

TITLE 8. INDUSTRIAL RELATIONS  
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS  
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT  
SUBCHAPTER 14. FOREIGN LABOR CONTRACTOR REGISTRATION

**FINAL STATEMENT OF REASONS**

**UPDATE OF INITIAL STATEMENT OF REASONS**

Following the agency's review and consideration of comments provided during the 45-day comment period and at the public hearing, as well as further staff consideration of the initial proposal, the Division of Labor Standards Enforcement (DLSE) issued a "Supplement to Initial Statement of Reasons," which is incorporated herein. The Supplement accompanied DLSE's Notice of Modifications to Text of Proposed Regulations and New Documents Added to the Rulemaking File, for which a 15-day period for comment was provided pursuant to Government Code section 11347.1. DLSE issued a subsequent Notice of Extension of Comment Period upon learning that the Notice of Modifications to Text of Proposed Regulations and New Documents Added to the Rulemaking File contained a typographical error in the email address for submission of written comments. The Notice of Extension of Comment Period allowed members of the public a full 15 days to submit comments to the correct email address.

**Revisions Following Initial Public Comment Period**

After the initial public comment period, the following sections were revised substantively as follows and circulated for further public comment:

**Section 13850:**

Subsection (a)'s definition of "recruiting" and "recruits" was modified in two ways. First, the words "or directed" were added in the definition's opening phrase: "'Recruiting' or 'recruits' means any activity performed *or directed* by a person." (New language in italics.) This addition was necessary to encompass not only recruitment activity that the contractor himself or herself engages in, but also recruitment activities that are directed by the contractor, such as situations in which the contractor may hire a subcontractor to carry out recruitment activities.

Second, the phrase "to perform labor which is related to a potential temporary or permanent employment opportunity" in California was replaced with the phrase "for labor, work, or services performed" in California. This language was provided for clarity in response to a comment, because the phrase "to perform labor which is related to a potential temporary or permanent employment opportunity" could be interpreted to mean labor *relating to an* employment opportunity, and not the actual labor or services that will be performed pursuant to the employment opportunity. This modification is also more consistent with the statutory definition of "foreign labor contracting activity" which does not reference the temporary or permanent nature of the employment opportunity, but includes recruiting or soliciting "in furtherance of that worker's employment in California." Business and Professions (B&P) Code

section 9998.1(b). Under California law, “labor” includes labor, work, or service; this modification clarifies that work and services are contemplated as well. *See* Labor Code section 200(b) (defining “labor”).

Subsection (b)’s phrase “to perform labor which is related to a potential temporary or permanent employment opportunity” in California was amended for the same reasons as stated above. In this subsection, the replacement phrase is “employment for labor, work, or services performed” in California, such that soliciting will include communicating regarding the terms of employment for labor, work, or services performed in California.

#### **Section 13851:**

Subsection (e)(2) was modified to include the phrase “and liabilities.” This is necessary to reflect that employers who use foreign labor contractors not only have new obligations under the statute and regulations, but may be subject to liability for failure to comply as well. The liability provisions set forth in the statute, B&P Code section 9998.8, include criminal and civil penalties, damages, costs, and attorney’s fees.

#### **Section 13853:**

Preamble: A final sentence was added to indicate that the agency may make an online application available, and would provide notice regarding such availability. In addition, the agency plans to accept completed and signed physical applications by email as well as by mail, so an email address has been added to the regulation.

Subsection (a)(5) contains a new requirement that the applicant provide the domestic and international locations where the applicant is doing business (city, state, and country). In the event that the applicant’s current business and mailing address are not in the same city, state, or country where the applicant actually conducts business, this information provides the Labor Commissioner with a fuller understanding of the applicant’s foreign labor contracting operations and will allow the Labor Commissioner to better evaluate the manner and means by which the applicant proposes to conduct operations as a foreign labor contractor if registered. This information is consistent with other required registration application information that is necessary to confirm the applicant’s character, competency, and responsibility to perform regulated recruiting activities as specified under B&P Code section 9998.1.5(b)(1)(A).

Subsection (a)(6), and subdivisions (A), (B), (C), and (D) were modified to require that applicants provide applicable foreign identification numbers. This is necessary in order for the Labor Commissioner to have the same type of information for foreign entities as is required for domestic entities, which are required to provide their Social Security or Taxpayer Identification numbers. This program contemplates registration of entities conducting foreign labor contracting activity wholly outside of the United States. Therefore, these foreign identification numbers are important for the Labor Commissioner to have in order to verify basic information about the applicant and to evaluate the applicant’s character, competency, and responsibility to perform regulated recruiting activities as specified under B&P Code section 9998.1.5(b)(1)(A). In addition, subdivision (a)(6)(B) includes a correction so that corporate officers must provide a

home, not business address, as the business address is requested separately under subdivision (a)(3).

Subsection (a)(10) contains a new requirement that the applicant list any license, registration, or permit issued pursuant to any state or federal law, or law of a foreign country, that any person or entity identified under subdivisions (a)(1), (a)(2), and (a)(6) of this section (the applicant and persons with financial interests in the applicant's business) has obtained within the last 5 years. This information is necessary because the applicant is required in renumbered subsection (a)(11) to list whether any of these persons or entities has had any license, registration, or permit issued pursuant to any state or federal law, or law of a foreign country that was suspended, revoked or denied, or has had any disciplinary action imposed upon him, her, or it in connection with the holding of a license or permit. In order to verify whether the applicant is accurately listing such actions with respect to a license or permit, particularly where this may involve the law of a foreign country, it is necessary to ask whether these persons or entities have had such licenses or permits.

Subdivision (a)(9)(A) was renumbered as subsection (a)(11)(A). This subsection was modified to require that the applicant indicate not just whether any person identified under subdivisions (a)(1), (a)(2), and (a)(6) has any of the enumerated issues, but whether any person *or entity* identified under subdivisions (a)(1), (a)(2), and (a)(6) has any of these issues. This modification is necessary to mirror the language in renumbered subdivision (a)(11)(B), which states that if any "person or entity identified in subdivision (A)" has any of the enumerated issues, the applicant must submit an explanation regarding the incident. Further, it is more accurate to include the word "entity" because subdivision (a)(1) includes all legal forms of business entities, whether individual/sole proprietor, partnership, corporation, limited liability company, or other business entity.

Subdivision (a)(13)(E) was renumbered as (a)(15)(E), and subdivision (iii) was modified to substitute the phrase "which prohibits false imprisonment" with the phrase "relating to human trafficking." This modification was made in response to a comment, and is necessary to more accurately reflect the relevant provisions of Penal Code section 236.1 relating to human trafficking.

Subdivision (a)(13)(H) was renumbered as (a)(15)(H), and modified to add the words "or omission," such that the applicant must certify not only that the applicant is aware that any material misrepresentations made in connection with the application for registration constitute grounds for denial or revocation of registration, but that material omissions could constitute grounds for denial or revocation of registration as well. There are a number of items on the registration application that require the applicant to affirmatively provide information about the applicant and individuals who have financial interests in the applicant's business, among other things. It is therefore necessary that the applicant acknowledge and memorialize an understanding of the potential adverse consequences of a material *omission*.

Subsection (c) was added, which is necessary to allow the Labor Commissioner to request any additional documentation that may be needed to substantiate the veracity of statements made in

response to the application questions. Particularly because this is a new registration program with unique characteristics relating to contractors operating abroad, the Labor Commissioner should be able to obtain information necessary to complete the statutorily-mandated investigation into the character, competency, and responsibility of the applicant.

#### **Section 13865:**

Subsection (b)(1) deleted a reference to the statutory definition of foreign worker, as the regulatory definition of “foreign guest worker” in section 13850(c) is intended to apply where “foreign worker” is used throughout these regulations.

Subdivision (c)(1)(C) was modified to remove the requirement that the employing person provide, as part of the required disclosure to the Labor Commissioner, for each partner in a partnership, each member of an LLC, or each corporate officer of a corporation, the following: current physical business address, mailing address if different, preferred email address, and home physical address. The Labor Commissioner typically requires this type of information in registration programs where the Labor Commissioner is statutorily mandated to evaluate the character and fitness of a party seeking registration or licensing. Under this foreign labor contractor registration program, the roles of the foreign labor contractor and the employer are distinct. The Labor Commissioner is required by the statute to assess the “character, competency, and responsibility” of the labor contractor prior to registration, including obtaining the names and addresses of all persons financially interested. *See* B&P Code section 9998.1.5(b)(1)(A)-(B). By contrast, the statute only requires that the employer provide the Labor Commissioner with the name, address, and contact information of the person designated by the employer to work with a foreign labor contractor. *See* B&P Code section 9998.2(b)(1). For this reason, it is not necessary for the Labor Commissioner to collect all of the information initially proposed in this provision.

#### **Section 13870:**

In order to streamline the regulations describing unlawful recruitment fees, and to reduce confusion reflected in public comments regarding the two separate lists of types of fees in proposed sections 13870 (Unlawful Recruitment Fees) and 13872 (Other Fees, Costs, and Expenses Prohibited Post-Hire/Selection), these lists were consolidated in section 13870(a)(1). Many of the “other” fees listed in section 13872(a) could also be charged to the worker prior to being hired or selected for a job opportunity. Consolidating the lists makes it clearer that these fees are all prohibited, regardless of when they are imposed. This consolidation was achieved as follows. Relevant language from Section 13872(a)(1)-(6) was added to section 13870 subdivisions (a)(1)(A) (adding “placing” to reflect “worker placement” fees), (a)(1)(F) (adding the cost of a “visa” to “visa processing fees”), (a)(1)(P) (adding “third parties” and “labor brokers”). Section 13870 already includes recruiting and processing fees because it incorporates the definition of “recruiting” activities in section 13850, and it specifically addresses transportation, so these two items did not need to be added to section 13870. The necessity of including these fees in the regulation was discussed in the Initial Statement of Reasons.

In addition, subsection (a)'s first sentence was modified as follows. The word "prospective" was deleted, which was necessary for clarity purposes because the regulation provides that the fees described in this section could be charged to a worker subsequent to the worker's selection for employment, for example, as a deduction from wages – at that time, the worker is no longer a "prospective" worker. In addition, this change is consistent with the consolidation of fees prohibited both prior to and post-hire/selection, as explained above. The words "by a contractor" were deleted, both for clarity purposes, because the regulation provides that the fees may be collected by several other entities in addition to the foreign labor contractor, and for consistency with the statute, which states that "a person using the services of a foreign labor contractor to obtain foreign workers or employees may not assess any fee . . . for foreign labor contracting activities." B&P Code section 9998.2.5(c).

In addition, the following were added to the list of unlawful recruitment fees:

Subdivision (a)(1)(T): Collateral requirements, such as land deeds. This addition was necessary because foreign labor recruiters may request or demand collateral for the payback of the recruitment fee or for their services, and workers or their family members may provide land deeds for this purpose. These types of fees that can trap workers in debt and in exploitative situations where they fear the economic consequences of leaving their employer are consistent with the recruitment fees prohibited under this statute.

Subdivision (a)(1)(U): Fees to secure future employment opportunities. This addition was necessary because foreign labor contractors commonly charge internationally-recruited workers fees to "lock in" jobs in future seasons. Workers often feel obligated to pay these fees because they are so indebted by paying up-front costs that they need to stay longer to pay off their debts.

#### **Section 13871:**

The word "prospective" has been deleted for the same reason as explained above where this term was used in section 13870.

#### **Section 13872:**

Subsection (a) was modified as discussed above, by consolidating the items in subsection (a) into the list of prohibited fees in section 13870(a)(1) and deleting them from this section.

The title of this section was also modified by deleting "Post-Hire/Selection" because that part of the title is no longer applicable to the content of this section.

#### **Section 13873:**

Subsection (a) was revised to delete the list of costs or expenses that were proposed in subsection (a)(1)-(7), and to provide that a contractor shall identify and disclose to the worker any and all costs or expenses that may be charged to the worker while working in the state, including for the items listed in B&P Code section 9998.2.5, as long as these costs, expenses, or deductions are customarily assessed against similarly-employed workers in the United States and permitted under governing state and federal law. This modification accounts for the fact that the statutory language appears to sanction certain costs, expenses, and deductions that are not, or in some

cases, may not be, permissible under California and federal law, yet the statute did not intend to alter any other rights or remedies (*see* B&P Code section 9998.8(e)).

The title of this section was changed to “*Potentially Allowable Post-Hire Costs and Expenses to be Itemized or Disclosed*,” to reflect that these costs may not be allowable.

Subsection (b) was revised to state that if there is no amount to *be charged*, the disclosure should indicate “none.”

Subsection (c) was deleted because it has been rendered superfluous.

#### **Section 13874:**

Subsection (a) was modified to remove the phrase “but in no event later than the time for applying for a work visa.” This change was necessary because if the disclosure and the work contract are not provided to the worker until she or he applies for a work visa and has a consular interview, the worker may not have ample time to fully evaluate the terms and conditions of the job opportunity prior to accepting the position and making plans to travel to California for the job opportunity. This timing does not conflict with the federal H-2B regulations, which require disclosure of the job order *no later than* the time at which the worker applies for a visa. *See* 20 C.F.R. 655.20(l).

