

**TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT
SUBCHAPTER 9**

**AMEND SECTIONS 13660, 13661, & 13662
ADOPT SECTIONS 13660.1, 13660.2, 13663, 13663.5, 13664,
13664.1, 13665, 13665.5, 13666, 13666.1, 13667, 13667.1, & 13667.4
REGULATING FARM LABOR CONTRACTOR LICENSES**

ADDENDUM TO INITIAL STATEMENT OF REASONS

DLSE supplements (in italics below) the Initial Statement of Reasons (in plain format with original section headings in bold) with the following to further address and demonstrate the specific purpose and reasonable necessity (Government Code 11346.2(b)(1)) for each proposed regulation.

Proposed New Article 1 – Application for License; Renewal; Procedures

Proposed Section 13660 provides written application content for those seeking to obtain a farm labor contractor’s license pursuant to Labor Code 1682 et seq. The Labor Commissioner may not issue a license to a person to act as a farm labor contractor until specified conditions are met which include a written subscribed and sworn application on a form prescribed by the Labor Commissioner. Also, an applicant must provide a statement of all facts required by the Labor Commissioner concerning the applicant’s character, competency, responsibility, and the manner and method by which a person proposes to conduct operations as a farm labor contractor. (Labor Code 1684(a)(1)(A) and (a)(2)) The proposed section specifies specific background information of the applicant and information the Labor Commissioner requires for the written application, including other documents related to the information on the application and verification which will be reviewed by Labor Commissioner prior to issuance of a license. Adopting these requirements by regulation responds to requests over several years by the regulated public for stated criteria which the Labor Commissioner utilizes for applications for a farm labor contractor’s license, standardizes the information the agency will review, and implements specific statutory rules and duties applicable to qualifying for a license.

Subsections (a) and (b) are necessary for DLSE to establish the specific information and documents which must be submitted by persons applying for a license to operate as a farm labor contractor. The preamble language specifies overall application alternatives which are based on either a new (initial) license as specified in the current section or a renewal of a license which utilizes two possible application procedures (specified in proposed Section 13661) and is necessary to inform the public of the categories of applications established by DLSE for obtaining a farm labor contractor’s license which reference specific application forms. The preamble also establishes that the information provided in connection with an application must be certified and made under penalty of perjury which is necessary to

implement the requirement under Labor Code 1684(a)(1) that an application be subscribed and sworn in more easily recognized and understood terms.

Subsection (a)(1) specifies information which identifies an applicant by their legal name and conventional identifying information for individuals and non-individuals (corporation, limited liability company, and partnerships) for which farm labor contractors (FLCs) operate their businesses. For individuals, it is reasonably necessary to obtain date of birth, driver's license and social security number to more specifically identify among other individuals from the public at large as well as those applying, or who have previously applied, for a license. For non-individual businesses, the date of creation of the applicable business entity is required to ascertain its existence at the time of application for a license which ensures that a legally recognized business entity intends to engage in conduct regulated under the Farm Labor Contractor law. The dates of birth for a sole proprietors and partners as well as date of incorporation (corporation) and organization (limited liability company) are also necessary for DLSE to determine the duration (effective dates) for a license as specified in Labor Code 1688.

Subsection (a)(2) is necessary because both individuals and non-individual businesses often use fictitious names when conducting businesses which are different from their actual legal names. Obtaining all names an applicant intends to use in conducting business provides a means to associate fictitious names with actual names of those who will conduct a farm labor contractor business and is necessary for DLSE's administration of the licensing law. Also, as fictitious names change often and a business may use multiple fictitious names, DLSE has determined that providing information for a three-year period previous to the application is necessary to associate with potential liabilities of the applicant which are relevant to determining competency, character and responsibility for licensure under Labor Code 1684(a)(2).

Section (a)(3) is necessary in order for DLSE to obtain essential contact information regarding physical business and home addresses and other essential contact information required, including mailing address, if different from physical address, email address. An applicant's designation of a fixed location and email address insures the ability for DLSE to communicate and provide any necessary notices or other communication to a licensee performing the regulated activity. Simply providing a Post Office box or private mail box address is inadequate to sufficiently be able to physically locate a licensee's business. A home address is necessary for DLSE to have complete location information for an applicant seeking a license to conduct a contractor business and for providing an alternative source for contacting a contractor for notices or other communications. The section also provides that the Labor Commissioner must be notified promptly of any changes to the contact information which is necessary for DLSE to maintain its ability to locate the licensee in the event of a relocation of the licensed business.

Section (a)(4) which requires business telephone numbers (business and mobile) is information, similar to the business contact information discussed for the previous subsection and provides for a more immediate ability to communicate with a licensee when they are

conducting their business. The ability to more immediately contact a contractor is especially important due to the transitory and mobile nature of farm labor contracting.

Section (a)(5) is necessary to demonstrate an applicant's compliance with any applicable registration requirement under the federal Migrant and Seasonal Agricultural Worker Protection Act (MSPA) [29 U.S.C. section 1811 et seq.] in connection with their farm labor contractor business. Since a license is subject to revocation, suspension or failure to renew for a licensee's violation of the federal law if the holder is required to register under the federal law (see Labor Code 1690(f)), an applicant's qualification for a state license depends upon compliance with the federal registration requirement if the applicant is required to register under MSPA, and a copy of the certificate demonstrating registration is necessary. This requirement only applies where an applicant is required to register with the federal Department of Labor which has its own coverage and definitions as to who must register under federal law which is not as broad as the coverage and definitional provisions of the state Farm Labor Contractor law. Federal farm labor contractor requirements under MSPA do not preempt a state from regulating farm labor contractors under state law and is intended to supplement state law and regulation (29 U.S.C. section 1871). Labor Code 1688 and this regulation requiring compliance with federal law registration requirements, if applicable, is compatible with federal law. Applicants, however, are not excused from the state license requirement if they are not required to register with the Secretary of Labor since coverage under the State's licensing requirement exists independent of MSPA's definitional and exemption provisions.

Subsection (a)(6) is necessary in order for DLSE to ascertain the specific legal entity (individual/sole proprietor, partnership, limited liability company, or corporation) under which the applicant business will operate under the license. Additional contact information pertaining to responsible persons for the respective applicant entity, including name, business and home addresses, and phone numbers of corporate officers, or members or managing agents and designation of foreign corporate status is required for DLSE to evaluate the nature of the business, its status with required filings with the Secretary of State, as applicable, and persons responsible for operating the business for which a license is sought.

Subsection (a)(7) requiring identification of persons financially interested in the applicant business together with an indication of the amount of their respective financial interest directly implements the requirements of Labor Code section 1684(a) in the application for a license.

Subsection (a)(8) is necessary for DLSE to determine the specific individuals who will use the services of any other individual (who is not the licensee) to perform a regulated activity (see Labor Code section 1682(b)) of the licensee. Identification of other individuals, including employees (crew bosses, foremen) or other entities, which an applicant will use to perform the regulated activity is necessary because it indicates a fundamental operational component of the business by indicating how the applicant will be performing the regulated activities. Information regarding the names, addresses and whether the identified person held a license at any time within the last 10 years is information which demonstrates the

operational structure for conducting the business and reveals whether an applicant is using the services of a person or entity (identified by name, address, and phone number) who held a farm labor contractor license and impacts the applicant's ability to perform the regulated activity using such other person. An applicant's use of one who previously held a license which was revoked could affect the applicant's competency and responsibility to conduct a regulated activity under a license and violate restrictions specified in Labor Code 1695.8. If the applicant responds in the negative, then he or she shall state who will perform the regulated activity for the applicant and is necessary to ensure that DLSE is provided with information identifying who will perform the specified activities. The information is needed for DLSE to effectively determine the applicant's competency and responsibility standards specified in Labor Code 1684(a)(2).

Subsection (a)(9) is necessary for DLSE to evaluate (and be able to verify information) to determine an applicant's character, competency and responsibility as specified in Labor Code section 1684(a)(2). Information listing known and intended growers (identified by name, address (physical and mailing, if different) the applicant plans or intends to contract with in the future indicates the nature and extent of the business the applicant intends to operate. A list of growers with whom the applicant has contracted with in the last 3 years (only required for those applicants who have a contract history with a grower) provides a history and scope of operations within or among regions of the state.

Subsections (a)(10) is necessary to identify the person who will take the written exam required under Labor Code 1684(a)(5) and provides identification information for purposes of administration of the exam only to the applicant (individual or an identified representative of a business entity).

Subsection (a)(11) is necessary for DLSE to verify an applicant's compliance with applicable employee housing permit or certification requirements contained in Health and Safety Code 17000-17062.5 which is referenced in Labor Code 1684(c)(2). Farm labor contractors who are subject to the federal Migrant Seasonal Agricultural Worker Protection Act must also comply with applicable state or local employee housing requirements (see 29 U.S.C. section 1823). Thus, it is necessary for DLSE to ascertain compliance with employee housing requirements as conditions for licensure as a contractor under both state law (see Labor Code section 1684(c)(2)) and federal law referenced in Labor Code section 1690(f).

