TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT
ADDING SUBCHAPTER 13: JANITORIAL REGISTRATION AND TRAINING
ADDING ARTICLES 1, 2, 3, 4 AND 5

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

FINAL STATEMENT OF REASONS AND UPDATED INFORMATIVE DIGEST

UPDATED INFORMATIVE DIGEST

The Property Service Workers Protection Act (AB 1978, Chapter 373, Statutes of 2016) established a registration program for janitorial services employers and a biennial in-person sexual violence and harassment prevention training requirement. The purpose of these regulations is to implement and interpret AB 1978.

Two bills amending AB 1978 were signed into law after the Notice of Proposed Rulemaking, Initial Statement of Reasons, and Text of Proposed Regulations were issued on April 5, 2019. These bills are Senate Bill ("SB") 83 (Chapter 24, Sections 26-32, Statutes of 2019) and Assembly Bill ("AB") 547 (Chapter 715, Statutes of 2019). The portions of each bill that affect this regulatory proposal are set forth below.[1] Further discussion of the bills and their impact on specific proposed regulatory provisions is included in the chart below that summarizes the modifications made to the proposed regulations and the reasons for those changes.

SB 83. SB 83 became effective on June 27, 2019.

AB 1978 defined "employer" to mean "any person or entity that employs at least one employee and one or more covered workers and that enters into contracts, subcontracts, or franchise arrangements to provide janitorial services." SB 83 amended the definition of "employer" to mean "any person or entity that employs at least one covered worker or otherwise engages by contract, subcontract, or franchise agreement for the provision of janitorial services by one or more covered workers." Consistent with the definition of "covered workers" in Labor Code section 1420(e),[2] which includes employees as well as independent contractors and franchisees who perform janitorial work, this definition captures relationships that go beyond employer-employee and includes sub-contracting arrangements that are common in the janitorial industry.

---

[1] SB 83 and AB 547 amended some of the same provisions of the existing law at Labor Code sections 1420-1434. The provisions of SB 83 that were superseded by further amendments in AB 547 are not discussed here, as they no longer impact this rulemaking.

[2] Labor Code section 1420(a)(1) defines covered workers as a janitor, including individuals who work as employees, independent contractors, and franchisees, as the term in defined in the Service Contract Act Directory of Occupations maintained by the United States Department of Labor.

AB 1978 required employers to provide training in sexual violence and harassment prevention to employees. SB 83 amended this provision to require that training be provided to all covered workers (meaning janitorial employees, franchisees, and independent contractors), not just employees.

AB 1978 required employers to maintain specified wage and hour records of employees. SB 83 amended the recordkeeping requirement to specify that employers must keep a more limited set of records regarding other covered workers as well.

SB 83 added a requirement that effective January 1, 2020, all new applications for registration and renewal of registration shall demonstrate completion of the sexual violence and harassment prevention training requirements by providing a written attestation to the Labor Commissioner that the training has been provided as required.

AB 547. AB 547, which became effective on January 1, 2020, made several additional changes to AB 1978.

AB 1978 required registration or renewal applicants to provide the address and telephone number of the business and, if applicable, the addresses and telephone numbers of any branch locations. AB 547 requires, additionally, that the applicant provide the name of any subcontractor or franchise servicing contracts at the branch locations.

AB 1978 required the Labor Commissioner to issue an official registration form to demonstrate that the registrant has a current and valid registration. AB 547 requires the Labor Commissioner to issue two types of registrations, one for registrants with employees and one for registrants with no employees.

AB 1978 required the Labor Commissioner to maintain an online public database of registered janitorial employers. AB 547 requires the Labor Commissioner to reflect in the online public database of registered janitorial employers whether the registrant is a nonemployee registrant exempt from the requirement to secure workers' compensation coverage under Section 3700 of the Labor Code.

AB 1978 required registration or renewal applicants to list all unpaid outstanding judgments. AB 547 limits the outstanding judgments to unpaid wage and hour final judgments and instances where the applicant has not fully satisfied the terms of an administrative settlement pursuant to the Department of Fair Employment and Housing (DFEH) processes or a final judicial decree for any final judgment for a violation of the California Fair Employment and Housing Act (FEHA).

AB 1978 required registration or renewal applicants to provide any liens or suits pending against them. AB 547 limits the liens or suits to wage and hour suits and pending FEHA claims.

AB 1978 established civil fines of $100 per day up to a maximum of $10,000 for failing to register, and a fine of $2,000 to $25,000 for contracting with an unregistered janitorial employer. AB 547 added an additional civil fine of $10,000 per violation for any material misrepresentation made by an employer in connection with an initial or renewal application.

AB 547 added attestations that an employer is required to make as part of the application and renewal process regarding training compliance. Specifically, AB 547 requires that, effective January 1, 2022, the attestation shall include whether the training was provided by a peer trainer and an explanation as to why a peer trainer was not used if a peer trainer did not provide the required training. AB 547 also provides that an employer will be deemed to be in compliance with the requirement to use a peer trainer to provide the required training if they contracted with a qualified organization that was listed on the agency's website at the time of the training.

UPDATE TO INITIAL DISCLOSURES IN NOTICE OF PROPOSED RULEMAKING

The Labor Commissioner's Office has updated the cost impact of the regulation based on the legislative changes described above:

Cost impacts on a representative private person or business: It is estimated that an additional 324 businesses must register with the Labor Commissioner under the statutorily-mandated registration program due to amended definition of "employer" discussed above. The $500 fee (set by statute independent of these regulations) applies both for an initial registration application valid for one year and for a subsequent annual registration renewal.

Effect on small business: The proposed regulations will affect any small business in California that employs a covered worker or that contracts for the provision of janitorial services provided by covered workers that is subject to regulation and who is required to register with the Labor Commissioner.

UPDATE TO INITIAL STATEMENT OF REASONS

Pursuant to Government Code Section 11346.9(d), the Labor Commissioner's Office (also known as the Division of Labor Standards Enforcement or DLSE) incorporates the Initial Statement of Reasons prepared in this rulemaking. Consistent with Government Code section 11346.2(b)(3), which requires the submission of documents the agency relied upon "in proposing the adoption, amendment, or repeal of a regulation," certain documents listed as relied upon in the Initial Statement of Reasons were not included in the rulemaking file submitted to the Office of Administrative Law because these documents were relied upon for other purposes, not to support the necessity of the regulation. The Labor Commissioner's Office is also supplementing the Initial Statement of Reasons as set forth below.

Supplement to Necessity Provided in the Initial Statement of Reasons

The Labor Commissioner's Office is providing additional information to support the necessity of the proposed regulations:

- Section 13814(a)(1) – This subdivision includes the term "or conditioned" in the sentence: "Proceedings to determine whether a registration shall be revoked, suspended or conditioned shall be initiated by filing an accusation." The phrase "or conditioned" is necessary because the Labor Commissioner may not seek revocation or suspension but instead may seek a conditional limitation on the applicant's license. The word "or conditioned" provides flexibility for the Labor Commissioner to enter into a settlement with a licensee that is "conditioned" upon a future event in applicable situations. This

language provides flexibility for both the Labor Commissioner and the applicant and may benefit the applicant enabling the applicant to retain his/her license. This language is also identical to regulations enacted for Garment Manufacturing Registration at 8 CCR section 13646(b) and Foreign Labor Contractor Registration at 8 CCR section 13859(a)(1). Both of these programs are also administered by the Labor Commissioner.

- Section 13815(c) – This subdivision states in part: "The motion may be decided with or without a hearing at the discretion of the hearing officer." This sentence is necessary because a motion to compel discovery may be simple or complex. In many cases, the hearing officer can determine the merits of the motion based on the pleadings filed without the need for oral argument. In more complex discovery matters, the hearing officer may require an in-person oral argument to determine complex issues. Therefore, for administrative hearing efficiency, the hearing officer requires discretion to ask for a hearing on a motion to compel discovery, when necessary. This language is also identical to regulations enacted for Garment Manufacturing Registration at 8 CCR section 13646(i) and Foreign Labor Contractor Registration at 8 CCR section 13860(c). Both of these programs are also administered by the Labor Commissioner.
- Section 13815(e) – This subdivision contains a sentence stating: "The Labor Commissioner shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing." It is necessary to state "deliver or mail" because there are situations in which regular mail is inadequate. There are times when continued registration by an applicant presents a danger to the public or his/her employees. In these situations the Labor Commissioner cannot afford to wait for service by regular mail and must serve the notice of hearing by personal delivery by another person or third-party delivery service (e.g., UPS, FedEx, etc) that can attest or verify actual delivery. The ability to personally serve the notice of hearing serves the public interest and provides the applicant with applicable due process. This language is also identical to regulations enacted for Garment Manufacturing Registration at 8 CCR section 13646(j) and Foreign Labor Contractor Registration at 8 CCR section 13860(d). Both of these programs are also administered by the Labor Commissioner.
- Section 13816(c) – This subdivision includes the statement: "An objection is timely if made before the submission of the case." This sentence is necessary because it enables either party to preserve their objections to hearsay at any point prior to the hearing officer taking the matter under submission, which is important to provide a more orderly presentation by the parties when providing evidence and testimony. This rule does not penalize a party for failing to comply with technical rules of evidence and adopts the general rule for admissibility of hearsay evidence in administrative hearings. This language is also identical to regulations enacted for Garment Manufacturing Registration at 8 CCR section 13651(b) and Foreign Labor Contractor Registration at 8 CCR section 13861(c). Both of these programs are also administered by the Labor Commissioner.
  Section 13818(b) – This subdivision contains the following two sentences: "The decision shall become effective 30 days after it is delivered or mailed to the respondent, unless the decision provides for an earlier date or a stay of execution has been granted by the Labor Commissioner. A stay of execution may be included in the decision or granted by the Labor Commissioner at any time before the decision becomes effective and may require

that the respondent comply with specified conditions or terms of probation." The first sentence is necessary because it provides the authority and flexibility for the Labor Commissioner to specify an earlier effective date as an exception to the 30-day period if necessary for the protection of the public or the applicant's employees. The second sentence is necessary because it provides the authority and flexibility for the Labor Commissioner to issue a stay of execution in appropriate cases which may benefit the applicant enabling the applicant to retain his/her license. Both sentences are necessary for the Labor Commissioner to tailor a decision based on specific circumstances that further the protective purposes of the registration program and the timing of any relief under the decisions. This language is also identical to regulations enacted for Garment Manufacturing Registration at 8 CCR section 13646(l)(3) and Foreign Labor Contractor Registration at 8 CCR section 13863(a)(3). Both of these programs are also administered by the Labor Commissioner.

