

TITLE 8. INDUSTRIAL RELATIONS  
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS  
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT  
ADDING SUBCHAPTER 15: PUBLIC LIST OF CERTAIN PORT DRAYAGE MOTOR  
CARRIERS AND CUSTOMER SHARING OF LIABILITY UNDER LABOR CODE  
SECTION 2810.4  
ADDING ARTICLES 1, 2, 3, and 4

ADOPTING SECTIONS 13875 THROUGH 13888, INCLUSIVE, REGULATING PUBLIC  
LIST OF CERTAIN PORT DRAYAGE MOTOR CARRIERS AND CUSTOMER SHARING  
OF LIABILITY UNDER LABOR CODE SECTION 2810.4

**FINAL STATEMENT OF REASONS**

In September 2018, Senate Bill (“SB”) 1402 was enacted to bring about greater accountability in the port trucking industry by requiring the Labor Commissioner (or, “LCO”) to create a public list of trucking companies with outstanding judgments and imposing shared liability on customers that continue to use these companies if there are future labor violations. This law, codified at Labor Code section 2810.4, went into effect on January 1, 2019. (SB 1402, Chapter 702, Statutes of 2018.) The Labor Commissioner has maintained a public list of port trucking companies with outstanding judgments on its website since the law went into effect.

During the pendency of this rulemaking in 2021, the Legislature passed and the Governor signed SB 338 (Chapter 333, Statutes of 2021), which modified existing requirements regarding the types of liability determinations that are subject to posting of port drayage motor carriers (or, “motor carrier(s)”) on the public list administered by the Labor Commissioner. The Legislature declared that drayage drivers at California ports are routinely misclassified as independent contractors when they are in fact employees under California and federal labor laws.<sup>1</sup> Such misclassification is rampant, which contributes to wage theft and leaves drivers in a cycle of poverty.<sup>2</sup> Many companies that commit violations go out of business, are replaced by others, or even the same entity under a different name, that repeat the pattern.<sup>3</sup> SB 338 included the creation of a new category for posting of liability determinations of prior offenders, as specially defined. The bill further directed the Labor Commissioner to adopt regulations describing what constitutes “sufficient documentation” for removal of a motor carrier from the public list. Accordingly, the agency modified its initial proposal pursuant to a 15-day notice, which publicized a notice of proposed modifications and modified text on December 10, 2021 to primarily account for SB 338’s new provisions. The 15-day notice includes modification of procedures relating to a motor carrier’s placement and removal from the list, other necessary changes to implement statutory requirements, and, based upon further consideration by the agency, amendments to clarify and more specifically implement general procedural requirements pertaining to administration of the public list.

This regulatory action creates a new Subchapter 15 in Title 8 of the California Code of Regulations, of Division 1, Chapter 6. In adopting these regulations, the agency’s action more fully implements

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<sup>1</sup> Senate Bill 338 (Gonzalez, 2021), Chapter 333, section 1(e) (Legislative findings and declarations).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*, section 1(k).

and clarifies the procedures under Labor Code section 2810.4 used to compile the public list, place or remove a motor carrier from the public list, the procedures for contesting the Labor Commissioner's determinations, and the manner in which customer liability will be enforced under Labor Code section 2810.4.

### **UPDATE TO INITIAL STATEMENT OF REASONS**

The Labor Commissioner incorporates the Initial Statement of Reasons, which was publicized on September 4, 2020.

SB 338 was enacted in the fall of 2021. Upon review of the recent legislation, the Labor Commissioner determined that modifications to the existing proposed regulations were necessary to make more specific the new requirements under the bill, including addition of a new category of prior offenders that require different considerations for placement on the public list. Additionally, the Legislature directed that the Labor Commissioner adopt certain regulations pertaining to removal of a motor carrier from the public list, including requirements regarding the documentation a port drayage motor carrier must provide to the Labor Commissioner. Accordingly, the agency prepared modifications and issued a 15-day notice of modifications along with modified text for the regulations on December 10, 2021.

These modifications were primarily intended to incorporate changes as a result of amendments to the law made by SB 338, which also led to further consideration of the initial proposed regulations requiring further development of proposed procedures for clarity and efficiency benefitting both the regulated public and the agency administering the public list.

The following sections were modified substantively as set forth below.

#### **Section 13875 (Definitions)**

**Subsection (c)** which provides a special definition for "essential information" is modified to reflect a renumbering of a reference to the Labor Code provision made under SB 338 (new subsection (A) in Labor Code section 2810.4(b)(1)), and substantively adds to the special definition: the identification of the court where the final judgment was entered; inclusion of a reference number used by the Labor Commissioner to identify the liability that is subject to posting; inclusion of a Labor Commissioner case or superior court case where a final or non-final finding of a subsequent liability was most recently determined; and the North American Industry Classification System (NAICS code) provided by the Labor Commissioner. Identification of the court where a final judgment is entered is necessary to more completely describe an existing liability, which is subject to confirmation by the Labor Commissioner or the general public and further aids in distinguishing liabilities among the various superior courts that are organized by county. The Labor Commissioner will generate and utilize a reference number for an identified liability which is necessary to efficiently administer a statewide public list in a more uniform manner and will assign such reference number when initiating a required notice to a port drayage motor carrier for purposes of identification of a specific liability determination (final judgment) to be used for administration of the public list.

The NAICS code provided by the Labor Commissioner is for administrative tracking purposes for each listing on the public list and is expressly excepted from the essential information required to be provided by a public entity or private party when making a request for posting pursuant to Section 13876(a)(2)-(3). The Labor Commissioner's use of the code shall not be interpreted as having any bearing on whether a business is a "port drayage motor carrier" within the meaning of Labor Code section 2810.4(a). The exception to requiring a private party or other public entity to provide when making a request for posting and stating the code's limited purposes are necessary to express the intended limitations on the designation and use of the NAICS code while allowing the Labor Commissioner to provide and use the code for administrative tracking and posting purposes. Added language specific to prior offenders, as defined in Labor Code section 2810.4(a), is necessary due to the special statutory requirement added under SB 338 (Labor Code section 2810.4(b)(1)(B)) which allows posting of final or non-final liability determinations by the Labor Commissioner or court which most recently determined liability would necessarily be included as essential information regarding a motor carrier that must be posted in order to provide accurate information of the determined liability.

**Subsection (d)** which provides a special definition for "notification by certified mail" as used in Labor Code section 2810.4(b)(2) which means notification to the last listed address on a Notice of Entry of Judgment is modified to also be satisfied by using the last listed address in the tax lien, tax assessment, final citation or ODA if a judgment has not been entered based on the type of liability. This added language is necessary to include liability determinations, which are not entered as judgments but otherwise subject to posting. The notification of posting of a liability determination must include any determination subject to posting under Labor Code section 2810.4(b)(1)(A)-(B). A non-substantive change is made to Subsection (d) to add a closing parenthesis, as suggested in the public comment, following the internal parenthetical, "(or, ODA)" within the sentence to read as "(or if judgment has not been entered, the last listed address in the ... (or ODA))..." The addition of a parenthesis is necessary to close the internal parenthetical beginning with "(or if judgment has not been entered ...)", was inadvertently omitted, and does not alter the substance of the subject regulatory provisions.

**Subsection (e)**, which provides a special definition of "successor," deletes a potentially confusing phrase ("who succeeds in the operation of a predecessor port drayage motor carrier"). The deletion is necessary to avoid any misinterpretation that the phrase is a requirement separate and independent from the subsequent four identified criteria ((e)(1) through ((e)(4)). The deleted phrase's similarity with the first subsequently identified criteria for determining successorship ((e)(1)) could result in effectively rendering (e)(1) a necessary criteria in all cases which would be inconsistent with the overall intent that any one of the listed criteria ((e)(1) through ((e)(4)), if proven, could establish successor liability. Also, the subsection is modified to reflect a renumbering of the Labor Code subsection made under SB 338 which changes the previous reference from Labor Code section 2810.4(a)(4)(C) to 2810.4(a)(5)(C). A non-substantive change is made to add a comma after the phrase, "... as defined in Labor Code section 2810.4(a)(5)(C) ..." The addition of a comma is necessary to identify and separate the previous phrase, "as defined in Labor Code section 2810.4(a)(5)(C)." The inclusion of a comma ordinarily separates such a phrase, was inadvertently omitted, and does not alter the substance of the subject regulatory provisions.

**Subsection (f)** which provides a special definition for “tax assessment, or tax lien that can be released to the public under federal and state disclosure laws” is modified to replace the word “can” with “may” in the phrase. The modification is necessary to be consistent with the statutory source of the phrase which uses the word “may” in Labor Code section 2810.4(b)(1)(A). Also, the subsection is modified to reflect a renumbering of the Labor Code subsection made under SB 338 which adds Subsection (A), changing the previous reference from Labor Code section 2810.4(b)(1) to 2810.4(b)(1)(A).

**Subsection (g)** which provides a listing of what is included under the special definition of “wages” in Labor Code section 2810.4(a) is modified due to renumbering of the subsection in SB 338 to accurately refer to the numbered subsection of the referenced Labor Code section where the special definition resides—Labor Code section 2810.4(a)(9). Also, the subsection is modified so that subsection (g)(2) includes a reference to Labor Code section 226.8, which includes remedies for an employer’s misclassification of workers as independent contractors and is necessary given the Legislature’s clear intent in SB 338 to capture liability determinations resulting from misclassification of workers as independent contractors (See SB 338, Chap. 333, Statutes of 2021, sec. 1 [Legislative findings and declarations]).