Subsection (a)(12) is necessary for DLSE to implement into the application process the prohibition against the selling of intoxicating liquors at worksites, as stated in Labor Code section 1685(a).

Subsection (a)(13) is necessary for DLSE to determine from the applicant whether he or she has submitted IRS Form 8821 (rev 10/2012) [tax information authorization] which has been submitted prior to, at the time of, or after submission of an application. Indicating the submission of the form authorization promotes tracking of information by DLSE provided by the IRS to DLSE and serves to ensure applicant's awareness of the required authorization as a component of the application.

Subsection (a)(14) language is necessary to implement the requirement that vehicles and drivers be registered with DLSE as required in Labor Code 1696.4 and Vehicle Code 12519 as well as the requirement that all vehicles used for transportation of workers have sufficient liability for personal and property damage pursuant to Labor Code 1695(a)(6). Providing this information will be the means for registration of vehicles and drivers in a less burdensome manner rather than requiring a separate vehicle registration procedure and this subsection is necessary to implement the requirement as part of the application process. The provision also directs a licensee to acknowledge an obligation to provide updated information to DLSE for any additional vehicles not later than 7 days prior to the use of such vehicles for transportation of workers. Labor Code 1696.4 requires that, as a condition of registration of vehicles, liability insurance coverage shall be provided to DLSE. The 7-day period recognizes that vehicle needs may change on an irregular basis and are job-dependent but that a 7 day period is a reasonable time for a contractor to anticipate transportation needs which would also comply with the statutory registration requirement prior to using other vehicles to transport workers.

Subsection (a)(15) is necessary in order to determine the applicant's responsibilities when utilizing another contractor or other person in connection with its operations. Labor Code 1695.9 addresses the responsibility of a contractor who uses other persons ("persons" include businesses under Labor Code section 18) that perform labor contracting activities on behalf of the contractor, including the use of persons who are not an employee of the contractor. The information requested seeks basic information which identifies the business type, name, and address of any other business to allow DLSE to ascertain an applicant's responsibilities beyond employees of the contractor where a contractor operates jointly with other persons. Also, the basic identifying information (name and address) is needed to review an applicant's anticipated responsibilities and the ability for DLSE to verify is relevant to determining an applicant's "responsibility" which is a standard for licensure under Labor Code 1684(a)(2).

Subsection (a)(16)(A) provisions are necessary for DLSE to review and evaluate an applicant's history regarding compliance with legal obligations which are related to wage and tax delinquencies, judgments, pleas in criminal cases, and previous compliance with any licensing or permits held by responsible persons of the business and those identified with a financial interest under subsections (a)(6) and (a)(7). The requested information directly relates to and demonstrates competency and responsibility of the applicant and persons responsibility for operating the business which are standards for licensure under Labor Code 1684(a)(2). Also, Labor Code 1689 requires an applicant to disclose the names of person who have financial interests in the business (ownership or profit sharing) and Labor Code 273 requires that a farm labor contractor license holder may not allow persons who are wage judgment debtors to hold positions described in Section 1689 in the business. A ten-year period for information regarding specified criminal matters and adverse actions regarding licenses or permits is deemed a reasonable time for history related to an applicant's prior criminal conduct and prior licensure when determining an applicant's current ability (character, competency, and responsibility) to lawfully operate a licensed farm labor contractor business using employee labor. Adverse actions in connection with a license is limited to licenses issued pursuant to the Labor Code and Business & Professions

Code which are deemed more appropriate areas involving employment of persons in a business operation.

Subsection (a)(16)(A)(i) requires reporting existing delinquency for unpaid wages which is a fundamental obligation for an employer. The requirements reflects the importance of payment of wages by all employers which is a fundamental requirement under the Labor Code (Sections 200-273 and 1171-1206) and protecting workers regarding payment of wages is one of the underlying purposes of the farm labor contractor law. (Ruiz v. Cabrera (2002) 98 Cal.App.4th 1198, 1201). This requirement on the application is necessary for the Labor Commissioner to determine an applicant's character, competency, and responsibility pursuant to Labor Code 1684(a)(2).

Subsection (a)(16)(A)(ii) requiring identification of any unpaid judgments outstanding is necessary to determine an applicant's fitness to conduct a licensed business in view of outstanding judgment obligations and provides the Labor Commissioner with information to determine character, competency, and responsibility pursuant to Labor Code 1684(a)(2).

Subsection (a)(16)(A)(iii) requiring information regarding owed payroll taxes or personal, partnership, or corporate income taxes, social security taxes, or disability insurance taxes is necessary to determine an applicant's fitness to conduct a licensed business. The information will reveal unpaid legal obligations, including worker contributions owing and required by the Unemployment Code or Employment Development Department (Labor Code 1690.1). The information is necessary for the Labor Commissioner to effectively determine an applicant's history with meeting business and employer obligations which are necessary for DLSE to determine the applicant's character competency and responsibility pursuant to Labor Code 1684(a)(2).

Subsection (a)(16)(A)(iv) requiring information regarding history of criminal guilty pleas or conviction of a crime substantially related to working conditions or workers health or safety is necessary to determine an applicant's character, competency, and responsibility pursuant to Labor Code 1684(a)(2) to operate a business using employee labor. The language which ties criminal history to specified matters substantially related to working conditions and workers health and safety establishes primacy for crimes having a relationship to the matters related to the license the applicant seeks.

Subsection (a)(16)(A)(v) requiring indication of any suspension, revocation, denial or other disciplinary action for any license or permit issued pursuant to Labor Code or Business & Professions Code, demonstrates an applicant's history of compliance with licensing laws relevant to conducting a business and is necessary to determine an applicant's character, competency, and responsibility to hold a farm labor contractor's license pursuant to Labor Code 1684(a)(2).

Subsection (a)(16)(A)(vi) requiring information whether an applicant has violated or willfully abetted any person in the violation of any law in the specified laws implements into the application a requirement in Labor Code 1690(d) which is a disqualifying condition for licensure. The required information will provide screening of a license applicant consistent with the Labor Code provision.

Subsection (a)(16)(B) is necessary to enable DLSE to also consider any extenuating circumstances (e.g. nature of violation or charge, forum, length of time since disposition, etc.) through an applicant's explanation regarding incidences reported by the applicant under subsection (a)(16)(A) or which may qualify under criteria specified in Labor Code 273(c). The information will provide DLSE with a more complete review of the reported information when determining an applicant's competency, character, and responsibility under Labor Code 1684(a)(2).

Subsection (a)(17) is necessary to address a historical problem DLSE has encountered of attempts by a previous licensee (or applicant who was denied a license, renewal, or had a license revoked) to circumvent the action by seeking the license under the name of a family member to effectively continue to operate the contracting business as an agent of the relative licensee. In requiring a licensee to identify specified family members who the applicant knows have held a contractor's license that was denied or revoked, the information will provide information for DLSE to determine the extent of an effort by an applicant to allow a previous license holder who had been determined unqualified to hold a license to provide a means for the relative who was a previous licensee to be significantly involved with operations of the applicant's business. This information is intended to provide DLSE with information which will address attempts by those who may seek to circumvent the qualifications for issuance of a license and necessary to determine the applicant's character and competency of the applicant under Labor Code 1684(a)(2).

Subsection (a)(18) requiring the number of employees the applicant will employ and to provide state and federal employer identification numbers are necessary for DLSE to determine the size of the business and tax identification numbers the contractor will use for reporting tax and payroll information as an employer of workers. The information is necessary to determine whether the applicant has tax reporting identification which is necessary for conducting a business using employee labor and is used to determine competency and responsibility under Labor Code 1684(a)(2).

Subsection (a)(19) requiring total gross revenue for the applicant is necessary for evaluation of the financial viability of the applicant which will be used to determine the competency and responsibility of the applicant under Labor Code 1684(a)(2).

Subsection (a)(20) requiring the name and address of an agent, if any, designated and authorized by the applicant to communicate with DLSE personnel in connection with the application. This is necessary to facilitate communication between the applicant and DLSE in connection with the application process or following issuance of a license.

Subsection (a)(21) requires certified statements on the application which ensure that an applicant is aware of requirements for obtaining a license and continuing conditions for maintaining a license once issued. The attested statements on the application are necessary to reinforce an applicant's awareness when applying for a license and their need to implement proactive measures to comply with the specified obligations.

Subsection (a)(21)(A) requiring workers compensation liability coverage applies to all employers in the state pursuant to Labor Code 3700 and is necessary that employers agree to obtain and maintain the required coverage.

Subsection (a)(21)(B) requiring that a farm labor contractor obtain and maintain a surety bond pursuant to Labor Code 1684 (a)(3) is necessary to ensure on-going bond coverage by the contractor for the statutorily prescribed bond amounts which is a condition for licensure.