Subsection (b)(6), which lists the information that is required to be included in the work contract that is signed by the employer and contains the assurances and terms and conditions of employment, was modified as follows:

Subdivision (b)(6)(A) adds that any production standards be included when describing the salary or wage rate. This is necessary because some workers are paid a piece rate, and their wages will be based on certain production standards.

Subdivision (b)(6)(I) was deleted. The subsequent subdivision, (b)(6)(J) (which has been relettered as (b)(6)(I)), requires that the weekly schedule be provided. Therefore, it is unnecessary and duplicative of (J) to require that the work contract also state whether the position is full-time or part-time. Additionally, the H-2B program requires that all positions be full-time, which obviates the need for this provision. *See* 20 C.F.R. 655.18(b)(2) (employer must indicate that “the job opportunity is a temporary, full-time position”).

Subdivision (b)(6)(K) was relettered as (b)(6)(J), and modified by adding the word “any” at the beginning of the sentence. Although the three-fourths guarantee is part of the federal H-2B regulations, *see* 20 C.F.R. 655.20(f), for several years now, the Appropriations Act that funds the U.S. Department of Labor has provided that the Department of Labor may not use any funds to enforce the three-fourths guarantee. However, the Appropriations Act did not vacate these regulatory provisions, and they remain in effect, thus imposing a legal duty on H-2B employers, even though the Department of Labor cannot use any funds to enforce them until such time as the appropriations rider may be lifted. *See, e.g., Employee Rights Under the H-2B Program*,

available at <https://www.dol.gov/whd/posters/pdf/H2B-eng.pdf>. The Labor Commissioner does not intend to impose a requirement on H-2B employers to include the three-fourths guarantee in their work contracts that is not required at this time by the Department of Labor. The term “any” reflects that employers may nevertheless offer a three-fourths guarantee to their H-2B workers, and that should be included in the work contract. Additionally, the phrase “(or 6-week period for employment periods lasting less than 120 days)” was added to this provision to reflect the requirement in the federal H-2B regulations at 20 C.F.R. 655.20(f).

Subdivision (b)(6)(L) was relettered as (b)(6)(K), and modified to account for the fact that a contractual clause imposing penalties for terminating employment may violate applicable law where an employer seeks to recover this amount from the worker’s wages. For example, under California law, an employer may not use “self help” to recover amounts purportedly owed to the employer by the employee. Labor Code section 221 prohibits an employer from receiving from an employee any wage paid by the employer to the employee either by deduction or recovery after payment of the wage. Therefore, it was necessary to edit this provision to indicate any penalties for terminating employment to the extent that such penalties do not violate governing state or federal law.

Subsection (b)(10) was modified as follows:

- “Division 3, Chapter 21.5” was substituted for section 9998 of the Business and Professions Code, as the whole chapter entitled “Foreign Labor Contractors” provides protections for foreign workers.
- A reference to the federal H-2B regulations that provide worker protections was added, as this is the federal law directly applicable to H-2B workers employed in California.
- The foreign labor contractor is required to include as an attachment the Department of Industrial Relations flyer, *All Workers in California Have Rights*, which is available at: [https://www.dir.ca.gov/letf/english\\_worker\\_mobile.pdf](https://www.dir.ca.gov/letf/english_worker_mobile.pdf) in English and is available in other languages at: [https://www.dir.ca.gov/letf/Information\\_for\\_workers\\_and\\_employers.html](https://www.dir.ca.gov/letf/Information_for_workers_and_employers.html). The contractor may also use a subsequently-issued worker rights flyer with updated information. It is necessary to require that this information be provided because foreign workers are entitled the same rights that other workers in California have under California law. However, because they are traveling to the state for work, they may be unfamiliar with these rights under California law. Informing foreign workers of their rights will better enable them to recognize workplace violations, and empower them to seek redress and avoid exploitation.
- Additional language regarding the anti-retaliation provisions was added, which is necessary to more closely track the language of the statute, B&P Code section 9998.6, and inform workers that retaliation against their family members is also prohibited.

- A toll-free number was added for workers to contact the Labor Commissioner's Office. This is necessary so that workers can contact the Labor Commissioner's Office regarding any questions or regarding complaints of violations.

#### **New Subchapter:**

DLSE changed the originally proposed subchapter number, 13, to new subchapter 14, in anticipation of future rulemaking that would precede the section numbers in this rulemaking.

#### **ADDITIONAL DOCUMENTS ADDED TO THE RULEMAKING FILE**

The following documents were added to the rulemaking file on June 21, 2018. Interested parties were notified and afforded the opportunity to comment upon them within a 15-day time period, which was subsequently extended until July 24, 2018:

#### **Documents Referenced in the Proposed Regulations:**

- Application for Registration (DLSE 701)
- Foreign Labor Contractor Bond (DLSE 702)
- Foreign Labor Contractor Disclosure Statement (DLSE 703)
- Employer Disclosure Statement: Use of Foreign Labor Contractor (DLSE 704)
- Amended Employer Disclosure Statement: Use of Foreign Labor Contractor (DLSE 704 A)
- Corporation Statement of Information (Form SI-550)
- LLC Statement of Information (Form LLC-12)
- Statement and Designation by Foreign Corporation (Form S&DC-S/N)
- Flyer: *All Workers in California Have Rights*
- List: California Labor Commissioner offices

#### **Other Documents Relied Upon Include:**

- Cost sheet for Foreign Labor Contractor Registration

#### **LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.

#### **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF AUGUST 25, 2017 THROUGH OCTOBER 9, 2017**

Comments are organized by regulation section. Written 45-day comments are identified by assigned number of commenter and assigned number within the comment letter (e.g., 10.02). Public hearing comments are identified in italics as "*PH*" followed by the time entry (hour:minutes:seconds or minutes:seconds) for the comment location on the digital recording of the hearing (e.g., *PH 1:23:45 or PH 09:34*).



### **Section 13850(a) - Definition of “Recruiting” and “Recruits”**

**Comments 4.01,4.02, 4.03, 4.04, 5.01, 5.02, 5.03, 5.04, 6.01, 6.02, 6.03, 6.04, 10.01, 10.02, 10.03, 10.04, 11.01, 11.02, 11.03, 11.04, 12.01, 12.02, 12.03, 12.04, 13.01, 12.02, 12.03, 12.04, 13.01, 13.02, 13.03, 13.04, 16.01, 16.02, 16.03, 16.04, 19.01, 19.02, 19.03, 19.04, 20.01, 20.02, 20.03, 20.04, 21.01, 21.02, 21.03, 21.04, 22.01, 22.02, 22.03, 22.04, 23.01, 23.02, 23.03, 23.04, 24.01, 24.02, 24.03, 24.04, 25.01, 25.02, 25.03, 25.04, 26.01, 26.02, 26.03, 26.04, 27.01, 27.02, 27.03, 27.04, 28.01, 28.02, 28.03, 28.04, 29.01, 29.02, 29.03, 29.04, 31.01, 31.02, 31.03, 31.04, 33.01, 33.02, 33.03, 33.04**

Section 13850(a) defines recruiting and recruits as pertains to the regulation of foreign labor contractors and includes within the definition a number of activities associated with the act of recruiting. Commenters made several recommendations to amend the proposed definition including:

- Adding “trains” and “influences” as recruitment activities contained within the definition. Commenters note that training is often conducted by recruiters and their agents in the workers’ countries of origin, and the training is often mandatory and often “coaches workers to be compliant – to ignore abuses and exploitation.” In addition, commenters believe that it is necessary to add “influences” to the definition because it is broader than current language “entices” or “secures” and failure to include this term could narrow the existing provision in Labor Code section 970, which uses the term “influences.”

**Response:** DLSE appreciates the concern raised by commenters that workers should not be coached to be fearful of exercising their rights under the law. However, adding the word “trains” to the regulatory definition would mean that individuals in workers’ country of origin who train workers who are planning to travel to California for an employment opportunity would be deemed foreign labor contractors and would be required to register with DLSE, even if they were not engaged in the kind of behavior that commenters noted. This would cast an overly-broad net for foreign nationals who provide training to workers abroad, but who do not engage in any other type of recruitment activity such as those enumerated in the regulation (enticing, securing, hiring, purporting to hire, persuading, transporting, or otherwise seeking to process or secure employment of a worker). DLSE believes this is beyond the scope of the registration requirement. The agency also notes that charging workers for training is prohibited under Business & Professions (B&P) Code section 9998.2.5(d) (expenses cannot be charged to a foreign worker prior to commencement of work) and in section 13870(a)(1)(B).

DLSE considered commenters’ suggestion to add “influences” but declines to do so because the concept of “influencing” someone to accept work is sufficiently encompassed within the current language, “secures, persuades, hires, purports to hire, transports, or otherwise seeks to process or secure employment of a worker, or a group of workers.” Additionally, the definition in these regulations does not impact, and will not narrow, the statutory language in Labor Code section 970.

- Modifying the definition to specifically include both direct and indirect engagement in the specified activities. Commenters believe that the regulatory definition for the registration program must be identical to the prohibition on direct or indirect

misrepresentation in recruiting in Labor Code section 970 in order to avoid narrowing that provision.

**Response:** DLSE considered the comment and declines to modify the definition to add “direct or indirect.” The agency needs to provide sufficient clarity to the regulated community regarding who should register. The concept of indirect activity triggering a requirement to register is not sufficiently clear. In addition, as stated above, Labor Code section 970 is a separate statute that is not related to these regulations.

However, based on this comment, the agency modified the regulatory text to add a similar concept to the definition of “recruiting” and “recruits.” The words “or directed” were added in the definition’s opening phrase: “‘Recruiting’ or ‘recruits’ means any activity performed *or directed* by a person.” (New language in italics.) This addition is necessary to encompass not only recruitment activity that the contractor himself or herself engages in, but also recruitment activities that are directed by the contractor, such as situations in which the contractor may hire a subcontractor to carry out recruitment activities. For example, the contractor may not wish to travel to towns throughout the workers’ country of origin and may hire a representative in each town to recruit workers for a job opportunity in California. In such circumstances, the contractor is engaging in recruitment activity, even if it is by directing the work of others.

- Modifying the language used to describe the work related to recruitment from “labor which is related to a potential temporary or permanent employment opportunity” to “services or labor performed” in California, which is more specific.

**Response:** DLSE accepted this suggestion because it is clearer and more consistent with the statutory language. The phrase “labor which is related to a potential temporary or permanent employment opportunity” could be interpreted to mean labor relating to an employment opportunity, and not the actual labor or services that will be performed pursuant to the employment opportunity. Modifying the language as suggested is also more consistent with the statutory definition of “foreign labor contracting activity,” which does not reference the temporary or permanent nature of the employment opportunity, but includes recruiting or soliciting “in furtherance of that worker’s employment in California.” B&P Code section 9998.1(b). Under California law, “labor” includes labor, work, or service. *See* Labor Code section 200(b) (defining “labor”). Therefore, the agency conformed the regulatory definition with the definition of “labor” under Labor Code section 200, which includes labor, work, or service.

#### **Section 13850(b) - Definition of “Soliciting” and “Solicits”**

**Comments 4.03, 4.04, 5.03, 5.04, 6.03, 6.04, 10.03, 10.04, 11.03, 11.04, 12.03, 12.04, 13.03, 13.04, 16.03, 16.04, 19.03, 19.04, 20.03, 20.04, 21.03, 21.04, 23.03, 23.04, 24.03, 24.04, 25.03, 25.04, 26.03, 26.04, 27.03, 27.04, 28.03, 28.04, 29.03, 29.04, 31.03, 31.04, 33.03, 33.04**

Section 13850(b) defines soliciting and solicits as pertains to the regulation of foreign labor contractors and includes within the definition a number of activities associated with the act of soliciting. Commenters made several recommendations to amend the proposed definition including:

- Modifying the definition to specifically include both direct and indirect engagement in the specified activities. Commenters believe that the regulatory definition for the registration program must be identical to the prohibition on direct or indirect misrepresentation in recruiting in Labor Code section 970 in order to avoid narrowing that provision.

**Response:** DLSE considered the comment and declines to modify the definition to add “direct or indirect.” The agency needs to provide sufficient clarity to the regulated community regarding who should register. The concept of indirect activity triggering a requirement to register is not sufficiently clear. Moreover, the regulatory definition for “soliciting” and “solicits” already encompasses situations in which a recruiter uses another person or entity to perform solicitation. Finally, as stated above, Labor Code section 970 is a separate requirement that is not related to these regulations.

- Modifying the language used to describe the work related to recruitment from “labor which is related to a potential temporary or permanent employment opportunity” to “services or labor performed” in California, which is more specific.

**Response:** As explained above (under the definition of “recruiting” and “recruits”), DLSE accepted this comment because it is clearer and more consistent with the statutory language. The agency conformed this with the definition of “labor” under Labor Code section 200, which includes labor, work, or service.