**(New) Subsection (h)** adds a special definition of the phrase “court judgment, tax assessment, or tax lien”. The added subsection is necessary to reconcile the types of liability determinations resulting from SB 338 and its new requirements pertaining to a prior offender, as specially defined in Labor Code section 2810.4(a)(8), as to which either a final or non-final liability determination qualifies for posting on the public list with references to the respective controlling statutes. The classification of the liability determination as final and non-final is critical to the type of liability which is subject to posting under Labor Code section 2810.4(b)(1)(A)-(B) and is necessary for the regulated public’s understanding of the respective statutory bases for posting of the specified liability determinations, including such determinations applicable to a prior offender which was recently added to Labor Code section 2810.4 under SB 338.

**(New) Subsection (i)** adds a special definition for the phrase “final citation or ODA” which are liability determinations issued by the Labor Commissioner and referenced in Labor Code section 2810.4(a)(8)(B). The added subsection is necessary to more specifically categorize liability determinations issued by the Labor Commissioner under the agency’s citation authority and, for word economy, uses the more commonly used acronym “ODA” instead of the more lengthy “order, decision or award” when referring to quasi-judicial authority in determinations issued by the Labor Commissioner on claims filed by individual workers pursuant to Labor Code section 98 et seq. The inclusion of language that such liability determination was “not appealed” is necessary to expressly affirm that a “final Labor Commissioner citation or ODAs” (order, decision or award), which was not timely appealed, renders a port drayage motor carrier a prior offender, as specified in Labor Code section 2810.4(a), to the same extent as a final court judgment and is consistent with the legal consequence for a liability determination being final if not appealed.

## **Section 13876 (Sources of Information and Requests for Internet Webpage Posting)**

The section title is changed to add “and Requests for Internet Webpage Posting” after “Sources of Information” in order to include added requirements regarding requests to post on the public list liability determinations obtained by the Labor Commissioner or submitted by either a public entity (other than the Labor Commissioner) or a private party. SB 338 included provisions, which provided the submission of information regarding liability determinations to the Labor Commissioner to post on the public list. The Labor Commissioner determined that such requests (procedural requirements are provided in new subsection (c)) in the same regulatory section which describe and distinguish the various sources of such information (obtained by Labor Commissioner, other public entity, or a private party who obtained a liability determination) are reportable to the Labor Commissioner for posting under Labor Code section 2810.4. The title change also replaces the word “Website” in the title with “Webpage” to be consistent with amendments to the statute under SB 338, which both added a special definition for “internet webpage” and now uses “internet webpage” throughout Labor Code section 2810.4.

This section initially described the sources of information from which a posting of a liability determination would be provided and is modified to remove non-regulatory language (first full sentence) which the Labor Commissioner determined was not necessary and that similar language in Labor Code section 2810.4 was sufficient without repeating the same point in the regulation. This section was also modified to a new format which more completely describes the three sources of information in new subsection (a) which were stated in the initial proposed text; implements the recent SB 338 provisions regarding prior offenders in new subsection (b); and further, provides modified procedural requirements in new subsection (c) for actual submission of requests, including supporting documentation, to the Labor Commissioner to review for posting on the public list.

**(New) Subsection (a)** more clearly distinguishes the three existing primary entity sources identified in the initial proposed text who will provide information preliminarily to a posting of a liability determination on the public list. The modification is necessary to provide more clear descriptions of the sources listed separately in following subsections (a)(1) through (a)(3) which relate to the posting requirement for unsatisfied liability determinations subject to Labor Code section 2810.4(b)(1) as initially enacted under SB 1402 and as amended under SB 338.

**(New) Subsection (a)(1)** which initially referred to the posting of liability determinations generally based on proceedings before the Labor Commissioner is modified to more clearly describe the forms of such administrative actions (citations; order, decisions or awards; or other legal actions brought by the Labor Commissioner) which may result in a final court judgment. The modification is necessary to inform the public of the various forms of administrative enforcement actions resulting in a final court judgment which, if unsatisfied, would be subject to required posting on the public list. The enforcement tools for addressing violations of statutes and regulations under the Labor Commissioner’s jurisdiction are extensive, and the stated enforcement actions are intended to capture any authority provided to the Labor Commissioner under the Labor Code which can result in a final judgment stemming from an exercise of the Labor Commissioner’s authority, including the filing of civil actions from which liability determinations are made by a court.

**(New) Subsection (a)(2)** which, under the initial proposed text, referred to the submission to the Labor Commissioner of essential information by a private party or other public entity of a determined liability, is modified to separately address “other public entities” that provide essential information regarding an unsatisfied liability determination against a port drayage motor carrier. Upon further consideration, the Labor Commissioner finds it necessary to distinguish these two sources under separate subsections as the described liabilities would not be obtainable by both sources. For example, judgments on tax assessments or tax liens would be liabilities of a public entity but not a private party. The modification removes any potential confusion of the liabilities obtained by a public entity or private party for purposes of posting on the public list. The modification also adds language, which directs the public to subsection (c) for the procedural requirements for submission of required information and documents to the Labor Commissioner for review prior to a posting on the public list.

**(New) Subsection (a)(3)** which, under the initial proposed text, combined other public entities with private parties as a separate source of information (see discussion of Subsection (a)(2) above) is modified to provide a separate subsection listing of a private party as a source of information who can provide personally, or through their authorized representative, essential information regarding an unsatisfied final judgment to the Labor Commissioner to review for posting on the public list. The modification also adds language, which directs the public to subsection (c) for the procedural requirements for submission of required information and documents to the Labor Commissioner for review prior to a posting on the public list.

**(New) Subsection (b)** implements a new requirement added under SB 338 requiring posting of a determined liability of a prior offender, defined in Labor Code section 2810.4(a)(8), and described in Labor Code section 2810.4(b)(1)(B). The subsection is necessary to more specifically describe the circumstances for public listing of a prior offender (having a previous liability which is related to misclassification of a worker as an independent contractor) where a subsequent liability by the prior offender includes a finding that a port drayage motor carrier has violated a labor or employment law or regulation. Unlike the posting requirement pursuant to (a) requiring an unsatisfied final judgment, the liability in a subsequent liability determination for a prior offender is subject to placement on the public list even if the appeal period has not expired, *i.e.*, the subsequent liability determination which qualifies for posting may be final or non-final liability determination. The subsection is further necessary to clarify that the sources of information include the same sources described in subsections (a)(1)-(3) but must include a finding that the subsequent liability determination includes a violation of any labor or employment law or regulation, *e.g.*, misclassification of workers as independent contractor, unpaid wages, workers’ compensation coverage, employment tax assessments, tax liens, etc. While the listing of sources of information in subsections (a)(1)-(3) are the same as in subsections (b)(1)-(3), there is still a need to distinguish the type of liability determinations that qualify for listing specifically applicable to prior offenders as provided in SB 338 that recently established posting requirements for prior offenders in Labor Code section 2810.4(b)(1)(B).

**(New) Subsections (b)(1) through (b)(3):** see summary above for Subsections (a)(1) through (a)(3) regarding discussion of need for distinguishing the three primary sources (Labor Commissioner proceedings, other public entities, and private parties) and for added language providing direction for other public entities and private parties to submit the essential information in accordance with subsection (c)), which is incorporated herein.

**(New) Subsection (c)** establishes a special provision applicable to requests from a private party or public entity made to the Labor Commissioner to post liability determinations. The subsection implements authority given to the Labor Commissioner who is charged with administering the public list, including authority to adopt regulations and rules of practice and procedure necessary to administer and enforce Labor Code section 2810.4(b), which encompasses posting and removal of liability determinations of port drayage motor carriers on or from the public list. (Labor Code § 2810.4(l)). Additionally, the obligation of the Labor Commissioner to post prior offender liability added under SB 338 is only available if notice of the subsequent and prior liability determinations are provided in a manner and format acceptable to the Labor Commissioner. (Labor Code § 2810.4(b)(1)(B).) This subsection is necessary to provide the public, and more specifically, other public entities and private parties, with uniform procedural requirements to request a posting, which is subject to review and determination by the Labor Commissioner consistent with Labor Code section 2810.4(b) and these proposed regulations that a liability determination qualifies for required posting on the public list.

**(New) Subsection (c)(1)** establishes a uniform procedure which specifies the manner and form of a request for posting submitted by a private party or other public entity must be in writing when submitted to the Labor Commissioner's Office. A written request requirement is necessary to ensure the identity of the requestor and maintenance of a record of any request submitted by the Labor Commissioner, including the items listed in following subsections (c)(1)(A)-(C).

**(New) Subsection (c)(1)(A)** establishes that a requestor must submit documentation to establish that a liability determination was made against a port drayage motor carrier, as defined, and such evidence shall consist of described documents listed in subsections (i)-(iii). The items listed in (i) through (iii) include certified copies of the documents which comprise of judgments (final or non-final, as applicable), evidence that a liable party engaged in "port drayage services" or otherwise qualifies as a "port drayage motor carrier" as defined in Labor Code section 2810.4(a), and, if applicable, evidence demonstrating that the port drayage motor carrier is a "successor" as defined in Labor Code section 2810.4(a). The described information stated in (i) – (iii) in the form of documentary evidence is necessary to provide the Labor Commissioner with sufficient verifiable information to determine whether a liability determination is valid in itself as well as whether the established liability otherwise qualifies for posting on the public list against a port drayage motor carrier. The Labor Commissioner determined that providing descriptive categories of documents (evidence) to be submitted under (i)-(iii) are superior to an exhaustive listing of all potential documents due to the various judicial and administrative forums where liability determinations are made in addition to the various types of liabilities which fall under the broad scope of Labor Code section

2810.4. Descriptive categories of documents will better promote inclusion of liabilities on the public list following review by the Labor Commissioner, which is contemplated under the statute and recently expressed by the Legislature in SB 338. (See SB 338, Chap. 333, Statutes of 2021, sec. 1 [Legislative findings and declarations]).