Subsection (a)(21)(C) requiring liability insurance for each vehicles when transportation is provided to employees pursuant to Labor Code 1695(a)(6).

Subsection (a)(21)(D) requiring , as a condition of being licensed as a farm labor contractor, to keep the Commissioner informed of any change in the licensee's address and other contact information. This is necessary in order for DLSE to have the most current contact information of the licensee in the event of any notice, service of papers, or other communication which must be made to a licensee.

Subsection (a)(21)(E) requiring that the licensee consent to designation of the Labor Commissioner to be the licensee's agent to accept service of summons, is required as a condition of licensure under Labor Code 1684(a)(1)(C) and implements the consent requirement in an application for a license.

Subsection (a)(21)(F) requiring that the licensee attest to awareness and compliance with Labor Code requirements and specific worker safety requirements is necessary to make contractors more conscious of worker safety obligations which directly impact the well-being and health of workers. Specific reference is made for heat illness prevention and pesticide use for which dangerous exposures are an on-going risk for agricultural workers whose workplaces and working environments change regularly. While farm labor contractors must comply with all applicable health and safety requirements to protect employees, DLSE has determined that increased awareness by contractors of these obligations is a standard for licensure for which the attestation regarding awareness and compliance in these areas is required to determine an applicant's competency and responsibility under Labor Code 1684(a)(2).

Subsection (a)(21)(G) requiring that the applicant certifies that the applicant has provided all to DLSE for a determination by the agency as to the character, competency, and responsibility (standards under Labor Code 1684(a)(2)) and

manner of conducting business is necessary to ensure the completeness and correctness of information provided by the applicant pursuant to Labor Code 1684(a)(1).

Subsection (a)(21)(H) is necessary in order to make an applicant more aware of their initial and continuing obligations which promote and enhance compliance with the Farm Labor Contractor Law and that applicants are subject to the specified adverse actions due to noncompliance with applicable provisions of the Labor Code and these regulations promulgated pursuant to the Labor Code provisions for farm labor contractor licensing.

Subsection (a)(21)(I) is necessary in order for the applicant to acknowledge and memorialize on the applicant that a misrepresentation on the application is grounds for a denial or subsequent revocation of a license as specified in Labor Code 1690(b) if it is material. The ordinary meaning of “material” is “important, essential, or pertinent to the matter under discussion; important enough to affect the outcome of a case, the validity of an instrument, etc.” (Webster’s New World College Dictionary, 4th Ed, p. 886). A misrepresentation is “[a] material fact stated as a fraudulent, negligent, or innocent misstatement, or an incomplete statement.” (<http://www.thelawdictionary.org/misrepresentation-2>) Inclusion of “material misrepresentation” of a fact presented in connection with an application for a license (distinguishable from insignificant, trivial, or unimportant matters which do not have an effective influence on a decision) is necessary to clarify the nature of any misrepresentation made by an applicant which would be subject to a denial of a license, or suspension or revocation of an issued license under Labor Code 1690(b).

Subsection (b) requiring other items and documents which must be provided with an application for a license are necessary for DLSE to verify information provided pursuant to subsection (a) of Section 13660 and have a record of information which items are required under statute or address an applicant’s character, competency, and responsibility which must be determined by DLSE in order to issue a license pursuant to Labor Code 1684(a)(2).

Subsection (b)(1) requiring the payment of various fees associated with an application for a license, the amounts designated for a license and filing fee under Labor Code 1684(a)(4), and provides the manner for making payment either on-line or by certified check, money order, or cashier’s check. Although Labor Code 1684(a)(4) specifies payment of license fee as a condition for issuance of a license, this provision more specifically requires payment of the fee at the time of filing of the application with DLSE because the filing of an application initiates administrative processing by DLSE. The provision also sets an examination fee for \$100 as authorized under Labor Code section 1684(b)(1). DLSE has determined that \$100 is necessary to cover the cost of administering the written exam required under Labor Code 1684(a)(5) and (b)(1) for up to three attempts to pass the examination in a calendar year. The cost for administering the exam per applicant includes, maintaining/updating exam, staff time to administer and review exam, and supplies actually exceeds \$100 (see accompanying worksheet for examination fee. DLSE is limited to setting a fee for administering the

required exam to not more than \$100 pursuant to Labor Code 1684(b)(1) and sets the maximum amount authorized under the statute as the exam fee. The provision also specifies the consequence to the application in the event an applicant fails to pass after three attempts which is necessary to establish a reasonable limit for an application to be pending passage of the exam. Establishing forfeiture of the application and examination fee is necessary as DLSE has incurred costs in connection with filing of an application and administering the exam. Establishing an additional standard for re-application in the event of a failure to pass the exam is necessary due to the limit specified in Labor Code 1684(a)(5) which sets a maximum of three attempts in a calendar year.

Subsection (b)(2) requiring a copy of the creating documents and statements of information filed with the Secretary of State, as applicable, are necessary to verify the existence and applicant's use of a lawfully formed corporation, limited liability company, or partnership including principals for the business and necessary to determine to determine an applicant's character, competency and responsibility under Labor Code 1684(a)(2).

Subsection (b)(3) requiring two current passport photos for individual as sole proprietor, each partner, and a representative of a corporation, limited liability company, or other business association are necessary to determine the identities of individuals who will be who will be conducting the contractor business. The photograph identification is necessary for DLSE to place a picture on the license as required under Labor Code 1687(a)(5) and to maintains a photo in DLSE's files. The provision also provides for informing DLSE of changes in such personnel during the period of the license, the corporation or business association shall submit two passport photographs of the new representative so that the division can issue a new license with a current photograph of the licensee.

Subsection (b)(4) is necessary because each applicant, as a condition for issuance of a license, must deposit with DLSE a surety bond pursuant to Labor Code 1684(a)(3). To satisfy this requirement DLSE has established a form Farm Labor Contractor Surety Bond [DLSE 402 rev 03/2014) for deposit with DLSE. The subsection also provides that a bond may be issued using a form created by the surety which complies with the coverage requirements provided in the statute. An original bond is required when applying using the physical application process, and a copy is required for on-line applications due to the nature of DLSE's on-line filing process and receipt of uploaded documents.

Subsection (b)(5) requiring proof of coverage for worker's compensation is generally required for all businesses in the state which utilize employees. DLSE also enforces the worker's compensation requirement under Labor Code 3700 (see 8 CCR 15550) and this provision specifies required information to demonstrate effective coverage. This information is also necessary for DLSE to determine to determine an applicant's competency and responsibility under Labor Code 1684(a)(2) prior to operating as a licensed contractor.

Subsection (b)(6) requiring evidence of completion of eight hours of approved educational classes is required under Labor Code 1684(b)(2) and in accordance with proposed Section 13665.5. Classes are administered by approved third party providers (see proposed Section 13665) and proof of completion of required classes is necessary for DLSE to determine

competency of an applicant under Labor Code 1684(a)(2) which includes compliance with the educational class requirement.

Subsection (b)(7) requiring a statement as to any final court judgment, Labor Commissioner order, or an accord (e.g. settlement agreement) involving an issue which relates to unpaid wages is required for approval of any application for a farm labor contractor's license. Labor Code section 273 subd. (c). This requirement is necessary to incorporate the required statement into the application process.

Subsection (b)(8) requiring live scan fingerprint images is necessary to determine criminal history of applicants and individuals within a partnership, corporation, or limited liability company who are responsible for operating a business who seeks a license to operate a farm labor contractor business. This information is necessary to implement a mechanism for obtaining criminal history information from the Department of Justice to review past criminal history of individuals who will operate a licensed business and to determine existence of criminal history specified in Section 13660.1 for use by DLSE to determine the applicant's character, competency, and responsibility pursuant Labor Code 1684(a)(2). DLSE receives criminal history information from the Department of Justice for purposes of performing licensing duties pursuant to Penal Code 11105.

Subsection (b)(9) requiring a copy of a driver's license (or other photo identification) of specified persons are necessary to obtain proper identification of persons (1) identified on the application as those who will operate the farm labor contracting business under the applicable entity form, (2) persons who will operate a farm labor vehicle used for transportation of farm laborers, and (3) the person taking the examination required under Labor Code section 1684(a)(5), are necessary in order to provide DLSE with actual independent identification information which verifies living persons who will operate the business, who will drive vehicles used to transport workers, and for exam security in administering the required examination of an applicant. This information is necessary for DLSE to determine the applicant's character, competency, and responsibility under Labor Code 1684(a)(2).