Supplement to Initial Statement of Reasons Regarding Analysis for the Determination There Would Not Be a Significant Adverse Impact on Business

The analysis explaining the Labor Commissioner's determination that this regulatory proposal would not cause a significant adverse impact on business is supplemented as follows (*updates in italics*):

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. *Labor Code Section 1427 requires a $500 initial application fee and $500 annual fee thereafter. This is the primary source of economic impact for janitorial businesses.*

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.[3] *During the first six months that the new registration requirement was in effect, 324 janitorial contractors with no employees registered with the Labor Commissioner's Office. Adding the 324 to the original number (5,684) results in 6,008 total impacted businesses.*

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

[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/CEWDetail NAICS.asp?MajorIndustryCode=1024&GeoCode=06000000&Year=2016&OwnCode=50&Qtr=02

fewer than 100 employees in the third quarter 2016.[4] It is estimated that a similar percentage of small businesses in the janitorial services industry will be impacted.

Economic Impact Assessment, Government Code GC 11346.2(b)(2)(A) and 11346.3(b)(1)(A)-(D)

The Labor Commissioner determined that no businesses will be created nor eliminated as a result of the regulations. While the proposed regulations will impact businesses that fall under the registration requirement, the regulatory action primarily implements, clarifies, and standardizes requirements set by statute or that are necessary to implement statutory prohibitions and requirements and will not significantly increase statutory obligations.

Similarly, no jobs will be created nor eliminated as a result of these regulations. Since only persons who are registered would be permitted to perform regulated activities as a direct result of legislation (AB 1978 [2016], AB 547 [2019], and SB 83 [2019]) being implemented by these regulations, any elimination of jobs previously held are the result of the legislation and not of the regulations. To the extent that any job was previously held by a person working in a janitorial business performing regulated activity the job is not necessarily eliminated and may be performed by an individual for a business that qualifies for and obtains a registration.

The Labor Commissioner determined that these regulations will create a more level playing field for businesses in this industry who will be required to register but will not likely lead to expansion of businesses.

Implementation of standardized registration procedures for businesses in the janitorial industry enhance the Labor Commissioner's ability to identify janitorial businesses in enforcement of labor laws in administrative and court actions for wage and hour violations which will improve the safety and welfare of workers performing janitorial services throughout the state.

Based on the above facts and data regarding the impact of the registration program, DLSE has determined that there is no significant adverse impact on business.

Other Updates to Initial Statement of Reasons

Shortly after the Notice of Proposed Rulemaking was published in the Notice Register on April 5, 2019, the agency learned that the address where the public hearing was scheduled to take place in Los Angeles on May 21, 2019 was listed incorrectly. (The incorrect address was a previous location of the state office building close to where the hearing was actually going to take place.) The agency issued a Notice of Correction explaining the error and providing the correct address on April 15, 2019, updated its website to list the correct address on April 15, 2019, and published the Notice of Correction in the Notice Register on April 19, 2019. In addition, prior to the day of the hearing, the agency attempted to post the Notice of Correction at the address that was listed incorrectly in the original Notice, but that address (107 South Broadway, Los Angeles) no longer

[4] 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

exists as it has been replaced with a different building that has a different address. Agency staff advised the personnel staffing the security desk of that building regarding the hearing and the correct address, so that members of the public who wished to attend the hearing could be directed to the correct address.

Following the agency's review and consideration of comments provided during the 45-day comment period and at the public hearing, and following subsequent legislative amendments to the law that is the subject of these regulations, the agency issued a Notice of Modifications to Text of Proposed Regulations. These modifications were intended to incorporate changes as a result of the public comments and as a result of changes to the law made by SB 83 and AB 547. A 15-day period for comment was provided pursuant to Government Code section 11347.1. Following additional consideration by the agency over the issue of clarity in proposed Section 13811.5, which provides the criteria for the issuance of a temporary extension of an existing registration, the agency further amended this proposed section to change the Labor Commissioner's exercise of authority from discretionary to mandatory when issuing a temporary registration. The proposed language ensures that janitorial contractors do not experience difficulties in contracting for business due to an expired registration based on delays in the processing of a renewal application that are not the fault of the registrant. The proposed language in subsections (b) and (d) also more clearly provide the circumstances for issuing a temporary extension in both mandatory and affirmative terms. A second 15-day period for comment was provided pursuant to Government Code section 11346.8(c).

The following sections were revised substantively as set forth below.

Modifications Resulting from the 45-day Public Comment Period, Public Hearing, and Legislative Changes (April 5, 2019 – May 20, 2019, Public Hearing May 21, 2019)

Section/ Subsection	Modifications	Justification
13810(a)(2)	Subsection (a)(2) is modified to require that applicants provide the physical address, a mailing address, if different, and an email address for receiving electronic mail for the applicant's main or central location as well as any separate branch locations operated under the same legal entity.	The purpose of this change is provide an explanation of the statutory term "branch" to mean separate locations operated under the same legal entity as the applicant. It is necessary to include this text in order to provide applicants with an understanding of what they need to include for their branch locations, particularly because Labor Code section 1429(a)(4) as amended by AB 547 now requires them to provide the name of any subcontractor or franchise servicing their contracts, including at branch locations. In addition, this provides the LCO with sufficient information regarding the branch locations associated with the

Section/ Subsection	Modifications	Justification
		same legal entity as the applicant's main or central location so that each branch location can be listed on the registration certificate.
13810(a)(4)	Subsection (a)(4) is modified to request additional information regarding any unpaid wage and hour final judgments that remain outstanding, and to delete the last part of the sentence that would have requested information regarding any unpaid wages to any employee.	This change is necessary to conform to the revised statutory language in Labor Code section 1429(a)(8)(A)(ii) regarding final wage and hour judgments, as amended by AB 547.
13810(a)(5)	New subsection (a)(5) is proposed to implement the new requirement in Labor Code section 1429(a)(8)(A)(ii) as amended by AB 547 requiring applicants to provide information regarding unresolved matters arising under the Fair Employment and Housing Act.	This provision is necessary for the LCO to evaluate whether the applicant has failed to satisfy the terms of an administrative settlement as part of the Department of Fair Employment and Housing's processes, or a final judicial decree for any final judgment for a violation of the Fair Employment and Housing Act.
13810(a)(8)	Subsection (a)(8) is modified to clarify that an applicant need only provide the number of employees used to provide janitorial services if the applicant has one or more employees.	This clarification is necessary because SB 83 amended the definition of "employer" in Labor Code section 1420(e) to mean in "any person or entity that employs at least one covered worker or otherwise engages by contract, subcontract, or franchise agreement for the provision of janitorial services by one or more covered workers." As a result, some of the applicants who are "employers" for purposes of this registration program may not actually have any employees, as "covered workers" include independent contractors and franchisees, pursuant to the definition in Labor Code section 1420(a)(1).
13810(a)(11)	Subsection (a)(11) is modified to clarify that applicants who employ one or more workers are required to provide proof of workers' compensation coverage.	This clarification is necessary because SB 83 amended the definition of "employer" to mean in "any person or entity that employs at least one covered worker or otherwise engages by

Section/ Subsection	Modifications	Justification
		contract, subcontract, or franchise agreement for the provision of janitorial services by one or more covered workers." As a result, some of the applicants who are "employers" for purposes of this registration program may not actually have any employees, as "covered workers" include independent contractors and franchisees, pursuant to the definition in Labor Code section 1420(a)(1). Applicants are only exempt from the requirement to provide proof of workers' compensation coverage if they truly do not employ any employees.
13810(a)(12)	New subsection (a)(12) is proposed to require that applicants indicate whether they have registered previously or had a registration suspended or revoked under the same or another business name, and if so, the business name and registration number.	This provision was adopted in response to a comment, where the LCO agreed with the commenter that this information aids the LCO's evaluation of the application and whether the prior registration has any impact on the applicant's ability to meet the conditions set forth in Labor Code sections 1429 and 1430 and this subchapter.
13810(a)(13)	New subsection (a)(13) was proposed in order to implement and make specific a new attestation requirement that was added by SB 83 and further refined by AB 547. SB 83 added a requirement to Labor Code section 1429(a)(10) that the applicant demonstrate completion of the sexual violence and harassment prevention training requirement prescribed by the Labor Commissioner and developed pursuant to Labor Code section 1429.5 by providing a written attestation to the Labor Commissioner that such training has been provided as required. AB 547 then added that, effective January 1, 2022, the attestation must include	The information requested under this provision is necessary for the LCO to verify compliance, particularly because the employer may not be the entity actually providing the training even though it is arranging for or ensuring that the training is provided as required. Under AB 547, a qualified organization will provide a peer trainer to conduct the training for nonsupervisory workers rather than the employer providing the training. Additionally, an employer may ensure that the training is provided to covered workers by another janitorial employer, e.g., a sub-contractor or a franchisee. SB 83 amended the definition of "employer" to mean "any person or entity that employs at least one covered

Section/ Subsection	Modifications	Justification
	whether the training was provided by a peer trainer and an explanation as to why a peer trainer was not used if a peer trainer did not provide the required training. In order for the Labor Commissioner's Office to ascertain whether the training was provided as required, the Labor Commissioner will gather as part of the attestation whether the applicant provided the training or whether the training was provided by another entity, the name of the janitorial employer or entity that provided the training, and the dates on which training took place. In addition, beginning January 1, 2022, additional information regarding the peer trainer and the qualified organization that provided the peer trainer will be gathered.	worker or otherwise engages by contract, subcontract, or franchise agreement for the provision of janitorial services by and one or more covered workers." This broad definition captures relationships that go beyond employer-employee, and includes sub-contracting arrangements that are common in the janitorial industry. As a result, there may be a chain of contracts or agreements among several "janitorial employers" for purposes of cleaning any particular location, and the training obligation for each employer would run to the workers and their supervisors engaged in providing the janitorial services. For example, there could be a large janitorial contractor that bids on a cleaning contract, and then they subcontract out to another janitorial contractor, who may also contract out to a third contractor. In such a circumstance, there may be three registered "employers," each of whom is required to provide sexual harassment training to the nonsupervisory janitors and their supervisors. These workers could be providing janitorial services for all three employers simultaneously because the work is being done at the location covered by each of the three applicable contracts. The intent of the companion training regulation (that is proposed in a separate rulemaking) is not to require that a worker receive the training separately (i.e., three times) by each employer in order to fulfill the training requirement. Rather, the intent of the regulation is to require that the training be conducted at least once every two years or within six months of a worker assuming a position. Janitorial employers can comply by ensuring that training is