**(New) Subsection (c)(1)(B)** provides a requirement that the requestor provide the full name and last known address of the port drayage motor carrier and include, if applicable, a copy of a statement of information or other registration document for business entities who are registered with the Secretary of State (e.g., corporation, limited liability company, or other entity). The documentary evidence is necessary for purposes of verifying the identity and entity form of a port drayage motor carrier. In the Labor Commissioner's experience, port drayage motor carriers can often change the business entity form such that verification of the business form can be verified with Secretary of State information filings to ensure appropriate listing of the entity on the public list.

**(New) Subsection (c)(1)(C)** provides clear direction for submitting a request against a prior offender by requiring the requestor to submit each liability determination for the prior and subsequent liability determination as described in Subsection (b) of this section, if the request is for a listing of a prior offender. This documentary item of evidence is necessary in order to ensure that the Labor Commissioner can provide a posting of a prior offender in accordance with the special provisions applicable to such prior offenders and determine whether the liability determination complies with the posting requirements specified in Labor Code section 2810.4(b)(1)(B) and Subsection (b) of this section.

**(New) Subsection (c)(1)(D)** establishes a uniform manner for delivery of the request and documentation to the Labor Commissioner's Office, which includes a direct mail delivery address, or alternatively, delivery via email to the stated email address. This requirement is necessary to have a singular central office receive all written requests for postings submitted by private parties and entities to achieve uniform processing of requests and posting on the public list by the Labor Commissioner.

**(New) Subsection (c)(2)** which provides for a review by the Labor Commissioner of the submitted request and documentation and determination that sufficient information has been provided for posting of a determined liability, and provides the subsequent agency action which is to notify the port drayage motor carrier of the future listing pursuant to Section 13877. This subsection is necessary to inform the public of the posting procedure which must be based on review and determination of compliance with Labor Code section 2810.4 and in accordance with the request requirements contained in this regulatory section.



### **Section 13877 (Notice to Port Drayage Motor Carriers):**

This section replaces the word “website” with “internet webpage” to be consistent with amendments to the statute under SB 338, which both added a special definition for “internet webpage” and now uses “internet webpage” throughout Labor Code section 2810.4.

**Subsection (a)** which provides the Labor Commissioner notify port drayage motor carriers of their requirement to maintain a public list pursuant to Labor Code section 2810.4 replaces the word “website” with “internet webpage” under SB 338. The modification is necessary to remain consistent with amendments to the statute under SB 338, which both added a special definition for “internet webpage” and now uses “internet webpage” throughout Labor Code section 2810.4.

**Subsection (b)** initially proposed text that the definitions of “port drayage carrier” under Labor Code section 2810.4 be included in the notice the Labor Commissioner provides to motor carriers prior to posting their names, among other essential information, on the public list. The reference to including the definitions of “port drayage motor carrier” under Labor Code section 2810.4 is deleted. The Labor Commissioner determined that reference in the notice to Labor Code section 2810.4 required in Subsection (a) of this section provides sufficient notice of the law and direction to the motor carrier of the statute’s requirements, including the special definitions for a port drayage motor carrier. Accordingly, there is no need to separately provide such special definition, which is better understood when, read in context of the entire statute.

**(New) Subsections (b) – (c)** are modified due to the renumbering of Subsection 13877 after the deletion of former Subsection (b).

### **Section 13878 (Response to Notice):**

**Subsection (a)**, which under the initial proposed text, provided for a period of 20 calendar days to respond, is modified to replace “website” to “internet webpage,” amended to change the time to respond to 15 business days, and adds the word “motor” to “motor carrier.” The modification of “website” to “internet webpage” is necessary to be consistent with amendments to the statute under SB 338, which both added a special definition for “internet webpage” and now uses “internet webpage” throughout Labor Code section 2810.4. The modification of the time to respond from 20 calendar days to 15 business days is necessary to remain consistent with the timeline of 15 business days as indicated in Labor Code section 2810.4 and avoids potential confusion for the regulated public. Also, this modification is necessary because it maintains the time to respond uniform with other areas of Labor Code section 2810.4 where a port drayage motor carrier, as defined under Labor Code section 2810.4(a), is required to respond to avoid initial placement on the list or to be removed from the public list. This modification is further necessary to allow the Labor Commissioner the ability to use a consistent timeframe for administrative tracking and posting purposes, including a uniform timeline by which to not place a port drayage motor carrier on the list or to remove a motor carrier from the public list. This section also deletes references to responding on the next “business day immediately following the weekend or holiday” if the 20<sup>th</sup> calendar day falls on a weekend or holiday. This deletion is necessary because, under the

modified text of “15 business” days as discussed above, the deadline to respond will always fall on a business day and not on a weekend or holiday. The addition of “motor” to “motor carrier” is necessary to make clear this term conforms to the statutorily defined terms of “port drayage motor carrier” in Labor Code section 2810.4(a), and where “port drayage motor carrier” was previously included in the same sentence.

**Subsection (b)(1)**, which under the initial proposed text, provided a port drayage motor carrier respond by completing a *Proof of Payment or Settlement* form (WCA 128 PORT Proof of Payment or Settlement 12/2019) if it believed it should not be placed on the public list. The reference that included the use of the *Proof of Payment or Settlement* form (or, “WCA 128 Form”) is removed and replaced by a written statement under penalty that the outstanding liability has been satisfied or settled. This deletion and modification are necessary because, upon further consideration after passage of SB 338, the Labor Commissioner determined that use of a particular form should not be required and a motor carrier’s submission of a written statement under penalty of perjury is consistent with other amendments to Labor Code section 2810.4 regarding a motor carrier’s obligation(s) concerning the public list. This modification is also necessary because the Labor Commissioner determined that submission of a written statement under penalty of perjury, along with accompanying documentation as specified in Section 13878(b)(2), is more efficient for both motor carriers and the Labor Commissioner in making determinations regarding avoidance of placement on the public list.

**Subsection (b)(2)** provides for a copy of applicable documents. This section is modified to include a special definition of “conformed copy” which is not ordinarily understood. This added language is necessary to provide a description of the types of documents, which are required under this subsection.

Non-substantive changes are made to **subsections (b)(2)(A)-(I)**, which identify the types of documents a port drayage motor carrier may provide, in addition to the written statement under subsection (b)(1), if the motor carrier believes it should not be placed on the public list. These changes include removing the period in the next level of numbering under (b)(2) and replacing it with open and closing parentheses, and replacing lower case “a.” to “i.” to capital letter format so that the subsections read as “(A)” to “(I)”. These changes are necessary to correct inadvertent clerical errors relating to the text, and were discovered by the Labor Commissioner following publication of the 15-day notice of modifications. The changes do not alter the substance of the subject regulatory provisions, and are necessary to make the lettering format consistent with the other provisions and drafting standard that uses capital letter format in the next level of numbering.

**Subsection (b)(2)(a)** allows a port drayage motor carrier to submit an *Acknowledgment of Satisfaction of Judgment* form, which is a Judicial Council form (EJ-100), used to document when a court judgment has been satisfied. This section has been modified to identify the form as a “conformed copy” of the specified document and also the ability to submit an alternative pleading which indicates full satisfaction of judgment. The modification is necessary to more accurately reflect the full name of the Judicial Council EJ-100 form, including that last revised version. The modification is also necessary because it recognizes that the form identifies three types of acknowledgment, “Full,”

“Partial,” or by “Matured Installment.” For purposes of this subsection, a “full” satisfaction of judgment is what is intended to be operative and determinative in order to show satisfaction of judgment. This modification is further necessary because it clarifies the circumstances by which the Labor Commissioner considers compliance with a court judgment under SB 338. The modification is also necessary to clarify the port drayage motor carrier complies by providing an EJ-100 form or alternative document that is conformed by the applicable court.

**Subsection (b)(2)(f)**, which allows a port drayage motor carrier to submit a written settlement agreement signed by an authorized representative of the Labor Commissioner or relevant taxing authority, deletes the word, “or.” This deletion is necessary to correct a grammatical error because the Labor Commissioner adds other types of documents a port drayage motor carrier can submit in order to avoid being placed on the public list.

**Subsection (b)(2)(h)**, which allows a port drayage motor carrier to submit other evidence showing it has satisfied the judgment, assessment, or lien, has been modified to include the words, “port drayage” and “or.” The addition of “port drayage” to “motor carrier” is necessary to make clear this term conforms to the statutorily defined terms of “port drayage motor carrier” in Labor Code section 2810.4(a), and where “port drayage motor carrier” was previously included in the same section 13878(b). The addition of “or” is necessary because the Labor Commissioner includes other types of documents a port drayage motor carrier can submit in order to avoid being placed on the public list.

**(New) Subsection (b)(2)(i)** allows a port drayage motor carrier to submit a conformed copy of a final ruling, order, opinion, or other written disposition demonstrating that the port drayage motor carrier who is a prior offender prevailed on appeal of a subsequent non-final finding. This new subsection is necessary because it includes submission of a conformed copy of a final disposition, which accounts for how a prior offender, as defined and described under SB 338, can avoid being placed on the public list. See above explanation under Subsection (b)(2) providing a special definition for “conformed copy,” which is incorporated here.

**Subsection (c)**, which under the initial proposed text, provided a port drayage motor carrier either mail to a Labor Commissioner address in Long Beach, California or email within 20 calendar days a *Proof of Payment or Settlement* to avoid being placed on the public list. The reference that included the use of *Proof of Payment or Settlement* is removed and replaced by a written statement as required by section 13878(b). The modification is necessary to reduce the potential confusion as to whether the Labor Commissioner requires a port drayage motor carrier to use a particular form. The Labor Commissioner has determined that a written statement as required by Section 13878(b) with all accompanying documentation as specified is more efficient for both motor carriers and the Labor Commissioner in making determinations regarding the public list. Thus, making a reference to a form is unnecessary as the regulation adequately refers to the information and supporting documents to be submitted to the Labor Commissioner. The modification of 20 calendar days to 15 business days is necessary to make consistent the timing under Labor Code section 2810.4. See the previous discussion under section 13878(a), which is incorporated here. The modification of the mailing address is

necessary to accurately reflect the new mailing address where a port drayage motor carrier can submit by mail its written statement and accompanying documentation. The addition of “in pdf format” is necessary because this format is a widely available and commonly used method for electronically transmitting documents. This subsection is necessary to provide the regulated public with the required manner and form for submitting information to the Labor Commissioner regarding whether a port drayage motor carrier should be added to the public list.