Subsection (b)(10) requiring proof of applicant's vehicle liability insurance coverage (for persons and property damage) is a requirement for all licensees pursuant to Labor Code 1695(a)(6) for all vehicles used to transport workers and is necessary for DLSE to determine an applicant's responsibility under Labor Code 1684(a)(2). Labor Code 1695(a)(6) also provides that the coverage be in amounts satisfactory to the Labor Commissioner. The amounts are established as minimum coverage requirements applying to any vehicle used for transportation of workers. The Labor Commissioner has determined the specified amounts for two categories of vehicle types which are based on the number of passengers (15 or less, and more than 15) and a third category applicable to day-haulers who only provide transportation of workers for other contractors are the minimal amounts of vehicle coverage for purposes of Labor Code 1695(a)(6). The minimum amounts for personal liability for bodily injury or death to one person due to a single accident (\$15,000) and to two or more persons due to a single accident (\$30,000) is based on the minimum coverage amounts for personal injuries set forth in Vehicle Code 16056 and is established for vehicles transporting

up to 15 passengers. The minimum personal liability amounts for vehicles transporting more than 15 passengers (\$30,000/\$60,000) is necessary due to the significant increase in risk of personal injury when transporting more passengers. Also, specific minimum coverage amounts for day haulers who only transport workers of either another contractor(s) or single/multiple a growers is necessary to account for the associated additional risk of transporting workers more frequently which increases risks of accident resulting in personal injury or death. The amount established for vehicles used by day-haulers for transporting 15 or fewer passengers (\$1,500,000) and for vehicles transporting more than 15 passengers (\$5,000,000) is necessary to due to the increased risks associated with a business which is dedicated only to transporting workers based on the size of vehicle. The personal liability coverage amounts for day haulers in this subsection are consistent with federal coverage requirements for farm labor contractors who use vehicles to transport workers who are not covered under state workers' compensation requirements (i.e., workers who may not be employees of the day hauler) which requires no less than \$100,000 for each passenger seat in the vehicle (\$1,500,000 for 15 passengers) with a maximum of \$5,000,000 for any one vehicle (see 29 CFR 500.121). The amount of \$1,500,000 for 15 or fewer passengers and \$5,000,000 for more than 15 passengers are also consistent with insurance protection amounts established by the Public Utilities Commission for charter-party carrier vehicles who, for hire, transport passengers as a business (see, PUC General Order 115-F at <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/575.PDF>). DLSE determines these minimum amounts reasonable and appropriate for application to day haulers. Additionally, DLSE has determined that a \$50,000 minimum is necessary to cover property damage liability resulting from a single accident which is also the minimum amount for property damage coverage applicable to federal farm labor contractors (29 CFR 500.123) which is determined reasonable for state requirements. The property damage coverage amount in this section is appropriate and accounts for the transportation of farm workers which regularly use both paved public and non-paved rural or private roads for which damages to property of others can occur at a higher risk than for regular vehicles.

Subsection (b)(11) requiring a certificate from the Department of Motor Vehicles (DMV) permitting operation of farm labor vehicle (if the vehicle is subject to Vehicle Code sections 322 and 12519) when the applicant will transport farm workers who are his or her own employees or employed by another is necessary for DLSE to determine compliance with farm labor vehicle laws specified in the Vehicle Code and referenced in Labor Code 1696.3 as a requirement for licensees who use such vehicles.

Subsection (b)(12) requiring evidence of a driving record from DMV (INF 1125 rev 11/2000) for any person operating a vehicle which will transport any employees (whether or not the employees of the license applicant) is necessary to ensure that only drivers who have a clean driving record transport employees which promotes safety protections for workers. DLSE has determined that this requirement is a standard which demonstrates a minimal competency of drivers who will transport farm labor workers who are either employees of the contractor or of another contractor and is necessary information to determine an applicant's competency and responsibility under Labor Code 1684(a)(2).

Subsection (b)(13) requiring a completed personal record information for a sole proprietor, each partner of a partnership, each corporate officer of a corporation, each member and managing agent (if any) of a limited liability company is information to be completed and subscribed by all persons who have an operational role (based on the entity form of a business) which is seeking a license and is necessary for DLSE to determine the character competency, and responsibility of an applicant. The required information provided under penalty of perjury which provides identifying information for each person and their spouse (necessary to determine any operational or financial interest in the business) provides both contact and identification information for each person responsible for operating the business and ensures that accurate information is provided to DLSE. Information regarding previous occupational history is necessary for DLSE to evaluate the qualifications of those having an operational role in the applicant's business and their ability to perform and conduct a business which is subject to the Farm Labor Contractor License Law.

Proposed Section 13660.1 provides parameters for “character, competency, and responsibility” stated in Labor Code 1684(a)(1)(A) which the Labor Commissioner must determine prior to issuing a farm labor contractor license based upon review of the application information and consideration of fitness in view of an applicant’s previous conduct or conviction of a crime substantially related to working conditions. The proposed section also specifies conditions for rehabilitation of an applicant following a period of time after completion of any ordered incarceration or penalty under a crime or act, as specified. Adopting these requirements by regulation responds to requests over several years by the regulated public for stated criteria which the Labor Commissioner utilizes for issuance of a farm labor contractor’s license, standardizes the information the agency will consider and review, and implements specific statutory rules and duties applicable to qualifying for a license.

Subsection 13660.1(a) is necessary to establish that DLSE’s determination of an applicant’s character, competency, and responsibility provided in Labor Code 1684(a)(2) will be based on evaluating the information provided by an applicant (under proposed Section 13660 or 13661) or otherwise obtained by DLSE during review of an application. It is necessary to further specify types of conduct and convictions which pertain to an applicant’s past history where specific conduct, acts, or convictions of crimes are substantially related to working conditions which could likely impact the applicant’s ability to perform contractor duties under a license.

This subsection identifies four categories of past history (subsection (a)(1) through (4) which require examination in view of the role and duties of a contractor as a business and employer. Specifically, established violations of provisions of the Labor Code and Title 8 of the California Code of Regulations reflect an ability to comply with laws applicable to employers and include requirements regarding payment of wages and safety and health protections for employees. Crimes or acts involving dishonesty, fraud, deceit, or theft for one’s benefit which harms another reflects an applicant’s capacity to act, transact, or otherwise engage others to act in honest and lawful manner. Crimes involving physical violence reflect an applicant’s capacity to act, transact with others, or otherwise engage others in a peaceful and healthy manner. Crimes or acts that reflect a substantial or repeated

disregard for wages, health or safety, or welfare of employees reflect on one's capacity to correct misfeasance or otherwise take measures to correct violative conditions and/or maintain practices which comply with lawful business practices on a consistent basis. DLSE has determined that these categories are necessary to provide the public with general guidelines used by DLSE when reviewing past history rather than provide an exhaustive and specific list of past acts of an applicant which directly disqualify an applicant because such a specific listing could not fully capture all acts or conduct necessary to make determinations for licensure. Providing a special definition for "other acts" in subsection (a)(4) is necessary to account for gravity or frequency of violations of law for which there are applicable statutory definitions; for example, degrees of crimes as well as classifications for crimes (infractions, misdemeanors, felonies) and for violations of civil laws (willful, serious, repeat violations) The stated categories are primarily based on similar provisions adapted from the state contractor's license law (see Business & Professions Code 480 and 8 CCR 868) and is adapted to farm labor contracting. The special definition in this provision makes any determination of the type of violation dependent on the category as described under the applicable statutory scheme from which the violation arises. For example, worker safety and health laws under Cal/OSHA provide classifications and degrees of violations (regulatory, general, serious, repeated, willful (see Labor Code 6423 et seq.; 8 CCR 334)

Subsection (b) is necessary to establish criteria for considering rehabilitation which reflects the discretion to be exercised by the agency in evaluating an applicant for a license. The stated considerations are primarily based on similar factors adapted from the state contractor's license law (see Business & Professions Code 482 and 16 CCR 869) and provide sufficient guidelines for evaluating rehabilitation for farm labor contracting.

Subsection (c) is necessary to implement the requirement under Labor Code 273(c) that no application for a license be approved where there is a final determination involving unpaid wages (in a judgment or final administrative decision) unless a bond is deposited which covers the liability as required under Labor Code 273(c). For renewal applicants who may have a bond deposited pursuant to Labor Code 1684(a)(3), a final judgment may be subject to the bond under that section independent of Labor Code 273(c). Based on these statutes, DLSE includes both statutory requirements as matters which directly relate to an applicant's character, competency and responsibility pursuant to Labor Code 1684(a)(2).

~~**Proposed Section 13660.2** specifies a 1 year period of time which must lapse before a new application can be submitted to the Labor Commissioner following denial of an application due to a determination that the person lacked the character, competence, or responsibility to be licensed. This section responds to requests over several years by the regulated public for stated criteria which the Labor Commissioner utilizes for issuance of a farm labor contractor's license, standardizes the time period for re-applying after a denial of an application, and implements a specific rule applicable to qualifying for a license.~~

[This section will be deleted due to inconsistency with LC 1685(b) and 1695.8]

Proposed Section 13661 specifies the conditions for a licensee to renew their license prior to expiration of their existing license. The section provides reference to a renewal application

form which requests updated or changed information and that the previous and updated information is subscribed and sworn by the renewal applicant. This section implements and makes more specific the current practice of the agency under Labor Code 1684(c) with respect to license renewal requirements.

