

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

ADDING SUBCHAPTER 13: JANITORIAL REGISTRATION AND TRAINING

ADOPTING SECTIONS 13810 THROUGH 13819, INCLUSIVE,
REGULATING JANITORIAL EMPLOYER REGISTRATION

INITIAL STATEMENT OF REASONS

INTRODUCTION

The Labor Commissioner, Chief of the Division of Labor Standards Enforcement (DLSE or Division), Department of Industrial Relations, is authorized pursuant to Labor Code section 1422 to adopt regulations to carry out the provisions of Part 4.2, of Division 2, of the Labor Code pertaining to registration of janitorial employers.¹ The Labor Commissioner proposes the adoption of new Subchapter 13, Chapter 6, Division 1, of Title 8 of the California Code of Regulations to implement registration and sexual harassment training required for employers of janitorial workers. This proposed regulatory action is necessary to effectively implement statutory requirements to register, providing standards for applicants and establishing procedural requirements for administering the registration program, including procedures for denial, suspension, and revocation of registrations. The companion regulatory action implements requirements for sexual violence and harassment prevention training.

In 2016, the Legislature passed AB 1978 (Statutes 2016, Chapter 373), adding Labor Code sections 1420 et seq., requiring registration for employers of janitorial workers. The Labor Commissioner has determined that the proposed regulations are reasonably necessary to effectively administer and enforce the janitorial employers' registry and training required by the act. Establishing standards for applications, registration certificates, and adverse actions (denial of registration, suspension, and revocation) will benefit workers subject to the protections of the legislation and will provide a more level and fair playing field for janitorial employers lawfully operating these businesses and for businesses who use janitorial employers in California.

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

The Labor Commissioner has determined that each proposed section is reasonably necessary to carry out the authority and purposes for which they are proposed and each proposed section

¹ The proposed regulations in this rulemaking proposal only pertain to the *registration program* enacted under AB 1978 (2016). The Labor Commissioner is also proposing other regulations pertaining to sexual harassment training in a separate rulemaking proposal following input from advisory committee meetings convened by the Director of the Department of Industrial Relations pursuant to Labor Code section 1429.5. The proposed rulemaking addressing sexual harassment training will be concurrently filed with a separate OAL file number and rulemaking contents.

relates to a public problem, administrative requirement, or other condition or circumstance that the section is intended to address.

Proposed Article 1. Registration Application

Section 13810 (Application for Registration) provides application procedural and content requirements for a person or entity seeking to register pursuant to Part 4.2 of Division 2 of the Labor Code, commencing with section 1420. Adopting these requirements by regulation standardizes the information the Labor Commissioner will review and implements specific statutory rules and duties applicable to qualifying for registration.

The preamble language in the section also establishes that the information provided in connection with an application must be certified and made under penalty of perjury, which is necessary to implement the requirement under Labor Code section 1429(a) that an application be subscribed and sworn to by the applicant for registration.

Subsection (a) specifies information on a registration application as required under Labor Code section 1429(a)(1) through (10) along with other items (stated in (a)(1) through (a)(10) of this section). This is necessary to ensure that all required information, required both by statute incorporated by reference and any additional or more specific information required by the Labor Commissioner pursuant to section 1429(a)(11), is provided on an application, as well as documentation regarding these required pieces of information.

Subsection (a)(1) requires the applicant to designate whether the application is for a “new” (initial) registration or a “renewal” of registration, which will be designated by the applicant and is necessary to ensure that the applicant designates the type of registration among these two categories of registrations which are also used in the statutes. The designation is also necessary for the Labor Commissioner to determine whether specific information is new or different from a previous application by the applicant.

Subsection (a)(2) is necessary in order for the Labor Commissioner to obtain essential contact information regarding physical location of the business and other essential contact information required, including mailing address, if different from physical address, and an email address for receiving electronic mail. An applicant’s designation of a fixed location and email address ensures the ability of the agency to communicate and provide any necessary notices or other communication to a registrant performing the regulated activity which the Labor Commissioner determines is necessary for efficient administration of the program and enforcement of program requirements. Simply providing a Post Office box or private mailbox address is inadequate to physically locate a registrant’s business. The subsection allows entry of a mailing address that can be provided if different from the physical address for the business as the primary address of record for registration.

Subsection (a)(3) is necessary because the statute only specifies information for corporate businesses. Other business entities include individuals (sole proprietors) and other non-corporate business entities, including partnerships and limited liability companies (LLC) that perform janitorial services. In addition, some entities that perform janitorial services may not constitute a business entity (for example, a nonprofit organization). This subsection is

necessary to capture other business entity forms (other than corporations) as they are respectively organized and conduct business as a janitorial employer.

Subsection (a)(3)(i) requires specified information relating to these other business entity forms to ensure clear identification in the application for registration, including other names used by an individual. Obtaining all names an applicant intends to use in conducting business provides a means to associate previous and/or fictitious names with actual names of registrants who will conduct business and is necessary for the agency's administration of the registration law using accurate information regarding the applicant. Also, a business may use multiple fictitious names or have previous names and the Labor Commissioner has determined that providing such information is necessary to identify whether the employer is subject to the liabilities set forth under Labor Code section 1429(a)(8).