A non-substantive change is made to **Subsection (c)** to add the words “written statement” following the words “or must submit a completed” in the *second* phrase in Section 13878(c), as suggested in a public comment. This addition is necessary to correct a syntax or grammatical error due to the inadvertent omission, does not change the substance of the subject provision, and is susceptible to only a single meaning. The full provision is simply intended to require the submission of the “written statement with all accompanying documentation as required by Subsection (b)” to be made by either mail or email at the specified mail or email addresses. The subject “written statement” stated in the initial part of the sentence is unchanged and remains the same subject for the second phrase of the sentence with the only difference being the Labor Commissioner’s designated addresses based on the manner of submission.

### **Section 13879 (Labor Commissioner Disposition of Responses Timely Received)**

**Subsection (a)**, which under the initial proposed text, provided a port drayage motor carrier would not be placed on the public list pending the Labor Commissioner’s determination if the motor carrier provided a “*Proof of Payment or Settlement* form (WCA 128 PORT Proof of Payment or Settlement 12/2019).” The reference that included the WCA 128 Form is removed and replaced by a timely response as required by section 13878. See the previous discussion under Section 13878(b)(1) regarding deletion of “*Proof of Payment or Settlement* form (WCA 128 Port Proof of Payment or Settlement 12/2019),” which is incorporated here. This section also deletes 20 calendar days and modifies it to 15 business days. The modification of 20 calendar days to 15 business days is necessary to make consistent the timing under Labor Code section 2810.4. See the previous discussion under section 13878(a), which is incorporated here. This section also deletes references to “as set forth under Section 13878.” This deletion is necessary to simplify section 13879, as a second reference to “Section 13878” is repetitive and duplicative.

**Subsections (b)(1)-(b)(3)**, which identify the information the Labor Commissioner will provide regarding whether the motor carrier will be placed on the list, adds “port drayage.” The addition of “port drayage” to “motor carrier” is necessary to make clear this term conforms to the statutorily defined terms of “port drayage motor carrier” in Labor Code section 2810.4(a).

## **Section 13880 (Labor Commissioner Disposition Where No Timely Response or No Response Received)**

**Subsection (a)**, which under the initial proposed text, provided a port drayage motor carrier would be placed on the list if the motor carrier did not complete and submit a “*Proof of Payment or Settlement* form (WCA 128 PORT Proof of Payment or Settlement 12/2019)” within 20 calendar days. The reference that included the WCA 128 Form is removed and replaced by a response as required by Section 13878. See the previous discussion under Section 13878(b)(1) regarding deletion of “*Proof of Payment or Settlement* form (WCA 128 Port Proof of Payment or Settlement 12/2019),” which is incorporated here. This section also deletes 20 calendar days and modifies it to 15 business days. The modification of 20 calendar days to 15 business days is necessary to make consistent the timing under Labor Code section 2810.4. See the previous discussion under Section 13878(a), which is incorporated here. This section also deletes “under Section 13878.” This deletion is necessary to simplify Section 13880, as a reference to multiple sections is repetitive and duplicative.

**Subsection (b)(2)** which establishes a port drayage motor carrier will continue to appear on the list unless it takes certain steps is deleted and modified to reflect compliance consistent with newly added Labor Code section 2810.4(b)(1)(D) under SB 338, adds “tax” and “final citation or ODA,” and modifies the language regarding liability by deleting “judgment, assessment, or lien” and adding language that explains the liability in more detail. The deletion of how a port drayage motor carrier requests removal and modifications to the language regarding compliance with Labor Code section 2810.4(d)(1)(D) is necessary to explain the different steps a port drayage motor carrier is now required to take if it wants to be removed from the list under SB 338. See discussion below under section 13881 regarding Labor Code section 2810.4(b)(1)(D), which is incorporated by reference here. The modifications which adds “tax” is necessary to make clear that these refer to tax assessments or tax liens that, if satisfied, may result in the removal of the port drayage motor carrier from the public list. Also, the modification that adds “final citation or ODA,” which terms are specially defined in newly proposed Section 13875(i), is necessary to encompass the language that includes a citation or ODA issued by the Labor Commissioner that, if satisfied, may result in the removal of the port drayage motor carrier from the public list. The deletion of “judgment, assessment, or lien” as modified to “liability” is necessary to specify that the liability at issue is the one subject to the posting and it is the Labor Commissioner who determines whether such posting no longer qualifies to remain on the list under Labor Code section 2810.4.

## **Section 13881 (Removal from Public List)**

This section establishes a uniform procedure for the removal of a port drayage motor carrier from the public list and is modified to prescribe removal within, and not later than, 15 business days from a determination that the requirements described in following subsection (a) have been met and is necessary to conform with the new time requirements specified in Labor Code section 2810.4(b)(1)(D). The time period language in initially proposed text in Subsection (e) is moved to this initial part of the section. Also, language in the first sentence in the initial proposed text is removed since new language pertaining to a motor carrier providing sufficient proof is moved and modified in new Subsections (a)(1)-(4).

**(New) Subsection (a)** provides the primary procedural requirements for removal of a port drayage motor carrier from the public list by requiring that removal occur within 15 business days after the Labor Commissioner determines upon a review of documents specified in Subsections (a)(1)-(4) that there has been full payment of a determined liability listed on the public list. The subsection is necessary to provide context from which removal must occur with reference to various mechanisms for satisfaction of the determined liability that are based on: an unsatisfied judgment or other final liability specified in Labor Code section 2810.4(b)(1)(A)-(B); entering into an approved settlement dispensing of the liability; or in the case of a subsequent liability, the prior offender prevailed in an appeal of a non-final liability determination.

**(New) Subsection (a)(1)** establishes the manner and form for submitting required proof of satisfaction of a listed liability determination which must include a written statement by the motor carrier, under penalty of perjury which states the basis for removal (full satisfaction of the listed liability as specified in subsection (a)) along with documentation specified in Subsection (a)(2)-(3), as applicable, and the manner of submission of the documents to the Labor Commissioner at either by mail at the stated mailing address or via electronic mail (email) at a specified email address in pdf format which is a widely available and commonly used format for electronically transmitting documents. This subsection is necessary to provide the regulated public with the required manner and form for submitting information to the Labor Commissioner for removal of the motor carrier's liability determination from the public list.

**(New) Subsection (a)(2)** establishes the types of documentation a motor carrier must provide to show payment or satisfaction of a final liability determination through identification of the liability and submission of documents specified in Section 13878 which are applicable to a judgment, tax assessment, tax lien, or a citation or ODA. This subsection is necessary to provide a reference to allowable documents, which directs motor carriers to submit to prove satisfaction of the specified liabilities that include judgments. The Labor Commissioner determined that the supporting documents specified in Section 13878 providing a list of documents (evidence) are superior to an exhaustive listing of all potential documents due to the various mechanisms for satisfying a judgment. Documents from the referenced list will better promote inclusion of such various mechanisms from which a motor carrier can provide relevant documents to the Labor Commissioner for review and consideration in order to make an informed determination regarding removal from the public list.

**(New) Subsection (a)(3)** establishes the types of documentation a motor carrier for submission to the Labor Commissioner to show that a prior offender (who may be placed on the public list for having a non-final liability determination for which the appeal period has not expired) has subsequently prevailed on an appeal. This subsection is necessary to account for removal of a prior offender from the public list specifically addressed in Labor Code section 2810.4(b)(1)(B) by including such scenario in the procedures for removal established under this section.

**(New) Subsection (a)(4)** establishes the types of documentation a port drayage may submit to the Labor Commissioner to show that a motor carrier has sufficiently abated any violations of a labor or employment law or regulation subject to a final judgment or final citation or ODA. This subsection is necessary to account for removal of a port drayage motor carrier from the public list by including such scenario in the procedures for removal established under Labor Code section 2810.4(b)(1)(D). This subsection is also necessary to direct the port drayage motor to what documents are necessary to merit such removal, including what type of documents the Labor Commissioner may consider upon the agency's request.

**Subsections (b) and (c)** initially proposed text that included the use of a form (WCA 128 form) in Subsections (b) and (c). The reference to the use of the form is removed from both initially proposed subsections (b) and (c) and replaced by the manner and form language in new Subsection (a)(1) because the Labor Commissioner determined that use of the particular form should not be required and that a motor carrier's submission of a written request along with documentation requirements as specified in the regulation is more efficient for both motor carriers and the Labor Commissioner in making removal determinations.

**(New) Subsection (b)** which provides for notice to the port drayage motor carrier by letter of the Labor Commissioner's determination after review of the submitted proof (documentation) is modified to phrase the determination as making a decision to merit removal, and further modified the subsection to reflect renumbering due to removal of initially proposed Subsection (c). This modification is necessary to make clear that documentation presented as proof necessarily requires consideration or evaluation of the information submitted and requires some exercise of discretion by the Labor Commissioner as to whether the proof is sufficient to show that the liability has been satisfied and all violations under such liability have been remedied or sufficiently abated. This modification is consistent with statutory direction to the Labor Commissioner provided in Labor Code section 2810.4(b)(1)(B) and (D).

**(New) Subsection (c)** establishes a standard that clarifies that requests for removal are specific to a single liability determination entered on the public list. The subsection is necessary to ensure that removal from the public list cannot satisfy a motor carrier's placement on the list that is based on another different liability determination where there are multiple listings of liability determinations for a motor carrier.

