

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

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

INITIAL STATEMENT OF REASONS

INTRODUCTION

The Labor Commissioner is authorized pursuant to Labor Code Section 1699 to adopt, amend, or repeal rules and regulations as are reasonably necessary for the purpose of enforcing, and administering Chapter 3 (Farm Labor Contractors) of Part 6 (Licensing) in Division 2 (Employment Regulation and Supervision) of the Labor Code. The Division of Labor Standards Enforcement (DLSE) proposes the adoption of amendments to Subchapter 9 of Chapter 6, Division 1, of Title 8 of the California Code of Regulations pertaining to the requirements for farm labor contractor licenses issued by DLSE under the authority of the Labor Commissioner, Chief of DLSE. The proposed regulatory action is necessary to effectively implement statutory requirements regarding licensure by providing standards for applicants and types of information used by DLSE regarding licensure of farm labor contractors, establishing other requirements for administering the farm labor contractor licensing laws, and to provide for consistent internal agency practices regarding the processing of applications for licenses authorizing a person to operate as a farm labor contractor pursuant to the requirements of Labor Code Section 1682 et seq.

Currently, existing regulations regarding farm labor contractors licensed by the agency only pertain to the agency's disbursement of funds from the Farmworker Remedial Account for workers who have been damaged by a farm labor contractor's failure to pay wages to workers after a determination regarding the validity of a claim (8 CCR 13660-13662). The proposal repeals these existing provisions regarding the Farmworker Remedial Account, renames the subchapter to include all areas of farm labor contractor licenses generally, and provides standards for DLSE's administration of the Farmworker Remedial Account under a new article within the subchapter.

In recent years, the regulated public (licensees and persons interested in obtaining a license) and worker groups have increasingly requested from DLSE information regarding the standards, criteria, and processes for issuance of licenses used by DLSE in carrying out the statutory standard that an applicant provide information regarding character, competency, and responsibility. The regulatory proposal standardizes criteria for administering statutory licensing requirements used to determine fitness of applicants and licensees, surety bonds, written examinations, educational classes, continuing duties of licensees, and disbursing funds to workers and their representatives from the Farmworker Remedial Account administered by the agency.

DLSE has determined that the proposed regulations are reasonably necessary to effectively administer and enforce the farm labor contractor licensing program. The recognized intent of the farm labor contractor licensing provisions is to protect workers. (*Ruiz v. Cabrera* (2002) 98 Cal.App.4th 1198, 1201 [primary purpose is to protect farmworkers; focus of FLCA ensures the payment of wages, assures the availability of work when such work is promised, and prohibits imposition of unfair charges against employees as a condition of access to work]). Establishing the proposed standards for license applications, bond requirements, continuing duties of licensees, educational requirements, and procedures for disbursing funds from the Farmworker Remedial Account will benefit the workers subject to the protections of the farm labor contractor licensing law and provide a more level and fair playing field for contractors lawfully operating these businesses. Additionally, under AB 1675 (Chap. 857, Statutes 2012), the Legislature recently established civil penalties for unlicensed farm labor contractors. Establishment of standardized requirements for applicants and licensees will also encourage persons who operate businesses that fall within the coverage of existing farm labor contractor licensing laws to be informed of the requirements and apply for a license in view of the new monetary civil penalty which may be assessed against unlicensed contractors.

SPECIFIC PURPOSE OF EACH SECTION – GOVERNMENT CODE 11346.2(b)(1)

DLSE has determined that each adoption is reasonably necessary to carry out the authority and purposes for which they are proposed and each proposed section relates to a public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address.

Proposed New Article 1 contains nine (9) sections which provide general requirements for application and issuance of farm labor contractor licenses and implement requirements or make more specific the procedures specified in Chapter 3 of Part 6 of Division 2 of the Labor Code.

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

standardizes the information the agency will review, and implements specific statutory rules and duties applicable to qualifying for a license.

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

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

Proposed Section 13661 specifies the conditions for a licensee to renew their license prior to expiration of their existing license. The section provides reference to a renewal application form which requests updated or changed information and that the previous and updated information is subscribed and sworn by the renewal applicant. This section implements and makes more specific the current practice of the agency under Labor Code 1684(c) with respect to license renewal requirements.