Subsection (a)(3)(ii) requires that an applicant which is a partnership or LLC provide the same information as required for corporations as specified in Labor Code section 1429(a)(2) regarding its formation date and any record with the Secretary of State. The information is necessary to allow the Labor Commissioner to receive business entity information to the same extent as required in the statute for corporations.

Subsections (a)(4) through (a)(6) implement the statutory prohibitions for registration by the Labor Commissioner for applicants pursuant to Labor Code section 1430. Since section 1430 lists disqualifying liabilities for registration, it is necessary for the Labor Commissioner to ascertain the status of any of the specified liabilities to determine the existence of pending liabilities through the application process. Subsections (a)(4) through (a)(6) require identifying the entity against whom a liability has existed, the administrative or judicial case number information, date of the finding of liability, amount of liability, and any balance remaining. This information is the minimum necessary for the Labor Commissioner to ascertain status of liability prior to registration of the applicant to perform the covered activities.

Subsection (a)(7) requires the applicant to provide the current number of employees whom the applicant uses to provide janitorial services. The information is necessary for the Labor Commissioner to be informed of the size of the janitorial employer, which is relevant to enforce program requirements, including compliance with the registration requirement (for which a civil penalty applies for a failure to register), requirements regarding sexual violence and harassment prevention training, and compliance with other wage and hour laws enforced by the Labor Commissioner.

Subsection (a)(8) requires the applicant to list each subcontractor, other independent contractor or franchisee the applicant currently uses when providing janitorial services, as well as the janitorial registration number if applicable (meaning if those entities meet the definition of "employer" under Labor Code section 1420(e)(1) and are required to register with the Labor Commissioner under Labor Code section 1423). Subsection (a)(8) requires identification of the type of business entity listed and the number of individuals each identified entity uses to perform janitorial services for the applicant. This requirement is necessary to enforce the registration requirement against a broad and complete range of

janitorial businesses who are performing activities regulated under this new law (which expressly includes businesses that “employ” janitorial workers who are independent contractors or franchisees, under Labor Code sections 1420(a)(1) and (e)(1)), and will provide the Labor Commissioner with an effective mechanism to ensure all entities contemplated under the law are in compliance with program requirements.

Subsection (a)(9) requires the applicant to provide information regarding the businesses for whom the applicant currently provides janitorial services, as well as the businesses with whom the applicant has contracted or otherwise provided janitorial services during the 12-month period prior to the application. This information is necessary for the Labor Commissioner to carry out enforcement. The Labor Commissioner is responsible for enforcing the requirement that persons and entities contract only with janitorial employers who are registered. The list of businesses for whom the registered contractor provides services will help the Labor Commissioner’s Bureau of Field Enforcement use its resources strategically to plan investigations where there are likely to be the most significant compliance issues; it will be apparent that these entities are contracting with janitorial service companies that are registered in compliance with the law. Additionally, the list of business for whom the janitorial contractor provides services is a helpful tool for enforcement of other wage and hour laws enforced by the Labor Commissioner, including client employer liability under Labor Code section 2810.3, whereby businesses that obtain or are provided workers from a labor contractor to perform labor within the usual course of business share liability for labor violations with the labor contractor.

Subsection (a)(10) provides options for demonstrating that the applicant has workers’ compensation coverage. This is necessary because the statute only specifies that workers’ compensation information be provided for the applicant’s business. Some applicants obtain workers’ compensation coverage through a third party. This subsection specifies that the applicant provide information demonstrating workers’ compensation coverage either through its own certificate or via a third party with whom the applicant contracts.

Subsection (b) requiring the payment of an initial application fee and annual fee thereafter for the amount specified in Labor Code section 1427 (\$500) and this subsection sets forth the manner for making payment, either online or by certified check, money order, or cashier’s check. This provision more specifically requires payment of the specified fee at the time of filing of the registration application with the Labor Commissioner because the filing of an application initiates administrative processing by the agency.

Subsection (c) provides that a Taxpayer Identification Number may be used where a Social Security Number is required for registration purposes. This is necessary to harmonize the Legislature’s desire to have all janitorial employers in the state register with the Labor Commissioner with the requirement in Labor Code section 1429 that registration may not be approved unless all conditions are satisfied, including providing Social Security Numbers for all corporate officers, managers, and persons with at least a ten percent financial interest in the business. A Taxpayer Identification Number that is not a Social Security Number is sufficient for registration purposes if a Social Security Number is not available.

Proposed Article 2. Issuance of Registration; Changes in Information; Registry List

Section 13811 (Registration Certificate) sets forth the procedures for issuance of a Registration Certificate to a person who has been determined by the Labor Commissioner to be qualified for registration, including the manner of issuing the Registration Certificate to the applicant.