Subsection (a) is necessary to establish a time period for which any renewal application must be filed with DLSE and is based on the need to allow sufficient time to administratively process an application prior to expiration of a current license and renewal requirement (within 30 days preceding expiration as specified in Labor Code 1688). The 60 day period reflects the frequent occurrences for an applicant to be informed of a defect or insufficiency in the application information and subsequently provide it to DLSE. Any less amount of time would create an administrative burden and cause delays in renewal which would undesirably result in expiration of licenses and contractors operating without the required license. The subsection also provides for manner of submission of a renewal application (online or physical application) and is necessary to establish that the same minimum 60 day period applies to all renewal applications regardless of the form of the application.

Subsection (b) requiring submission of specified information using a “short form” renewal process is necessary to more effectively administer the licensing program and reduce delays in reviewing and processing applications where there are little or no changes in the licensee’s qualifications except for updating specific information and providing updated documents. The short form application process is only available if specified conditions are met which will provide sufficient screening to ensure ongoing qualifications of a licensee and reduce the application burden on licensees who fall within the specified parameters.

Subsection (b)(1) requiring attestation to the conditions for applying under the short form process is necessary to ensure that the applicant reports accurately that there have been no changes in the business form and contact information, reportable civil liabilities and compliance with required tax filings, or criminal convictions/pleas for the licensee, including persons responsible for operating a licensed business entity, as specified. These criteria are needed to ensure that the identity of the licensee is the same and there have been no additional civil or criminal liabilities which could detrimentally affect the structure of the business, its financial stability, or capability to comply with the law. An applicant’s attestation to these conditions allows DLSE to review the licensee’s continuing character, competency and responsibility for licensure under Labor Code 1684(a)(2).

Subsection (b)(2) is necessary to establish that, only where the applicant can attest to the conditions specified in (b)(1), the renewal applicant can utilize the short renewal process by providing the specified items. This provision repeats the qualification for use of a short form stated in subsection (b)(1) but is necessary to reinforce its applicability to applicants who can attest to the conditions under (b)(1). The slight duplication is outweighed by the need to avoid a possible interpretation that the short renewal process is merely an alternative to the regular renewal process specified in subsection (c). The short process is only available upon meeting the conditions specified in (b)(2)(A) through (C).

Subsections (b)(2)(A) is necessary to specify the fees which must be paid by a renewal applicant. It is necessary to qualify the examination fee (\$100) because an examination may not be required yearly (licenses must be renewed yearly under Labor Code 1688) pursuant to Labor Code 1684(b)(1) in which case it would only be required every two years if the exemption conditions exist. This exemption from a yearly examination only applies to renewal applicants.

Subsection (b)(2)(B) is necessary to confirm identification and contact information for the renewal applicant so that DLSE can match the applicant to an existing license, is provided directly by the applicant with current identity and contact information (necessary for the reasons previously stated for subsection (a)(1) through (7)), and gross annual income for the business which is a general item of information necessary to determine financial viability of the business relative to its size and activities and also reflects an ability to continue operations, including payment of wages for workers, and meeting on-going licensee obligations.

Subsection (b)(2)(C) is necessary to identify the documents to be submitted in connection with the short renewal process. These items are necessary for the same reasons previously stated for proposed Section 13660(a)(5), (a)(8), (a)(9), (a)(13), (a)(17), (b)(3), (b)(4), (b)(5), (b)(6), (b)(10), (b)(11), (b)(12), and (b)(13) for initial applications. For documents described in subsection (b)(2)(C)(i) [surety bond] and (iv) [information regarding drivers of vehicles used to transport workers], the applicant need only submit the required documents if there has a change in amount of required surety based on the size of annual payroll (under Labor Code 1684(a)(3) and proposed Section 13664) or a change in the identity of any drivers. By requiring documentation for these items only if there are changes to information provided to DLSE for the current license, it will reduce the application burden on a licensee seeking renewal with little or no changes in the specified documents and streamlines DLSE's review for changes in the information required under subsections (b)(2)(C)(i) and (iv). All other documentary items specified in (b)(2)(C) must be provided and reviewed by DLSE to sufficiently determine continuing fitness and qualification for a license to ensure the character, competency and responsibility of the applicant under Labor Code 1684(a)(2).

Subsection (c) is necessary to establish regular renewal application requirements which would apply to licensees who do not qualify for renewal under the short renewal process in subsection (b). The subsection specifying that the same informational items required for an initial license pursuant to Section 13360(a) must be provided by a renewal applicant for license renewal except that the applicant must indicate whether or not there is a change in information regarding use of persons to perform regulated activities (described in Section 13660(a)(8)) and the information regarding persons responsible in the business operations (described in Section 13660(a)(16)). Only if there are changes, the applicant would be required to provide updated information which decreases the burden on applicants and streamlines DLSE's review of renewal applications where there are no changes to these informational items. In requiring additional documents (previous year tax filings and payroll reports), the information is necessary to ensure recent and actual compliance with fundamental responsibilities for payment of taxes and wage payments by the licensee and demonstrates viability of the business and enables DLSE to determine the applicant's

continuing qualifications as to character, competency, and responsibility under Labor Code 1684(a)(2).

Proposed Section 13662 implements the requirement that an applicant take a written examination required under Labor Code 1684(a)(5) demonstrating knowledge of the current laws and regulations concerning farm labor contractors as the Labor Commissioner deems necessary for the safety and protection of farmworkers. The section specifies who must take the examination based upon the business entity form and such person must submit photo identification. This section codifies the current practices of the agency for ensuring the identity of the appropriate person to take the written examination.

Section 13662 is necessary to apply the examination requirement for obtaining a license to various business entity forms of an applicant which ranges from an individual (sole proprietor) to a partnership, limited liability company, or corporation. Since only an individual can take an exam, whether applicant is an individual (sole proprietor) or individual designated by the applicant (for entity forms other than a sole proprietor), the standard under this section is the most reasonable alternative for effectively administering a secure exam. The provision for subsequent changes in the person designated by a partnership, limited liability company, corporation, or other business form is necessary to ensure that the licensee maintains its qualification for a license and the need for replacement photos where a new license needs to be issued.

Proposed Section 13663 provides a time schedule for processing license applications (within 60 days of receiving an application) and time periods for submitting additional information following a written notice from the agency requesting additional information from the applicant. The section also provides that the Labor Commissioner may issue a temporary license authorized under Labor Code 1684.3 only when the agency is unable to complete its determination (within 60 days of receiving an application) and the delay is not the fault of the applicant. This section provides a time standard for processing applications within the agency and provides for the issuance of a temporary license to applicants to address instances which have occurred in the past where delays are not the fault of the applicant.

Section 13663 is necessary to establish a time-line for processing applications by DLSE and provide a procedure for DLSE to notify, and an applicant to respond to, defects or insufficiencies regarding the application and the consequence for failure to timely respond. DLSE's historical administration of farm labor contractor licenses has demonstrated that not all applications are submitted with all required information or documents and there is frequently a need to address deficiencies. DLSE has determined that allowing the ability for an applicant to address defects or insufficiencies within specified response times and which allow for no more than two notices of defects is a reasonable balance between the need to allow an applicant opportunities to address problems and the need for DLSE to timely process and act on an application. The standard will more effectively avoid numerous and excessive opportunities for curing defects which causes increases in the numbers of pending applications for prolonged or excessive periods of time which creates administrative burdens as well as uncertainty for applicants.

Proposed Section 13663.5 provides for replacement licenses and a replacement fee (\$25) which may be requested by a licensee and issued by the agency to replace a license which has been lost, destroyed or mutilated. This section establishes the administrative cost for issuing a replacement license to a licensee and sets the amount which will pay for personnel time and materials for issuing a replacement license.

Section 13663.5 is necessary to establish a process for obtaining a replacement license in the event a loss of a license or other appropriate instance. (Labor Code 1683). DLSE has determined that a replacement license may be issued where the license is lost, destroyed, or mutilated. Requiring a statement containing the required information regarding a qualifying loss made by the licensee under penalty of perjury provides DLSE with necessary information regarding the circumstances of the loss the loss and request for replacement which is critical to monitoring the licenses issued by the agency as well as being informed when a license is stolen, lost, or mutilated. Since licensee must carry their licenses at all times (see Labor Code 1695(a)(1)), a replacement license which complies with the requirements in Labor Code 1687 must be issued for the licensee. DLSE sets a replacement fee in the amount of \$25 which covers the administrative costs of producing a physical license card containing a photograph and required information (see worksheet for license replacement fee in rulemaking file).