Section/ Subsection	Modifications	Justification
		completed by any employer in the chain, as long as the training is provided in the required timeframe for each covered worker. Therefore, the LCO will require the employer to list the entity that provided the training if it was not the employer, and the dates of the training, as part of the attestation demonstrating that the training has been completed as required.
13810(b)	Subsection (b) is modified to clarify that the registration fee in Labor Code section 1427 may be paid in several different ways, and that a service fee may be charged for vendor-processed transactions where the vendor retains the service fee, and the fee does not constitute revenue for the Labor Commissioner's Office.	The purpose of this modification is to provide notice to applicants that vendor-processed transactions may be associated with a service fee. This is necessary to address an operational issue for the LCO whereby the agency has not able to retain the full amount of the registration fee due to payment of service fees to third-party vendors.
13811(a)	Subsection (a) is modified to indicate that the Labor Commissioner will issue the appropriate Registration Certificate depending on whether the applicant has employees, as there will be a Registration Certificate for registrants with employees and a Registration Certification for registrants without employees.	This modification is necessary to implement the new requirement in AB 547, codified at Labor Code section 1425, that the LCO "shall issue two types of registrations, one for registrants with employees and one for registrants with no employees."
13811(c)(3)	Subsection (c)(3) adds "registrant's branch locations" to the list of information that will be included on the registration certificate.	This modification is necessary to include branch locations on the certificate to create an official record of registration status for each location.
13811(c)(4)	New subsection (c)(4) was proposed to include on the registration certificate whether the registrant is a non-employee registrant exempt from the requirement to secure workers' compensation coverage.	This provision further implements the new requirement in AB 547, codified at Labor Code section 1425, that the LCO will issue two types of registrations – one for registrants with employee and one for registrants with no employees. The purpose of issuing two types of registrations is to indicate the very limited circumstances in which a

Section/ Subsection	Modifications	Justification
		janitorial registrant would be exempt from the requirement to secure workers' compensation coverage where that business does not employ one or more employees. Including this information on the registration certificate – and in the online registry – underscores the narrow allowance for not having workers' compensation and makes clear to the public which type of registration that business has.
13811.5	This new section was proposed to allow the Labor Commissioner to issue a temporary registration extension where a complete renewal application is submitted at least 30 days prior to the expiration date of the registration and is otherwise eligible for renewal, but the Labor Commissioner's Office has not yet issued the renewal. The provision allows for the issuance of a temporary registration that extends the validity period of a registration for up to 90 days in certain circumstances, at the Labor Commissioner's discretion.	This section was established in response to a comment regarding the potential need for an extension of the validity dates of a registration if there is a delay in processing renewal applications. In these situations, it would be necessary to provide for a temporary extension so that janitorial contractors would not experience difficulties in contracting for business due to an expired registration date in the online registry. The LCO proposed a 90-day extension because this time period has proven to be operationally sound based on the LCO's administration of the temporary or provisional license in the Farm Labor Contractor, Garment, and Talent Agency licensing programs.
13811.5(a)	Subsection (a) would require that the renewal application be submitted at least 30 days prior to the expiration date of the registration, along with the applicable fees and proof of worker's compensation insurance.	This subsection is necessary because the LCO can only process a temporary registration extension that is filed at least 30 days in advance; operationally any dates closer to the expiration date would not allow sufficient time for processing, and might encourage applicants to file for an extension at the last minute. In addition, two basic requirements would have to be met in order to warrant extending the registration: payment of the registration fee and proof of current worker's compensation insurance, as applicable.

Section/ Subsection	Modifications	Justification
13811.5(b)	Subsection (b) would condition the temporary registration extension on the fact that the renewal applicant has not failed to provide any missing items that the Labor Commissioner's Office has requested in order to process the renewal application.	This subsection is necessary because only renewal applicants that have met all of their obligations warrant a registration extension. If a renewal applicant has failed to establish eligibility for renewal due to their own failure to act, a temporary extension is not appropriate.
13811.5(c)	Subsection (c) requires the renewal applicant to be in good standing with the Secretary of State.	This subsection is necessary in order to ensure that businesses that have been suspended by the Secretary of State are not given authorization to continue their registration period.
13811.5(d)	Subsection (d) sets out the final condition for the temporary registration extension, which is that the renewal application processing has not been completed by the Labor Commissioner's Office.	This provision is necessary to clarify that the temporary registration extension is only warranted due to a delay on the part of the LCO, not on the part of the renewal applicant.
13812(a)(3)	Subsection (a)(3) is proposed in order to reflect in the online registry when a person or entity was issued a temporary registration, and the validity dates of the temporary registration.	The purpose of this new provision is to ensure that the online registry includes all relevant information regarding registration status. This is necessary because in instances where a registration expires, the public needs to know whether a temporary registration has been issued in order to continue to be able to contract lawfully with that janitorial business.
13812.6	A new section was proposed in order to define what constitutes a "violation" for purposes of Labor Code section 1432(c), whereby a material misrepresentation made in connection with an initial or renewal application is subject to a $10,000 civil penalty. The Labor Commissioner is proposing to treat each individual material misrepresentation as an independent violation that is subject to a $10,000 civil penalty.	This provision is necessary to implement and interpret a new civil penalty enacted as part of AB 547. The LCO believes that this is the best interpretation of the statutory provision, which states that the penalty for making "a" material misrepresentation applies "per violation." Alternatively, the statute could be interpreted to mean that where multiple misrepresentations are made on any particular application, "per violation" means "per application." The LCO does not view this alternative as being consistent with the plain language of the statute.

Section/ Subsection	Modifications	Justification
13813(c)	Subsection (c) is amended to substitute the word "registrant" for "person," to add denial and suspension periods, to add the word "final" before "judgments," and to specify that the laws applicable to janitorial employers are those set forth in Division 2, Part 4.2 of the Labor Code.	Substituting "registrant" for "person" is necessary to clarify that this may be a business entity, not an individual. Adding denial and suspension periods to the sentence that explains that a registrant whose registration is revoked may apply for a new registration upon expiration of the revocation ensures that registrants who are subject to denial and suspension, in addition to revocation, may apply for a new registration at the end of those periods. Adding "final" before "judgment" makes this bar to registration consistent with the bar to registration in Labor Code section 1430 and the considerations regarding wage and hour judgments in Labor Code section 1429(a)(8)(A)(ii), which are all final determinations. As noted by a commenter, it is necessary to reflect that a judgment that is final, and not subject to appeal, in order to be a bar to registration. Finally, the modification specifying which laws are applicable to janitorial employers is intended to clarify, in response to a comment, which laws are applicable to janitorial employers and must be complied with in order to regain registration status after a denial, suspension, or revocation period. The LCO proposed to specify that, following such a period, a registrant must come into compliance with all laws applicable to janitorial employers as set forth in Division 2, Part 4.2 of the Labor Code. This Part of the Labor Code that establishes the janitorial registration and training program sets forth numerous laws with which janitorial employers must comply. By providing this clarification, other laws that are not referenced in this Part would not prevent a janitorial

Section/ Subsection	Modifications	Justification
		registrant from renewing their janitorial registration.
13815(d)	New subsection (d) was added to address a failure to produce records that are required to be maintained to substantiate compliance under Division 2, Part 4.2 of the Labor Code pertaining to the janitorial registration and training program, pursuant to a request by the Labor Commissioner. Failure to produce records would be subject to the provisions of Labor Code section 1174.1, which includes an evidentiary sanction.	This provision is necessary to incorporate the existing recordkeeping enforcement mechanism under section 1174.1 – which is applicable to payroll, time and employment records employers are regularly required by law to maintain, and which includes evidentiary sanctions for failure to produce required records that may be imposed at any administrative hearing or writ proceeding contesting a citation. This type of recordkeeping enforcement mechanism is necessary to ensure that the LCO can access required records, and to maintain the efficiency and fairness of administrative proceedings.
13819(c)	New subsection (c) was added to clarify that the phrase "all other covered workers" in Labor Code section 1421(f) does not refer to employees, and that it refers only to the other covered workers defined in Labor Code section 1420(a)(1) -- meaning an independent contractor or franchisee working as a janitor.	The purpose of this new text is to provide clarification regarding the new recordkeeping provision in SB 83, codified at Labor Code section 1421(f), that applies only to "other covered workers." It is necessary to provide this clarification because SB 83 added a separate and less stringent recordkeeping requirement for non-employee covered workers, namely independent contractors and franchisees.

Further (Second) Modification to Address Clarity Issue in Proposed Section 13811.5 (May 28, 2020 – June 13, 2020)

Section/ Subsection	Modifications	Justification
13811.5	This section was amended to remove discretion by the Labor Commissioner's office when providing a temporary registration extension where a complete renewal application is submitted at least 30 days prior to the expiration date of the registration and is otherwise eligible for renewal, but	The purpose of this amendment is to change the Labor Commissioner's exercise of authority from discretionary to mandatory when issuing a temporary registration that extends the period (date) of an existing registration. The section, as modified, would require an extension if all of the listed criteria are met in order to ensure that janitorial

Section/ Subsection	Modifications	Justification
	the Labor Commissioner's Office has not yet issued the renewal. The amended provision adds the word "shall" and now **requires** the issuance of a temporary registration that extends the validity period of a registration if the applicant meets all of the enumerated criterion listed in Labor Code section 13811.5 subsections (a) through (d).	contractors do not experience difficulties in contracting for business due to an expired registration based on delays in the processing of a renewal application that are not the fault of the registrant. The Labor Commissioner's issuance of the temporary registration extension will more effectively enhance the administration of the program requiring annual registrations and avoid time gaps where the status and qualifications of the registrant show no apparent basis for disqualification or denial of their registration status.
13811.5(b)	Subsection (b) was amended to state the criterion in positive terms for purposes of clarity.	The purpose of this change is to more clearly state the criterion in more positive terms. This modification does not change the meaning of the subsection but more simply states in the affirmative the significance of submission of all items the Labor Commissioner has requested under the application or other specific request in connection with the renewal application. The subsection, as modified, ensures that any delay in processing is not based on any fault of the registrant applying for renewal.
13811.5(d)	Subsection (d) was amended to clarify that an applicant shall receive a temporary extension only if the Labor Commissioner's office failed to process the application prior to expiration of the preexisting license.	The purpose of this change is to clarify that issuance of temporary registration extensions are truly based on delays in the processing of renewal applications by the Labor Commissioner occurring prior to the expiration of a valid registration and that the temporary extension does not create a different process for lapsed registrations or otherwise supplant the basic registration requirements in Section 13810 where there is no currently valid registration.