Subsection (a) informs the applicant that a Registration Certificate will be issued once the applicant has complied with proposed section 13810. Adopting this proposed section by regulation standardizes the information the agency will utilize to issue a Registration Certificate, which is a statutory prerequisite for a janitorial service business regulated under Part 4.2 of Division 2 of the Labor Code, and this chapter, to lawfully conduct business operations. A Registration Certificate in a form issued by the Labor Commissioner constitutes official documentation signifying that the agency has determined the applicant has met conditions of registration. This subsection also provides for online notification of registration and access to a printable Registration Certificate.

Subsection (b) is necessary because a Registration Certificate, like all licenses and permits that enable a person or business entity to conduct business under specified and regulated conditions, will expire annually on a specific date based on the date of initial registration and is consistent with the required payment of a registration fee specified in Labor Code section 1427.

Subsection (c) is necessary to inform the applicant and the public about the contents of the Registration Certificate, which signifies that the applicant identified in the Registration Certificate has met the legal requirements to be registered as a janitorial service employer. The contents include the information specified in Labor Code section 1431 (name, address, registration number, and effective dates of registration) for posting on DLSE's website. The regulation further requires that the registrant's name also include any fictitious business names ("doing business as" or "dba") in addition to public identification by the legal name. Identifying both names for a business will better provide an accurate identification of a business by both their legal name and any fictitious business name.

Subsection (d), regarding the non-transferability of the Registration Certificate, is necessary in order to ensure that the janitorial service registration is not circumvented. The Registration Certificate is issued to a specific applicant that has submitted and subscribed to information and the Labor Commissioner has determined that specified conditions for registration have been satisfied. *See* Labor Code section 1429. Allowing the Registration Certificate to be transferable would eviscerate the statutorily-mandated conditions for registration that apply to a single business and make the registration process susceptible to sham registration by an unqualified or disqualified janitorial employer.

Subsection (e), requiring notification to the Labor Commissioner of any change in contact information of the registrant within 10 days of any change is necessary to effectuate Labor Code section 1431 requiring the name and contact information of the registrant to be publicly posted on DLSE's website. Ten days is determined to be a reasonable time for an employer to provide timely notification of changes to location and contact information and balances the

need for accurate information reasonably close to the occurrence of the change, with the allowance of a reasonable but prompt time for the registrant to comply by updating the information. Additionally, contact information must remain current so that the Labor Commissioner can locate the janitorial service employer in the event of a relocation of the registered business and is able to send any required information and communication to the registrant. Incorrect contact information could result in the inability to accurately identify or provide necessary information to the registrant, including information related to revocation or suspension of registration and other enforcement action. Issuance and access to a printable amended Registration Certificate, without additional cost, is necessary so that a business has in its possession a valid certificate with current information consistent with information on the registry database.

Section 13812 (Online Registry) more specifically describes the information regarding registrants that will be posted on the department’s internet-based online registry required under Labor Code section 1431.

Subsection (a)(1) provides that the same name and contact information on the Registration Certificate shall be listed on the registry which is necessary to ensure that businesses using registrants and workers be able to accurately identify registered janitorial employers with sufficient specificity to confirm a person’s registration status with the online registry.

Subsection (a)(2) is necessary to enable businesses and workers of janitorial businesses to determine a janitorial employer’s registration status with the Labor Commissioner. This information will provide the public with pertinent information of status and promote compliance with the registration requirement within the industry.

Subsection (b) provides that the Labor Commissioner may indicate the information in a single list or post separate lists for registrants and those who have been denied registration or whose registration has been suspended or revoked. Identifying suspended and revoked registrations will assist the general public, businesses using janitorial employers, workers, and law enforcement agencies of registration status for janitorial businesses who are subject to the registration requirement and minimizes the ability of those acting underground to perform regulated janitorial services without registration.

Proposed Article 3. Civil Penalty

Section 13812.5 (Civil Penalty for Contracting with Unregistered Employers) implements the language in Labor Code section 1432(b) that provides for assessment of a civil penalty against a person or entity who contracts with an unregistered janitorial employer. Subsection (a) defines a violation for purposes of penalty assessment. Subsection (b) defines a first violation and sets a penalty amount. Subsections (c) through (g) provide clarity and uniformity for determining what constitutes a “subsequent violation,” what the penalty amounts will be for first and subsequent violations, and how these violations may be cited. DLSE determined that enforcement of the civil penalty under this standard is consistent with and promotes the objectives underlying both the registration requirement and the language in Labor Code section 1432(b) aimed at deterring violations by persons or entities who use unregistered janitorial employers.

Subsection (a) explains what constitutes a violation for purposes of penalty assessment under Labor Code section 1432(b). This subsection is necessary to explain how Labor Code section 1432(b) will be enforced, as each violation will be considered and penalized separately. Consistent with the statute, the focus is on the “contracting event” and whether, at the time of contract execution, renewal, extension, or modification, the janitorial employer had a valid and current registration, as evidenced by the online registry.

Subsection (b) explains how a first violation will be determined in situations where there is more than one contracting event that constitutes a violation. This subsection is necessary because the statute sets forth a penalty range of \$2,000 to \$10,000 for initial violations, and a penalty range of \$10,000 to \$25,000 for subsequent violations. DLSE would like to provide notice to the regulated community as to how first violations will be identified. In order to determine the first violation, DLSE must look at the oldest contracting event.