**Subsection (e)** which provided the time period for removal (15 business days from the Labor Commissioner's determination of a port drayage motor carrier's listing on the public list) is removed and integrated earlier into the preamble of the section.

### **Section 13882 (Notice to Port Drayage Motor Carrier Successors)**

**Subsection (a)**, which provides the Labor Commissioner's Office will notify port drayage motor carrier successors of certain information in addition to information contained in Sections 13878 through 13881 and Labor Code section 2810.4(b)(2), deletes "will" and replaces it with the word "shall." The modification is necessary to be consistent with the phrase used in other

statutory sources of Labor Code section 2810.4 and these regulations regarding the Labor Commissioner's notice to port drayage motor carriers regarding placement on the list.

**Subsection (a)(2)**, which under the initial proposed text, provided a port drayage motor carrier could request an informal hearing on the issue of successorship by completing a *Request for Hearing* form. The reference to *Request for Hearing* form, including that the use of this form was an optional method to be submitted, is removed and replaced by the requirement that a port drayage motor carrier submit a request for a hearing in writing, expressly identifying the dispute as to successorship. This deletion and modification is necessary because, upon further consideration after passage of SB 338, the Labor Commissioner determined that reference to a particular form albeit optional created confusion surrounding use of a specific and particular form. This modification is also necessary because the Labor Commissioner determined a written request that expressly identifies the dispute as to successorship is consistent with Labor Code section 2810.4 regarding a motor carrier's obligation(s) in challenging a finding of successorship. This modification is also necessary because a written request that expressly identifies the dispute as to successorship is more efficient for both motor carriers and the Labor Commissioner in making determinations regarding disputes of successorship findings.

**Subsection (a)(3)**, which under the initial proposed text, required all responses to a notice identifying a port drayage motor carrier as a successor as defined under amended Labor Code section 2810.4(a)(5)(C) be postmarked or emailed no later than 20 calendar days. This subsection is modified to state all responses must be emailed in pdf format, and either postmarked or emailed within 15 business days. This subsection also deletes references to responding to the Labor Commissioner by the next "business day immediately following the weekend or holiday" if the 20<sup>th</sup> calendar day falls on a weekend or holiday." The modification in the time to respond from 20 calendar days to 15 business days is necessary to remain consistent with the timeline of 15 business days as indicated in Labor Code section 2810.4. See the previous discussion under section 13878(a), which is incorporated here. The deletion of responding to the Labor Commissioner if the 20<sup>th</sup> calendar falls on a weekend or holiday is necessary because, under the modified text of "15 business" days as discussed above, the deadline to respond will always fall on a business day. The addition of "in pdf format" is necessary to clarify the format for transmitting documents via email because the pdf format is a widely available and commonly used format for electronically transmitting documents. This subsection is necessary to provide the regulated public with the required manner and form for submitting information to the Labor Commissioner regarding responses to findings of successorship.

**Subsection (a)(4)**, which under the initial proposed text, provided that a successor would be placed on the list, waive its right to a hearing, not receive any additional notice from the Labor Commissioner, and continue to appear on the list, if it did not complete and submit a "*Proof of Payment or Settlement* form (WCA 128 PORT Proof of Payment or Settlement 12/2019)" within 20 calendar days to the same mailing address or email address. The reference that included the WCA 128 Form is removed and replaced by a request in writing and accompanying documentation within 15 business days and, if the response is via email address, the subsection adds that the response be sent in pdf format. See the previous



discussion under section 13878(b)(1) regarding deletion of “*Proof of Payment or Settlement* form (WCA 128 Port Proof of Payment or Settlement 12/2019),” which is incorporated here. This section also deletes 20 calendar days and modifies it to 15 business days. See the previous discussion under section 13878(a), which is incorporated here. The addition of “in pdf format” is necessary to clarify the format to be used for transmitting documents via email because the pdf format is a widely available and commonly used format for electronically transmitting documents. This subsection is necessary to provide the regulated public with the required manner and form for submitting information to the Labor Commissioner regarding responses to findings of successorship.

Non-substantive changes are made to **Subsections (a)(4)(A)-(C)**, which state the consequences if a successor does not complete and submit the request in writing. The changes include removing the period in the next level of numbering under (a)(4) and replacing it with open and closing parentheses, as well as replacing lower case “a.” to “c.” with capital letter format so that the subsections read as “(A)” to “(C)”. These changes are necessary to correct inadvertent clerical errors relating to the text, and were discovered by the Labor Commissioner following publication of the 15-day notice of modifications. The changes do not alter the substance of the subject regulatory provisions, and are necessary to make the lettering format consistent with the other provisions and drafting standard that uses capital letter format in the next level of numbering.

**Subsection (a)(4)(b)**, which initially proposed text that the successor would waive its right to request a hearing on the matter of successorship before the Labor Commissioner if it failed to timely respond by completing a WCA 128 Form, has been deleted. This deletion is necessary due to changes made in Section 13883, which renders the initially proposed text identifying waiver language in this subsection inapplicable and further removes any inconsistency with the procedures regarding when a successor could request a hearing (described in more detail below under Section 13883).

**(New) Subsection (a)(4)(b)** provides the successor will not receive additional notice from the Labor Commissioner’s Office. This subsection is renumbered from Subsection (a)(4)(c) to new Subsection to (a)(4)(b) due to the deletion of the prior Subsection (a)(4)(b). See discussion immediately above regarding Subsection (a)(4)(b), which is incorporated here.

**(New) Subsection (a)(4)(c)**, which under the initial proposed text, provided that after being placed on the public list, the successor would continue to appear on the list unless it requests removal because it has satisfied or settled the predecessor’s underlying judgment, assessment, or lien. This subsection is renumbered from Subsection (a)(4)(d) to new Subsection to (a)(4)(c) due to the deletion of the prior Subsection (a)(4)(b). See discussion immediately above regarding Subsection (a)(4)(b), which is incorporated here. This section further deletes references to underlying judgment, assessment, or lien as specified, and adds, “until such time as the Labor Commissioner determines the successor or its predecessor to be removed from this list.” This modification is

necessary to clarify the procedures and circumstances under which the Labor Commissioner may determine the successor or its predecessor should be removed from the list. This deletion and modifications are also necessary to make such procedures and circumstances consistent with SB 338, and which are located in different subsections of the revised Labor Code section 2810.4. Also, this modification is necessary because it deletes a potentially confusing phrase, simplifies the language after passage of SB 338, and makes clear the Labor Commissioner's role in determining when the successor or predecessor motor carrier may should be removed from the list.

### **Section 13883 (Hearing Regarding Determination of Port Drayage Motor Carrier Successor)**

**Subsections (a) through (c)**, which discuss that a port drayage motor carrier successor could request an informal hearing with the Labor Commissioner, the subject matter of the hearing, and the use of subpoenas and subpoenas duces tecum, have been deleted, modified, and renumbered as Subsections (a)(1) to (a)(3). This modification is necessary to separate the two parts of Subsection 13883, which separately address the different stages and parameters for disputing initial placement on the list and continued placement on the list.

**(New) Subsection (a)** adds the title "Initial Placement on the Public List of a Successor." This modification is necessary to separate the two parts of Subsection 13883, which separately address the different stages and parameters for disputing initial placement on the list and continued placement on the list. The modifications also reflect a renumbering within subsection (a) which is necessary to account for the resulting reformat of the whole section adding new subsections (a)(1)-(a)(3), (b) and (c).

**Subsection (a)(1)**, which states the Labor Commissioner will assign the matter to a hearing officer if a port drayage motor carrier, or successor, submits a timely request for a hearing within 20 calendar days has been modified to state 15 business days. The modification of 20 calendar days to 15 business days is necessary to make consistent the timing under Labor Code section 2810.4. See the previous discussion under section 13878(a), which is incorporated here.

**Subsection (a)(2)** explains the subject matter to be considered in a hearing by the Labor Commissioner to determine whether a business is a successor to a port drayage motor carrier as defined in Section 13875(e), how evidence will be presented, and the fact that a hearing request stays the placement of the motor carrier on the list until a determination is made following the hearing, and that determination becomes final. This section adds, "If the request is timely made within 15 business days (amended from 20 calendar days) of the date of notice pursuant to section 13882 . . ." This addition is necessary to ensure that the issues and procedures considered in a Labor Commissioner hearing on the issue of successorship are consistent with section 13882, as modified. The modification of 20 calendar days to 15 business days is necessary to make consistent the timing under Labor Code section 2810.4. See the previous discussion under section 13878(a), which is incorporated here.

**Subsection (a)(3)** discusses that subpoenas and subpoenas duces tecum may be used for the attendance of witnesses and production of documents at the hearing. See discussion immediately above adding (New) Subsection (a), which is incorporated here.

**(New) Subsection (b)** creates title, “Successors on the Public List that Challenge Continued Placement.” This modification is necessary to separate the two parts of Subsection 13883, which separately address the different stages and parameters for disputing initial placement on the list and continued placement on the list as discussed below under (b)(1)-(2).

**(New) Subsection (b)(1)** allows a port drayage motor carrier that is on the public list as a successor to submit a written request for consideration by the Labor Commissioner at any time it is on the public list if the successor contends they were aggrieved in any manner due to a lack of notice or knowledge of their placement on the list or due to mistake, inadvertence, surprise, or excusable neglect. This subsection also adds language regarding how the request for consideration is to be delivered to the Labor Commissioner, and that the request for reconsideration must fully describe the basis for the challenge to continued placement on the list and be accompanied by any supporting documentation. The Labor Commissioner determined that this additional language is necessary to distinguish between port drayage motor carriers who challenge initial placement on the public list from those who challenge continued placement on the list. The agency recognizes that circumstances may occur following placement of successors on the public list, which stem from a lack of notice or other extrinsic factors that impact the need for continued placement on the list. This procedure provides a mechanism for the agency to review such circumstances upon a written request. This additional procedure is also necessary because it follows and establishes regulatory and well-developed standards allowing Labor Commissioner to review continued placement on the list. (See, e.g., Labor Code § 98(f); Code of Civil Procedure § 473). Also, this addition is necessary because it makes clear the manner and form a challenging party is to submit the request for consideration to the Labor Commissioner, and what the request for consideration should include.