Summary and Response to Written and Oral Comments[5] Resulting from the 45-Day Public Comment Period

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
Section 13810 – Application for Registration		
a. Section 13810		
Sandra Diaz, Service Employees International Union, United Service Workers West (hereinafter "SEIU USWW")	Make the following addition to the regulatory text in section 13810: "Employee" has the same meaning as "covered worker" as defined in Labor Code section 1420(a) and includes full-time, part-time, and temporary janitorial workers.	The LCO declines to adopt the proposed modification because it is inconsistent with the statute. "Covered worker" is defined in Labor Code section 1420(a) to mean a janitor, and it includes employees, independent contractors, and franchisees. It is clear from this definition that an employee is only one subset of "covered worker." Therefore, the definition of "employee" cannot have the same meaning as "covered worker."
Sandra Diaz, SEIU USWW	Make the following addition to the regulatory text in section 13810: "Employer" has the same meaning as in Labor Code section 1420(e).	The LCO declines to adopt the proposed modification because it is duplicative of the statute and not necessary to repeat in this section pertaining to application requirements.
Stephen C. Dwyer, American Staffing Association	Staffing firms should not be considered janitorial "employers" who are required to register and to provide sexual harassment training. Staffing firms function as intermediaries that provide temporary employees to clients for use in the clients' trades or businesses. Stated differently, staffing firms are in the business of finding and screening qualified candidates and assigning temporary and contract workers to provide special assistance in cases of employee absences, special projects, or seasonal	The LCO declines to make the proposed modification to create a regulatory provision that would exempt staffing firms from the requirements of this law because the statutory definition of "employer" - which is the trigger for the law's registration and training

[5] Comments made at the public hearing on May 21, 2019 are designated as "PHT" (Public Hearing Transcript), followed by the pages and lines of the public hearing transcript where the comments are located.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	workloads. Staffing firms do not, however, provide the underlying services rendered by the temporary workers. Rather, such firms recruit, screen, hire, employ and assign employees who render services, on a temporary and contract basis, to generally work under the supervision of clients. Although staffing firms routinely employ and assign employees such as lawyers, accountants, and doctors, staffing firms are not regulated or viewed as law firms, accounting firms, or medical practices. To do so would produce anomalous results, and to regulate California staffing firms as janitorial contractors would produce similar results and reflect a fundamental mischaracterization of the services such firms render. That laws such as California's janitorial service registration and harassment training law should be inapplicable to staffing firms is reflected by a decision by a California appeals court, which ruled that staffing firms in the business of assigning laborers to be supervised by construction contractors were not required to be licensed as construction contractors. See Contractors Labor Pool, Inc. v. Westway Contractors, Inc., 61 Cal.Rptr.2d 715 (Ct. Appeal, 2d Dist., 1997). This ruling was subsequently codified in the California statutes. California Business & Professions Code, Chapter 9, Section 7026.1. In addition to the fact that staffing firms do not render janitorial services, there is no public policy reason to regulate them as such, particularly since their temporary workers already are required to receive sexual harassment training pursuant to SB 1343, signed into law last year. Similarly, staffing firms already maintain the records referenced in Section 13819 and articulated in Labor Code 1421. Therefore, the final rules should make clear that the janitorial services law's requirements do not apply to a temporary service employer, as defined in Labor Code section 201.3(a)(1).	requirements - does not allow for such an exemption. The statute provides only one exclusion from the definition of "employer," and that is for "an entity that is the recipient of the janitorial services." (As of SB 83, eff. 6/27/19.) The LCO interprets this to mean that an entity that hires a janitorial employer, as defined in the law, to provide janitorial services for that entity, is not deemed to have "engage[d] by contract, subcontract, or franchise agreement for the provision of janitorial services." This would apply, for example, to a restaurant that hires a janitorial business to provide cleaning services for the restaurant. This exclusion would not apply to a staffing agency that contracts to provide janitorial services through use of janitorial workers.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
Elena Dineen, Maintenance Cooperation Trust Fund (hereinafter "MCTF") (also in PHT p. 7, lines 2-21)	The regulations should make clear that access to the registry is available only to employers who actually comply with the statutory requirements of Labor Code 1420-1429. The proposed regulations should clarify the actual Labor Code statute that defines an employer as: (e)(1) "Employer" means any person or entity that employs at least one employee and one or more covered workers and that enters into contracts, subcontracts, or franchise arrangements to provide janitorial services. Labor Code 1429(7) further clearly states that: The policy number, effective date, expiration date, and the name and address of the carrier of the applicant business' current workers' compensation coverage. The intent of the statute is clear, the registry is meant to establish a consistent standard that all janitorial employers that fit within the statutory definitions must comply with in order to operate a business. If a business provides cleaning services but does not fit the statutory definition of employer nor comply with the requirements laid out in Labor Code section 1429, then they are NOT required to register. Allowing such business to register provides a loophole for businesses that actually are NOT IN COMPLIANCE with the statutory requirements to provide the FALSE APPEARANCE OF COMPLIANCE which undermines the purpose and intent of the registry. The regulations should make clear that this is not permitted.	The definition of "employer" was revised by SB 83, which became effective on June 27, 2019. The new definition of "employer" is the following: "Employer" means any person or entity that employs at least one covered worker or otherwise engages by contract, subcontract, or franchise agreement for the provision of janitorial services by one or more covered workers. The term "employer" includes the term "covered successor employer" but does not include an entity that is the recipient of the janitorial services. (Labor Code section 1420(e)(1)) This definition encompasses janitorial contractors that act as brokers or "middlemen" to arrange for janitorial services, and who may not have any employees of their own. AB 547 (eff. Jan. 1, 2020) recognizes that this new definition of "employer" encompasses some "employers" that do not have employees, and would therefore not be required to secure workers' compensation under Labor Code section 3700. Under AB 547, the LCO is required to issue two types of registrations, one for registrants with employees and one for registrants without employees. Further, only employers that employ one or more worker and are required to secure workers'

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
		compensation insurance under section 3700 are required to provide proof of workers' compensation insurance. The online registry will reflect that some janitorial contractors are registered as non-employee registrants that do not have workers' compensation. These statutory changes effectively address the commenter's concern. As such, the LCO declines to adopt the suggested modification.
Elena Dineen, MCTF (also in PHT p. 7, lines 22-25; p. 8, lines 1-13)	Require janitorial employers to provide the physical address of each location at which they are contracted to perform janitorial services. Add language to Section 13810(a): <u>for each location at which the applicant currently provides janitorial services, provide the physical address and mailing address, if different.</u> Janitorial contractors often contract with a business to provide janitorial services at multiple physical locations for a single business. An individual janitor may be required to work at multiple locations for the same business in a single shift or work week. Additional language is necessary in the regulations to ensure complete and accurate information is collected about every location in which an applicant may perform services for a business.	The LCO appreciates the comment and agrees that janitorial contractors often contract with a business to provide janitorial services at multiple physical locations, and that an individual janitor may be required to work at multiple locations for the same business in a single shift or work week. The LCO also agrees that having complete and accurate information about every location in which an applicant may perform services for a business is consistent with the purpose of the registration program. However, the LCO is currently unable to efficiently incorporate and operationalize all of this information in the online registration application. For this reason, the LCO declines to adopt the proposed modification. However, the LCO notes that there is a recordkeeping provision in a separate

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
		rulemaking, Enforcement of Client Employer Liability under Labor Code section 2810.3, which requires a labor contractor to keep records of each client employer for which workers were provided by the labor contractor to perform services, including the business name of the client employer and address of the worksite or premises where labor, work, or services were performed for the client employer. This recordkeeping requirement will help to address the commenter's concern.
b. Section 13810(a)		
Sandra Diaz, SEIU USWW (also in PHT p. 17, lines 7-14); Elena Dineen, MCTF (also in PHT p. 8, lines 14-25; p. 9, lines 1-6)	Make the following addition to the regulatory text in section 13810(a): <u>whether the applicant has registered previously or had a registration suspended or revoked under the same or another business name and, if so, the business name and registration number</u>. Unlawful operators in the underground economy use many tactics to avoid accountability and continue exploiting workers. An unscrupulous contractor may change the name of the business, but remain in operation, in order to avoid liability for unpaid wages or existing judgments	The LCO agrees that disclosure of whether the applicant has registered previously or had a registration suspended or revoked under the same or a different business name is useful information in the application evaluation process, particularly where unscrupulous employers have ceased operations under a business name where violations or liability was incurred, and reopened under a different business name in order to avoid liability and accountability. The regulations have been modified to adopt this proposed modification.
c. Section 13810(a)(4)		
Ben Ebbink, California	The proposed section requires an applicant for registration to provide information regarding	The LCO revised this portion of the proposed regulation to

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
Chamber of Commerce, Building Owners and Managers Association, California Business Properties Association, California Hospital Association, California Restaurant Association, North Orange County Chamber (hereinafter "California Chamber of Commerce")	judgments due to current or former employees that remain unpaid. Labor Code Section 1430(a) provides that the Division shall not approve the registration or renewal of an applicant if the employer has not fully satisfied any "final judgment" for unpaid wages. The language of this proposed section is unclear and should be amended to conform to Labor Code section 1430(a) and specify that information must only be provided regarding final judgments where all opportunity to appeal has lapsed.	conform to the amendment that AB 547 made to Labor Code section 1429(a)(8)(A)(ii) to specify that information regarding unpaid final wage and hour judgments that are outstanding be provided as part of the application process. This change adopts, in effect, the commenter's proposed modification, harmonizing this portion of the statute with the language noted by the commenter in Labor Code section 1430(a).
d. Section 13810(a)(5)		
Kathryn A. Rookes, Jan-Pro Franchising International, Inc.	Regulation § 13810(a)(5) requires disclosure of any contribution amounts assessed by the Employment Development Department that remain due and unpaid. I am asking for clarity on whether the contributions assessed have been determined by final judgment. I am aware of several situations in which the EDD assessed contributions on businesses that, through the prescribed appeal process, were ultimately determined not to be appropriately assessed. While the appeal process is pending, contributions might not be paid, which would appear to prevent an application from obtaining a valid registration. I ask that the regulations be clarified to provide that unpaid assessments be by final, unappealed determination. If registration under is denied while an EDD assessment is under appeal, the denial will unfairly penalize an applicant and will have a chilling effect on an applicant's decision to appeal an unfair assessment.	The LCO declines to modify the regulation at section 13810(a)(5) to clarify that Employment Development Department (EDD) contributions assessed must have been determined by final judgment because the statute at Labor Code section 1429(a)(8)(A) requires applicants to submit information regarding unpaid taxes without qualification, meaning the statute does not require the assessment to be a final judgment and in fact requires the LCO to evaluate this information as part of registration regardless of finality. However, the LCO