Subsection (c) defines what constitutes a “subsequent violation” consistent with the statutory language describing a violation under Labor Code section 1432(b) based on a contracting event occurring in time after a first violation. Further, this subsection specifies that a subsequent violation may occur when contracting with the same unregistered contractor or a different unregistered contractor. The subsection is necessary to avoid varying interpretations as to when a subsequent violation exists where a person or entity contracts with one or more unregistered janitorial employers.

Subsection (d) sets forth a penalty amount for first violations that occur alone, without being accompanied by subsequent violations in the first citation. DLSE proposes that first violations alone be subject to a civil penalty of \$2,000 as part of a penalty assessment framework that starts at the bottom of the statutory range for a first and isolated violation.

Subsection (e) sets forth a penalty amount of \$10,000 for a first violation that is accompanied by subsequent violations that are part of the first citation issued by DLSE, as well as a \$10,000 penalty for each subsequent violation in a first citation. This subsection is necessary because the statute provides a range of \$2,000 to \$10,000 for initial violations and \$10,000 to \$25,000 for subsequent violations. Where a first violation does not appear in isolation but is part of a pattern of violations, DLSE proposes that these violations be subject to the highest end of the statutory range for first violations. DLSE further proposes that subsequent violations that are part of the same citation, meaning that they are generally part of the same investigation that identified the first violation (note that the statute provides that the procedures for issuing, contesting, and enforcing judgments for citations or civil penalties shall be the same as those set forth in Labor Code section 1197.1), be assessed at the low end of the statutory range as part of a penalty assessment framework that imposes greater penalties where there are subsequent violations after the first citation.

Subsection (f) sets forth a penalty amount of \$25,000 for all violations in a subsequent citation in a subsequent investigation. Again, this subsection is necessary because the statute provides a range of \$10,000 to \$25,000 for subsequent violations, and DLSE would like to provide notice to the regulated public and consistency in penalty assessment by establishing a standard penalty amount. DLSE proposes that such subsequent violations in a subsequent investigation be subject to a penalty of \$25,000, the statutory maximum, because of the severity of the violation, where the contractee continues to violate the law and fails to come into compliance after being cited for prior violations.

Subsection (g) provides the procedure and framework for assessing civil penalties under Labor Code section 1432(b) and informs the regulated public that the civil penalty for a subsequent violation(s) may be made along with or separately (subsequent) from the assessment for a first violation. This subsection is necessary to 1) avoid insulating a person or entity contracting with unregistered contractor(s) from a penalty for subsequent violation(s) which occur in time after issuance of a citation which only included assessment for a first violation, and 2) expressly provide for assessment of first and subsequent violations under the same citation where isolated contracting events giving rise to violations are determined under the same investigation and citation by DLSE. The subsection also provides for determination of subsequent violations in a separate proceeding so long as there is evidence produced of the first violation, which is necessary to ensure a basis exists for assessment of a higher penalty for subsequent violation if assessed and determined in the same, or a subsequent (citation) proceeding.

Proposed Article 4. Denial of Registration; Suspension and Revocation

Section 13813 (Actions on Applications and Registrations) provides introductory language that generally classifies the types of actions that may be taken on a registration application and is necessary to provide context by stating the possible grounds and procedures for adverse actions to be initiated by the Labor Commissioner.

Subsection (a) describes the grounds for adverse action against an *applicant* arising from a failure to meet the conditions or qualifications for registration. Identification of this ground for denial of an application by the Labor Commissioner is necessary to provide for adverse action for acts arising during the application process based on information provided or obtained, including misrepresentations made by the applicant under the statutory conditions to qualify for registration.

Subsection (b) describes the grounds for adverse action against a *registrant* who fails to comply with the applicable statutes and this subchapter, and includes misrepresentations made during the application process but discovered after issuance of a registration, and for subsequent liabilities, including a final citation or judgment against the registrant or person identified pursuant to Labor Code section 1429(a)(8) that adversely impacts the registrant's qualification for registration, as determined by the Labor Commissioner. Identification of this ground for adverse action is necessary to provide a more specific application for adverse

action against a person who is registered by the Labor Commissioner, where unlawful conduct occurs during registration but is discovered after the registration is issued.

Subsection (c) provides a special rule that addresses revocation of a registration that allows a janitorial service employer to apply for a new registration only after expiration of the revocation period. This provision is necessary to preclude a person from seeking a subsequent registration prior to expiration of any period of revocation and curbs attempts to shorten the full effective dates of a previous revocation. Requiring an applicant whose previous registration was revoked to satisfy any previous judgments and settlement agreements related to a violation of laws applicable to janitorial services employers is necessary to ensure that the person has addressed consequences for any previous violations of applicable laws by appropriate redress of amounts due to the State or an aggrieved person. This requirement will afford registration to persons who have demonstrated compliance with any outstanding obligations arising from a registration that was revoked.