#### **Section 13850(c) - Definition of “Foreign Guest Worker”**

**Comments 1.01, 2.01, 3.01, 4.05, 5.05, 6.05, 7.01, 8.01, 9.01, 10.05, 11.05, 12.05, 13.05, 14.01, 15.01, 16.05, 17.01, 18.01, 19.05, 20.05, 21.05, 22.05, 23.05, 24.05, 25.05, 26.05, 27.05, 28.05, 29.05, 30.01, 31.05, 32.01, 33.05, 34.01, 35.01, PH 3:30, PH 16:37, PH 19:36, PH 33.07, PH 43:47, PH 1:08:00, PH 1:18:00, PH 1:26:40**

Section 13850(c) defines a foreign guest worker for purposes of the regulation of foreign labor contractors under SB 477. Commenters are concerned that the definition limits the program to apply only to workers recruited to perform nonagricultural labor in California pursuant to Section 101(a)(15)(H)(ii)(b) of the federal Immigration and Nationality Act (the H-2B program). They request that DLSE delete that language from the definition so that the program will apply to a broader base of workers.

**Response:** DLSE considered the comments that the foreign labor contractor registration program should extend beyond H-2B workers but declines to modify the scope of the regulations because there was no change in law that would alter the agency’s views expressed in the Initial Statement of Reasons:

SB 477 amended (added to) existing provisions regulating foreign labor contracting. The Act previously provided its scope and application to “non-agricultural workers as defined under” the federal statute which regulates the H2b visa program. (B&P §9998). Notably, Section 9998 was not amended by SB 477 and thus continues to confine the application of the chapter to nonagricultural workers as defined in the federal H2b visa program.... It is necessary to specifically define the term “foreign guest worker” in the regulations for

purposes of implementing the registration requirement and related employer and contractor disclosure requirements, so that the scope of the regulations is consistent with the statutory coverage for the chapter established in §9998.

The Labor Commissioner recognizes the view that the specific provisions expanding the substantive provisions of the Act in SB 477 did not contain language limiting coverage of the chapter to only foreign workers under the H2b visa program and that statements by legislators and other groups during the legislative process spoke in more general terms that extended beyond the H-2B program and may have relied upon more broadly based information and/or statistics in defining or weighing the problem of abuses. However, the Labor Commissioner cannot disregard the coverage limitation in §9998 which, by its terms, extends to the whole chapter, including the provisions added by SB 477. Agency regulations cannot be inconsistent with applicable coverage limitations contained in the enabling statute. Disregarding the coverage limitation in §9998 would constitute an exercise by the Labor Commissioner of legislative authority to effect a repeal by implication [of] an existing substantive coverage provision in Section 9998, despite the fact that SB 477 neither repealed or amended §9998. While the Labor Commissioner recognizes that these proposals will not carry out the desired effect of covering recruitment of all foreign workers under all federal visa or guest worker programs, as intended by SB 477's proponents, any clarification must come from the legislature rather than the agency charged with implementing all of the applicable statutes, including those not amended under SB 477. In the absence of a more expressed legislative intent to modify the coverage language in §9998, the Labor Commissioner cannot, through interpretation, disregard a statutory provision addressing coverage of the chapter which was not modified in SB 477.

(Initial Statement of Reasons pp. 3-4)

The agency notes that legislation was introduced in the 2018 legislative session, AB 1913, which would have amended B&P Code section 9998 to remove the H-2B coverage limitation. This bill was defeated in the California Assembly on May 31, 2018. *See* [https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201720180AB1913](https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill_id=201720180AB1913). Therefore, DLSE continues to lack a basis to expand the coverage of these regulations beyond H-2B workers.

**Section 13851(e)(2) - Use of a Non-Employee Agent by an Employer**

**Comments 4.06, 5.06, 6.06, 10.06, 11.06, 12.06, 13.06, 16.06, 19.06, 20.06, 21.06, 22.06, 23.06, 24.06, 25.06, 26.06, 27.06, 28.06, 29.06, 31.06, 33.06**

Section 13851(e)(2) provides the consequence for use of a non-employee agent, as well as the employer's obligation to use only registered contractors when using other persons to perform recruitment activities. Commenters recommend that the agency add language to this provision indicating that an employer's obligations include "the liability provisions."

**Response:** DLSE accepted this comment and modified the regulation text accordingly, as it clarifies an employer's role in the program and the employer's potential liability for noncompliance.

### **Section 13853 - Application for Registration as a Foreign Labor Contractor**

Section 13853 specifies the information to be provided by an applicant for a foreign labor contractor registration. Commenters made suggestions and recommendations about several of the provisions as follows:

**Comments 4.09, 4.10, 4.12, 4.20, 4.21, 4.22, 5.09, 5.10, 5.12, 5.20, 5.21, 5.22, 6.09, 6.10, 6.12, 6.20, 6.21, 6.22, 10.09, 10.10, 10.12, 10.20, 10.21, 10.22, 11.09, 11.10, 11.12, 11.20, 11.21, 11.22, 12.09, 12.10, 12.12, 12.20, 12.21, 12.22, 13.09, 13.10, 13.12, 13.20, 13.21, 13.22, 16.09, 16.10, 16.12, 16.20, 16.21, 16.22, 19.09, 19.10, 19.12, 19.20, 19.21, 19.22, 20.09, 20.10, 20.12, 20.20, 20.21, 20.22, 21.09, 21.10, 21.12, 21.20, 21.21, 21.22, 22.09, 22.10, 22.12, 22.20, 22.21, 22.22, 23.09, 23.10, 23.12, 23.20, 23.21, 23.22, 24.09, 24.10, 24.12, 24.20, 24.21, 24.22, 25.09, 25.10, 25.12, 25.20, 25.21, 25.22, 26.09, 26.10, 26.12, 26.20, 26.21, 26.22, 27.09, 27.10, 27.12, 27.20, 27.21, 27.22, 28.09, 28.10, 28.12, 28.20, 28.21, 28.22, 29.09, 29.10, 29.12, 29.20, 29.21, 29.22, 31.09, 31.10, 31.12, 31.20, 31.21, 31.22, 33.09, 33.10, 33.12, 33.20, 33.21, 33.22, *PH 52:13, PH 1:13:35, PH 1:40:30***

Section 13853(a) sets forth the information to be provided by applicants for registration. Commenters want the following added to the information to be provided by applicants:

- A list of all domestic and international locations in which applicant does business.

**Response:** DLSE accepted this comment and added new subsection (a)(5) to the application requirements. In the event that the applicant's current business and mailing address are not in the same city, state, or country where the applicant actually conducts business, this information provides the Labor Commissioner with a fuller understanding of the applicant's foreign labor contracting operations and will allow the Labor Commissioner to better evaluate the manner and means by which the applicant proposes to conduct operations as a foreign labor contractor if registered. This information is consistent with other required registration application information that is necessary to confirm the applicant's character, competency, and responsibility to perform regulated recruiting activities as specified under B&P Code section 9998.1.5(b)(1)(A).

- Information about key employees and related entities.

**Response:** DLSE considered this comment and declines to accept it because information about key employees and other entities is already required under regulatory provisions such as sections 13853(a)(6) (individuals who have financial interests in the applicant's business), (a)(7) (other foreign labor contractors utilized by the applicants), (a)(8) (businesses the applicant performs recruitment services for) and (a)(9) (businesses the applicant will work in connection with in conducting recruitment) (references are to regulations as modified, not as proposed).

- A means of notifying DLSE when relationships with employers end and begin.

**Response:** DLSE considered this comment and declines to accept it because under this statutory regime, it is the employer's obligation to disclose engagement with recruiters.

- Professional associations to which the applicant belongs.

**Response:** DLSE considered this comment and declines to accept it because this information is not critical for the character, competency, and responsibility determination.

- A list of other labor contracting and/or registration systems to which an applicant is subject.

**Response:** DLSE accepted this comment because having this information will allow DLSE to verify whether any of the applicant's contracts, licenses, or permits were suspended or revoked. The modified regulation text is reflected in section 13853(a)(10).

- A catch all provision for "other information the DLSE determines is relevant."

**Response:** DLSE accepted this comment because it agrees that the Labor Commissioner may need to request additional documentation to substantiate the veracity of statements made in response to the application questions. Particularly because this is a new registration program with unique characteristics relating to contractors operating abroad, the Labor Commissioner should be able to obtain information necessary to complete the statutorily-mandated investigation into the character, competency, and responsibility of the applicant. The modified regulation text is reflected in section 13853(c).

**Comments 4.07, 5.07, 6.07, 10.07, 11.07, 12.07, 13.07, 16.07, 19.07, 20.07, 21.07, 22.07, 23.07, 24.07, 25.07, 26.07, 27.07, 28.07, 29.07, 31.07, 33.07**

Section 13853(a)(2) requires applicants to provide the names under which the applicant is doing business as or has done business for the previous three years. Commenters want applicants to provide the length of time an applicant has been conducting recruitment activities and a list of business names used during that time rather than the prior three years.

**Response:** DLSE considered this comment and declines to accept it in the interest of having a standard three-year period for all applicants.

**Comments 4.08, 5.08, 6.08, 10.08, 11.08, 12.08, 13.08, 16.08, 19.08, 20.08, 21.08, 22.08, 23.08, 24.08, 25.08, 26.08, 27.08, 28.08, 29.08, 31.08, 33.08**

Section 13853(a)(4) sets out the requirement that the applicant immediately, but no later than ten (10) days thereafter, advise the Labor Commissioner of any change in contact information. Commenters want the Labor Commissioner to assess penalties for failure to comply with this requirement.

**Response:** DLSE considered this comment and declines to specify by regulation a penalty for failure to update contact information. The statute sets forth the sanctions and remedies available (B&P Code section 9998.8).

**Comments 4.11, 5.11, 6.11, 10.11, 11.11, 12.11, 13.11, 16.11, 19.11, 20.11, 21.11, 22.11, 23.11, 24.11, 25.11, 26.11, 27.11, 28.11, 29.11, 31.11, 33.11**

Section 13853(a)(7) sets out the requirement that applicants provide specified information identifying businesses they plan to contract with in the 12 months following application and, if a

renewal application, in the two years prior. Commenters want more detailed information to be required including the number of workers recruited, occupations of recruited workers, salary ranges, visa categories, and overall value of contract(s) with employer(s).

**Response:** DLSE considered this comment and declines to accept it because DLSE does not believe that this additional information is required in order to evaluate the applicant's character, competency, and responsibility.

**Comments 4.13, 5.13, 6.13, 10.13, 11.13, 12.13, 13.13, 16.13, 19.13, 20.13, 21.13, 22.13, 23.13, 24.13, 25.13, 26.13, 27.13, 28.13, 29.13, 31.13, 33.13**

Section 13853(a)(9) requires applicants to indicate whether any person with a financial interest in the business has committed specified crimes within the last 5 years. Commenters believe that the lookback period should be increased to 10 years and should mirror the list of offenses that apply to farm labor contractor licenses.

**Response:** DLSE considered this comment and declines to accept the suggestion that the agency should adopt the criminal background screening requirements associated with the farm labor contractor program. The agency notes that the statutory scheme for foreign labor contractors does not contemplate as robust a registration and enforcement program as the farm labor contractor program, likely due to the fact that farm labor contractors have much more contact with workers and have significant ongoing obligations with respect to the workers as they perform work. *See, e.g.,* Labor Code section 1696.8 (mandating creation of a Farm Labor Enforcement Unit).

**Comments 4.14, 5.14, 6.14, 10.14, 11.14, 12.14, 13.14, 16.14, 19.14, 20.14, 21.14, 22.14, 23.14, 24.14, 25.14, 26.14, 27.14, 28.14, 29.14, 31.14, 33.14**

Section 13853(a)(9)(B) requires the submission of an explanation and supporting documentation where a person with financial interest in the business has committed specified crimes, owes taxes, or has had any license, registration, or permit suspended, revoked, or denied. Commenters point out a typographical error and suggest that "(v)" be changed to "(iii)."

**Response:** DLSE accepted this comment, as reflected in renumbered section 13853(a)(11)(B).

**Comments 4.15, 5.15, 6.15, 10.15, 11.15, 12.15, 13.15, 16.15, 19.15, 20.15, 21.15, 22.15, 23.15, 24.15, 25.15, 26.15, 27.15, 28.15, 29.15, 31.15, 33.15, PH 1:03:46**

Section 13853(a)(10) requires applicants to indicate the total number of employees the applicant will employ, if applicable, and to provide state and federal tax employer identification numbers, or a similar employer identification number required by a taxing authority in a foreign country. Commenters want the agency to include information on training of employee recruiters on their responsibilities under the law.

**Response:** DLSE considered this comment and declines to regulate the training of staff employed in foreign countries by the foreign labor contractor. The agency presumes that foreign labor contractors will take necessary steps to train their staff on compliance with the law.

**Comments 4.16, 5.16, 6.16, 10.16, 11.16, 12.16, 13.16, 16.16, 19.16, 20.16, 21.16, 22.16, 23.16, 24.16, 25.16, 26.16, 27.16, 28.16, 29.16, 31.16, 33.16**

Section 13853(a)(11) requires applicants to provide information about their total gross annual receipts, as specified. Commenters want the agency to also require applicants to provide information on how recruiting and soliciting activities are conducted and how much money is devoted to these activities.

**Response:** DLSE considered this comment and declines to require such information because it goes beyond what is necessary to assess the character, competency, and responsibility of the registrant.