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	In addition, I ask that the regulations clarify that assessments due under an approved settlement agreement with the EDD, for which payments are timely made in accordance with the settlement agreement, not be grounds for denial of registration. EDD assessments are not always the result of an intentional failure to pay. In some cases, the EDD has expanded the scope of entities on which assessments are due. In these situations, contributions will not be determined to actually be due until the appeals process has been completed. Once finalized, an entity may be subject to several years of contributions, as the EDD appeal process is a lengthy process. In these situations, the entity and the EDD may enter into a settlement agreement under which the entity agrees to make payments over time. As long as the entity is timely making the payments required under the settlement agreement, the entity should not be denied registration. Denial of registration in these circumstances will unfairly penalize an applicant that is making a good faith effort to comply with the law and the settlement agreement.	notes that Labor Code section 1430(b) only bars registration based on outstanding EDD assessments if the EDD assessment has become final. Therefore, the commenter's concern regarding a denial based on a non-final EDD assessment is not well-founded. Regarding the commenter's second proposed modification to clarify that registration will not be denied when payments are being made on a timely basis pursuant to an approved payment agreement, the LCO recognizes that there is tension between Labor Code section 1429(a)(8)(B), which allows for consideration of payment agreements by requiring applicants to submit information regarding existing payment agreements, and Labor Code section 1430, which appears to bar registration unless all unpaid wages, unemployment insurance and other taxes are fully satisfied. The LCO has determined that the two statutory sections must be harmonized in favor of registering employers who are meeting their obligations under an approved payment agreement. The janitorial registration program is aimed at bringing janitorial employers out of the underground economy and ensuring that they meet basic

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
		requirements in order to operate responsibly in the state. If the LCO were to not allow janitorial businesses to register if they are making timely payments under an approved payment plan, it would discourage payment agreements and make it much more likely that workers would not receive any restitution for their unpaid wages, and the state would be less likely to receive those payroll taxes. In sum, although there is some statutory language indicating an intent to prohibit registration of any contractor that has past violations -- even those they are remedying -- the LCO believes it is more consistent with the legislative intent to encourage full satisfaction by allowing businesses to operate and pay off debts. The LCO declines, however, to clarify in the regulations that timely payment under an approved settlement agreement is acceptable because the regulations as currently written do not preclude such a consideration.
e. Section 13810(a)(8)		
Ben Ebbink, California Chamber of Commerce	This proposed section requires an applicant for registration to provide information for each subcontractor, other independent contractor, or franchisee the applicant uses, including "the number of individuals each identified entity uses to perform janitorial services for the applicant."	The LCO declines to delete this section. In the LCO's enforcement experience in the janitorial industry, the agency has seen that many janitorial contracts actually do provide the number of workers that will be used to provide the

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	An applicant is unlikely to have knowledge or access to information regarding the number of employees utilized by a subcontractor, independent contractor, or franchisee, and any such information is likely to vary on a frequent basis. Therefore, this requirement should be deleted as the Division should more appropriately obtain that information from the identified entity themselves.	janitorial services. Further, in the agency's enforcement experience, contracts for the performance of janitorial services typically include the total number of hours, and this is a number that can be converted into the number of workers such that a subcontractor, independent contractor, or franchisee could easily provide the number to the applicant. The LCO recognizes this information may vary on a frequent basis but believes it is nevertheless useful on an annual basis. An employer is only required to provide the information when registering or renewing an application.
Kathryn A. Rookes, Jan-Pro Franchising International, Inc.	Regulation § 13810(a)(8) requires, for each applicant for registration, disclosure of the number of individuals each subcontractor, other independent contractor or franchisee uses to perform janitorial services. This requirement imposes a new recordkeeping burden on the applicant. Before the registration requirement, the applicant was not required by any law to create and retain records on employees or independent contractors of third-party businesses with which the applicant contracted. In addition, this new requirement duplicates information that DLSE already obtains from the registrations of the third-party businesses, as provided in § 13810(a)(7), although it imposes an even heavier burden, as the third-party business is not required by § 13810(a)(7) to disclose individual independent contractors that it uses; only disclosure of employees is required. As the information required here duplicates information that the DLSE already collects, expands the recordkeeping burden on an applicant that is not imposed on the third-party businesses with which it contracts, and imposes a	The LCO declines to eliminate the disclosure provision in section 13810(a)(8). Section 13810(a)(7) requires disclosure of the current number of employees the applicant uses to provide janitorial services. Section 13810(a)(8) requires disclosure of the number of individuals used by each subcontractor, other independent contractor, or franchisee that the applicant uses to provide janitorial services. These are two separate requirements that do not overlap or duplicate information that the agency already collects.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	new recordkeeping burden on applicants for registration, I ask that this provision of the regulations be eliminated.	
Elena Dineen, MCTF	Require applicants to submit information about subcontractors with whom they have contracted during the 12-month period prior to the application. Add language to Section 138[10](a)(8): for each subcontractor, other independent contractor, or franchisee applicant ~~currently uses~~ <u>with whom they have contracted during the 12-month period prior to the application</u> when providing janitorial services, the janitorial registration number (if applicable); whether the entity is a subcontractor, other independent contractor, or franchisee; and the number of individuals each identified entity uses to perform janitorial services for the applicant.	The LCO declines to adopt the proposed modification because applicants and registrants are already providing information regarding the businesses for whom the applicant/registrant has provided janitorial services during the 12-month period prior to the application. Because of the potentially duplicative nature of the suggested additional information, which is already being provided to the LCO by the registered subcontractors, independent contractors, and franchisees who provide janitorial services to other contractors, the agency has determined that this additional information, while helpful overall to understanding the business operations of an applicant, is not necessary to require at this time. (We also note that the commenter appears to be referring to section 13810(a)(8), not section 13812(a)(8) as stated in the comment.)
f. Section 13810(a)(9)		
Ben Ebbink, California Chamber of Commerce	This proposed section requires an applicant for registration to provide "for each business for whom the applicant currently provides janitorial services, the respective name, physical address, mailing address, if different, phone number and email address of the business, and the same information regarding other businesses with whom the applicant has contracted or otherwise provided janitorial services during the 12-month period prior to the application."	The LCO declines to eliminate this section because it aids the Division in carrying out its enforcement obligations. First, the LCO is responsible for enforcing the requirement that persons and entities contract only with janitorial employers who are

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	Information regarding other businesses with whom the applicant contracts or has contracted previously is not directly relevant to the application process and this requirement should be removed. The Initial Statement of Reasons contends that this information "is a helpful tool for enforcement of other wage and hour laws enforced by the LCO, including client employer liability under Labor Code section 2810.3" The purpose of the registration process is to provide the Division with statutorily mandated information regarding the applicant, not to facilitate the Division engaging in a "fishing expedition" against other businesses for "other wage and hour laws." Therefore, this requirement should be eliminated.	registered. The list of businesses for whom the registered contractor provides services will help the LCO'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. Moreover, the purpose of the registration process is not for the Division to conduct a "fishing expedition" but rather to bring about greater labor law compliance in the janitorial industry by furthering transparency regarding the janitorial contractors operating in the state. The legislative history of the registration requirement reflects that the purpose was to reduce the incidence of wage theft in a "subcontracted industry" in which it had been reported that "32 percent of workers in the property services industry were paid less than minimum wage, and 80 percent were not paid the legally required overtime when they worked more than 40 hours a week." AB 1978 Bill Analysis, Assembly Labor & Employment Committee, p. 5 (4/18/16). The legislative bill analysis further explains: "Supporters [of the bill] state that it is

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
		clear that the property services industry is in need of regulation in order to protect vulnerable workers. In fact, there are five main industries in California operate almost exclusively through contracting and subcontracting, including construction, garment manufacturing, farm labor, long-term care, and property services. Not coincidentally, basic labor violations plague these industries; labor scholars and enforcement agencies continually observe that contracted labor frustrates wage enforcement. Contracting disrupts the direct relationship between employers and employees. Workers hired by contractors and subcontractors are often ignorant of the identity of, or have little access to, their true employer. Among these five industries, all have a registry or licensing, except for property services.... They argue that the state has acted to regulate other industries with similar risk factors, similar worker populations, and similar contracted labor. They believe the time has come to similarly regulate the property services industry." AB 1978 Bill Analysis, Assembly Labor & Employment Committee, p. 7 (4/18/16). The LCO can better enforce wage and hour laws for these

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
		subcontracted janitorial workers and the registration requirement with the information requested in this section.
Elena Dineen, MCTF	Require applicants to disclose the value of the contracts with whom the applicant has contracted or provided janitorial services. Add language to Section 13810(a)(9): for each business for whom the applicant currently provides janitorial services, the respective name, physical address, mailing address, if different, phone number, and email address of the business, the value of the contract they have executed to provide janitorial services for the business, and the same information regarding other businesses with whom the applicant has contracted or otherwise provided janitorial services during the 12-month period prior to the application. The non-union janitorial services industry is often a race to the bottom. Contractors undercut bids from law abiding contractors in order to secure business from property owners. The value of the contracts, however, is often insufficient to accurately pay the workers for the hours they are required to work in order to complete the job. Requiring contractors to provide information about the value of the contracts they execute with business and property owners would create increased transparency.	The LCO declines to adopt the proposed modification because requiring information regarding the value of each contract as part of the application process does not connect directly with the LCO's ability to use the information in the manner suggested by the commenter.
Elena Dineen, MCTF (PHT p. 9, lines 7-25)	We request that applicants submit information about each contractor with whom they've contracted during the 12-month period prior to the application and that this language be added to Section 13810(a)(9). In the nonunion sector of the industry, there's often multiple layers of subcontracting. In a different section of the proposed regulations, 138[10](a)(8), applicants are required to provide information about the businesses with whom they contract for the previous 12 months. We think that that language should be repeated in the section that talks about subcontracting and the information you provide about your subcontractors. You're not just providing information about current	The LCO declines to adopt the proposed modification because applicants and registrants are already providing information regarding the businesses for whom the applicant/registrant has provided janitorial services during the 12-month period prior to the application. Because of the potentially duplicative nature of the suggested additional