Section 13814 (Notice of Denial; Suspension or Revocation; Notice of Defense) provides a notice requirement for actions which deny a registration and suspend or revoke a registration, and further establishes procedures and requirements, including a hearing by a hearing officer if an adverse action is appealed by the applicant or registrant. The language is necessary to specify the respective procedures for the specified adverse actions initiated by the Labor Commissioner.

Subsection (a) establishes a means of informing and providing an opportunity for hearing regarding an adverse action by the Labor Commissioner on an application or registration, which comports with due process protections. The Labor Commissioner has determined that notice and hearings requested by applicants or registrants shall be in accordance with rules established in new Article 4 which is intended to apply instead of rules of procedure contained in the administrative adjudicatory provisions in the Government Code contained in Chapter 5 of Part 1, Division 3 of Title 2, commencing with Government Code section 11500. The referenced Government Code sections authorize an agency to adopt its own procedures for adjudicatory proceedings which are expressly adopted by an agency, and the agency has determined that providing rules of procedure in these regulations will more effectively inform applicants and registrants of procedures to contest or object to adverse agency actions. The procedures specified in this section are largely based on similar provisions used by the Labor Commissioner in administering the garment manufacturing registration program (see Title 8, California Code of Regulations, section 13646) which have been effective, provide a method for efficient administration by the agency, and are compliant with procedural due process requirements for a registration program.

Subsection (a)(1) further establishes that the notice of adverse action relating to a *suspension or revocation* of a registration shall be made by the filing of an accusation, which is a common name designating an agency's action on an existing registration or license. The subsection further specifies that such notice contain sufficient and plainly stated information upon which the agency bases its proposed action. These basic requirements are necessary to sufficiently inform the registrant in ordinary and concise language of the acts or omissions upon which the proposed action is based to enable him or her to review and determine whether to contest the proposed action.

Subsection (a)(2) establishes that the notice of adverse action relating to a *denial or renewal of a registration* shall be made by the filing of a statement of issues which is a common name designating an agency's action that denies a person's qualification for a registration or license. Similar to the text and purposes stated for subsection (a)(1), the subsection further specifies that such notice contain sufficient information regarding items of information that are lacking or deficient or which have come to the attention of the agency justifying a denial, and is necessary to inform the applicant (initial or renewal) of the proposed action and enable him or her to determine whether to contest the proposed denial or otherwise defend against the proposed action.

Subsection (b) provides for service of the moving document (accusation or statement of issues) upon the person who is applying for or holds a registration upon which action is being taken by the Labor Commissioner, which shall include a statement which further informs the person of their right to file a notice of defense within a specified period (15 days after service) pursuant to subsection (b)(1), and a form which the person can use to file a notice of defense. The Labor Commissioner finds that 15 days is a common and reasonable period of time for a person to inform the Labor Commissioner of his or her objection to the proposed action and request for hearing. This requirement is necessary in order to provide a person with a sufficient and reasonable opportunity to contest the proposed action. Since the failure to timely file a notice of defense within the prescribed period forecloses any hearing on the administrative action (see subdivision (d)), the provision includes a statement that such failure constitutes a waiver of a request for hearing. The Labor Commissioner further determined that the filing of a notice of defense is sufficient to constitute a request for hearing and will be deemed a request for hearing for purposes of these regulations as provided in subsection (b)(2). This standard is necessary to ensure that a person who objects to the action is requesting to be heard on the filed notice of defense and avoids an automatic adverse result due to a person's technical failure to expressly request a hearing despite the filing of a defense to the adverse action.

Subsection (c) establishes the time within which a person must act to contest the adverse action by filing a notice of defense and reasonably covers grounds for which the person can assert his or her position with respect to all or some of the matters which are stated in the agency's moving document (accusation or statement of issues). Stating specified grounds for contesting or admitting matters is necessary to provide a janitorial employer a basis for contesting the proposed agency action and formulating defenses that address the item(s) stated in the moving document and is necessary for the Labor Commissioner to determine the scope and length of a hearing to determine the disputed matters for purposes of scheduling the hearing.

Subsection (d) provides that the failure to file a timely notice of defense shall constitute a waiver of the employer respondent's right to a hearing that is necessary to establish administrative finality for requesting a reasonably prompt hearing upon which an adverse action has been taken by the Labor Commissioner. The subdivision also provides independent authority for the Labor Commissioner to grant a hearing in his or her discretion even where the applicant or registrant fails to file a timely defense. Such authority is

necessary to ensure a fair disposition of agency actions where circumstances justify the grant of a hearing in order to address any unusual circumstance or irregularity brought to the Labor Commissioner's attention subsequent to the notice of adverse action, to ensure a fair administration of the registration program.

Section 13815 (Failure to File Notice of Defense; Discovery; Notice of Hearing) establishes the applicable procedures when a person who is subject to adverse action regarding their application or registration files a timely notice of defense by providing standardized procedures that inform affected persons of due process rights related to the timely filing of a notice of defense. The section also provides the consequences when a person fails to file a timely notice of defense or who files a notice but fails to appear at a hearing to clearly state the effect of inaction by the affected person.