**Comments 4.17, 5.17, 6.17, 10.17, 11.17, 12.17, 13.17, 16.17, 19.17, 20.17, 21.17, 22.17, 23.17, 24.17, 25.17, 26.17, 27.17, 28.17, 29.17, 31.17, 33.17**

Section 13853(a)(13)(E)(iii) requires applicants to certify that they are aware of the responsibilities as a registrant and that they agree to operate as a foreign labor contractor in compliance with all applicable provisions of law and specifically, to certify that the applicant has not been found by a court, the Secretary of Labor, or the Labor Commissioner to have violated Penal Code section 236.1, which prohibits false imprisonment. Commenters want the agency to include all relevant provisions of Penal Code section 236.1 relating to human trafficking.

**Response:** DLSE accepted this suggestion. We have deleted the reference to false imprisonment and substituted “relating to human trafficking” to more accurately reflect all of the relevant provisions of Penal Code section 236.1 that relate to human trafficking.

**Comments 4.18, 5.18, 6.18, 10.18, 11.18, 12.18, 13.18, 16.18, 19.18, 20.18, 21.18, 22.18, 23.18, 24.18, 25.18, 26.18, 27.18, 28.18, 29.18, 31.18, 33.18**

Section 13853(a)(13)(H) requires applicants to certify that they are aware that any material misrepresentation made in connection with the information provided on the application or other documents submitted relating to the application is grounds for denial or subsequent revocation of registration. Commenters want the agency to include omissions in addition to misrepresentations as grounds for denial or revocation.

**Response:** DLSE accepted this suggestion and modified the regulatory text to add the words “or omission,” such that the applicant must certify not only that the applicant is aware that any material misrepresentations made in connection with the application for registration constitute grounds for denial or revocation of registration, but that material omissions could constitute grounds for denial or revocation of registration as well. There are a number of items on the registration application that require the applicant to affirmatively provide information about the applicant and individuals who have financial interests in the applicant’s business, among other things. Material omissions can be as critical as misrepresentations, and are important for program integrity.

**Comments 4.48, 5.48, 6.48, 10.48, 11.48, 12.48, 13.48, 16.48, 19.48, 20.48, 21.44, 22.48, 23.48, 24.48, 25.48, 26.48, 27.48, 28.48, 29.48, 31.48, 33.48**

Section 13853(b)(1) sets forth the requirement that an applicant shall provide to the Labor Commissioner a registration fee of \$95 pursuant to B&P Code section 9998.1.5(b)(4).



Commenters are concerned that this fee is too low to sufficiently cover the costs of the program including enforcement activities, monitoring of registered contractors, and educational and training programs. Commenters suggest fees ranging from \$2,500 to \$10,000, to be determined based on: 1) the size of the labor contractor's business, and 2) the total cost of all the programs required under the law.

**Response:** DLSE considered this comment but declines to raise the registration fee as commenters suggested. This program applies to a small number of H-2B foreign labor contractors, and will not be as expansive as commenters proposed.

**Comments 4.19, 5.19, 6.19, 10.19, 11.19, 12.19, 13.19, 16.19, 19.19, 20.19, 21.44, 22.19, 23.19, 24.19, 25.19, 26.19, 27.19, 28.19, 29.19, 31.19, 33.19**

Section 13853(b)(2) requires applicants to provide documents containing information about their business organization including the statement of information provided to the Secretary of State if they are corporations, limited liability corporations, or partnerships. The provision also requires applicants that operate as a corporate or business entity in a foreign country to provide a copy of the registration or other certificate from the applicable foreign governmental agency which authorizes the business entity to exist or otherwise act as a lawful business entity. Commenters want the agency to include a requirement that applicants provide any government identification numbers for foreign entities.

**Response:** DLSE accepted the suggestion that the agency should have a record of the foreign entity's foreign identification number, if applicable. This is necessary in order for the Labor Commissioner to have the same type of information for foreign entities as is required for domestic entities, which are required to provide their Social Security or Taxpayer Identification numbers. This was added as new subsection 13853(a)(6).

**Section 13855 - Character, Competency and Responsibility**

**Comments 4.23, 5.23, 6.23, 10.23, 11.23, 12.23, 13.23, 16.23, 19.23, 20.23, 21.44, 22.23, 23.23, 24.23, 25.23, 26.23, 27.23, 28.23, 29.23, 31.23, 33.23**

Section 13855 requires applicants to provide information to aid the Labor Commissioner in determining whether an applicant possesses satisfactory character, competency and responsibility to be registered as a foreign labor contractor. Commenters request that information regarding these applicants' character, competency, and responsibility be posted on the DLSE's website and suggest that the following language be added to the text of the regulation: "All of the information provided in an application will be available to the public on the DLSE's website."

**Response:** DLSE considered this comment and declines to adopt it. Similar to other registration programs administered by the Labor Commissioner (e.g., farm labor contractor, garment), the information on the registration application form is sought for purposes of DLSE's evaluation of the applicant's character, competency, and responsibility, not for the purpose of providing information to the public. The agency notes that the statute mandates that DLSE maintain on its website the names and contact information for all registered foreign labor contractors and a list of the names and contact information of any foreign labor contractor who is denied renewal or registration (*see* B&P Code section 9998.1.5(a)). DLSE has also provided that additional information will be available on its website, in order to provide more transparency for the public (*see* section 13865(g)). This provides critical information to the public without the need to post

the application form online itself, particularly because the application may contain confidential material.

**Section 13856(b) - Registration Certificate - Certificate Expiration**

**Comments 4.33, 5.33, 6.33, 10.33, 11.33, 12.33, 13.33, 16.33, 19.33, 20.33, 21.44, 22.33, 23.33, 24.33, 25.33, 26.33, 27.33, 28.33, 29.33, 31.33, 33.33, PH 1:02:43**

Section 13856(b) sets out the condition that a registration certificate shall expire two (2) years from the date of issuance. Commenters request that the agency require foreign labor contractors to register annually rather than biannually.

**Response:** DLSE considered this comment but declines to require annual registration renewal. The agency believes that for these entities, which have less ongoing contact with workers on a day-to-day basis than licensees in our other registration programs, registration renewal once every two years is appropriate.

**Section 13856(e) - Registration Certificate - Change of Information**

**Comments 4.34, 5.34, 6.34, 10.34, 11.34, 12.34, 13.34, 16.34, 19.34, 20.34, 21.44, 22.34, 23.34, 24.34, 25.34, 26.34, 27.34, 28.34, 29.34, 31.34, 33.34**

Section 13856(e) sets forth the requirement that a registrant shall notify the Labor Commissioner in writing within ten (10) days of any change to the contact information specified on the registration certificate. Commenters request that the agency require changes to be reported within a maximum of five (5) days rather than ten (10).

**Response:** DLSE considered this comment and declines to make this change. A ten-day period is sufficient for foreign labor contractors who are generally operating outside the country.

**Section 13856(g) - Registration Certificate - Online Registry of Registrants**

**Comments 4.24, 4.25, 4.26, 4.27, 4.28, 4.29, 4.30, 4.31, 4.32, 5.24, 5.25, 5.26, 5.27, 5.28, 5.29, 5.30, 5.31, 5.32, 6.24, 6.25, 6.26, 6.27, 6.28, 6.29, 6.30, 6.31, 6.32, 10.24, 10.25, 10.26, 10.27, 10.28, 10.29, 10.30, 10.31,, 10.32, 11.24, 11.25, 11.26, 11.27, 11.28, 11.29, 11.30, 11.31, 11.32, 12.24, 12.25, 12.26, 12.27, 12.28,, 12.29, 12.30, 12.31, 12.32, 13.24, 13.25, 13.26, 13.27, 13.28, 13.29, 13.30, 13.31, 13.32, 16.24, 16.25,, 16.26, 16.27, 16.28, 16.29, 16.30, 16.31, 16.32, 19.24, 19.25, 19.26, 19.27, 19.28, 19.29, 19.30, 19.31, 19.32, 20.24, 20.25, 20.26, 20.27, 20.28, 20.29, 20.30, 20.31, 20.32, 21.24, 21.25, 21.26, 21.27, 21.28, 21.29, 21.30, 21.31, 21.32, 22.24, 22.25, 22.26, 22.27, 22.28, 22.29, 22.30, 22.31, 22.32, 23.24, 23.25, 23.26, 23.27, 23.28, 23.29, 23.30, 23.31, 23.32, 24.24, 24.25, 24.26, 24.27, 24.28, 24.29, 24.30, 24.31, 24.32, 25.24, 25.25, 25.26, 25.27, 25.28, 25.29, 25.30, 25.31, 25.32, 26.24, 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 27.24, 27.25, 27.26, 27.27, 27.28, 27.29, 27.30, 27.31, 27.32, 28.24, 28.25, 28.26, 28.27, 28.28, 28.29, 28.30, 28.31, 28.32, 29.24, 29.25, 29.26, 29.27, 29.28, 29.29, 29.30, 29.31, 29.32, 31.24, 31.25, 31.26, 31.27, 31.28, 31.29, 31.30, 31.31, 31.32, 33.24, 33.25, 33.26, 33.27, 33.28, 33.29, 33.30, 33.31, 33.32**

Section 13856(g) sets forth the requirement that the Labor Commissioner will maintain an online registry of registrants accessible at the DLSE's website, which will contain specified information including:

- (1) Registrants' information;
- (2) Employees and other registered contractors who perform foreign labor contracting activities for each registrant; and

(3) The registration status indicating whether a person or entity is registered, denied registration, suspended, or revoked, which includes a date of action affecting the status.

Commenters made several requests for changes and additions to this registry as follows:

**Comment 24**

Commenters request that the agency create a mechanism for showing relationships between employers and the chain of recruitment. Commenters further request that the relationships between employers and recruiters be visually and technologically linked.

**Response:** DLSE has considered comments requesting that the agency's website contain information reflecting relationships between employers and recruiters. The agency has determined that this would be duplicative of a public website maintained by the U.S. Department of Labor, which already displays information showing the relationships between H-2B employers and the foreign labor contractors whose services they use. *See* [https://www.foreignlaborcert.doleta.gov/Foreign\\_Labor\\_Recruiter\\_List.cfm](https://www.foreignlaborcert.doleta.gov/Foreign_Labor_Recruiter_List.cfm).

**Comment 25**

Commenters request that the agency include on the registry names of unregistered foreign labor contractors who have been reported to the Division in order to incentivize registration.

**Response:** DLSE considered this comment and declines to adopt it. The fact that the law prohibits a California employer from using an unregistered contractor should be sufficient incentive for a labor contractor to register. Moreover, if a foreign worker wants to verify whether a contractor is registered, he or she need only check the DLSE website – if the contractor is not listed, the contractor is not registered. This obviates the need to list those who are not registered.

**Comment 26**

Commenters wish to have displayed the relationships between all actors in the chain of recruitment, both foreign and domestic.

**Response:** DLSE has considered comments requesting that the agency's website contain information reflecting relationships between all actors in the chain of recruitment. To the extent that this information could be culled from the regulation's required submissions, the agency is not prepared to invest in a means to display such information, particularly because this would be duplicative in many respects of a public website maintained by the U.S. Department of Labor, which displays information showing which foreign labor contractor is engaged by which H-2B employer. *See* [https://www.foreignlaborcert.doleta.gov/Foreign\\_Labor\\_Recruiter\\_List.cfm](https://www.foreignlaborcert.doleta.gov/Foreign_Labor_Recruiter_List.cfm).

**Comment 27**

Commenters wish to have included and displayed all employers for whom the recruiter recruits.

**Response:** DLSE has considered this comment but declines to adopt it. As explained above, the agency considers this to be duplicative of a public website maintained by the U.S. Department of

Labor, which displays information about which foreign labor contractor is engaged by which H-2B employer. See [https://www.foreignlaborcert.doleta.gov/Foreign\\_Labor\\_Recruiter\\_List.cfm](https://www.foreignlaborcert.doleta.gov/Foreign_Labor_Recruiter_List.cfm).

#### **Comment 28**

Commenters request to have the job contract linked to the registry so that workers can verify terms of employment.

**Response:** DLSE has considered the commenters' request but declines to adopt it. The agency is not collecting job contracts from employers or foreign labor contractors, and therefore could not link them to the registry. Moreover, this would be duplicative of the public job registry that is already maintained on the U.S. Department of Labor's website, <https://lcr-pjr.doleta.gov/index.cfm>, which links to employers' labor certification applications that contain terms and working conditions for the job opportunity.

#### **Comment 29**

Commenters request to have the registry published in real-time.

**Response:** DLSE considered this comment and declines to adopt a regulation dictating the manner by which the agency will post information to the online registry, as this involves the agency's internal staffing procedures. However, the agency notes that the registry will be updated regularly.

#### **Comment 30**

Commenters request, at a minimum, that section 13856(g) be broadened to include:

1. The length of time a recruiter has been registered or engaged in recruiting activities prior to the Act.
2. The names and identifying information of all the employer clients of the recruiter, including occupations of workers, number of workers recruited, wages to be paid, workplace location, and dates of employment for workers.
3. Other licenses and registrations held by the recruiter.
4. A copy of the contracts with the workers.
5. The length of time the recruiter has been in business.