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	subcontractors but also about subcontractors with whom you've done business in the past 12 months. And, again, this goes to this idea of transparency and preventing nonunion, unlawful businesses from taking advantage of the system.	information, which is already being provided to the LCO by the registered subcontractors, independent contractors, and franchisees who provide janitorial services to other contractors, the agency has determined that this additional information, while helpful overall to understanding the business operations of an applicant, is not necessary to require at this time. (We also note that the commenter appears to be referring to section 13810(a)(8), not section 13812(a)(8) as stated in the comment.)
g. Section 13810(c)		
Kathryn A. Rookes, Jan-Pro Franchising International, Inc.	I wish to thank you for permitting the use of a Taxpayer Identification Number, in lieu of a Social Security Number. This concession will enable many businesses to comply with the law that would not otherwise be eligible.	The LCO appreciates the comment.
Section 13811 – Registration Certificate		
a. Section 13811(b)		
Ben Ebbink, California Chamber of Commerce	The proposed section states that a registration certificate shall be valid for one year from the date of issuance. While Labor Code Section 1427 requires an applicant to pay an application fee and an annual fee, the statute does not limit the duration of registration certificates to one year. Based on previous experience with other licensed industries (including garment manufacturing and farm labor contractors), the Division may not be able to process renewals in a timely manner. Employers in these other industries have often gone months (or longer) past their license renewal date after having	The LCO has considered the concern raised by the commenter regarding the potential consequences of a registration expiring even though a registrant has timely submitted all renewal information to the LCO. Although the agency always endeavors to process applications in a timely manner, should circumstances arise where there are delays that are not on the part of the registrant, the agency agrees

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	timely submitted all of their renewal information. This places them in jeopardy of enforcement activity based on expired registration based not on any fault of their own, but on delay on the part of the Division. To avoid these problems, the Division should consider providing a longer period of time for registration validity, such as two years. At a minimum, the regulations should specify that registration shall remain valid if all renewal information has been submitted but the renewal has not yet been processed by the Division, even beyond the registration expiration date.	that a mechanism to temporarily extend the validity of the registration would be useful to the regulated community. The regulations have been modified (at section 13811.5) to create a procedure that allows for a temporary extension when the registrant has provided all required renewal information to the LCO at least 30 days before the expiration date of the registration. In such circumstances, registration can be extended for up to 90 days.
Section 13812 – Online Registry		
a. Section 13812		
Ben Ebbink, California Chamber of Commerce	This proposed section requires the Division to maintain a public online registry database of janitorial employers. This information shall include, "registration status, indicating whether a person or entity is registered, was denied registration, or had registration suspended or revoked, which includes a date of action affecting the registration status." This information goes beyond the statutory mandate. Labor Code Section 1431 merely requires a public database of property services employers, including the "name, address, registration number, and effective dates of registration." Allowing the Division to publish revocation suspension or revocation information is problematic because there is significant doubt that the Division would be able to maintain and update this information in a timely manner. This information would need to be updated on a daily basis in order to be accurate. This concern is especially significant because of the potential liability for businesses contracting with unlicensed janitorial employers.	The LCO has considered the concern raised by the commenter but declines to adopt the suggestion that this information not be posted in the online registry database, where it provides useful information to the public. When a registrant is subject to suspension, denial or revocation, the information that is posted in the online registry lists the specific dates during which the suspension or revocation is effective. Therefore, the circumstance envisioned by the commenter will not occur, as it will be clear when the suspension or revocation period ended.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	Such businesses are likely to rely on the veracity of such information when making significant financial investments regarding which business to contract with. If this information is not updated in a timely manner, inaccurate decisions could be made, impacting the livelihood of both janitorial employers and the businesses they contract with. For these reasons, such information regarding license suspension and revocation should be deleted until the Division can guarantee that this information will always be timely and accurate. We do not believe the Division can make such assurances at this time.	
b. Section 13812(a)		
Sandra Diaz, SEIU USWW (also in PHT p. 17, lines 1-6)	Make the following addition to the regulatory text in section 13812(a): (a) The public registry database of registered janitorial employers accessible at the DLSE's website, as provided in Labor Code section 1431, shall also contain the following information <u>to be updated in real time</u>. We believe being able to have a live registry when contracting in order to identify the closest to live as possible, who are the good actors out in the industry that we're going to be able to rely on for the industry to hire.	The LCO declines to adopt the proposed modification because the online registry already operates on a live, real-time basis and it is not necessary to include this in the regulatory text.
c. Section 13812(a)(2)		
Elena Dineen, MCTF (also in PHT p. 8, lines 14-25; p. 9, lines 1-6); Sandra Diaz, USWW (also in PHT p. 17, lines 7-14)	Add language to Section 13812(a)(2): registration status, indicating whether a person or entity is registered, was denied registration, or had registration suspended or revoked <u>under the same or a different business name</u>, which includes a date of action affecting the registration status <u>and the business name and registration number</u>. Unlawful operators in the underground economy use many tactics to avoid accountability and continue exploiting workers. An unscrupulous contractor may change the name of the business, but remain in operation, in order to avoid liability for unpaid wages or existing judgments.	The LCO declines to adopt the proposed modification which would require the posting of this information in the online registry. The fact that an entity registered previously under a different business name or had a previous suspension or revocation is not necessary for purposes of reflecting the current registration status of a janitorial business.
d. Section 13812(b)		

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
Elena Dineen, MCTF (also in PHT p. 10, lines 1-13)	Require the Labor Commissioner to publish online a separate list of registrations that have been denied, suspended, or revoked on the DLSE's website. Add language to Section 13812(b): The Labor Commissioner ~~may~~ shall provide a separate list of registrations that have been denied, suspended, or revoked on the DLSE's website. The proposed regulations currently provide the Labor Commissioner the discretion to provide a separate list of registrations that have been denied, suspended, or revoked on the DLSE's website. This separate list is critical to successful implementation of the registry because it will provide property owners and clients with critical information to ensure they contract with law abiding janitorial contractors and provide an additional tool to help eliminate the underground economy.	The LCO declines to adopt the proposed modification to preserve flexibility to identify the most efficient manner of reporting this information.
Section 13812.5 – Civil Penalties for Contracting with Unregistered Employer		
a. Section 13812.5		
Ben Ebbink, California Chamber of Commerce	This proposed section sets forth a schedule of proposed civil penalties against a person or entity who contracts with an unregistered janitorial employer. This proposed section would establish two different potential civil penalties for a first violation - $2,000 for a first violation "alone," and $10,000 where the first violation is accompanied by a subsequent violation. This approach is inappropriate and should be eliminated. Civil penalties for a first violation should be based upon the culpability and state of mind of the person or entity at the time the first violation is committed. The entire reason for having increased higher penalties for "subsequent" violations is to penalize a business who engages in repeated unlawful activity. It is not appropriate to increase the amount of civil penalty for the first violation based on subsequent activity by the individual or entity.	The LCO declines to make the proposed modification. The statute provides a penalty range of $2,000 to $10,000 for initial violations and a separate penalty range of $10,000 to $25,000 for subsequent violations, leaving discretion as to how to assess the penalty within those ranges. The LCO has determined that a pattern or practice of violations, as evidenced by more than one violation determined during an initial inspection, indicates a disregard for the law that warrants a higher penalty for a first violation. The Division will not "go back after the fact" to increase the amount of the penalty - the highest

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	Subsequent violations should be addressed with the increased civil penalties set forth for those subsequent violations, not by going back "after the fact" and increasing the amount of penalty for the first violation. Therefore, this approach to civil penalties for a first violation should be eliminated.	range of the penalty for an initial violation will only be assessed if it is accompanied by subsequent violations that are part of the first citation issued by DLSE. Similar to the rationale proposed by the commenter, the LCO will only assess the highest penalty for subsequent violations after the first citation, where the entity evidences an intent to continue to operate in violation of the law after having been cited previously.
b. Section 13812.5(d)		
Elena Dineen, MCTF	Increase the civil penalty for first violation for contracting with unregistered employers. Add language to Section 13812.5(d): First violations alone will be subject to a civil penalty of ~~$2,000~~ $10,000.	The LCO declines to adopt the proposed modification because the statute provides a range of $2,000 to $10,000 in civil penalties for a first violation. The agency has established a framework for establishing the circumstances in which a first violation will be subject to the highest end of the range, which is when the first violation is assessed along with subsequent violations, indicating a pattern or practice of non-compliance.
Section 13813 – Actions on Applications and Registrations		
a. Section 13813		
Elena Dineen, MCTF (also in PHT p. 10, lines 14-25; p. 11, lines 1-5)	The regulations should clearly define the period of time within which a revocation expires. Section 13813 of the proposed regulations states that "[a] person whose registration is revoked for any period under this section may apply for a new registration upon expiration of the revocation." The regulations should clarify that expiration of the	The LCO declines to adopt the proposed modification that would specify a one-year period in order to preserve flexibility to identify the most appropriate time period for the revocation on a case-by-case basis. Each individual

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	revocation period occurs no less than 1 year following revocation but not before all judgments and settlement agreements related to any failure to comply with laws applicable to janitorial employers are satisfied.	revocation will contain an explicit time period, which provides each person whose registration is revoked for any period proper notice as to the meaning of "expiration of the revocation." The LCO does not believe a more explicit definition of "expiration of the revocation" is necessary to include in the regulatory text.
Kathryn A. Rookes, Jan-Pro Franchising International, Inc.	Regulation § 13813 provides that an application for registration will be denied if any judgments or settlement agreements remain outstanding. There are many situations, other than intentional violations, that might result in a settlement agreement requiring payments over time. I ask that this regulation be revised to permit registration in those cases in which a settlement agreement is being timely followed.	The LCO declines to make the proposed modification because section 13813 states that when a registrant whose registration has been revoked applies for new or renewal of registration, the application will be denied unless "judgments and settlement agreements" are satisfied. Where payments are being made timely under an approved settlement agreement, this constitutes "satisfaction" of the settlement agreement for purposes of section 13813.
b. Section 13813(c)		
Ben Ebbink, California Chamber of Commerce	This proposed section provides that an application for a new or renewal registration shall be denied unless all judgments and settlement agreements related to failure to comply with laws applicable to janitorial employers are satisfied. This language should be amended to clarify that it applies to final judgments where all opportunity to appeal has lapsed and executed settlement agreements. In addition, the reference to "laws applicable to janitorial employers" is vague and too broad in scope. This phrase could apply to any number of laws applicable to janitorial employers, not just janitorial	The LCO agrees that because the language in proposed section 13813(c) acts as a bar to registration, it should be a "final" judgment, mirroring the finality expressed in Labor Code 1430, which lists bars to registration. The LCO declines to include the additional language suggested, in order to more closely mirror Labor Code 1430. Additionally, the LCO accepts the comment that the current language referencing