Subsection (a) provides the right to a hearing on the merits when a person files a timely notice of defense, creating a right to a hearing on the agency's action which is fundamental to procedural due process. By deeming a filed notice of defense a specific denial of all parts of the agency action that are not expressly admitted, the notice of defense will not be subjected to technical rules requiring artful drafting of the person's objections or defenses to the proposed agency action. While formulating any objection or defense encourages specification of the grounds, this rule is necessary to prevent sole reliance upon an absence of specification in the notice of defense to foreclose a person from being heard on the proposed agency action.

Subsection (b) provides for actions the Labor Commissioner may take when there is a failure to timely file a notice of defense or where the person fails to appear at a subsequently scheduled hearing on the merits. This provision is necessary as it identifies the actions the agency may take, including admissions and other evidence, or proceeding by default without scheduling a separate hearing. This procedure is also necessary to provide finality where the respondent business fails to answer to the adverse action and allows the Labor Commissioner to pursue determination of the action without delays when the affected person does not file a notice of action, or files a notice of defense but fails to appear at a scheduled hearing in order to prolong a determination of the proposed agency action.

Subsection (c) provides an exclusive rule for prehearing discovery for agency action to deny an application or suspend/revoke a registration which adopts by reference the procedure specified in Government Code section 11507.6. The adopted process is necessary to provide a uniform procedure for a party to an adverse action proceeding to obtain information from the other party in an orderly manner. This subsection is also necessary to provide reasonable standards for replying to a discovery request and the procedure to compel compliance with a request, including service and time periods for seeking to compel discovery in the event of a failure to comply which shall be determined by a hearing officer in writing. Requiring that the determination of a hearing officer must be in writing is necessary to ensure that a reasoned basis for any determination on discovery exists and is memorialized.

Subsection (d) provides a minimum time period for service of a notice of hearing of at least 10 days prior to the hearing date. The 10 days is a minimum which affords a reasonable time

where cases involve discrete acts or omissions which are the basis of the agency action, but does not foreclose longer periods where more issues are contested. This standard is similar to the minimum 10-day standard for notices of hearing applicable to formal administrative adjudications (Government Code section 11509) and for adverse actions in the garment registration program also administered by the Labor Commissioner. The contents of a notice must substantially comply with the form set forth in Government Code section 11509, which is expressly referenced and is designed to provide necessary and standard information for hearing notices. Notices must also inform the person of the right to request an interpreter for the party or witness, which is necessary due to Labor Code section 105, which requires the Labor Commissioner to provide an interpreter in a hearing conducted by the agency.

Section 13816 (Conduct of Hearing; Rules of Evidence; Role of Hearing Officer) provides standards for conducting hearings, including rules of evidence and the role of the hearing officer for hearings held under this new article. The standards are primarily based on similar provisions in the garment manufacturing regulations that the Labor Commissioner also administers and has found to provide hearing procedures which are efficient to administer and meet due process requirements for providing a fair hearing.

Subsection (a) provides that a hearing shall be conducted by a hearing officer appointed by the Labor Commissioner and is necessary to expressly state the governing rules for any hearing contesting an adverse action against an applicant (denial) or registrant (suspension/revocation) under the subchapter. Similar to other administrative hearings conducted by the Labor Commissioner under other statutes, legal due process requires that a party be provided a fair hearing (*Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731) requiring that the hearing officer who determines the matter is a designated person who is independent of the person who initiated or otherwise determined the proposed adverse action and must conduct a hearing in a fair and independent manner.

Subsection (b) establishes the application of the more relaxed rule in administrative hearings that does not require technical rules relating to evidence and witnesses which are ordinarily required in court proceedings. This establishes a more informal hearing proceeding and is necessary to ensure that the proceeding focuses on substance rather than technical procedure in the presentation of evidence to be considered by the hearing officer. Preserving the application of privileges to protect confidential communications and the general rule of admissibility based upon relevancy is necessary to establish reasonable parameters for inclusion which also protects confidential relationships associated with protected privileged communications.

Subsection (c) adopts the general rule for admissibility of hearsay evidence in administrative hearings, avoids application of technical rules ordinarily applicable to hearsay in court proceedings, and is necessary to allow parties to more readily present relevant evidence.

Subsection (d) provides authority to the hearing officer to control the manner and order for presentation of evidence subject to the more specific standards specified in the following section, 13817, and to rule on excluding evidence in order to allow for an efficient

proceeding, which is necessary to provide a basis for a reasoned decision by the hearing officer that also comports with due process.

Section 13817 (Rights of Parties at Hearing; Taking of Evidence; Rules of Procedure)

provides for rights of a party appearing at a hearing and establishes procedures for the parties and hearing officer who conducts a hearing under this article. The standards are primarily based on similar provisions in the garment manufacturing regulations, which the Labor Commissioner also administers, and are necessary to provide hearing procedures that are efficient to administer and meet due process requirements for providing a fair hearing. Recognizing that the subchapter regulates in a new industry and subjects persons who have not been subject to previous regulation, the Labor Commissioner determined that the rights and standards in this section warrant express provisions to clearly inform affected persons of the standard hearing procedures within the subchapter.