**Response:** DLSE considered these suggestions but declines to adopt them. The purpose of obtaining information such as the employer clients of the recruiter and the other licenses and registrations held by the recruiter is for the agency to evaluate the character, competency, and responsibility of the applicant. In creating regulations for a registration program, the Labor Commissioner has to balance the potential use of certain information that stakeholders value, with the burden placed on contractors required to register, in order to avoid defeating the purpose of the program by creating a registration system so onerous that businesses will choose to operate in the shadows and risk the liability associated with not complying rather than take on the burden of applying. Additionally, it would be unduly burdensome for the agency to accurately maintain all of the information requested in a publicly-accessible format.

### **Comment 31**

Commenters request that the registry include information in multiple languages “covering those most frequently encountered by workers.”

**Response:** DLSE considered this request but declines to adopt it because the registry will contain basic information, such as names, that will not need to be translated.

### **Comment 32**

Commenters request that the registry enable workers to provide reviews, comments, and feedback on their experiences with specific recruiters.

**Response:** DLSE considered this suggestion and declines to adopt it. Commenters suggest a role for DLSE that is not appropriate. The agency reviews applications to evaluate an applicant’s fitness for registration. It is not a clearinghouse for commentary about recruiters.

### **Section 13857(d) - Surety Bond; Establishing Gross Income Receipts**

**Comments 4.35, 5.35, 6.35, 10.35, 11.35, 12.35, 13.35, 16.35, 19.35, 20.35, 21.44, 22.35, 23.35, 24.35, 25.35, 26.35, 27.35, 28.35, 29.35, 31.35, 33.35**

Section 13857(d) sets forth the requirement that the Labor Commissioner will retain the required bond for no more than six months after a registered contractor closes its business and ceases operating as a foreign labor contractor, in order to provide for claims arising prior to the closure of the business. Commenters want the agency to extend the required retention time to seven years, the statute of limitations for human trafficking. Commenters further suggest that if this is deemed too lengthy then it should be held for a minimum of two to three years, the statute of limitations for other relevant claims that may be brought against the foreign labor contractor.

**Response:** DLSE considered the commenters’ suggestion and declines to modify the period of time that the bond will be retained after the foreign labor contractor ceases operations. This is consistent with the farm labor contractor regulations, 8 C.C.R. section 13664(d), which also provide that the Labor Commissioner will retain the bond in her possession for no more than six months after the employer ceases engaging in the business in order to provide for claims arising prior to the close in business. This section is not intended to modify any statute of limitation which may otherwise be applicable to a claim arising during the time prior to the business ceasing its operations.

**Comments 4.36, 5.36, 6.36, 10.36, 11.36, 12.36, 13.36, 16.36, 19.36, 20.36, 21.44, 22.36, 23.36, 24.36, 25.36, 26.36, 27.36, 28.36, 29.36, 31.36, 33.36**

Commenters recommend adding a section to include a rebuttable presumption that an employer should have known he was contracting with an unregistered recruiter and provide suggested language as follows: “Use of an unregistered recruiter is prima facie evidence of an employer’s knowledge of the recruiter’s illegal status for purposes of the obligations and liability provisions of the law. The burden of proof rests with the employer to affirmatively prove that he reasonably believed the recruiter to be registered.”

**Response:** DLSE considered the commenters’ suggestion and declines to adopt it. The requirement to use a registered contractor already exists in law (B&P Code section 9998.2(c)), and the regulations already detail (in section 13865(b)(2)) how to determine whether an

employer “should have known” about using the services of a registered foreign labor contractor. Adding a rebuttable presumption would unnecessarily complicate this approach.

**Section 13859(a) - Notice of Denial, Suspension or Revocation; Notice of Defense**

**Comments 4.37, 5.37, 6.37, 10.37, 11.37, 12.37, 13.37, 16.37, 19.37, 20.37, 21.44, 22.37, 23.37, 24.37, 25.37, 26.37, 27.37, 28.37, 29.37, 31.37, 33.37**

Section 13859 sets out the process for denial of an application for registration and revocation or suspension of registration and provides for a hearing process if the decision is appealed.

Commenters recommend providing clarification regarding who may file an “accusation” or a “statement of issues” for purposes of instituting revocation or suspension proceedings under section 13859(a). Commenters suggest the addition of a new subparagraph at section 13859(a)(3) as follows: “Any person may initiate proceedings to deny, revoke, suspend or condition a foreign labor contractor’s registration.”

**Response:** DLSE declines to adopt the commenters’ suggestion because “any person” may not initiate proceedings to deny, revoke, or suspend a registration. Consistent with the agency’s role in other licensing and registration programs, the agency charged with evaluating applications for registration has the authority to deny, suspend, or revoke, but such authority does not extend to outside parties.

**Section 13865 - Employer Disclosure to Labor Commissioner of Use of Foreign Labor Contractor**

**Comments 4.23, 5.23, 6.23, 10.23, 11.23, 12.23, 13.23, 16.23, 19.23, 20.23, 21.44, 22.23, 23.23, 24.23, 25.23, 26.23, 27.23, 28.23, 29.23, 31.23, 33.23**

Section 13865 sets forth the requirement that any person who knows or should have known that he, she, or it is using the services of a person who performs foreign labor contracting activities pursuant to Business & Professions Code section 9998.1(b) shall make certain disclosures, as specified. Commenters request that information regarding these disclosures be posted on the DLSE’s website and suggest the following language be added to the text of the regulation: “All of the information provided in an application will be available to the public on the DLSE’s website.”

**Response:** DLSE has considered the commenters’ suggestion and declines to adopt it. As explained above, much of this information is already available on a public website maintained by the U.S. Department of Labor, which displays information about which foreign labor contractor is contracted by which H-2B employer. See

[https://www.foreignlaborcert.doleta.gov/Foreign\\_Labor\\_Recruiter\\_List.cfm](https://www.foreignlaborcert.doleta.gov/Foreign_Labor_Recruiter_List.cfm).

**Section 13865(c) - How to Make the Disclosure Required in Section 13865**

**Comments 4.39, 5.39, 6.39, 10.39, 11.39, 12.39, 13.39, 16.39, 19.39, 20.39, 21.44, 22.39, 23.39, 24.39, 25.39, 26.39, 27.39, 28.39, 29.39, 31.39, 33.39**

Section 13865(c) provides a process for making the disclosures required by section 13865 by filling out a specified form and submitting that form by email or mail at the addresses provided. Commenters suggest that this could be improved by specifying that an employer must make disclosures to the Labor Commissioner within 24 hours of contracting with a recruiter.

**Response:** DLSE considered the commenters' suggestion and declines to adopt it, as there is no apparent need for an urgent, 24-hour period for reporting the use of a foreign labor contractor.

**Section 13865(c)(2)(C) - Employment Information, Current as of the Date of Disclosure Required by Section 13865, to be Provided**

**Comments 4.40, 5.40, 6.40, 10.40, 11.40, 12.40, 13.40, 16.40, 19.40, 20.40, 21.44, 22.40, 23.40, 24.40, 25.40, 26.40, 27.40, 28.40, 29.40, 31.40, 33.40**

Section 13865 specifies the information to be provided to the Labor Commissioner in the required disclosures. Commenters recommend that employers also be required to include among the disclosures a copy of the contract provided to the worker and provide suggested language as follows: "The employer must make the disclosures required under this section within seven days after contracting with a foreign labor contractor. A copy of the contract between the employer and the prospective worker must be part of this disclosure."

**Response:** DLSE considered commenters' recommendation and declines to modify the regulation text to include a seven-day time limit for disclosing the use of a foreign labor contractor. As noted above, there is no apparent need for a 24-hour reporting period, and there is similarly no apparent need to provide one full week (seven days) either. The agency expects that employers will disclose this information to the Labor Commissioner expeditiously and within a reasonable amount of time. Further, because the agency is not planning to review each employment contract when it receives disclosures from employers, there is no basis to collect the work contracts at the time of disclosure. If the agency needs to review the contract as part of an enforcement action and the employer does not provide a copy of the contract, the agency may use subpoena powers to obtain the contract.

**Section 13868 - Contracting with an Unregistered Foreign Labor Contractor**

**Comments 4.38, 5.38, 6.38, 10.38, 11.38, 12.38, 13.38, 16.38, 19.38, 20.38, 21.44, 22.38, 23.38, 24.38, 25.38, 26.38, 27.38, 28.38, 29.38, 31.38, 33.38**

Commenters point out a typographical error in section 13868 stating that the word "not" should be inserted before "registered" in the second sentence of the paragraph.

**Response:** DLSE accepted the comment and corrected this typographical error.

**Section 13870(a) - Unlawful Recruitment Fees**

**Comments 4.41, 5.41, 6.41, 10.41, 11.41, 12.41, 13.41, 16.41, 19.41, 20.41, 21.44, 22.41, 23.41, 24.41, 25.41, 26.41, 27.41, 28.41, 29.41, 31.41, 33.41**

Section 13870(a) defines what is meant by an unlawful recruitment fee. Commenters like the itemized definition but recommend adding the following additional fees to the definition:

- recruiting, soliciting, identifying, placing potential job applicants, potential employees, persons who may be referred or contracted for employment, and employees

**Response:** DLSE agreed with commenters that the term "placing" should be included in the list of prohibited recruitment fees, and added this in section 13870(a)(1)(A). The remainder of the terms suggested by commenters are encompassed within the definition of "recruiting" and "soliciting" in section 13850, which has already been incorporated into section 13870(a).

- labor broker services, both one-time and recurring

**Response:** DLSE agreed with commenters that fees for “labor broker” services should be included in the list of prohibited recruitment fees, and added this in section 13870(a)(1)(P). This prohibition includes both one-time and recurring fees for labor broker services.

- covering the cost, in whole or in part, of advertising

**Response:** Costs for advertising are already prohibited in section 13870(a)(1)(C). Therefore, this suggestion was not accepted.

- the inclusion of a collateral requirement, such as land deeds, in contracts

**Response:** DLSE agreed with commenters that collateral requirements such as land deeds should be included, and added it in section 13870(a)(1)(T). This addition is necessary because foreign labor recruiters may request or demand collateral for the payback of the recruitment fee or for their services, and workers or their family members may provide land deeds for this purpose. These types of fees that can trap workers in debt and in exploitative situations where they fear the economic consequences of leaving their employer are consistent with the recruitment fees prohibited under this statute.

- contract breach fees

**Response:** DLSE considered this suggestion, and the fact that the statute requires the foreign labor contractor to disclose to the worker “any penalties for terminating employment.” B&P Code section 9998.2.5(a)(2). DLSE did not incorporate commenters’ suggestion as an outright prohibition. However, this issue was addressed in a separate section, section 13874. Specifically, although the statute, B&P Code section 9998.2.5(a)(2), requires the contractor to provide the foreign worker with a signed copy of the work contract that includes, among other things, “any penalties for terminating employment,” this type of contractual clause may violate applicable law where an employer seeks to recover this amount from the worker’s wages. For example, under California law, an employer may not use “self help” to recover amounts purportedly owed to the employer by the employee. Labor Code section 221 prohibits an employer from receiving from an employee any wage paid by the employer to the employee either by deduction or recovery after payment of the wage. Under modified section 13874(b)(6)(K), contract breach fees would only be permissible to the extent that such penalties do not violate governing federal or state law.

- insurance

**Response:** Commenters did not specify what type of insurance they meant. To the extent commenters were referring to health insurance, the costs of health care are required to be disclosed to the worker under B&P Code section 9998.2.5(a)(4). Under modified section 13873, such costs may be charged and must be disclosed to workers as long as they are customarily assessed against similarly-employed workers in the United States and permitted under governing state and federal law.



**Section 13872 - Other Fees, Costs, and Expenses Prohibited Post-Hire/Selection**

**Comments 4.42, 5.42, 6.42, 10.42, 11.42, 12.42, 13.42, 16.42, 19.42, 20.42, 21.44, 22.42, 23.42, 24.42, 25.42, 26.42, 27.42, 28.42, 29.42, 31.42, 33.42**

Section 13872(a) defines the fees that a foreign labor contractor shall not demand of a foreign worker post-hire or post-selection for the employment opportunity. Commenters recommended that in addition to the listed costs, the regulations should include a prohibition against charging fees for future employment opportunities, which are fees that foreign labor contractors commonly charge internationally recruited workers to “lock in” jobs in future seasons.

**Response:** DLSE considered this recommendation and agreed with commenters that these types of fees, which workers often feel obligated to pay because they are so indebted by paying up-front costs that they need to stay longer to pay off their debts, should be prohibited. This was added to the itemized list of prohibited fees in section 13870(a)(1)(U).