**(New) Subsection (b)(2)** provides the Labor Commissioner with discretion to consider holding an informal hearing on the issue of continued placement on the list based on the request, and as set forth in Sections 13883(a) and 13884-13887. This additional language is necessary to provide administrative flexibility to determine continued placement of a successor on the list under the standards for making such requests. While events relevant to consider a request may be adequately established by providing documentation, facts necessary to determine the requested relief (basis for continued placement on the public list) may require a hearing if additional fact-finding is needed under the particular circumstances. By allowing the Labor Commissioner to exercise discretion whether to hold a hearing based on the request which challenges continued placement on the public list, the procedures designed to ensure a valid basis for continued placement of successors on the list administered by the Labor Commissioner is maintained and will further the underlying intent for the public list to include all liable parties which includes successors. Also, the addition is necessary because it directs a challenging party to the Sections that describe the procedures by which this hearing may be held for which such party will be a participant.

A non-substantive change is made to **Subsection (b)(2)** to delete the reference to “(3)” in the phrase, “Any hearing shall be held in accordance with the procedures set forth in Sections 13883(a)(3) and 13884-13887.” The *last* sentence now reads as follows: “Any hearing shall be held in accordance with the procedures set forth in Sections 13883(a) and 13884-13887.” The addition of “(3)” to “Subsection 13883(a)(3)” was inadvertent. Subsection 13883(b) discusses the hearing procedures applicable to successors who dispute continued placement on the list, including applicable hearing procedures as set forth in Subsection 13882(a). The deletion of “(3)” from “Sections 13883(a) . . .” is necessary to more accurately describe the hearing procedures applicable to motor carrier successors who dispute continued placement on the list as stated in Subsection 13883(a), does not change the substance of the subject provision, and results in a more clear and appropriate reference to subsections under (a) other than (a)(3) in order to correctly include the general hearing procedures which were previously intended to be referenced.

**(New) Subsection (c)** states a successor is first required to request relief with the Labor Commissioner before seeking relief in another forum. This addition is necessary to make clear to the challenging party where it first needs to seek relief. Also, this addition is necessary because it ensures that issues as to a successor’s initial placement on the list or later challenge to continued placement is first brought to the Labor Commissioner to address. Labor Code section 2810.4 created a clear obligation for the Labor Commissioner to solely administer the public list and determine placement of determined liabilities of port drayage motor carriers, including their successors, on the list. This subsection’s requirement implements the Legislature’s intent for the Labor Commissioner to primarily address which motor carrier liabilities are posted or removed from the public list and exercising primary jurisdiction over list placement determinations which challenges should be first presented to the Labor Commissioner. The requirement in this subsection will further promote judicial economy (avoids resorting to the courts for relief directly in the absence of an administrative procedure) by first presenting a challenge regarding a successor’s placement to the administrative agency charged with making list placement determinations.

## **Section 13887 (Judicial Review)**

**Section (b)** provides notice that after a successorship decision becomes final, which could be if there is no timely petition for a writ of mandate or after disposition of the writ and any further appeal proceedings, the port drayage motor carrier successor will be placed on the public list. This section adds, “port drayage” to “motor carrier” and, “[i]n addition, if a petition for writ of mandate is timely filed, the port drayage motor carrier successor may be placed on the public list unless the court stays the hearing officer’s decision.” The addition of “port drayage” to “motor carrier” is necessary to make clear this term conforms to the statutorily defined terms of “port drayage motor carrier” in Labor Code section 2810.4(a). The language regarding maintaining a successor to the list during the pendency of a timely-filed petition for writ of mandate unless the court issues a stay is necessary because it makes these procedures consistent with SB 338 in which removal may occur only where there is no basis for placement on the list (see e.g., Labor Code section 2810.4(b)(1)(B)). This modification is also necessary because it is consistent with the role of a petition for writ of mandate with respect to judicial review of administrative decisions, which generally are not *automatically* stayed by the filing

of a writ petition. A stay must be obtained through an affirmative grant of a stay by a court (see Code of Civil Procedure section 1094.5(g)).

## **PUBLIC COMMENTS**

### **Summary and Response to Written Comments during the 45-day Public Comment Period**

The Labor Commissioner received written comment from only one member of the public writing on behalf of the International Brotherhood of Teamsters, Port Division (“Teamsters”).

#### **Julie Gutman Dickinson and Hector De Haro, Bush Gottlieb, A Law Corporation, for Teamsters**

1. “The Teamsters fully support the Commissioner’s efforts to enact this guidance, which will provide transparency and enable DLSE to continue to put pressure on port trucking companies to pay all outstanding judgments and to cease their pervasive practice of misclassifying workers.”

*Labor Commissioner’s Response: The support of the Teamsters is appreciated. This comment does not address any specific part of the proposal, and no further response is required.*

2. In particular, “the regulation’s inclusion of a clear definition of successor in Section 13875 and the establishment of a process to notify successors that they remain liable for outstanding judgments is crucial;” Section 13876’s provision that “allows private parties to independently submit information to the Commissioner, making it more likely that the Commissioner will include *all* bad actors on the list and that no judgments fall through the cracks;” and providing “a straightforward process for employers who want to get off the list” and “emphasize[s] that the only way employers keep themselves off the list once notified is by providing adequate proof that all outstanding judgments have been satisfied or settled.”

*Labor Commissioner’s Response: The support of the Teamsters is appreciated. This comment is supportive of the proposed regulations. The Labor Commissioner recognizes that the specified sections referenced in this comment were subsequently modified under a 15-day public comment period primarily based on recent legislation (SB 338) enacted in September 2021, and that the commenter’s observations remain consistent with the more recent modifications.*

3. Recommends that the Legislature and Commissioner take further steps to protect workers by extending full joint liability for the motor carrier and its customer from the moment they contract with each other rather than having to wait until there is a final judgment, which will provide greater responsibility and compliance incentives on companies in the industry.

*Labor Commissioner’s Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. This recommendation requires legislation and could not be accomplished through agency regulation, which must be consistent and based on existing law. While Labor Code section 2810.4(b)(3) was recently amended under SB 338 which pertains to joint liability with a customer of a motor carrier, existing law does not provide*

*for joint liability when the parties enter into a contract, and thus, altering liability could not be accomplished in these regulations.*

4. Barring No. 3, alternatively recommends that the Legislature and Commissioner “expand SB 1402 to place bad actors on the list as soon as claims are filed against them or as soon as there is an initial decision against them, with an estimate of the possible liability for those claims.”

*Labor Commissioner’s Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. This recommendation requires legislation and could not be accomplished through agency regulation, which must be consistent and based on existing law. The amendments to Labor Code section 2810.4 made recently under SB 338 do not authorize placement on the list prior to a final judgment, or in the case of prior offenders, prior to a subsequent non-final judgment, i.e., there must be a liability determination to justify posting of a motor carrier on the public list.*

## **Summary and Response to Written Comments during the 15-day Public Comment Period**

The Labor Commissioner received written comment from only one member of the public writing on behalf of the International Brotherhood of Teamsters, Port Division (“Teamsters”). The comments below are included as initially worded in the written comment. The comments below use the same numbering and format (section and subsection of regulation; suggested additions in bold; suggested deletions in ~~strikeout~~) as contained in the written comment for ease in identification of each comment for purposes of the agency’s response. The Labor Commissioner’s responses to the written comments are italicized.

Julie Gutman Dickinson, Michael E. Plank, and Hector De Haro, Bush Gottlieb, A Law Corporation, for Teamsters

### **I. Section 13875. Definitions**

(c): Modify the final sentence of this subsection as follows

For prior offenders, as defined and specified in Labor Code section 2810.4(a) and (b)(1)(B), respectively, “essential information” also includes identification of ~~the any~~ **the any** Labor Commissioner case or superior court case where ~~the any~~ **the any** final or non-final finding of a subsequent liability ~~was most recently~~ **has been** determined.

This will clarify that *all* subsequent final or non-final liability determinations, even if they are not the most recently determined, are part of the “essential information” about the prior offender.

*Labor Commissioner’s Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. It is important that the “essential information” pertain to a particularly identified case and the word “the” is preferred over the word “any” which is consistent with the drafting standard that prefers using the singular over the plural in*

*drafting legislation or regulations. As used in this definitional provision, “essential information” must refer to a particular identifiable case, not just one (any) among others. The Labor Commissioner further declines to replace the words “was most recently” with “has been” determined.” As stated, in the context of a case which is subject to posting, the proposed text would refer to a particular identifiable final or non-final finding as the one that most recently determined the liability for purposes of posting a prior offender on the public list.*

**(d):** Add a final closing parenthesis (“)”) after “(or, ODA)” for symmetry. Also, add “to” before “any agent of service” to make the sentence easier to follow.

*Labor Commissioner’s Response: The Labor Commissioner appreciates the comment and will take steps to make the identified non-regulatory change to include a final closing parenthesis.*

**(e):** Modify the first sentence of definition of “Successor” so that it does not encompass all port drayage motor carriers, as follows:

“Successor” means a port drayage motor carrier, as defined in Labor Code section 2810.4(a)(5)(C), **with respect to which one or more of the criteria set forth in subsections (1)–(4) below is met**, and shall be is liable to the same extent as the predecessor, ~~if one or more of the following criteria are met:~~

As written, every port drayage motor carrier comes within the definition of a “successor,” but is only liable to the same extent as the predecessor where one or more of the listed criteria are met. While this is not inconsistent with the legislation as a practical matter, it is counter-intuitive to define “successor” in this broad manner.