Proposed Section 13664 implements the surety bond requirement specified in Labor Code 1684(a)(3), provides criteria for proof of annual payroll, and continuity of the protections afforded by the bond, ~~and the Labor Commissioner's retention of the original bond for three years after the employer ceases business. This section implements the statutory requirement for determining the amount of a surety bond and provides for an alternative undertaking authorized under Code of Civil Procedure Section 995.010 et seq provided that the undertaking provides the same protections for the benefit of workers as a surety bond.~~ DLSE will be able to more effectively administer the licensing components which provides a source for recovery of damages for workers relating to wage payment violations by licensees.

Subsection (a) is necessary to establish that a surety issuing the bond required in Labor Code 1684(a)(3) is duly authorized to do business in the state. Although the statute does not specify that a surety must be authorized to do business in the state, a surety must be as a general matter be authorized with the California Department of Insurance (see Insurance Code 105 and 700). This requirement clarifies that such authorization specifically applies to farm labor contractor applicants and licensees and provides notification to applicants that will ensure the purposes of the bond requirement (protection of workers) will be accomplished.

Subsection (b) is necessary to establish the information DLSE will rely on when determining proof of annual payroll for purposes of determining the sufficiency of the bond amount for purposes of meeting requirements for a license. The amount of the bond is statutorily based on annual payroll pursuant to Labor Code 1684(a)(3). In specifying the documents an applicant or licensee must provide as evidence of its annual payroll, DLSE establishes a standard source of information for determining the sufficiency of bond amounts required for a license. The specified documents also demonstrate the licensee's compliance with payroll

reporting obligations which is necessary for DLSE to review to determine on-going compliance with obligations pertaining to wages of workers (e.g., withholdings, contributions, deductions from wages) which addresses a licensee's continuing competency and responsibility pursuant to Labor Code 1684(a)(2).

Subsection (c) which provides for maintaining continuous bond obligations in the event the required principal sum of the bond is reduced by a payout during the course of a license period is necessary to maintain the required coverage. Since bonds are a primary means of ensuring liabilities to workers, maintaining the principal sum for the bond would thwart deficiencies created for all workers by payouts made to individuals submitting claims against the bond. Specifying a consequence for a failure to maintain continuous coverage (suspend, revoke, or denial of an application) is necessary to ensure and reinforce continuous protection of workers for a bond in the amounts specified under Labor Code 1684(a)(3).

Subsection (d) is necessary to address the problem where an employer ceases its business by providing that DLSE will hold the bond for a period of no less than 6 months after the cessation of the business. This does not extend the terms of the bond to cover an additional 6 months but would allow a reasonable time for claims to be filed against the bond held by DLSE for any liabilities accruing prior to closure of the business. This time period avoids loss of valid claims by workers simply due to a licensee's cessation of its business and provides protection for workers' wages. This provision does not establish a statute of limitations for claims but provides that DLSE will hold the bond on deposit for six months which is deemed a reasonable period for allowing claims for work performed prior to cessation of the business. The time period is consistent with the six month period specified for commencing an action on bonds securing payment of wages for laborers applicable to private and public works of improvement (Civil Code 8610 and 9558).

~~**Proposed Section 13664.1** provides that an employee or representative first attempt to proceed against the employer's surety bond to recover amounts owed for wages, interest, or damages if awarded by the Labor Commissioner. This section provides an order for recovery against the bond or undertaking which will provide a prompt recovery for workers from a secured source (bond or undertaking) prior to seeking recovery from the Farmworker Remedial Account administered by DLSE which will avoid or minimize unnecessary depletion of account funds and discourage seeking simultaneous recoveries from the two sources.~~

[This proposed section is deleted.]

Proposed New Article 2 contains two sections which establish general requirements for educational classes for farm labor contractor applicants and licensees required under Labor Code 1684(a)(5), and specifically:

Proposed Section 13665 provides that a person, nonprofit organization, or educational institution may be evaluated and approved by the agency to provide educational programs to farm labor contractor applicants and licensees by submitting a proposed educational program at least 60 days prior to conducting such program. The section specifies the contents of a proposed program and qualifications for each proposed instructor, and criteria used by the

agency to determine approval of the educational provider. DLSE may, within 30 days of receipt of a request and at his or her discretion, approve an educational program for a one-year time period. An approved educational provider must report to the agency any changes in the program or instructor(s), and changes in the dates such programs are offered by the educational provider. This section implements the statutory requirement for educational classes (Labor Code 1684(a)(5)) and establishes standard requirements for educational class providers which will be reviewed and approved by the agency.

Subsection (a)(1) through (7) of Section 13665 is necessary to establish the minimal information which must be submitted at least 60 days prior to a start date for a class and is necessary for DLSE to have sufficient time to review, investigate (if necessary), and approve an educational program submitted by a provider. The required items of information a provider must submit to DLSE establish standards for information DLSE needs to evaluate the sufficiency of a program.

Subsection (b) is necessary to establish DLSE's discretionary authority to investigate any of the facts regarding a program's proposed educational components which are required in subsection (c) and is necessary to ensure the classes accomplish the educational objectives established by DLSE pursuant to Labor Code 1684(b)(2) and (c)(3).

Subsection (c) is necessary to establish required subject topics and respective class hours for which providers will cover in their classes and constitute classes applicants must take in order to satisfy the educational requirement in Labor Code 1684(b)(2) and (c)(3). DLSE has adopted the course requirements.

Subsection (c)(1)(A) through (E) are to establish standard education requirements for all new applicants as well as current licensees with less than five years in the business and who have had 2 or more citations within the last 2 years. DLSE has determined that, for applicants and licensees in the business for less than 5 years, regular yearly exposure to the laws in the specified core areas is important to developing a sufficient knowledge base for instituting and actually operating their business in compliance with applicable employment-related laws included in the required course topics. Also, for a current licensee who has had 2 or more citations within the last year (even with 5 or more years of experience), requiring the specified core courses is appropriate where there is demonstrated non-compliance with applicable legal requirements (2 or more citations against the licensee in the last 2 years). The corresponding hour requirement for each subject is needed to establish the minimum amount of time for each respective class a provider must devote to the respective subject which are weighted by DLSE based on the importance of the subject to ensure that sufficient instruction time is provided to participants for each respective course subject and in view of the number of subject areas which must total at least 8 hours of instruction pursuant to Labor Code 1684(c)(3). DLSE has determined that the specified subject areas for required education are relevant to farm labor contractors and are necessary for applicants and licensees to understand in order to conduct their business lawfully in a consistent manner over time.

Subsection (c)(2) establishing more general subjects are determined to apply to licensees with at least 5 years of experience in the business and who have no record of a violation under a citation. The focus for this latter category is for licensees to be exposed yearly to overviews and developments in farm labor contractor requirements, health and safety law, areas of business operation (management and supervision, best practices for grower relations), and relevant subjects from which a licensee can choose (electives) which will count, as specified, towards the minimum 8 hour course requirement under Labor Code 1684(c)(3). The more general topics for licensees in this category is necessary to more appropriately address educational needs for those with established experience (at least 5 years) and have no violations demonstrated by an absence of citations. The corresponding hour requirement for each subject is needed to establish the minimum amount of time for each respective class a provider must devote to the respective subject which are weighted by DLSE based on the importance of the subject to ensure that sufficient instruction time is provided to participants for each respective course subject and in view of the number of subject areas which must total at least 8 hours of instruction pursuant to Labor Code 1684(c)(3).

Subsection (c)(3) is necessary to establish qualifications for instructors for the educational classes required under Labor Code 1684(b)(2) and (c)(3). In requiring that an education class provider submit a resume and statement that the instructor meets any of the three specified criteria, this subsection establishes a minimum standard which qualifies a person to instruct applicants and licensees in the required educational program of a provider. The criteria allowing for education-based qualification (bachelor degree or equivalent, license or certificate to teach issued by a federal or state agency) as well as experience-based in an occupation involving the subject which he or she will teach is necessary to ensure that only persons with knowledge in the subject matter can teach in an approved educational program.

Subsection (d) establishing a time period (30) days for DLSE to act on an application for approval of a class program. This requirement is necessary to allow sufficient time to process and review the proposed program which must be submitted at least 60 days prior to the initial start date and allows a reasonable time for listing of class availability for applicants and licensees.

Subsection (e) is necessary to establish the duration of an educational program approved by DLSE (2 years) provided that there are no material changes in the approved program which ensures that there is a regular periodic review of courses to account for developments or changes in content and materials used by providers. Also, in specifying the procedure for re-application for approval due to expiration of the 2 year period, the subsection is necessary to establish the process for reapplication by providing updated document items specified in the referenced subsections of Section 13665.

Subsection (g) is necessary to establish a requirement and procedure for submitting to DLSE changes in the specified areas of a program prior to program presentation by the provider in order for DLSE to review and approve a change in the previously approved program and use of instructors who have not been previously approved by DLSE.