**Comments 4.43, 5.43, 6.46, 10.43, 11.43, 12.43, 13.43, 16.43, 19.43, 20.43, 22.43, 23.43, 24.43, 25.43, 26.43, 27.43, 28.43, 29.43, 31.43, 33.43**

Section 13872(b) prohibits a foreign labor contractor from charging a foreign worker hired or selected to work for an employer in California for any costs or expenses prior to commencement of work and also prohibits that workers be required to pay any costs or expenses which are not customarily assessed against workers similarly employed in the United States. Commenters noted that employees in many industries in the U.S. are “customarily” charged for expenses such as required tools, safety equipment, or uniforms that current law requires their employers to provide. Commenters recommend that to provide clarity, the language should be amended to state that employers can only charge workers for costs or expenses permitted by law, and they recommend replacing the language prohibiting a foreign worker from being required to pay for costs or expenses “not customarily assessed against workers similarly employed in the United States” with the following: “costs or expenses such as tools, safety equipment or uniforms that are required for the job.”

**Response:** DLSE considered this comment and appreciates the underlying concern, but it declines to adopt the proposed modification. The agency interprets the statutory phrase “costs or expenses that are not customarily assessed against all workers similarly employed in the United States” to mean costs or expenses that cannot lawfully be charged or deducted from the wages of workers in the U.S. (even if U.S. workers are sometimes charged for these expenses in violation of the law), as well as costs or expenses that are not generally charged to similarly-employed U.S. workers.

**Section 13873(a)(1) - Allowable Post-Hire Costs and Expenses to be Itemized and Disclosed**

**Comments 4.44 , 5.44, 6.44, 10.44, 11.44, 12.44, 13.44, 16.44, 19.44, 20.44, 22.44, 23.44, 24.44, 25.44, 26.44, 27.44, 28.44, 29.44, 31.44, 33.44**

Section 13873(a)(1) sets forth the allowable amount that can be charged a recruited worker for housing or living accommodations and limits those costs to the market rate for similar housing. Commenters point out that employers are generally not permitted under California law to charge their employees “market rate” for lodging, as suggested under subsection (a)(1). Commenters reference the DLSE’s minimum wage notice, which mandates below market rates for lodging when lodging is used as a credit against payment of the minimum wage.

**Response:** DLSE considers commenters' point well-taken, and has modified the text of the regulation to reflect that certain items may not be lawfully charged to workers. As explained at length in the Supplement to the Initial Statement of Reasons (pp. 6-8), the statutory language appearing to sanction certain costs, expenses, and deductions that are not, or in some cases, may not be permissible under California and federal law (including market rate housing costs), needed to be harmonized with other parts of the statute that provide that this legislation should not be construed to preempt or alter other rights or remedies available under federal or state law. Modified section 13873 states that these items may only be charged if the costs, expenses, or deductions are customarily assessed against similarly-employed workers in the United States and permitted under governing state and federal law.

**Section 13874 - Disclosure by Contractor to Worker**

**Comments 4.23, 5.23, 6.23, 10.23, 11.23, 12.23, 13.23, 16.23, 19.23, 20.23, 21.44, 22.23, 23.23, 24.23, 25.23, 26.23, 27.23, 28.23, 29.23, 31.23, 33.23**

Section 13874 sets forth the requirements for disclosure of specified information to workers. Commenters request that information regarding these disclosures be posted on DLSE's website and suggest the following language be added to the text of the regulation: "All of the information provided in an application will be available to the public on the DLSE's website."

**Response:** DLSE has considered this comment and declines to adopt it. The regulation requires labor contractors to submit the disclosure to the Labor Commissioner as a compliance measure to ensure that the labor contractor has met its statutory requirement to provide such disclosure to the worker, not because it was intended to be posted on DLSE's website.

**Section 13874(a) - Disclosure by Contractor to Worker**

**Comments 4.45, 5.45, 6.45, 10.45, 11.45, 12.45, 13.45, 16.45, 19.45, 20.45, 22.45, 23.45, 24.45, 25.45, 26.45, 27.45, 28.45, 29.45, 31.45, 33.45**

Section 13874(a) sets forth the requirements for disclosures that must be made by the contractor to the worker and specifies that the disclosures must be made at the time of recruitment, but in no event later than the time for applying for a work visa. Commenters were concerned with the timing of a recruited worker receiving a copy of the work contract and believe recruited workers should be provided a copy of the contract at time of recruitment to provide time to review prior to a consular appointment. Commenters recommend striking the language "but in no event later than the time for applying for a work visa."

**Response:** DLSE agrees with commenters about the timing of the disclosure, and has removed the language "but in no event later than the time for applying for a work visa" from this provision. If the disclosure and the work contract are not provided to the worker until she or he applies for a work visa and has a consular interview, the worker may not have ample time to fully evaluate the terms and conditions of the job opportunity prior to accepting the position and making plans to travel to California for the job opportunity.

**Section 13874(b) - Items Required to be Included in the Disclosure to be Provided to a Worker When the Labor Contractor is Conducting Recruiting Activity**

**Comments 4.46, 5.46, 6.46, 10.46, 11.46, 12.46, 13.46, 16.46, 19.46, 20.46, 22.46, 23.46, 24.46, 25.46, 26.46, 27.46, 28.46, 29.46, 31.46, 33.46**

Section 13874(b)(6) requires contractors to attach to the disclosure a copy of an employer-signed work contract detailing all assurances and terms and conditions of employment and also provides a list of items that must be contained in the contract. This requirement may be satisfied by providing a copy of a job order signed by the employer and submitted to the U.S. Department of Labor for purposes of obtaining a foreign labor certification if it contains the same information. Commenters recommend adding a sub-paragraph to the contents of the employment contract to include the following:

- Meals/meal provisions
- Rest periods
- Wage stubs with explicit information
- Production standards
- Sanitary and housing conditions
- Notice of the existence of strikes, lockouts, or labor disputes.

**Response:** DLSE considered whether to add each of these suggested items to the requirements for the work contract. One of the agency's considerations was how to balance the mandates of this state program with existing requirements under the federal H-2B regulations, in order to make the requirements consistent where possible. DLSE is declining to add items that are already required to be included in an H-2B job order under the federal regulations such as meals/meal provisions and housing that will be provided or assisted with (20 C.F.R. section 655.18(b)(10)). In addition, under the federal H-2B regulations, employers must certify that there is no strike or lockout in any of the employer's worksites within the area of intended employment (20 C.F.R. section 655.20(u)), making it unnecessary to provide notice of a strike or lockout under the state program.

Further, because modified section 13874(b)(10) requires labor contractors to give workers a copy of the flyer *All Workers in California Have Rights*, which explains rest periods and information required to be provided on wage stubs, DLSE declines to add this information to the work contract.

Finally, DLSE agrees with commenters that production standards should be included, and that has been added in section 13874(b)(6)(A). This is necessary because some workers are paid a piece rate, and their wages will be based on certain production standards.

**Section 13874(b)(10) - Disclosure by Labor Contractor to Worker: Rights of a Prospective or Hired Foreign Worker, and Enforcement Instructions**

**Comments 4.47, 5.47, 6.47, 10.47, 11.47, 12.47, 13.47, 16.47, 19.47, 20.47, 21.43, 22.47, 23.47, 24.47, 25.47, 26.47, 27.47, 28.48, 29.48, 31.47, 33.47, PH 15:30, PH 21.23, PH 1:04:00, PH 1:24:00**

Section 13874(b)(10) requires contractors to provide to workers statements regarding the rights of a prospective or hired foreign worker, and enforcement instructions. Commenters feel the

enforcement mechanism provided in the regulations is inadequate and request numerous additions and modifications to the regulation text as detailed below.

#### Request #1

Commenters request that the regulations require all internationally recruited workers to receive written notice of the resources available through the DLSE for bringing complaints of employment violations at the time of recruitment and should include the information in the existing Department of Industrial Relations (DIR) workers' rights flyer.

**Response:** DLSE agrees with commenters' suggestion that foreign workers should be provided a copy of DIR's workers' rights flyer. Foreign workers are entitled the same rights that other workers in California have under California law. However, because they are traveling to the state for work, they may be unfamiliar with these rights under California law. Informing the workers of their rights will better enable them to recognize workplace violations, and empower them to seek redress and avoid exploitation. Modified section 13874(b)(10) adds this requirement.

#### Request #2

Commenters request that section 13874(b)(10) be expanded to clearly define workers' rights under SB 477, as well as other federal and state laws, in the worker's native language. They recommend that DLSE work with the migrant workers' rights community to develop materials that effectively convey workers' rights under this and other applicable laws. Commenters provide suggested language as follows: "DLSE will establish and publish on its website procedures for workers to file complaints for violations of this section."

**Response:** DLSE appreciates commenters' interest in ensuring that workers are well-informed of their rights under this and other laws. The Labor Commissioner frequently receives information from the workers' rights community and welcomes such dialogue regarding proper enforcement of the law for all workers. However, the agency declines to adopt the requested regulatory modifications. The disclosure form – which is required to be provided in the primary language of the worker who is being recruited (subsection 13874(c)) – is already lengthy, and further explanation of workers' rights is beyond the scope of these regulations. In addition, the regulations and the form already provide information on how workers can report violations. The agency notes that the statute provides for enforcement through a civil action, which may be brought by any person aggrieved by a violation of this chapter, as well as the Labor Commissioner.

#### Request #3

Commenters recommend that DLSE require recruiters in countries of origin to partner with local community-based groups in providing training to ensure that unscrupulous recruiters do not use the training process to coach workers against asserting their rights and accessing justice.

**Response:** DLSE has considered commenters' request and may entertain further discussion about effective measures to educate and train the regulated community. The agency declines, however, to incorporate such topics into the regulation because it believes that these activities are beyond the scope of the regulation.

#### Request #4

Commenters are concerned that foreign labor contractors will not always comply with the notice requirements. They recommend including additional methods through which workers may receive notice of their rights under this law as follows:

- Commenters request that DLSE work with the embassy and consular staff in workers' countries of origin to ensure that workers are apprised of their rights under the law.
- Commenters suggest that the Labor Commissioner collaborate with the Employment Development Department's Labor Certification staff to ensure notice is provided as required to workers.
- Commenters suggest that the Labor Commissioner partner with Customs and Border Patrol to ensure that any worker entering the United States through a port of entry in California receives a disclosure of rights.
- Commenters suggest that DLSE create a mandatory orientation process, immediately upon workers' arrival to California, through which internationally recruited workers in all visa categories are invited to learn about their rights and protections under SB 477 as well as state and federal law.
- Commenters suggest that the regulations require DLSE to develop, update, and disseminate materials and provide training apprising recruiters and employers of their responsibilities under SB 477.
- Commenters suggest that DLSE be required to partner with community-based organizations in countries of origin in order to ensure quality control of trainings conducted by recruiters.

**Response:** DLSE has considered commenters' suggestions and requests, which it characterizes as outreach and education activities. The agency declines to incorporate such topics into regulation, as it believes that these activities are beyond the scope of the regulation.

#### Request #5

Section 13874(b)(10) includes a hotline among the recruiter disclosures to workers, without specifying which hotline number will be used, as well as a Spanish-language hotline.

**Response:** DLSE accepted this comment and added the toll-free number, 1-844-LABOR-DIR, to section 13874(b)(10). This number is also available in Spanish, as reflected in the regulation. With this number, workers can contact the Labor Commissioner's Office regarding any questions or regarding complaints of violations.

#### Request #6

Commenters are concerned that the proposed regulations fail to define a complaint intake process. Commenters request that the complaint mechanism must take into account the workers' fear of retaliation based on filing a complaint, as well as the likelihood that workers will be calling to complain about retaliation that has already occurred. Commenters assert that the existing procedure for filing a retaliation complaint or a wage claim in California is confusing and creates significant barriers to workers' access to either complaint process. Commenters recommend that the Commissioner provide its California-based, toll-free hotline, 1-844-

LABOR-DIR, to workers -- a single hotline for all types of complaints -- and make numerous suggestions as to the operation of this hotline:

- The hotline should be staffed with operators who know the requirements of the foreign labor contractor law and who can provide “correct internal referrals to handle complaints” along with correct external referrals to community based organizations with whom DLSE collaborates in the implementation of this law.
- The hotline must be easily reached any time of day from any part of California, and calls must be answered by a live person who has access to interpreters as needed.
- The hotline number should be able to receive international calls at no cost to the caller to accommodate workers who may not file complaints while they are in the United States.
- DLSE should post the hotline number on its website, specifying the purpose of the hotline, including complaints under this law, as well as the procedure by which complaints will be taken, assessed, investigated, possible outcomes, and procedures for requesting and using the services of translators to assist an aggrieved worker in filing a complaint.

**Response:** DLSE appreciates commenters’ suggestions regarding the complaint intake process and the way a hotline should be staffed to best serve this particular worker population. However, the agency declines to incorporate such topics into regulation, as it believes that these activities are beyond the scope of the regulation. Moreover, the agency notes that the statute provides for enforcement through a civil action, which may be brought by any person aggrieved by a violation of this chapter, as well as the Labor Commissioner.

#### Request #7

Commenters request that DLSE create a form based on the existing “Bureau of Field Enforcement (BOFE) Report of Labor Law Violation” that specifically addresses violations of the foreign labor contractor law for intake of complaints. Commenters suggest that in addition to the general information requested on the existing BOFE form, the new SB 477 form should include the following:

- a space for the reporting party to indicate contact information in his or her country of origin
- a check-box section for an aggrieved worker to indicate which sections of SB 477 the recruiter or the employer is alleged to have violated containing the following options:
  - recruitment fee charged
  - above market-rate charged for housing, transportation, food, or other services
  - registration violations, including employer use of unlicensed recruiter
  - violations of recruiter’s or employer’s disclosure requirements, including not providing documents in the worker’s native language and making false, misleading or fraudulent statements, among others
  - contract violations, including altering the terms of the contract without proper notice and contractual changes agreed to under duress, threats, intimidation, coercion, discrimination or retaliation against the worker or his family
  - visa/travel document abuses
- remedies sought.