*Labor Commissioner’s Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. The agency determined that the conjunctive word “and” in the first sentence of Subsection (e), in context, sufficiently conveys that both parts of the sentence must be met for successor liability to apply to the same extent as the predecessor. A business which is a port drayage motor carrier is only liable as a successor if one or more of the following stated criteria exist.*

**(h) :** Rephrase the definitions of “final” and “non-final” to avoid circularity and redundancies in the definition, which will make it clearer:

**(h)(1):** As used in Labor Code section 2810.4 and these regulations, the term “final,” as used with reference to any court or administrative citation, order, judgment, award, or other liability determination that a port drayage motor carrier has violated the law, means either that the applicable period for appeal has expired without any appeal being taken, or that the appeals process has been exhausted, and a finding of a liability determination against the carrier remains.

**(h)(2): As used in these regulations, the term “non-final,” as used with reference to any court or administrative citation, order, judgment, award, or other liability determination that a prior offender has violated the law, means that the applicable period for appeal has not yet expired, or that the appeals process has not yet been exhausted with respect to that liability determination.**

Other re-workings or simplifications of these definitions may also be possible, but as written each definition involves needless redundancy in light of the applicable definitions found in the legislation.

*Labor Commissioner’s Response: The Labor Commissioner declines to modify (rephrase) Subsection (h) and respectfully disagrees that the definitions are circular or needlessly redundant. The legislation, and particularly SB 338 (2021), does not define “final” nor mention the converse “non-final,” which have legal significance for posting of businesses in general as well as for prior offenders. The legal distinction is necessary to provide the regulated public with clear demarcation in more practical terms with respect to posting of a business on the public list, and the Labor Commissioner determined that more complete language in the definition allows the public to better understand the distinction within the context of the stated types of liability determinations which outweighed any risk of redundancy.*

**(i):** As above, re-phrase this definition:

**As used in Labor Code section 2810.4 and these regulations, the phrase “final citation or ODA” means that the applicable period for appeal has expired with respect to the citation or ODA, without any appeal being taken.**

Other re-wordings of this definition may be workable.

*Labor Commissioner’s Response: The Labor Commissioner respectfully declines to re-phrase this language as suggested in the comment for the same reasons stated in the previous comment.*

## **II. Section 13876. Sources of Information and Requests for Internet Webpage Posting**

The statute requires that that Division of Labor Standards Enforcement (“DLSE”) “shall” post liability determinations to the public list as described in sections (b)(1)(A) and (b)(1)(B). That requirement applies to the DLSE regardless of how the DLSE became aware of the existence of that liability definition, or how any source presented that information to the DLSE. Therefore, while it is appropriate for the DLSE to suggest the document(s) and/or evidence that a source should present along with a request for a posting, and the method by which such a request should be submitted, the DLSE would not be excused from the requirements of sections (b)(1)(A) or (b)(1)(B) simply because the request was not presented



according to the DLSE's preferred method or in its preferred format. The regulation should therefore make clear that the DLSE will consider information that it receives from any source, and will track its own information internally. Moreover, with respect to posting prior offenders to the list, the legislation makes clear that non-final citations and/or ODAs count as the kind of subsequent liabilities that will result in the prior offender's being placed on the list.

**(a):** Therefore, the Teamsters suggest changing subsection (a) as follows:

(a) The Labor Commissioner's Office shall include on the public internet webpage an unsatisfied final judgment, tax assessment, or tax lien, resulting in a finding of a port drayage motor carrier's unlawful conduct specified in Labor Code section 2810.4(b)(1)(A), **and shall consider information received from all sources, and in whatever format it is received, including the following sources:**

(1) Labor Commissioner citations, Labor Commissioner orders, decisions or awards, or any other legal action brought by the Labor Commissioner, **which shall be internally tracked by the Department and acted upon as soon as they make a motor carrier eligible for posting under 2810.4(b)(1)(A) or (B).**

*Labor Commissioner's Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. The regulations overall do not regulate nor otherwise limit the internal actions of the Labor Commissioner to act on other information obtained by the agency in connection with a liability determination and posting on the public list. The regulations are intended to identify the categories of external sources, which can initiate a listing of a determined liability subject to posting under Labor Code section 2810.4. Since the public list must be accurate, the regulations provide procedures for other public entities or private parties to submit information, which provides for expeditious postings rather than prescribe unnecessary procedures for the agency administering the list to follow. The Labor Commissioner has determined that the statute itself (Labor Code section 2810.4) sufficiently addresses the Labor Commissioner's obligations to act and determine a motor carrier's placement on the list. Based on the circumstances, further inquiry or otherwise confirming a liability determination that is subject to posting may be appropriate after the Labor Commissioner has reviewed the information provided by the submitting party.*

**(b):** The Teamsters suggest changing subsection (b) as follows:

Cut the phrase "who has an existing final court judgment, tax assessment, tax lien, or final citation or ODA that arose from unlawful conduct relating to misclassification of employees as independent contractors" from the first full sentence of this subsection, because it is redundant in light of the definition "prior offender" as used in this subsection.

*Labor Commissioner's Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. The Labor Commissioner appreciates the recommendation but determined that the importance in describing a qualifying prior judgment more fully outweighed the risk of redundancy as the posting of the subsequent judgment is dependent on a particular type of prior judgment (related to misclassification). The Labor Commissioner determined that such description is important in this subsection for both the motor carriers and entities seeking to place motor carriers on the public list as prior offenders.*

**(b)(1):** For subsection (b)(1), it is critical that the word “non-final” be added, for consistency with the language and intent of SB 338 and Labor Code Section 2810.4(a)(8), and the IBT also suggests adding further text as follows:

(1) An unsatisfied final or non-final judgment or a final **or non-final** citation or ODA arising from proceedings before the Labor Commissioner that includes a finding that a port drayage motor carrier has violated a labor or employment law or regulation, **which shall be internally tracked by the Department and acted upon as soon as they make a motor carrier eligible for posting under 2810.4(b)(1)(A) or (B).**

Addition of the word “non-final” is essential to ensure that non-final citations or ODAs constitute subsequent liabilities with respect to prior offenders, as clearly provided for in SB 338 and codified in Labor Code 2810.4(a)(8).

*Labor Commissioner's Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. The Labor Commissioner has determined that the language applicable to prior offenders sufficiently applies to final and non-final liability determinations for the described types of proceedings. In addition, the recommendation to include “non-final” based on Labor Code section 2810.4 (a)(8) is misplaced, as that section more generally defines “prior offender.” This regulatory section discusses the posting of a subsequent liability determination for a prior offender, which may include liability determinations in which the period for appeal has not expired. The statutory provisions control and compel an interpretation that the subsection encompasses non-final liability determinations. Regarding the suggested additional language at the end of Subsection (b)(1), the Labor Commissioner incorporates the response stated for Subsection (a)(1).*

**(c):** Given the mandatory duties on the DLSE set forth in sections 2810.4(b)(1)(A) and (B), the Labor Commissioner should not decline to consider information from a private party, public entity, or other source simply because that information is not presented in accordance with this subsection. Nor should it decline to post liability determinations if the source providing the relevant information does not provide it in accordance with this subsection, as long as the DLSE is able to determine that posting is appropriate consistent with sections 2810.4(b)(1)(A) and (B). Therefore, the word “only” should be stricken from subsection (c)(1). There should also be added a subsection (c)(1)(E) providing that:

**The Labor Commissioner shall not refuse to post any liability determination simply because a request to post that liability determination did not comply with the recommendations of this section, where it can otherwise be determined that posting the liability determination is required by Labor Code section 2810.4(b)(1)(A) or (B).**

*Labor Commissioner's Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. Regarding the proposed deletion of the word, "only," under Subsection (c)(1) and suggested additional language for a new (c)(1)(E), the agency incorporates the response stated for Subsection (a)(1). Both suggested modifications in this comment pertain to the issue of sole reliance upon what is provided to the Labor Commissioner by another public entity or private party and assumes that insufficient submissions will not result in posting on the public list. As stated in the language in this subsection, it applies to a submission by a public entity or private party and does not limit or restrict action by the Labor Commissioner. The Labor Commissioner intends to utilize any appropriate action, which will expedite postings of appropriate liability determinations that are initiated, by external sources. Based on the circumstances, further inquiry or otherwise confirming a liability determination that is subject to posting may be appropriate after the Labor Commissioner has reviewed the information provided by the submitting party.*

There should also be added a subsection (c)(3) providing that:

- (3) Upon review of the information provided by a private party or other public entity and determination that insufficient evidence has been provided to permit a posting, the Labor Commissioner shall notify the submitting private party or other public entity in writing, explain why the evidence was not sufficient, and present an opportunity for the private party or other public entity to respond and/or supplement its presentation of information.**

This addition will promote transparency, and permit a private party or other public entity the opportunity to supplement its evidence if the Labor Commissioner does not find it sufficient in the first instance.

*Labor Commissioner's Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. Given the delegated authority to administer the public list, including the obligation of the agency to post appropriate liability determinations to further the Legislature's intent which underlies the public list, the Labor Commissioner will take appropriate actions to promote inclusion of a qualifying liability determination. The Labor Commissioner determined that creation of additional procedural requirements could hinder less complicated and more straightforward posting determinations, which can be subject to investigative action or simple verification with the courts, or other public entities from which a determination can be more promptly made.*

### **III. Section 13878. Response to Notice**

(c): The phrase “written statement” is missing between “submit a completed” and “as required by Subsection (b)” in the proposed regulations as drafted, and should be added.