Subsection (h) specifying that DLSE staff has authority to attend any approved program for monitoring purposes at no charge is necessary to allow DLSE to monitor and review classes for compliance with the educational objectives and subject area requirements established in this section pursuant to Labor Code 1684(b)(2) and (c)(3).

Subsection (i) specifying the discretionary authority of DLSE to disapprove any educational program for purposes of crediting classes for licensure is necessary so that the regulated public is informed of DLSE's authority to act, at its discretion, based upon review of specific circumstances regarding either the presentation by the provider or participation by the applicant/licensee. There may be instances where an applicant/licensee's participation fails to meet the educational objective such as where a particular class was deficient in time (e.g. topic or class duration under specified hour requirements) or content (e.g. provider failed to address a required topic, class presented by unapproved instructor, applicant/licensee left the program early). If such circumstances arise, this section provides that DLSE may determine whether to credit the particular class for purposes of qualification of an applicant or licensee for a license even though as a technical matter he or she may have physically attended the class. This subsection accounts for the distinction between the participation of an applicant or licensee in a particular approved program and DLSE's separate determination of fitness for licensure of a specific applicant pursuant to DLSE's authority to determine an applicant/licensee's competency and responsibility for a license under Labor Code 1684(a)(2).

Proposed Section 13665.5 provides that educational providers for a period of three years from the date of completion of the educational curriculum maintain a record of administered classes and specifies the information which must be kept which shall be submitted to DLSE within 30 days of completion of each program. The section provides for a certificate of completion to be issued by the educational provider. Licensees who seek renewal must submit a record of all continuing education acquired during the preceding license period. This section provides for effective administration of the educational classes (initial and continuing education) for licensees.

Subsection (a) specifying a requirement that an educational program provider maintain a record of applicants and licensees who have successfully completed their program for a period of 2 years is necessary in order to maintain a history of their provided programs which may be necessary for potential confirmation by DLSE of both the instruction history of the approved provider as well as program attendance reported or submitted by an applicant or licensee in connection with an initial or renewal application. A two year period is deemed necessary in order to ascertain the instruction given in one year from that given in a prior year. Since licenses are issued for one year and are subject to renewal on dates (birthdays, as specified in Labor Code 1688) and applicants/licensees must take classes each year (Labor Code 1684(b)(2) and 1684(c)(3), requiring that a provider maintain records of classes for at least two years from dates courses were presented would provide a necessary means for DLSE to verify an applicant/licensee's compliance with the educational requirement for a respective year.

Subsection (b) requiring that a licensee maintain a record of continuing education courses for three years is necessary for the business to preserve its educational record and provide such information in the event an issue of compliance arises in connection with any on-going review of a licensee or review of a renewal application. A three year period is deemed reasonable and accounts for the requirements that an applicant meet the educational requirement as a prior condition for issuance of a license (Labor Code 1684(b)(2)), for each year following the issuance of a license (Labor Code 1684(c)(3) and for each prior year preceding an application for renewal under proposed subsection (f). Also, initial licenses are likely issued on a date which does not necessarily correspond with the expiration of a yearly license (based on birthdays, as specified in Labor Code 1688). Requiring the licensee to maintain records of education also benefits the licensee who will be able to address issues arising regarding their previous compliance with the continuing education requirements in addition to their ability to account for at least three prior years during which classes were taken in connection with any action being taken on a previous or pending application, current license, or previous compliance with educational requirements. Three years sufficiently encompasses the most relevant time period which demonstrates both historical (limited to 3 years) and most recent record of compliance for a licensee to maintain records of classes they took. The time period is reasonable given the relatively low burden for record content specified in proposed subsection (c) of this section and for DLSE to ensure historical and continuing satisfaction of the required education by licensees.

Subsection (c) specifying the information a record of completion of educational requirements is necessary to establish the essential information such record of completion must contain for purposes of demonstrating compliance with educational requirements (Labor Code 1684(b)(2) and (c)(3)).

Subsection (d) specifying that information demonstrating the presentation of a program and completion of such program by an applicant/licensee shall constitute the record which is required to be maintained under subsections (a) and (b) is necessary to require that the record be issued by the instructor for the program who presented the particular class and establishes verifiable compliance with class requirements which is independent and not based on self-certification by the applicant/licensee.

Subsection (e) is necessary for DLSE to be informed by class providers of all classes provided under an approved program in order to ensure that scheduled classes are in fact provided, the number of actual participants, program completion certificates issued by the provider, and to monitor administration of the educational program for farm labor contractors.

Subsection (f) requiring that a licensee submit to DLSE a record of classes for the year preceding the license period is necessary given that licenses are issued prospectively and DLSE must determine whether a renewal applicant has completed the continuing education requirement required under Labor Code 1684(c)(3) during the year prior to the prospective renewal of the license.

Proposed Article 3 contains ~~three (3)~~ *four (4)* new sections specifies on-going duties of licensed contractors which implement Labor Code 1695(a)(7) & (a)(9), and establishes contractor identification signage requirements at worksites; and specifically:

Proposed Section 13666 sets requirements for a licensee to post the rate(s) of compensation to be paid workers which is required to be “displayed prominently” under Labor Code 1695(a)(7). The section specifies the minimum size of the posting and font size. This section implements the statutory requirement and establishes minimum size dimensions to ensure the prominent display of the information.

The section specifying format of the required posting of compensation rates is necessary based on Labor Code section 1695(a)(7) which directs that the agency prescribe the lettering size for the posting. The additional specification that the licensee must be identified on the posting implements the statutory requirement aimed at ensuring communication of compensation rates which are being paid by a particular licensee at the time of performing labor and accounts for the fact workers may work for different contractors at different times even within a given season.

Proposed Section 13666.1 establishes contractor identification signage, including information to be included on signage required at worksites where contractors are operating work crews. The highly mobile and transient nature inherent to operations conducted by contractors on farms which vary in size, numbers of workers, type of work being performed by workers, and numbers of contractors at any time in a day or week creates obstacles for inspectors and investigators to ascertain a contractor’s operation at a worksite. Required contractor identification and license numbers on vehicles used to transport workers is insufficient due to instances of failure to comply with the requirement and the lack of immediate proximity of vehicles to working crews requiring full inspections to investigate the identity and license information for a contractor at a worksite. This section will allow for more effective contractor identification and contact information pertaining to that worksite by requiring portable signage placed near the entrance and clearly visible from the access road where workers enter the site for the day ~~and an additional portable sign in reasonable proximity where each crew is working which contains the name of the licensee, name and working phone number of the field supervisor in charge of the crew.~~ Recent legislation (AB 1675, Chapter 857 of Stat. 2012) provides for enforcement of the licensing requirement through assessments of civil penalties against unlicensed contractors. These identification signage requirements at worksites will provide more effective visibility of contractor operations enhancing accountability of employer contractors who employ farm laborers at regularly changing worksites and will provide for more readily visible and important basic identifying information regarding operations which are subject to farm labor contractor requirements.

Section 13666.1 is necessary to establish a reasonable manner for a contractor to identify themselves at worksites where he or she is operating because their locations inherently and regularly change due to the nature of agricultural work. The identification is necessary for DLSE to determine whether a licensee is operating at a location which can be readily

ascertained in order for DLSE to effectively enforce Farm Labor Contractor Law as specified in Labor Code 1699. Also, licensing requirements include, but are not limited to, on-going compliance with all applicable laws regulating the employment of employees, payment of wages, or conditions, terms or places of employment affecting the health and safety of farm employees (Labor Code 1690(a) and (d)). Violations of such affirmative, on-going obligations by licensees, may subject the licensee to revocation, suspension, or refusal to renew a license. Since DLSE is expressly authorized to enforce Labor Code Section 1690 (see Labor Code 1682.8), it is necessary for the agency to reasonably identify a contractor in the field where he or she operates performing regulated activities. DLSE considered other methods including a requirement for on-going reporting to DLSE by the contractor prior to performance of work at each location a contractor operates and determined that a signage requirement was a less burdensome alternative to implement for contractors to comply with and for DLSE to administer.

Proposed Section 13666.2 establishes specific requirements for a licensee to provide periodic training to supervisors, forepersons, and crew leaders regarding applicable laws and regulations regarding general work safety generally, and specifically implementing programs and practices for heat illness injury prevention and response and pesticide safety. The supervisor training shall be conducted at least once during each quarter of a calendar year that the licensee operates and the section requires that a licensee maintain records of all training and information provided to each supervisor, specifies information to be included in a record of training, and that the records must be available, upon request, to the Labor Commissioner for at least two years. This section implements and makes more specific the requirement in Labor Code 1695(a)(9) that licensee provide information and training to supervisors, crew leaders, forepersons, on laws relating to worker safety, including pesticide use/exposure, or regulating terms and conditions of agricultural employment. The section specifically identifies supervisor worker safety training in pesticide use/exposure and heat illness injury prevention/response which are known to present safety issues for agricultural workers. The section also establishes a recordkeeping requirement to enhance the ability of the agency to verify and enforce the required supervisor training through the farm labor contractor licensing program, and requires at least quarterly training during each quarter of a calendar year that a licensee operates. The quarterly training requirement is based upon the varying seasonal conditions of agricultural work that a farm labor contractor may operate and insures that regular supervisor training regarding worker safety correspond to existent seasonal conditions.