Commenters also request that the form contain the following statements:

- A statement explaining that specifying a type of violation by checking one of these boxes will serve only as an initial orientation to DLSE's investigators, and will not limit DLSE's duty to investigate to only the type of violation identified by that box.
- A statement apprising workers of their right to confidentiality and the immigration-related consequences of statements they make during the investigation process, if any.

**Response:** DLSE appreciates commenters' suggestions regarding a complaint intake form specific to the foreign labor contractor law. While the agency may develop further information about complaint-handling under this law, it declines to do so at the current time, and notes that there is already a mechanism for workers report violations to the agency. Moreover, the agency notes that the statute provides for enforcement through a civil action, which may be brought by any person aggrieved by a violation of this chapter, as well as the Labor Commissioner.

#### Request #8

Commenters note that the regulations do not include provisions for audits and investigations. Commenters request that DLSE add regulations to require the agency to conduct audits and investigations of recruiters to ensure compliance with the law. Commenters request that the investigations include site visits and in-person interviews with workers.

**Response:** DLSE appreciates commenters' suggestions regarding audits and investigations. The agency conducts audits and investigations on a case-by-case basis regarding violations of a law under the agency's jurisdiction. Thus, the agency declines to promulgate regulations on this topic. Moreover, the agency notes that the statute provides for enforcement through a civil action, which may be brought by any person aggrieved by a violation of this chapter, as well as the Labor Commissioner.

#### Request #9

Commenters point out that the regulations do not provide for a resolution of complaints and suggest that the regulations should specify a complaint resolution process for when violations are discovered to include that the Labor Commissioner will apply the full range of penalties and remedies available under the law, including as follows:

- revoking recruiter registrations
- collecting fines
- issuing injunctions
- ordering back pay and/or reinstatement to harmed workers.

**Response:** DLSE appreciates commenters' suggestions regarding a complaint resolution process. However, the agency declines to promulgate regulations on this topic. The statute already sets forth the sanctions and remedies available (B&P Code section 9998.8). Moreover, the agency notes that the statute provides for enforcement through a civil action, which may be brought by any person aggrieved by a violation of this chapter, as well as the Labor Commissioner.

#### Request #10

Commenters are concerned that complaints will involve internationally recruited workers who are in the United States on visas of limited duration and suggest that the Labor Commissioner indicate in the regulations that it will act within a maximum of seven days to address all grievances arising under these regulations.

**Response:** DLSE appreciates commenters' concern regarding migrant workers' time limitations while in the U.S. However, the agency declines to incorporate a regulatory timeframe for resolving grievances, the proper resolution of which would be case-specific. The agency also notes that the statute provides for enforcement through a civil action in court, which may be brought by any person aggrieved by a violation of this chapter, as well as the Labor Commissioner.

#### Request #11

Commenters recommend that the regulations specify zero tolerance for lawbreakers and suggest that at a minimum, action against violators of the law should include automatic suspension of a recruiter's license once DLSE concludes that a recruiter has charged a worker an illegal fee, regardless of the party within the recruiter's supply chain who charged the fee. Commenters further suggest that a zero tolerance policy include the following:

- Provisions requiring the recruiter to reimburse all aggrieved workers for any such illegal fees, and require that confirmation of the reimbursement should be made as a prerequisite to the recruiter's regaining a license to operate in California.
- Provisions that provide for a worker to be entitled to receive back-pay and damages for the period of time between an initial violation and the time when an award is made for cases of a violation of a worker's employment contract.

**Response:** DLSE appreciates commenters' concerns regarding proper remedies. However, the agency has already established by regulation a process for suspending registrants who violate the law. In addition, as part of the registration renewal process, the agency will consider whether the registrant has complied with the B&P Code and applicable regulations (section 13853(a)(15)(E)). Finally, the statute sets forth the other sanctions and remedies available (B&P Code section 9998.8).

#### Request #12

Commenters are concerned about deportation of workers who file complaints prior to completion of any investigation. Commenters suggest that the regulations include provisions requiring that the Labor Commissioner invoke the Memorandum of Understanding between the U.S. Departments of Labor and Homeland Security in order to stay any potential deportation proceedings until after the Labor Commissioner completes its investigation of any alleged workplace violations, when needed.

**Response:** DLSE appreciates commenters' concern but this topic is beyond the scope of the regulation.



### Request #13

Commenters suggest that the regulations contain provisions to deal with complaints that are not filed or resolved prior to a worker's departure from the U.S., requiring DLSE to initiate or continue an investigation of the complaint in question, regardless of the reasons for or circumstances surrounding the complainant's departure. Commenters suggest that in these cases, investigations should include phone calls or Skype interviews with the complainant and request that this policy should be clearly written into the final regulations.

**Response:** DLSE appreciates commenters' concerns regarding resolution of complaints for workers who have departed the country. However, the agency declines to promulgate regulations regarding such circumstances, which are beyond the scope of the regulation.

### Request #14

Commenters suggest that the \$95 registration fee is inadequate to cover the costs of the program, including auditing, monitoring, educational and training aspects. They suggest fees ranging from \$2,500 to \$10,000 based on the size of the labor contractor's business.

**Response:** DLSE has considered this request but is not raising the registration fee as commenters suggested. This program applies to a small number of H-2B foreign labor contractors, and will not be as expansive as commenters proposed.

## **SUMMARY AND RESPONSE TO COMMENTS RECEIVED FOLLOWING THE PERIOD THE MODIFIED TEXT AND NEW DOCUMENTS WERE AVAILABLE TO THE PUBLIC FROM JUNE 21, 2018 THROUGH JULY 6, 2018**

Comments are organized by regulation section and identified by assigned number of commenter and assigned number within the comment letter (e.g., 10.02).

### **Section 13850(a) - Definition of "Recruiting" and "Recruits"**

#### **Comments 15.1-1.01, 15.1-2.01, 15.1-3.01**

Section 13850(a) defines recruiting and recruits as pertains to the regulation of foreign labor contractors and includes within the definition a number of activities associated with the act of recruiting. DLSE proposed several changes to this definition that commenters support. Commenters re-state their request to add "trains" and "influences" as recruitment activities included within the definition.

**Response:** DLSE notes that this request does not pertain to regulatory language that was proposed in the 15-day notice, but instead re-states a comment submitted in response to the 45-day notice for which a response was already provided (please see response to comments 4.01, 4.02, 4.03, 4.04). Further response is not required.

### **Section 13850(b) - Definition of "Soliciting" and "Solicits"**

#### **Comments 15.1-1.02, 15.1-2.02, 15.1-3.02**

Section 13850(b) defines soliciting and solicits as pertains to the regulation of foreign labor contractors and includes within the definition a number of activities associated with the act of soliciting. DLSE proposed several changes to this definition that commenters support.

Commenters re-state their request to modify the definition to specifically include both direct and indirect engagement in the specified activities.

**Response:** DLSE notes that this request does not pertain to regulatory language that was proposed in the 15-day notice, but instead re-states a comment submitted in response to the 45-day notice for which a response was already provided (please see response to comments 4.03, 4.04). Further response is not required.

### **Section 13853 - Registration**

#### **Comments 15.1-1.03, 15.1-2.03, 15.1-3.03**

Section 13853 proposed to specify how an applicant for registration is to submit an application by email and mail to DLSE. Commenters express their desire for DLSE to make an online application process available in order to facilitate timely processing of registrations and data collection in the online registry. Commenters also re-state the suggestions applicable to registration that were included in their initial comments on the proposed regulations.

**Response:** If the necessary information technology is available for this program in the future, the agency may move to an online application and renewal process. It is not possible for the agency to accept online applications at the current time. Regarding re-statement of commenters' earlier suggestions regarding the preferred contents of the online registry, there was no proposed change to this aspect of the regulatory text in the 15-day notice and a response has already been provided for these comments (please see response to comments 4.09, 4.10, 4.12, 4.20, 4.21, 4.22). Further response to this set of comments is not required.

### **Section 13865(c)(1)(c) - Disclosure to Labor Commissioner of Use of Foreign Labor Contractor**

#### **Comments 15.1-1.04, 15.1-2.04, 15.1-3.04**

Section 13865(c)(1)(C) was proposed to be amended to remove the requirement that an employer who uses the services of a foreign labor contractor disclose the mailing, email, and home addresses "for each partner in a partnership, each member of an LLC, or each corporate officer of a corporation" and to require this information only of the employing person. Commenters state that there is no reason to limit this disclosure to persons operating in an individual capacity and request that the provision be reinstated to include the expanded disclosure.

**Response:** The agency does not agree that the employer disclosure needs to include additional information regarding all persons involved in the business. The reason the agency proposed this change is because there is a substantive difference between the employer disclosure and the labor contractor application for registration. The Labor Commissioner is required by the statute to assess the "character, competency, and responsibility" of the labor contractor prior to registration, including obtaining the names and addresses of all persons financially interested. *See B&P Code section 9998.1.5(b)(1)(A)-(B)*. By contrast, the statute only requires that the employer provide the Labor Commissioner with the name, address, and contact information of the person designated by the employer to work with a foreign labor contractor. *See B&P Code section 9998.2(b)(1)*. The disclosure regulation requires all employing persons to provide identifying information, including the employing person's name, all names under which the employing person has done business in the last three years, the current physical business address

and preferred mailing address, and preferred email address. The home address is required for sole proprietors because they often work out of their homes. The agency believes this information is sufficient for purposes of the employer disclosure.

#### **Section 13870(a)(1)(F) - Unlawful Recruitment Fees**

##### **Comments 15.1-1.05, 15.1-2.05, 15.1-3.05**

Section 13870(a)(1)(F) was proposed to be amended to clarify that the prohibited fees in this section refer to visa and visa processing fees. Commenters assert that the original language was intended to ban recruitment fees for what recruiters consider “processing” which could encompass a broader range of fees associated with processing of the visa itself and request that DLSE modify this section to ensure that all potential recruitment activities pertaining to processing are covered including processing applications, setting up appointments, and coordinating logistics.

**Response:** DLSE notes that commenters have apparently misconstrued the proposed change, which did not remove the language commenters believe is critical, namely “processing applications, setting up appointments, and coordinating logistics.” This language remains as proposed originally in subdivision 13870(a)(1)(F).

#### **Section 13872 - Other Fees, Costs, and Expenses Prohibited**

##### **Comments 15.1-1.06, 15.1-2.06, 15.1-3.06**

Section 13872 was proposed to be amended to remove the items in subsection (a) to consolidate them into the list of prohibited fees contained in proposed section 13870. It was also proposed that the language “post hire/selection” be removed from the title of section 13872, as it would no longer apply. Commenters recognize that subsection 13870(a)(1) includes “recruitment fees regardless of the manner or timing of their imposition,” which can be read to include fees imposed after a worker arrives in California, but they are concerned that the removal of a section specifically listing fees that are prohibited post-hire/selection creates an inadvertent loophole whereby unscrupulous recruiters may charge unauthorized fees. They request that DLSE reinstate the provision in 13872(a)(1).

**Response:** DLSE appreciates commenters’ concern regarding ways in which unscrupulous recruiters may charge unlawful fees post-hire/selection. However, the agency declines to reinstate the itemized list of post-hire/selection fees originally proposed in section 13872(a) because subsection 13870(a) adequately captures all prohibited fees and this section makes clear that these fees may not be charged at any time, including post-hire/selection. There is no loophole.

#### **Section 13874 - Disclosure by Contractor to Worker**

##### **Comments 15.1-1.07, 15.1-2.07, 15.1-3.07**

Proposed section 13874(b)(6)(K) was modified to re-letter it to subsection (J) and add the word “any” at the beginning of the sentence. Commenters are concerned that this change transforms the requirement to provide a certain number of hours of work per week from a mandatory requirement to a permissive standard that weakens worker protections below federal H-2B regulation requirements. Commenters recommend eliminating this subdivision.

**Response:** The U.S. Department of Labor is not currently enforcing the hours guarantee in the federal H-2B regulations due to successive congressional appropriations riders prohibiting such enforcement. Therefore, adding the word “any” simply reflects that if an employer intends to offer an hours guarantee irrespective of the fact that this is not currently enforced by the Department of Labor, it should be included in the work contract. DLSE disagrees that this constitutes a weakening of worker protections, as it serves to notify workers about any hours guarantee that will be offered.

**Comments 15.1-1.08, 15.1-2.08, 15.1-3.08**

Proposed section 13874(b)(6)(L) was amended to re-letter it to subsection (K) and modified to indicate disclosure requirements for “any” penalties for terminating employment “to the extent that such penalties do not violate governing state or federal law.” Commenters feel the phrasing is unclear and suggest the following alternate language: “Any penalties for terminating employment. Any such penalties must be in accordance with governing state, federal or common law.”