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

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

and provides for the issuance of a temporary license to applicants to address instances which have occurred in the past where delays are not the fault of the applicant.

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

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

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

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

Proposed Section 13665 provides that a person, nonprofit organization, or educational institution may be evaluated and approved by the agency to provide educational programs to farm labor contractor applicants and licensees by submitting a proposed educational program at least 60 days prior to conducting such program. The section specifies the contents of a proposed program and qualifications for each proposed instructor, and criteria used by the agency to determine approval of the educational provider. DLSE may, within 30 days of receipt of a request and at his or her discretion, approve an educational program for a one-year time period. An approved educational provider must report to the agency any changes in the program or instructor(s), and changes in the dates such programs are offered by the educational provider. This section implements the statutory requirement for educational classes (Labor Code 1684(a)(5)) and establishes standard requirements for educational class providers which will be reviewed and approved by the agency.

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

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

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

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

Proposed Section 13666.2 establishes specific requirements for a licensee to provide periodic training to supervisors, forepersons, and crew leaders regarding applicable laws and regulations regarding general work safety generally, and specifically implementing programs

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

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

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

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

Proposed Section 13667.4 specifies that valid claims shall be disbursed by the Labor Commissioner in the order received and, if account funds are inadequate to satisfy the claim, such claim will be held until adequate funds are deposited into the Farmworker Remedial

Account to pay the valid claim. This section establishes a standard for administering the farmworker account and disbursing funds which will provide a more full recovery of valid claims determined to be due a worker based on the order a claim is received and provides for full payment of claims which are held in the event there are insufficient funds to pay a valid claim.

OTHER REQUIRED SHOWINGS – GOVERNMENT CODE 11346.2(b)

Studies, Reports, or Documents Relied Upon – Government Code 11346.2(b)(3)

None.

Reasonable Alternatives – Government Code 11346.2(b)(5)(A)

The agency has initially determined that no alternatives would be more effective in carrying out the purpose that underlies the proposed regulatory action, or would be at least as effective or less burdensome on the regulated public (persons who seek to operate a business as a farm labor contractor) and that would ensure full compliance with the existing licensing statutes being implemented or made specific by the proposed regulations.

Facts and Evidence to Support Determination that Action Will Not Have A Significant Impact On Business – Government Code 11346.2(b)(6)

The agency has determined that the proposed regulatory action will not have a significant impact on business. While the proposed regulations will impact farm labor contractor businesses that fall under the licensing requirement, the action will not significantly increase existing statutory obligations above that which the agency currently requires for license applicants.

Nearly all information and supporting documents required for applications and renewal are currently provided by applicants and licensees to DLSE in order for the agency to determine fitness for a farm labor contractor license and no more burdensome than current administrative practices relating to application review and issuance of licenses and providing payments of claims against the Farmworker Remedial Account. Proposed regulations for written examinations, educational program approval, instruction, and records of classes are consistent with existing practices and processes used by DLSE for administration of the licensing program and create no significant additional burden for applicants, licensee's, educational program providers, or workers claiming amounts under the Farmworker Remedial Account.

Proposed worker safety training of crew leaders and forepersons and documentation are independently required under existing health and safety laws (Title 8, CCR Section 3395) and thus, employers (including farm labor contractor licensee) are required to train their employees, including crew leaders and supervisors. The proposed requirement for safety and health training in heat illness injury prevention and response, and pesticide use and exposure, are known dangerous conditions for farmworkers health and constitute risks which vary by the season, workplace, and with frequency throughout the year to justify requiring a licensee contractor to comply with an on-going minimal obligation of safety training consistent with the seasonal conditions and to maintain records of such training in order to operate as a licensed farm labor contractor. Since both worker training on hazards and record-keeping by employers are existing

obligations, the proposed worker safety training will only have minimal impact to account for specific training in these areas and record-keeping for purposes of regulating a farm labor contractor licensee.

Proposed identification signage at worksites of farm labor contractors will impact licensee businesses who regularly employ farm laborers at various work sites throughout a year. The signage requirement allows for portability of signs containing consistent information identifying the licensee and field supervisor which can be re-used at different locations. The number of signs (2 per worksite) will vary with the number of worksites (farms) where crews are working. DLSE estimates that it will cost no more than \$70 for signage at each worksite of a licensee.