Subsections (a) and (b) provide rules that are necessary to expressly establish rights which are commonly recognized to ensure fundamental fairness of a hearing, by allowing a party to appear in person and by counsel, to call witnesses and cross-examine opposing witnesses, to rebut evidence and present exhibits and other evidence, and requiring oral testimony under oath.

Subsection (c) provides for the admission of written declarations in hearings under the procedure set forth in Government Code section 11514, which the Labor Commissioner adopts as an appropriate and necessary procedure that uses an existing standard for submission of declarations by a party at a hearing.

Subsection (d) provides for recording or transcribing of a hearing which is designed to constitute an administrative record of the hearing proceeding and is necessary in order to provide judicial review of the agency's determination pursuant to section 13815 (requiring a hearing upon timely notice of defense), section 13818 (permitting the aggrieved party to seek judicial review of a decision after hearing), and to comply with Code of Civil Procedure section 1094.5, which requires an administrative record for judicial review.

Subsection (e) provides a procedure for the Labor Commissioner to file an amended or supplemental notice of action (accusation or statement of issues) to account for subsequent information uncovered or obtained following the issuance of the notice of action which generates new charges, but only on condition that the affected person have a reasonable opportunity to prepare a defense to any new charges. The procedure is necessary to allow the Labor Commissioner to fully determine any contested proposed action based on the available evidence which speaks to the person's qualifications for registration.

Section 13818 (Proposed Decision; Decision of Labor Commissioner; Judicial Review)

provides a procedure for preparation of a written decision by the hearing officer following a hearing, time periods for issuance of a decision following review by the Labor Commissioner for final action among specified alternatives that constitute disposition of the agency's action, and a procedure for seeking subsequent judicial review. The provisions are necessary for timely disposition of a case and for the Labor Commissioner to review contested dispositions of matters heard where authority over registration is ultimately vested with the Labor Commissioner.

Subsection (a) requires that the decision prepared by the hearing officer comply with the content requirements specified in Government Code section 11425.50, which is adopted for decisions under this section and establishes a standard for decision content that sufficiently allows for review of the factual and legal basis for the Labor Commissioner's decision and judicial review if sought by the affected person. This subsection provides a reasonably sufficient amount of time (45 days) for the hearing officer to transmit a proposed decision to the Labor Commissioner who may adopt, modify, or remand the proposal or case.

Subsection (b) provides the timing for issuance of a decision (within 60 days of the hearing) and is necessary to provide a reasonably prompt disposition, including review by the Labor Commissioner, or his or her designee. The section further provides a general effective date for a decision which is 30 days after it is delivered or mailed to the affected person unless the Labor Commissioner expresses a different date or grants a stay of execution. Providing authority for the Labor Commissioner to specify an effective date, issuance of a stay or other express conditions is necessary to allow for flexibility appropriate to particular cases.

Subsection (c) provides a procedure through which an aggrieved person may seek judicial review of the Labor Commissioner's decision and is necessary to comply with the constitutional guarantee that administrative decisions must be subject to judicial review since the courts have ultimate authority to determine rights under the law. The procedure to seek judicial review falls under Code of Civil Procedure section 1094.5 (writ of mandate) and the section provides a filing in superior court within 45 days of service of the decision, which is reasonably sufficient to initiate judicial review of the administrative decision which vests jurisdiction of the matter with the appropriate superior court. The language which states the consequence for a failure to file a timely petition is that the administrative decision is final and is necessary to inform the affected person of administrative finality of the decision to which an aggrieved person is required to comply without further administrative review or action.

Proposed Article 5. Recordkeeping

Section 13819 (Employees Covered by Recordkeeping Requirement) provides clarification regarding the employees for whom an employer must keep records as required under Labor Code section 1421.

Subsection (a) provides that the term "employee" in the recordkeeping requirements in Labor Code section 1421 has the same meaning as the term "employee" in Labor Code section 1420(a)(1). This provision is necessary due to some ambiguity regarding the employees for whom an employer must keep records under this statutory provision. The Labor Commissioner proposes that the employees for whom an employer must keep records in this section are the employees covered by the Act. As provided in the definition of "covered worker" in Labor Code section 1420(a), the employees covered by this law are employees who predominantly work as janitors. Therefore, the recordkeeping requirement applies to these janitorial employees.

Subsection (b) is necessary to clarify that the recordkeeping provisions in Labor Code section 1421 that do not specify the type of employee to whom the requirement refers, i.e., wage and wage rate paid each payroll period and any other conditions of employment, will also apply

to employees as the term is used in Labor Code section 1420(a)(1), meaning janitorial employees.