**Response:** DLSE considered the comment and declines to adopt the proposed modification because the two formulations have the same meaning.

**Section 13874(b)(10) - Disclosure by Contractor to Worker- Enforcement**

Several amendments were made to proposed section 13874(b)(10). Commenters make the following comments regarding this section:

**Comments 15.1-1.09, 15.1-2.09, 15.1-3.09**

Commenters support the inclusion of toll-free telephone numbers for reporting violations of the foreign labor contractor registration laws or non-compliance with workplace laws. Commenters make several suggestions regarding this “hotline” including the following:

- Must be easily reached any time of day from any part of California
- Must be staffed by a live person with access to interpreters
- The number should be able to receive international calls at no cost to the caller
- Those staffing the hotline should be trained on the requirements of the foreign labor contractor registration law

**Response:** DLSE notes that these suggestions do not pertain to modified language that was proposed in the 15-day notice, but instead re-state a comment submitted in response to the 45-day notice for which a response was already provided (please see response to Request #6 under comment 4.47). Further response is not required.

**Comments 15.1-1.10, 15.1-2.10, 15.1-3.10**

Commenters support inclusion of the requirement that workers be provided with a copy of the Department of Industrial Relations flyer, *All Workers in California Have Rights* (or a subsequent worker rights flyer with updated information). Commenters make the following requests with respect to this requirement:

- In addition to English, the flyer should be made available in the primary language of prospective workers.

**Response:** The flyer is already available in other languages, on DLSE’s website: [https://www.dir.ca.gov/letf/Information\\_for\\_workers\\_and\\_employers.html](https://www.dir.ca.gov/letf/Information_for_workers_and_employers.html). In addition, the Foreign Labor Contractor Disclosure Statement (DLSE 703, p. 4) provides the website where foreign labor contractors can access this flyer in other languages spoken by workers.

- The flyer should be updated to clearly define workers’ rights under the foreign labor contractor registration law and rights granted under federal and state human trafficking laws, including case examples or illustrations of these protections. Commenters offer some proposed text to be inserted on page 1 immediately after the fourth sentence as follows:

“As a worker recruited by a foreign labor contractor, you have rights in addition to those specified below. You are protected by both California and federal law (California Business and Professions Code Division 3, Chapter 21.5, Section 9998 and the federal Trafficking Victims Protection Act of 2000 (Division A, Public Law 106-386), and federal H-2B regulations at 20 C.F.R. Part 655 and 29 C.F.R. Part 503). You should have been given notice of your rights under these laws when you were recruited.

If you need help understanding these rights, please call the following toll free numbers:

If a foreign labor contractor violates the registration law, or your employer does not comply with requirements or prohibitions stated in this disclosure, including workplace laws, you may call [toll free number] 1-844 LABOR-DIR (or 1-844-522-6734) or contact the nearest office of the California Labor Commissioner (list attached) to report the violation. Spanish-speaking workers may call 1-877-552-9832 (1-877-55AYUDA) for assistance.

If you feel you are being forced to perform labor against your will, contact the National Human Trafficking Resource Center: Call 1-888-373-7888 – or Text HELP to 233733.

We do not work with any immigration officials and anyone you contact through our services has no power to initiate deportation proceedings.”

**Response:** DLSE appreciates commenters’ suggestions but declines to revise the existing flyer because the disclosure form that must be provided to foreign workers by the labor contractor already contains virtually all of this information (*see* Foreign Labor Contractor Disclosure Statement, DLSE 703). Moreover, the agency notes that H-2B workers are also required to be provided with a copy of the U.S. Department of State’s brochure detailing rights and protections for temporary workers as part of the visa application process, and this brochure contains similar information (*see* <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/temporary-workers.html>).

**Comments 15.1-1.11, 15.1-2.11, 15.1-3.11**

Commenters request that in support of the flyer a mandatory orientation process covering rights and protections for immigrant workers be provided upon a workers' arrival in California. The orientation should be given either by DLSE directly or through a DLSE contract with local community or advocacy groups with relevant expertise in the area. The flyer should include information about this orientation.

**Response:** DLSE appreciates commenters' suggestion. The agency already collaborates regularly with local community groups to help inform workers about their rights, including dissemination of multilingual community education materials for workers and various informational brochures created by non-profit community-based organizations, which have been made available to the public in our agency offices throughout the state. DLSE declines to create a specific training program for H-2B workers as part of these regulations.

**Forms and Documents Noticed****Comments 15.1-1.12, 15.1-2.12, 15.1-3.12**

Commenters request that forms 701, 703, 704 and 704A be available online for electronic filing, which would facilitate the creation of a searchable electronic database of recruiters and employers.

**Response:** If the necessary information technology is available for this program in the future, the agency may make these forms available online for electronic submission. The agency does not currently have the capacity to accept these forms online.

**Form 701 – Application for Foreign Labor Contractor Registration**

Regarding the "Requirements" section on page 1 of the application, commenters make the following comments:

**Comments 15.1-1.13, 15.1-2.13, 15.1-3.13**

Paragraph 1: Commenters are concerned that the application fee is insufficient.

**Response:** As stated in a previous response to commenters' suggestion that the fee be increased, DLSE has considered this request but is not raising the registration fee. This program applies to a small number of H-2B foreign labor contractors, and will not be as expansive as commenters proposed (please see response to Request #14 under comment 4.47).

**Comments 15.1-1.14, 15.1-2.14, 15.1-3.14**

Paragraph 7: For foreign-based entities, any governmental identification should be provided.

**Response:** DLSE declines to adopt this suggestion because Paragraph 8 already requires applicants to submit a copy of their legal photo identification. This would include foreign identification.

**Comments 15.1-1.15, 15.1-2.15, 15.1-3.15**

Paragraph 8: Insert "all" before "partners."

**Response:** DLSE declines to adopt this suggestion because it does not agree that it is necessary to include the word “all” in this sentence.

Regarding the application questions, commenters make the following comments:

**Comments 15.1-1.16, 15.1-2.16, 15.1-3.16**

Question 15: Commenters are concerned that insufficient instruction is provided to inform applicants that the information is required to be reported and that insufficient space is provided to list all actors in the chain of recruitment. They intend for this data to allow a foreign worker to visualize the entire chain of recruitment. Commenters recommend that rather than an open space for response the form should include individual fields to identify the range of actors along with their activities, current physical address, telephone numbers, Social Security numbers, Tax Identification numbers, DBA’s or aliases, and foreign labor contractor registration numbers.

**Response:** DLSE considered this suggestion but declines to adopt it. The application instructions on Page 1 already inform applicants as follows: “If you require additional space to answer a question, attach additional sheet(s) as necessary.” Therefore, applicants are not confined to the space provided on the application form. Moreover, commenters suggest that individual fields be added to the application form that are not required by regulation (see subsection 13853(a)(7)), such as a description of the contractors’ activities. Finally, the agency does not intend to create a visual diagram based on the information contained in the registration application.

**Comments 15.1-1.17, 15.1-2.17, 15.1-3.17**

Question 18: Commenters request that a sub-question “(c)” be added as follows:

- “Has applicant been convicted or plead nolo contendere to any charges based on violations of any laws addressing human trafficking either in the U.S. or in a foreign country?”

**Response:** DLSE declines to adopt this suggestion because the application already requires an applicant to certify that it has not been found to have violated federal and state human trafficking laws (*see* Application, p. 7). Additionally, this question exceeds the scope of the application regulation, under which applicants must provide information on criminal convictions, guilty pleas, and nolo contendere pleas for crimes involving fraud or misrepresentation.

**Comments 15.1-1.18, 15.1-2.18, 15.1-3.18**

Commenters request that a new “Question 20” be added as follows:

- “In what countries does the applicant intend to solicit or recruit workers and what languages do those prospective workers speak?”

**Response:** DLSE declines to adopt this suggestion because the application already requires an applicant to list the domestic and international locations where it does business. This provision was added in response to an earlier comment in order to allow the Labor Commissioner to better evaluate the manner and means by which the applicant proposes to conduct operations as a foreign labor contractor. Additionally, the requirement to specify the language the prospective workers speak exceeds the regulatory requirements for the registration application.

**Comments 15.1-1.19, 15.1-2.19, 15.1-3.19**

Commenters request that further certification statements be added on page 7 of the application as follows:

- “I/We attest that we have not charged any fees in violation of Business and Professions Code Section 9998.2.5(c).”
- “I/We attest that we have provided a copy of the proposed contract and all notices to prospective workers in their primary language(s).”

**Response:** DLSE appreciates these suggestions but declines to adopt them as there is already a certification of compliance with the Business and Professions Code and applicable regulations.

**FORM 703 – Foreign Labor Contractor Disclosure Statement****Comments 15.1-1.20, 15.1-2.20, 15.1-3.20**

Commenters are concerned that section 8 of the disclosure statement that addresses how guest workers can enforce their rights under the law is not drafted in language that is easily understandable, and make the following suggestions:

- The substantive content of the disclosure (specifically, the information contained in paragraphs 5, 6, and 7) should be incorporated in a second document as an appendix to Form 703 entitled “Foreign Labor Contractor Mandatory Disclosure to Prospective Workers,” be in the primary language of the worker, and should include as an attachment the actual proposed contract.
- A second document entitled “Your Rights as a Worker” should be provided as an appendix to Form 703 that includes the information in paragraph 8 that includes a step by step guide for a worker to understand his or her rights to initiate a complaint and contains several items that should be emphasized regarding guest worker rights in California.
- Rather than generalized language about the minimum wage, the document should explain the prevailing wage and clarify the applicable wage.

**Response:** DLSE appreciates commenters’ suggestions about making this document more understandable to workers but declines to adopt them. The agency believes it is more efficient to include all the required information on one disclosure form rather than creating appendices to the disclosure form, particularly because there are already several required attachments to the disclosure form. The agency notes in response to this comment that the disclosure form is already required to be translated into the primary language of the foreign worker being recruited, and that the work contract is already required to be attached to the disclosure form. Also, as explained previously (see response to comments 15.1-1.10, 15.1-2.10, 15.1-3.10), the agency has decided to require the foreign labor contractor to provide the foreign worker with a copy of the flyer “All Workers in California Have Rights,” but it declines to revise this flyer to make it specific to this program in light of the amount of information already available for H-2B workers. Finally, an explanation of the prevailing wage rates required under the H-2B program is beyond the scope of these regulations.



## **Form 704 – Employer Disclosure Statement: Use of Foreign Labor Contractor**

### **Comments 15.1-1.21, 15.1-2.21, 15.1-3.21**

Commenters suggest specifying that employers have seven days in which to file the disclosure statement.

**Response:** This comment was submitted during the 45-day notice period with respect to the disclosure requirement in section 13865(c), and a response was already provided (please see previous response to comment 4.40). Further response is not required.

### **Comments 15.1-1.22, 15.1-2.22, 15.1-3.22**

Commenters suggest that the form include all physical addresses of where workers will be working.

**Response:** DLSE declines to adopt this suggestion because the form already requires the employer to list the physical addresses of where foreign guest workers will work.

### **Comments 15.1-1.23, 15.1-2.23, 15.1-3.23**

Commenters request that the agency specify that additional sheets should be attached to fully answer all questions.

**Response:** DLSE declines to adopt this suggestion because the primary information that may need to be provided on additional pages is the contact information regarding additional foreign labor contractors involved in recruiting workers on behalf of the employer. The form already instructs employers to include additional contact information on a separate page if necessary (p. 3).

## **COMMENTS RECEIVED FOLLOWING THE PERIOD THE MODIFIED TEXT AND NEW DOCUMENTS WERE AVAILABLE TO THE PUBLIC FROM JULY 9, 2018 THROUGH JULY 24, 2018**

As noted above, the first 15-day comment period was extended for an additional 15 days. The agency did not receive any new comments during this additional 15-day comment period.

## **ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

No alternatives were proposed that would lessen any adverse economic impact on small business.

## **ALTERNATIVES DETERMINATION**

DLSE has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The new sections adopted by DLSE are the only regulatory provisions identified by the agency that accomplish the goal of regulating foreign labor contractors to ensure their initial and continuing fitness to engage in regulated activities under the foreign labor contractor registration law. Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the agency's attention.

TITLE 8. INDUSTRIAL RELATIONS  
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS  
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT  
SUBCHAPTER 14. FOREIGN LABOR CONTRACTOR REGISTRATION

**ADDENDUM TO FINAL STATEMENT OF REASONS**

**Nonsubstantive Changes Made During OAL Review**

The following nonsubstantive changes were made to the regulation text during OAL review:

**Section 13855:**

Subdivision (b)(4)(C): Added “the” between “that” and “applicant” to correct grammar.

**Section 13857:**

Subsection (a): Added a revision date for the surety bond form and incorporated the bond form by reference.

**Section 13859:**

Subdivision (b)(2): Added a sentence to clarify that the form entitled notice of defense that accompanies the copy of accusation or statement of issues that the Labor Commissioner is required to serve on the registrant or applicant is an optional method of filing a notice of defense requesting a hearing.

**Section 13860:**

Removed a subdivision from the References noted.

**Section 13873:**

Removed a subdivision from the References noted.