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	registration laws or even labor and employment laws. This language should be amended to specify that it refers only to failure to comply with Division 2, Part 4.2 of the Labor Code (commencing with section 1420).	"laws applicable to janitorial employers" may not provide adequate notice as to the applicable laws. The proposal has been updated to specify this subsection applies to all laws applicable to janitorial employers as set forth in Division 2, Part 4.2 of the Labor Code.
Section 13814 – Notice of Denial, Suspension or Revocation; Notice of Defense		
a. Section 13814(c)		
Ben Ebbink, California Chamber of Commerce	This proposed section authorizes a respondent to file a notice of defense to a filing of an accusation or statement of issues within 15 days after service. This period of time for filing a notice of defense is insufficient. Fifteen days is simply not sufficient for a respondent who receives the accusation or statement of issues to investigate its findings, consult with legal counsel where appropriate, and make an informed decision on whether to file a notice of defense. In fact, with such a short response time, the Division is likely to face an increased number of respondents filing a notice of defense merely to preserve their right to do so when they have not fully evaluated whether there are in fact grounds to do so, increase costs to the Division. Therefore, this time period should be extended to at least 30 days to allow respondents time to make an informed decision and avoid unnecessary costs to the Division.	The LCO declines to make the proposed modification. The 15-day period is consistent across licensing and registration programs administered and enforced by the LCO. It has not presented any problems in those programs. Filing a notice of defense is deemed to deny the accusation or statement of issues and is not a complex legal filing that would require extensive investigation or resources.
Section 13815 – Failure to File Notice of Defense; Discovery; Notice of Hearing		
a. Section 13815(d)		
Sandra Diaz, SEIU USWW	Correct the typo for subdivision (d) in section 13815.	The version of the proposed regulations that was posted on the LCO's website for public comment does not contain the typo for subdivision (d) that the commenter notes.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
Section 13817 – Rights of Parties at Hearing; Taking of Evidence; Rules of Procedure		
a. Section 13817		
Elena Dineen, MCTF (also in PHT p. 11, lines 17-25; p. 12, lines 1-12)	A corporation that is not in "good standing" with the California Secretary of State should not be permitted to appear in a hearing to appeal a denial, revocation, or suspension of registration. Section 13817 of the proposed regulations should clarify that a corporation that appeals a denial, revocation, or suspension of their registration must be a corporation in "good standing" with the California Secretary of State. Cal. Labor Code Section 1429(a)(2)(D) requires that corporations be in "good standing" with the California Secretary of State in order to be registered. This minimum requirement ensures that unscrupulous contractors do not abuse the hearing and appeal process.	The LCO declines to adopt the proposed modification. Corporations are not eligible for registration or renewal of registration if they are not in good standing with the California Secretary of State. The agency declines to conflate the requirements for application with the right to appeal.
Section 13818 – Proposed Decision; Decision of Labor Commissioner; Judicial Review		
a. Section 13818		
Ben Ebbink, California Chamber of Commerce	This proposed section provides that the Labor Commissioner's decision shall become effective 30 days after it is delivered "unless the decision provides for an earlier date." However, the applicant or registrant has 45 days after service of the decision to file a writ of mandate with the superior court pursuant to Section 1094.5 of the Code of Civil Procedure. It is unclear why the Labor Commissioner's decision should become effective 15 days before the time to file a writ of mandate has lapsed. This is confusing, inappropriate, and will result in situations where the Labor Commissioner's decision appears to become effective even though the matter is being appealed to civil court. Moreover, it is inappropriate to grant the Labor Commissioner the blanket authority to provide for shorter periods for the effective date of the decision than that otherwise provided in the regulations. This will lead to inconsistency in enforcement affecting the due process rights of applicants or registrants.	The LCO declines to make the proposed modifications. The timeframes set forth in this section are consistent across licensing and registration programs administered and enforced by the LCO. This timeline has not presented any problems in the past, nor does it deprive parties of their due process rights. Moreover, it is not inappropriate for a decision to take effect before the time to file a writ has lapsed because there is no link between the filing of a writ and the effective date of decision unless a stay is sought and granted.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	For these reasons, this proposed section should be amended to provide that the Labor Commissioner's decision becomes effective only after the statutory period to file a writ of mandate has lapsed. In addition, the authority of the Labor Commissioner to set earlier effective dates for decisions should be eliminated. The law and due process rights should apply equally to all applicants and registrants.	
Section 13819 – Recordkeeping		
a. Section 13819(b)		
Kathryn A. Rookes, Jan-Pro Franchising International, Inc.	I also applaud the clarification provided in § 13819(b) that the recordkeeping requirements only apply to employees that provide janitorial services. This clarification clears up confusion that exists under the pure language of the statute.	The LCO appreciates the comment.
Sections 13814-13818		
a. Sections 13814-13818		
Elena Dineen, MCTF (also in PHT p. 11, lines 6-16)	The process to appeal a denial, revocation or suspension of registration should adopt the appeal and hearing process outlined in Section 1197.1. California Labor Code Section 1197.1(c) outlines the process by which a person wishing to contest a citation issued by the Labor Commissioner's office can contest the citation and request a hearing to appeal the decision. Using the existing framework outlined in Section 1197.1, a framework already familiar to employers, would be less confusing while still providing due process to employers.	The LCO declines to adopt the proposed modification. The appeal process in the regulations is consistent with the appeal and hearing processes that the LCO has established and standardized throughout its Licensing and Registration programs. These processes are familiar to employers.
Additional General Comments Not Related to a Specific Regulatory Provision		
Ben Ebbink, California Chamber of Commerce	California Government Code Section 11349-11349.6 set forth the standards that proposed regulations are analyzed for purposes of approval and publication, including: (1) necessity; (2) authority; (3) clarity; (4) consistency; (5) reference; and (6) non-duplication. We do not believe that the proposed regulations satisfy these criteria.	Based on the justification and rationale described in the Initial Statement of Reasons and this Final Statement of Reasons and Updated Informative Digest, the LCO believes the criteria are met.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
M. Vasquez, Janitor and Union Member (PHT p. 13, lines 6-25; p. 14, lines 1-14)	I've been a janitor for more than 16 years and in the union. I was a victim of a salary theft through a company that was nonunion. We need the regulations to be established -- to be established in a more rigorous matter so that nonunion companies don't take advantage of us. I was an employee of a company for more than 16 years, and I was a victim of salary theft because no one was in charge of the theft that they carried out against me and so this was never handled. On a second occasion, I was also, once again, a victim of salary theft through a company that was never registered, that was not properly named. Later, when I tried to recover the money that I had worked for, that company had already changed its name. And so who could I claim -- who could I make a claim to? Who could I claim to obtain the money that I had earned? Who could I go to? And I don't think it's right that those of us that are not part of the union, that we just be left in limbo. If this registration is not a strict registration and does not force companies to do things properly, I believe that every employee should be justly compensated when they're working the entire day from morning to night. And that's why I'm here, to support the law, law 1978, that I've been here supporting from the very beginning and I will continue to support. And so we continue to fight. We continue to organize ourselves so this does not continue to occur. On two occasions, I lost my salary. It just went to the trash, and I have two children that I have to support. And I believe that the right thing to do is to make sure that these companies are properly registered; that they follow the requirements so that this type of issue -- this type of theft does not continue to occur.	The LCO appreciates this public hearing comment in support of regulations implementing the janitorial registration program established by AB 1978 (2016).
Sandra Diaz, SEIU USWW (PHT p. 14, lines 21-25; p. 15, lines 1-25; p. 16, lines 1-11; p. 17, lines 17-25; p. 18, lines 1-12)	We have 45,000 members statewide in California. We represent mostly contracted-out workers that range from janitors, security officers, airport workers, workers at events. I'm here to speak particularly on the challenges faces by the janitorial industry. We have been organizing janitors for decades in the State of California, but we've been able to see the change in the industry from when the industry -- when building owners would hire janitors in-house to when they decided to subcontract and then the layers of -- the	The LCO appreciates this public hearing comment in support of regulations implementing the janitorial registration program established by AB 1978 (2016).

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	layers of ownership and employee relationships continued to break down throughout the years and decades and the challenges that that has posed within the industry that now primarily operates underground. I think we heard from our acting legal director from the MCTF earlier today what are some of the mechanisms that they are requesting so that we can bring the industry up afloat. What we've been seeing also as our efforts to organize nonunion workers is that the relationship between employee and employer has changed so much and also the definition. So as we're looking at the registry, and what it represents for the industries is an attempt to bring the industry up afloat. When we decided to do this legislation, there was a sense of how do we tackle sexual violence in an industry where the accountability and the mechanisms to enforce are so -- there's, like, great challenges in that. And how do we bring transparency to an industry that desperately needs it? Hearing from owners sectors and owners community saying, "How do we know if there is a contractor that we hired that does have unpaid judgments or that isn't a good actor? How would we know?" And so the attempt of creating the registry was to be able to allow that "How do we have responsible contracting in the State of California?" And within that, I say that we support all the -- we're happy with the work that we've been doing with the LC to make that happen and the hard work that's been taking place within the registry…. .And I guess a bigger, larger piece that I would like to conclude with is that we are looking how to we bring an industry afloat and how do we deal with the challenges of this industry being primarily underground? And within that, as we look to bring more regulations for the employers that are complying with the laws, I think it's going to be just as important for us to weed out the ones that are not and be able to then have an industry that can begin to sustain standards. Standards that workers can live off and can be able to work with dignity in the workplace. I know that's the division we have moving forward and, for some work, it's hard to even envision that. You know, I met a janitor working for a franchise company, and I spoke with her, and I told	