Section 13666.2 is necessary to establish more specific requirements for contractors to demonstrate compliance with the training of supervisors and crew leaders generally required in Labor Code 1695(a)(9) which recognizes the varying conditions for agricultural work over the course of a year. The training requirement is necessary for DLSE to determine whether a licensee is conducting relevant training of supervisors and crew leaders in order for DLSE to effectively enforce Farm Labor Contractor laws (Labor Code 1699). Specific duties of licensees expressly include, but are not limited to, on-going compliance with all applicable laws regulating the employment of employees or places of employment affecting the health and safety of farm employees. Violations of such affirmative, on-going obligations by licensees may subject the licensee to revocation, suspension, or refusal to renew a license

(Labor Code 1690). Since DLSE is charged with enforcement of Labor Code Section 1690 (see Labor Code 1682.8), it is necessary for the agency to require that a contractor provide training required under the licensing law (Labor Code 1695(a)(7)) in a verifiable manner, as specified. Express reference to heat illness injury prevention and pesticide use/exposure is necessary because of the significant impact of heat and pesticide use upon farm workers and creates potentially dangerous environmental conditions affecting worker health and safety which have both yearly and seasonal variations and can be addressed with regular training of supervisors and crew leaders appropriate for the seasons. The requirement for at least one training during each quarter of a calendar year (when a contractor operates) is determined to be reasonably necessary to effectively ensure training is conducted to address appropriate environmental conditions present during each quarterly period of a year.

***Proposed Section 13666.5** is necessary to clarify by making express the (implied) authority of DLSE to revoke, suspend a license or refuse to grant a license renewal for a licensee who violates or fails to comply with the requirements of the FLC regulations which implement and make more specific the statutory farm labor contractor licensing laws (see Labor Code 1699). The section is needed to expressly inform the regulated public that the regulations implementing and making more specific the statutory FLC requirements, including administration of the licensing program, fall under the “chapter” referenced in Labor Code 1690 for which DLSE has existing revocation and suspension authority. The section also establishes that the proceedings for revocation, suspension or refusal to renew will be under proceedings specified in Labor Code 1686 and 1692. DLSE determined that expressing this licensing enforcement authority in the regulation more effectively conveys to applicants and licensees the enforceability of the regulations and removes any unexpected surprise for licensees and avoids claims that the regulations fail to expressly provide that a violation of the regulations by a licensee may be grounds for revocation, suspension, or failure to renew.*

Proposed Article 4 contains three (3) new sections specifying requirements and procedures for recovery under the Farmworker Remedial Account which exists pursuant to Labor Code 1684(a)(4) which allows the Labor Commissioner to disburse to persons who have been damaged by either a licensee or an unlicensed farm labor contractor, and specifically:

Proposed Section 13667 provides a procedure for claiming and disbursing damages from the Farmworker Remedial Account for claims made by an employee, employee representative, required information which must be submitted to the Labor Commissioner, under specified conditions, and provisions for the exercise of discretion provided under Labor Code 1684(a)(4) in determining disbursements upon review of information provided to the Labor Commissioner. This section (replacing former sections 13660 and 13661 proposed for repeal) with a single section within a new article pertaining to administering and disbursing funds from the account.

Subsection (a) is necessary to clarify the persons who may submit claims for recovery under the Farmworker Remedial Account established under Labor Code 1684(a)(4). The statutory provision provides for recovery of wages and damages to persons damaged by a licensee (or unlicensed contractor) and this section more specifically informs workers and the regulated public that a claimant is one who is an employee of a contractor who performs the types of

activities which are subject to the Farm Labor Contractor laws and which utilizes the activities specified in the definition of “farm labor contractor” (Labor Code 1682(b)).

Subsection (b) is necessary to establish that a claim against the account may be made by an employee’s designated representative in addition to an employee or a farm labor contractor (specified in Labor Code 1684(a)(4) and subsection (c) of this proposed regulation). This is necessary due to the difficulties with employees who frequently move to various areas during different seasons for work and delaying recovery for claims until long after work is performed. Allowing a designated representative to submit a claim is reasonably necessary to file claims more promptly and for DLSE to review and determine amounts payable from the account more promptly which will result in more prompt payments to employees owed amounts for their performed labor. The subsection specifying that a claim need not be in any particular format (but still must contain the information specified in subsection (c)) is reasonably necessary to reduce an obstacle for employees to seek payment for wages where there is either no dispute of the claim or the amount of the claim has been previously determined by DLSE (in an Order, Decision or Award under Labor Code 98 and 98.1), or in another forum.

Subsection (c) is necessary to establish the specific information which must be included in any claim submitted for payment from the account. Requiring the claimant’s name, time period for which recovery is sought, name and address of contractor, grower, or packer, valid form of identification, including social security or taxpayer identification numbers (if available), signed written authorization of a representative (if one is designated) and mailing instructions for payment of the claim are essential identification items for DLSE to ascertain who is claiming amounts for specified work performed for an identified contractor (licensed or unlicensed) including any applicable representative authorization by the claimant, and mailing instructions for payment. Specifying the inclusion of a copy of an order, decision or award, court judgment, or other document which establishes the amount sought for payment from the account is necessary for DLSE to verify that there has been an effective determination of amounts owed to the worker. Requiring an affidavit or declaration by the person having personal knowledge of attempts to first seek payment directly from the contractor, grower or packer (e.g. who failed to pay the contractor, or is otherwise a liable party, if applicable), or surety bond under Labor Code 1684(a)(3) is necessary to ensure that recovery was first attempted (or that an attempt was otherwise futile) against these parties or surety bond for the payment of determined claims. The requirement will appropriately promote payment from primary sources prior to utilization of the account administered by DLSE.

Subsection (d) specifying that DLSE may order an investigatory hearing where there is a deficiency in declarations, lack of information, or potential inaccuracy in information is necessary to establish a procedure for obtaining reliable information where DLSE determines the claim for payment requires additional or clarifying information.

Subsection (e) specifying requirements where a farm labor contractor seeks recovery on behalf of his or her employees is necessary to implement Labor Code 1684(a)(4) which provides discretionary authority for DLSE to disburse amounts from the account and allows

such recovery by contractors. In further specifying loss information required to be provided by the contractor and requiring the contractor to first exhaust remedies against their bond (required for licensees in Labor Code 1684(a)(3)), the provision is necessary to establish requirements unique to a claim against the account by a contractor on behalf of its own employees where the contractor was not paid by a grower or packer.

Subsection (f) is necessary to establish that DLSE's exercise of discretion will be based on the information provided pursuant to this section, and when a claim against the account is submitted by a contractor based upon a grower or packers failure to pay the contractor, any evidence pertaining to the contractors ability to effectively make any payment to his or her employee (who was damaged through nonpayment of wages) may be reviewed and considered by DLSE.

Proposed Section 13667.1 provides authority for the Labor Commissioner to order an investigatory hearing to determine the amount of damages actually suffered by an employee or other claimant seeking recovery from the Farmworker Remedial Account. If an order for hearing is made, the section provides for service of notice of a hearing either personally or by certified mail upon the farm labor contractor, and employee(s) or other claimant(s). This section authorizes an investigatory hearing, at the discretion of the agency, which would apply where there is conflicting or insufficient information regarding the amount of damages provided in a claim against the Farmworker Remedial Account, and provides for notice and location of the hearing.

Section 13667.1 is necessary to establish a procedure for DLSE to utilize where there is conflicting, insufficient, or potentially inaccurate information submitted in connection with a claim for payment from the account. The specified procedure which may be ordered by DLSE, at its discretion, is necessary to provide notice, manner of service, and opportunity to be heard is necessary to require attendance of the parties who could provide information sought by DLSE for purposes of disbursing amounts from the account.

Proposed Section 13667.4 specifies that valid claims shall be disbursed by the Labor Commissioner in the order received and, if account funds are inadequate to satisfy the claim, such claim will be held until adequate funds are deposited into the Farmworker Remedial Account to pay the valid claim. This section establishes a standard for administering the farmworker account and disbursing funds which will provide a more full recovery of valid claims determined to be due a worker based on the order a claim is received and provides for full payment of claims which are held in the event there are insufficient funds to pay a valid claim.

Section 13667.4 is necessary to establish an order for payment of claims against the account because the availability of disbursable funds (subject to appropriation by the Legislature) vary (deplete) due to payments made from the account during the year. This section provides

an orderly administration of account funds if there is an insufficiency in the account to pay valid claims in full.