*Labor Commissioner’s Response: The Labor Commissioner appreciates the commenter’s identification of an error, and will take action to make a non-regulatory change to include the missing terms “written statement,” which is used earlier in the sentence and the existing language provides submission of the subject document either by mail or in pdf format via email.*

#### IV. Section 13881. Removal from Public List

(a)(3) and (a)(4): The regulations should use the specific phrase “sufficient documentation” in these subsections, inasmuch as the legislation includes the requirement that the DLSE adopt “regulations describing what constitutes ‘sufficient documentation.’” While these subsections do appear to satisfy that requirement, use of the specific phrase from the statute would remove any doubt. The IBT therefore proposes changing the first sentence of subsection (3) to read:

**“Sufficient documentation”** For purposes of sufficiently documenting...

*Labor Commissioner’s Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. The Labor Commissioner determined that “[f]or purposes of sufficiently documenting” appropriately captures the Legislature’s intent to delegate to the agency the authority to identify what constitutes “sufficient documentation” and is not inconsistent with Labor Code section 2810.4(b)(1)(D)(ii).*

The IBT also proposes changing the second sentence of subsection (4) to read:

**For purposes of this subsection, This “sufficient documentation” shall include:...**

*Labor Commissioner’s Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. Given the Legislature’s intent to delegate to the agency the authority to determine what constitutes “sufficient documentation,” the Labor Commissioner has determined what qualifies as sufficient documentation by stating that such documentation will include a statement under penalty of perjury, as specified, while also allowing the Labor Commissioner to determine whether the motor carrier abated all applicable violations based on the documents provided.*

For consistency with the change to Section 13876(b)(1) noted above, the IBT also believes it is necessary to cut the word “final” from the phrase “or final citation or ODA” from subsection (a)(3). Alternatively the term “final” can be changed to “non-final citation or ODA”

*Labor Commissioner’s Response: The Labor Commissioner respectfully declines to modify as proposed in this comment for the same reasons stated in the comment above regarding Subsection 13876(b)(1).*

For subsection (a)(4), the IBT also believes it is necessary to add the following language:

...a statement under penalty of perjury that the port drayage motor carrier is **not engaging in misclassification of its drivers**, and does not currently engage in the labor practices identified as unlawful in the final judgment, final citation or ODA...

This addition is consistent with the legislative intent of putting an end to exploitative misclassification practices, as specifically referenced in the legislative findings in enacting SB338, and as explicitly codified in Labor Code 2810.4(a)(8)(A) and (B), which defines “prior offender” and references final judgments and decisions that “arose from the unlawful conduct relating to the misclassification of employees as independent contractors.” Accordingly, misclassification should be explicitly set forth here in this portion of the regulations.

*Labor Commissioner’s Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. The Labor Commissioner determined that “a statement under penalty of perjury” demonstrating abatement of violations appropriately reflects the legislative intent to capture “all violations identified,” including misclassification of drivers, as described under Labor Code section 2810.4(b)(1)(D)(i)-(ii). Also, the statutory language will control and would be interpreted to encompass the misclassification of drivers which is a violation of law.*

## **V. Section 13882. Notice to Port Drayage Motor Carrier Successors**

**(a)(1):** Delete the phrase “with an unsatisfied final court judgment, tax assessment, or tax lien” as surplusage.

*Labor Commissioner’s Response: The comment pertains to language which was initially proposed pursuant to a 45-day public comment period and was not modified by the agency under the more recent 15-day notice of modifications. Accordingly, the comment exceeds the scope of permissible comment, which is limited to the provisions that were modified under the 15-day notice.*

**(a)(4):** Delete the phrase “request in writing and accompanying documentation or submit a” as being related to the now deleted reference to WCA 128 PORT Proof of Payment or Settlement 12/2019, and replace it with the word “written.” As currently written, this is confusing because there is no other reference to “accompanying documentation” with respect to written requests for hearings regarding successor port drayage motor carriers.

*Labor Commissioner’s Response: The Labor Commissioner respectfully declines to delete as proposed in the comment. The “request in writing” is not related to the now deleted reference of WCA 128 PORT Proof of Payment or Settlement 12/2019, but is instead related to the requirement under Subsection 13882(a)(2) that a port drayage motor carrier may request an informal hearing on the matter of successorship by submitting a request in*

*writing. This is consistent with the Labor Commissioner's determination to create procedural requirements that are more simple and straightforward.*

## **VI. Section 13883. Hearing Regarding Determination of Port Drayage Motor Carrier Successor**

**(b)(1):** Add to the last sentence of this subsection as follows:

The request shall specifically **set forth why the successor port drayage motor carrier did not challenge its initial placement on the public list as a successor**, identify and fully describe the basis for the challenge to the continued placement on the list and must be accompanied by supporting documentation, if any, that is relevant to the challenged placement on the list.

This addition will require the successor to present some explanation for why it should be permitted to challenge its placement on the public list where it failed to challenge that placement initially, which is consistent with the limitation of such challenges to cases where the successor was "aggrieved in any manner due to a lack of notice or knowledge of their placement on the list or due to mistake, inadvertence, surprise, or excusable neglect."

*Labor Commissioner's Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. The Labor Commissioner appreciates the recommendation but recognized that circumstances may occur following placement of successors on the public list, which stem from a lack of notice or other extrinsic factors that impact the need for continued placement on the list. The suggested additional language improperly merges and potentially confuses the separate grounds and procedural requirements for raising the specified disputes made by successors. The Labor Commissioner determined that adding the suggested language could have the unintended effect of expanding issues in a Subsection (b) proceeding to include Subsection (a) issues where the former should be confined to continued placement only.*

**(b)(2):** Add to this subsection as follows:

**Where the Labor Commissioner determines that the successor was aggrieved in any manner due to a lack of notice or knowledge of their placement on the list or due to mistake, inadvertence, surprise, or excusable neglect, the Labor Commissioner may hold a hearing on the subject of the continued placement on the list based on the request. The Labor Commissioner shall not be required to hold such a hearing where it is determined that the successor was not aggrieved in any manner due to a lack of notice or knowledge of their placement on the list, or cannot demonstrate any mistake, inadvertence, surprise, or excusable neglect. Any hearing shall be held in accordance with the procedures set forth in**

Sections 13883(a)(3) and 13884-13887.

This language is consistent with the limitation of such challenges to cases where the successor was “aggrieved in any manner due to a lack of notice or knowledge of their placement on the list or due to mistake, inadvertence, surprise, or excusable neglect.”

*Labor Commissioner’s Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. As worded, the Labor Commissioner may exercise discretion in holding a hearing but doing so is not required. This encompasses any determination by the Labor Commissioner regarding whether the motor carrier successor demonstrated it was aggrieved in any manner due to a lack of notice or knowledge of the motor carrier’s placement on the list or due to mistake, inadvertence, surprise, or excusable neglect. The suggested added language is unnecessary as the adopted language sufficiently provides for exercising discretion based on presented information and facts under particular circumstances. The determination to hold a hearing may or may not exist at the outset based on the information and facts presented and would include an evaluation as to whether fact-finding in a hearing is necessary.*

**(b)(3):** Add a section (b)(3) providing that:

**A port drayage motor carrier that challenges its placement on the list pursuant to this subsection shall not be removed from the list unless and until the Labor Commissioner has made a final determination that it should not have been included on the list as a successor port drayage motor carrier.**

This will clarify that port drayage motor carriers appearing on the list as successors shall remain on that list pending the outcome of a challenge pursuant to this subsection.

*Labor Commissioner’s Response: The Labor Commissioner respectfully declines to modify as proposed in the comment. The Labor Commissioner appreciates the recommendation but determined that challenges to placement of motor carrier successors on the public list are specifically described in this section and in Sections 13884 to 13887, to the extent the Labor Commissioner exercises their discretion in holding a hearing. The suggested language is unnecessary because this subsection only applies to motor carrier successors who have already been placed on the list and could not be removed until the Labor Commissioner determines that it should be removed upon a showing that continued placement is not valid.*

### **UPDATE TO INITIAL DISCLOSURES**

The disclosures made in the Notice of Proposed Rulemaking published on September 4, 2020, are incorporated herein and remain the same, except as modified in the following:

#### **Alternatives Determination**

The Labor Commissioner has determined that no alternative it considered or 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 the Labor Commissioner are the only regulatory provisions identified by the Labor Commissioner that accomplish the goal of effectively implementing statutory requirements that require the agency to administer the public list required under Labor Code section 2810.4, enforce the shared liability for unpaid judgments between port drayage motor carriers and their customers, and establishing standards of procedure for motor carriers, other public entities, and private persons to interact with the Labor Commissioner regarding placement of unpaid outstanding liability determinations made in the courts and administrative agencies, and removal upon submission of appropriate documents.

The facts and evidence adduced through this rulemaking and through the Labor Commissioner's administration and enforcement experience over the past year have not presented any other alternative that would more effectively achieve the same result. Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Labor Commissioner's attention.

### **Economic Impacts**

The Labor Commissioner estimates the cost for a representative business, including a small business is \$215.70. The number of businesses, which have been placed on the public list over the last two years, is 26-27 businesses. The Labor Commissioner estimates it would take 2.5 hours of attorney time to review the notice for placement on the public list sent by the Labor Commissioner, discuss with the trucking company, and respond to the Labor Commissioner. The mean hourly wage for an attorney in California is \$86.28.<sup>4</sup> Therefore, if the 27 companies currently on the public list contacted an attorney to avoid placement on the list or to seek removal from the list, the cost for a small or typical business to respond to the notice and avoid placement on the list is estimated to be \$215.70 ( $\$86.28 \times 2.5 \text{ hours} = \$215.70$ ). Annual cost for representative businesses is estimated to be \$5,823.90 ( $\$215.70 \text{ per business} \times 27 \text{ businesses} \times 1 \text{ year} = \$5,823.90$ ).

The cost to an employer business of actually paying off the outstanding judgment is not a cost associated with this regulation. Full payment of an outstanding judgment is the cost of maintaining compliance with the state's wage and hour laws.

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<sup>4</sup> <https://www.bls.gov/oes/current/oes231011.htm> (May 2020 Bureau of Labor Statistics).