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	her "How many hours do you work a day?" She said, "I work from 6:00 a.m. to 10:00 p.m. There's no overtime, but they pay me when they can," and that's, sadly, still the reality in many parts of California, so we're hoping to be able to change that and use these tools that the State has created to bring more transparency afloat.	
L. Gonzalez, Janitor (PHT p. 18, line 19-25; pp. 19-27, lines 1-25)	I have worked in Orange County as a janitor in a nonunion company. I'm the mother of three children. In my country, I was an accountant, and I had graduated in business administration. I had to immigrate to this country searching for a dream for justice…. I'm asking all of you to basically support people who don't have a voice on the job and for those who continue living in injustice and those who continue living in fear and don't know their rights, because, not only are they violating all of our rights, they're violating all of our efforts. There's a lot of companies that continue to violate the law where they see that there's people who are vulnerable -- posing vulnerability, and that's exactly where these companies take advantage of these people. They violate the law. Violating the rights of those in need, and that continues to happen day after day. I'm proud and happy to have been given the opportunity from you to express, to ask justice for janitors that are nonunion, justice for moms like me that will never stop struggling, nor will these tears and the pain stop me because now I feel very invested in making sure that these laws are enforced. I'm very encouraged to know that the law AB 1978 exists with us.	The LCO appreciates this public hearing comment in general support of regulations implementing the janitorial registration program established by AB 1978 (2016).
C. Medina, Janitor (PHT p. 28, lines 14-25; p. 29, lines 1-25; p. 30, lines 1-15)	I want to ask you all to help us make justice happen. I've been a janitor for 30 years. I have experienced a lot of abuses. I've experienced a lot of abuses such as -- it's difficult for me to talk about this because I've experienced sexual harassment and abuse in almost every job that I've had, and I stayed silent, and I hold back in saying all of this. About two months ago, I left my last -- my last job. They weren't even paying me minimum wage. When I calculated, I was basically being paid about 3.50 an hour, and I want you guys to help us have justice. From the day that I met the union, they've been able to help me a lot, and I've been able to understand what my rights are, and	The LCO appreciates the public hearing comments.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	now I'm starting to see justice, and I'm starting to see my rights respected.	
V. Cerate, Janitor (PHT p. 31, lines 1-20)	I wanted to share with you all that I've been a janitor for the last five years. Over two of those years, they've stole my wages, and I lost my right to those wages. They would pay me with a personal check. I never had a right to vacation time, sick days. I was never -- I was never able to claim anything because everybody acted like they didn't know anything. Until I arrived at the organization -- until I arrived to the organization, MCTF, that explained to me that I had right and that my rights were being violated and that I wasn't supposed to be paid with personal check and there's laws that protected me, and then I understood that there was laws that were passed in order to respect workers. And we're here, all the janitors are here, because we want to make sure that the law is strong and that we're respected and all the sacrifices that we make and all of our -- and also just to recognize all of the things that are stolen from us.	The LCO appreciates this public hearing comment in general support of regulations implementing the janitorial registration program established by AB 1978 (2016).
Elena Dineen, MCTF (also in PHT p. 6, lines 11-25; p. 12, lines 13-16)	We support the Department's adoption of the proposed regulations at Sections 13810 through 13819 and have comments and recommendations for changes. The MCTF is a statewide watchdog whose mission is to create lawful business order in the property services industry where responsible contractors and janitors mutually prosper by abolishing the underground economy and eliminating unlawful operators. Strong regulations will help ensure that the registry effectively promotes transparency and fairness for both workers and law abiding employers. In the non-union sector of the industry, unscrupulous janitorial contractors often skirt existing laws, refusing to pay workers even after a judgment has been filed against them, filing for bankruptcy only to open a business "new" in name only. Without strong enforcement, law abiding employers are pushed out of the market and workers are left bearing the burden for this fraud.	The LCO appreciates the comment.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
Jesse Newmark, Oakland Centro Legal de la Raza	We support the Department's adoption of the proposed regulations at Sections 13810 through 13819 and Sections 13820 through 13822, and additionally submit comments and recommendations for changes to the proposed regulations. Centro Legal de la Raza (Centro Legal) was founded in 1969 to provide culturally and linguistically appropriate legal aid services to low-income, predominantly Spanish-speaking residents of the San Francisco Bay Area. Centro Legal assists several thousand clients annually with support ranging from advice and referrals to full representation in court, in the areas of housing law, employment law, and immigration law. Through legal services clinics, community outreach, and legal representation, Centro Legal serves hundreds of low-wage workers each year, including many who come to us as survivors of sexual harassment and assault in the workplace. We have heard from many janitorial workers about rampant sexual harassment happening on the job and the lack of employee training that could prevent instances of sexual violence from occurring. Centro Legal believes that the unique characteristics of janitorial industry and the workers who make up this industry call for an industry specific approach to addressing sexual harassment and violence prevention. AB 1978 is one of the first state laws to mandate sexual harassment and violence prevention training not only for supervisors and managers in the industry but also for each and every employee. Training front line, vulnerable workers in an industry where sexual violence is endemic is a fundamentally different proposition than the traditional supervisor trainings aimed not at vulnerable workers who may be subject to harassment, but rather at supervisors and managers whose conduct may prove to be a liability for their employers.	The LCO appreciates the comment.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
Lisa Bixby, Legal Aid at Work	We support the Department's adoption of the proposed regulations at Sections 13810 through 13819 and Sections 13820 through 13822, and have comments and recommendations for changes to the proposed regulations. Legal Aid at Work (formerly Legal Aid Society – Employment Law Center) is a non-profit public interest law firm founded in 1916 whose mission is to protect, preserve, and advance the rights of individuals from traditionally under-represented communities. Legal Aid at Work has represented low-wage clients in cases involving a broad range of issues, including sexual harassment, workplace sexual assault, and gender discrimination. Legal Aid at Work has represented numerous janitorial workers who have suffered sexual harassment and even sexual assault at their workplaces. The horrors our clients have experienced highlight how uniquely vulnerable janitorial workers are to harassment, assault, and discrimination, and make clear the need for strong, effective implementing regulations to reduce the prevalence of sexual violence in this industry. Legal Aid at Work believes that the unique characteristics of janitorial industry and the workers who make up this industry call for an industry-specific approach to addressing sexual harassment and violence prevention. AB 1978 is one of the first state laws to mandate sexual harassment and violence prevention training not only for supervisors and managers in the industry, but also for each and every employee. Training frontline, vulnerable workers in an industry where sexual violence is endemic is a fundamentally different proposition than the traditional supervisor trainings aimed not at vulnerable workers who may be subject to harassment, but rather at supervisors and managers whose conduct may prove to be a liability for their employers.	The LCO appreciates the comment.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
Nayantara Mehta, National Employment Law Project	We support the Department's adoption of the proposed regulations at Sections 13810 through 13819 and Sections 13820 through 13822, and submit comments and recommendations for changes to the proposed regulations. NELP is a national legal, research and policy organization, with an office in California. We advocate at the federal, state and local level for policies to create good jobs, expand access to work, and strengthen protections and support for workers in low-wage industries and for unemployed workers. We supported AB 1978 (Gonzalez), the Property Service Workers Protection Act. NELP believes that the unique characteristics of janitorial industry and the workers who make up this industry call for an industry specific approach to addressing sexual harassment and violence prevention. AB 1978 is one of the first state laws to mandate sexual harassment and violence prevention training not only for supervisors and managers in the industry but also for each and every employee. Training front line, vulnerable workers in an industry where sexual violence is endemic is a fundamentally different proposition than the traditional supervisor trainings aimed not at vulnerable workers who may be subject to harassment, but rather at supervisors and managers whose conduct may prove to be a liability for their employers.	The LCO appreciates the comment.
Nicole Marquez, Worksafe	While Worksafe supports the Department's adoption of the proposed regulations at Sections 13810 through 13819 and Sections 13820 through 13822, Worksafe submits comments and recommendations for changes to the proposed regulations. Worksafe is a California-based organization dedicated to eliminating workplace hazards. We advocate for protective worker health and safety laws and effective remedies for injured workers. We watchdog government agencies to ensure they enforce these laws. We also engage in campaigns in coalition with unions, workers, community,	The LCO appreciates the comment.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	environmental and legal organizations, and scientists to eliminate workplace hazards from the workplace. Worksafe is dedicated to combating sexual violence and harassment for all workers, but the unique characteristics of janitorial industry and the workers who make up this industry call for an industry specific approach. AB 1978, for example, is the first and only state legislation to mandate sexual harassment and violence prevention training not only for supervisors and managers in the industry but also for each and every front line cleaner. Training front line, vulnerable workers in an industry where sexual violence is endemic is a fundamentally different proposition than the traditional supervisor trainings aimed not at vulnerable workers who may be subject to harassment but rather at supervisors and managers whose conduct may prove to be a liability for their employers.	

One Comment Was Received Following the Period the Modified Text Was Available to the Public from November 25, 2019 through December 10, 2019:

Commenter(s)	Comment	LCO Response
Yardenna Aaron, Maintenance Cooperation Trust Fund ("MCTF")	The MCTF generally supports the Department's adoption of the new proposed modifications of the regulations at Sections 13810 through 13819 with no recommended changes.	The LCO appreciates the comments in support of the modifications to the proposed regulations.

One Comment Was Received Following the Period the Second Version of Modified Text Was Available to the Public from May 28, 2020 through June 13, 2020:

Commenter(s)	Comment	LCO Response
Dana Nichol, Pacific Association of Building Service Contractors ("PABSCO")	PABSCO supports the proposed regulatory changes to Section 13811.5 of the California Code of Regulations regarding temporary registration extension within the Janitorial Employer Registration program. These changes will allow janitorial contractors to continue to provide janitorial services to their customers in the event that their janitorial employer registration lapses due to processing delays. Modifying the criterion in more positive terms and enhancing the	The LCO appreciates the comments in support of the modifications to proposed temporary registration extension regulation..

	Labor Commissioner's ability to streamline the registration renewal process will encourage more janitorial companies to come into compliance with the law, thereby reducing the companies that operate in the underground economy.	

Local Mandate Determination

The Labor Commissioner's Office has determined that the proposed regulations do not impose any mandate on local agencies or school districts.

Alternatives Determination

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

The new sections adopted by the Labor Commissioner's Office are the only regulatory provisions identified by the Labor Commissioner's Office that accomplish the goal of effectively implementing statutory requirements to register, administering and enforcing the janitorial employers' registry, and establishing standards for applications, registration certificates, and adverse actions (denial of registration, suspension, and revocation). 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 Office's attention.

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

ADDING SUBCHAPTER 13: JANITORIAL REGISTRATION AND TRAINING
ADDING ARTICLES 1, 2, 3, 4 AND 5

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

ADDENDUM TO FINAL STATEMENT OF REASONS

Nonsubstantive Changes Made During OAL Review

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

Sections 13810 through 13819:

A period "." was added at the end of each section title.

Section 13812:

Subdivision (b) was removed because it was non-regulatory, nonsubstantive language.

Section 13812.6:

A Note containing authority and reference was added.

Section 13814:

Subdivision (a)(1): The word "conditioned" was withdrawn as it was not necessary; the word "or" was moved accordingly.

Subdivision (a)(2): "Initiating party" was substituted for "Labor Commissioner" for clarity.

Reference: Labor Code sections 1429 and 1430 were added.

Section 13817:

Labor Code sections 1429 and 1430 were added to the Reference.

Section 13818:

A colon was removed from subdivision (a). Labor Code sections 1429 and 1430 were added to the Reference.