OTHER REQUIRED SHOWINGS

Anticipated Benefits, Government Code Section 11346.2(b)(1)

Implementing Part 4.2 of Labor Code Division 2 by adopting new Subchapter 13, Chapter 6, Division 1, of Title 8 of the California Code of Regulations would provide benefits for both janitorial services workers and their employers. Establishing standardized information in the application stage and other standards and processes regarding registration will inform the public of the agency's standard procedures regarding the registration program and provide for consistent administration of the program by the agency. Workers would be able to view the online list of employers who are legally registered with DLSE and employers would benefit from the standardized process to become legally permitted to conduct business in this industry in California. Uniform procedures for submitting the required application will enable efficient and effective issuance of registration certificates and maintenance of an online registry of janitorial employers, and providing procedures for adverse actions upon applications and registrations will further accomplish the objective of the legislation (AB 1978) to enhance the welfare and protection of janitorial workers in this state. The registration also ensures businesses are compliant with the eligibility requirements, which would have broader impacts, including addressing sexual harassment in the workplace, reducing sexual discrimination in the California labor market overall and promoting social equity generally. Thus, these standardized procedures increase transparency in business and government, and promote fairness and social equity for the workers and employers covered by this law.

Economic Impact Assessment, Government Code Section 11346.2(b)(2)

Because this regulation is not a major regulation, the economic impact assessment required by subdivision (b) of Section 11346.3 is provided below.

Sources Relied Upon, Government Code Section 11346.2(b)(3)

California Economic Development Department Labor Market Info. *Quarterly Census of Employment and Wages (QCEW) Industry Detail* (2016). Accessed 11/30/2017:
http://www.labormarketinfo.edd.ca.gov/qcew/CEW-Detail_NAICS.asp?MajorIndustryCode=1024&GeoCode=06000000&Year=2016&OwnCode=50&Qtr=02
California Economic Development Department Labor Market Info. *Size of Business Data – 2006 – present*. Accessed 11/30/2017:
http://www.labormarketinfo.edd.ca.gov/LMID/Size_of_Business_Data.html

Reasonable Alternatives Rejected, Government Code Section 11346.2(b)(4)

The Labor Commissioner 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 perform specified services, as defined, and businesses who use such janitorial contractors), and that would ensure full compliance with the existing statutes regarding registrations being implemented or made specific by the proposed regulations.

Evidence Regarding Economic Impact on Business, Government Code Section 11346.2(b)(5)

The proposal will not have a significant adverse economic impact on business based on analysis of the associated costs of compliance.

The janitorial employer registration program will immediately impact 5,684 janitorial services organizations who are required to register with the Labor Commissioner. The industry employer estimate is obtained from the Employment Development Department for the particular NAICS or industry code associated with the janitorial services industry (NAICS 56172) that are privately owned.²

California Government Code section 11346.3 defines small businesses as businesses that are independently owned and operated, not dominant in their field of operation, and have fewer than 100 employees. The California Employment Development Department reports that 95.8% of the businesses in California's Administrative and Support Services industry (NAICS 561) have fewer than 100 employees in the third quarter 2016.³ It is estimated that a similar percentage of small businesses in the janitorial services industry will be impacted.

The creation or elimination of jobs within the state, Government Code Section 11346.3(b)(1)(A)

Based on the above analysis regarding the impact of the registration program, DLSE does not anticipate the creation or elimination of jobs within the state attributed to this proposal.

² California Economic Development Department Labor Market Info. *Quarterly Census of Employment and Wages (QCEW) Industry Detail* (2016). Accessed 11/30/2017: http://www.labormarketinfo.edd.ca.gov/qcew/CEW-Detail_NAICS.asp?MajorIndustryCode=1024&GeoCode=06000000&Year=2016&OwnCode=50&Qtr=02

³ California Economic Development Department Labor Market Info. *Size of Business Data – 2006 – present*. Accessed 11/30/2017: http://www.labormarketinfo.edd.ca.gov/LMID/Size_of_Business_Data.html

The creation of new businesses or the elimination of existing businesses within the state, Government Code Section 11346.3(b)(1)(B)

Based on the above analysis regarding the impact of the registration program, DLSE anticipates that the costs and benefits will be borne by existing businesses and will not create or eliminate businesses.

The expansion of businesses currently doing business within the state, Government Code Section 11346.3(b)(1)(C)

Based on the above analysis regarding the impact of the registration program, DLSE does not anticipate expansion of businesses currently doing business within the state attributed to this proposal.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment, Government Code Section 11346.3(b)(1)(D)

Implementing Part 4.2 of Labor Code Division 2 by adopting new Subchapter 13, Chapter 6, Division 1, of Title 8 of the California Code of Regulations would provide benefits for both janitorial services workers and their employers. Establishing standardized information in the application stage and other standards and processes regarding registration will inform the public of the agency's standard procedures regarding the registration program and provide for consistent administration of the program by the agency. Workers would be able to view the online list of employers who are legally registered with DLSE and employers would benefit from the standardized process to become legally permitted to conduct business in this industry in California. Uniform procedures for submitting the required application will enable efficient and effective issuance of registration certificates and maintenance of an online registry of janitorial employers, and providing procedures for adverse actions upon applications and registrations will further accomplish the objective of the legislation (AB 1978) to enhance the welfare and protection of janitorial workers in this state. The registration also ensures businesses are compliant with the eligibility requirements, which would have broader impacts, including addressing sexual harassment in the workplace, reducing sexual discrimination in the California labor market overall and promoting social equity generally. Thus, these standardized procedures increase transparency in business and government, and promote fairness and social equity for the workers and employers covered by this law.