

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

The proposed changes to the text of the regulations are indicated by bold underlined text to identify additions (e.g., **added language**) and bold strikeout to identify deletions (e.g., ~~**deleted language**~~) made upon the original proposed text.

Article 1. Definitions Used in Subchapter

Section 13875. Definitions

In addition to the definitions provided in section 2810.4(a) of the Labor Code, the following apply to both section 2810.4 and to this subchapter:

- (a) “Alleged conduct” as used in Labor Code section 2810.4(b)(2)(B) means an unsatisfied final court judgment, tax assessment, or tax lien, including the amount of such final court judgment, tax assessment or tax lien.
- (b) “Division of Labor Standards Enforcement” as used in Labor Code section 2810.4 has the same meaning and is referred to as the “Labor Commissioner” or the “Labor Commissioner’s Office.”
- (c) “Essential information” as used in Labor Code section 2810.4(b)(1)(A) includes the amount of the unsatisfied final court judgment, tax assessment, or tax lien, the date such liability was established (became final), **identification of the court where any final judgment was entered**, any applicable reference number **used by the Labor Commissioner to identify** ~~for~~ the judgment, assessment, or lien, ~~and~~ whether the port drayage motor carrier is listed as a successor of a predecessor port drayage motor carrier, **any North American Industry Classification System code (“NAICS code”) used by the Labor Commissioner. The NAICS code is excluded from the essential information provided by a public entity or private party stated in Section 13876(a)(2)-(3), will be provided by the Labor Commissioner and for purposes of posting only, and used solely for administrative tracking and shall not be interpreted as having any bearing on whether the defendant is a “port drayage motor carrier” within the meaning of Labor Code section 2810.4. For prior offenders, as defined and specified in Labor Code section 2810.4(a) and (b)(1)(B), respectively, “essential information” also includes identification of the Labor Commissioner case or superior court case where the final or non-final finding of a subsequent liability was most recently determined.**
- (d) “Notification by certified mail” as used in Labor Code section 2810.4(b)(2) means notification to the last listed address on the Notice of Entry of Judgment **(or if judgment has not been entered, the last listed address in the tax lien, tax assessment, final citation, or Order, Decision or Award (or, ODA)** or any agent for service of process listed with the Secretary of State.
- (e) “Successor” means a port drayage motor carrier, as defined in Labor Code section 2810.4(a)(4)(5)(C), ~~who succeeds in the operation of a predecessor port drayage motor carrier~~ and shall be liable to the same extent as the predecessor, if one or more of the following criteria are met:

- (1) Uses substantially the same equipment, facilities, or workforce to provide substantially the same services for substantially the same type of customers as the predecessor port drayage motor carrier.
 - (2) Shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor port drayage motor carrier.
 - (3) Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the drivers owed wages, damages, or penalties by the predecessor port drayage motor carrier.
 - (4) Is an immediate family member of any owner, partner, officer, or director of the predecessor port drayage motor carrier or of any person who had a financial interest in the predecessor port drayage motor carrier. As used in this subsection, "immediate family member" means a spouse, parent, sibling, child, uncle, aunt, niece, nephew, grandparent, granddaughter, grandson, mother-in-law, father-in-law, brother-in-law, sister-in-law, or cousin.
- (f) "Tax assessment, or tax lien that ~~can~~ may be released to the public under federal and state disclosure laws" as used in Labor Code section 2810.4(b)(1)(A) means a tax assessment or tax lien that is public.
- (g) "Wages" as defined in Labor Code section 2810.4(a)(~~7~~)(9) include:
- (1) Any minimum, regular, overtime or other premium wages that are due to the worker, including but not limited to any wages due under Labor Code sections 226.2, 226.7, 227.3, 246, and 2802;
 - (2) Any damages or penalties that are due to the worker or the state based upon any failure to pay wages, as provided by law, including but not limited to those set forth under Labor Code sections 203, 203.1, 210, 225.5, 226, 226.3, 226.8, 248.5, 558, 1194.2, and 1197.1; and
 - (3) Any applicable interest due for any sum described in this section.
- (h) The phrase "court judgment, tax assessment, or tax lien" means a liability determination as to a port drayage motor carrier specified in 2810.4(b)(1)(A) or (B), and is further classified as either:**
- (1) "Final" which means a liability determination for which the applicable period for appeal has expired, as specified in:**
 - (A) Labor Code sections 2810.4(b)(1)(A); or**
 - (B) Labor Code section 2810.4(a)(8) for an existing liability determination of a prior offender which arose from unlawful conduct relating to the misclassification of employees as independent contractors.**
 - (2) "Non-final" which means a subsequent liability for which the applicable period for appeal has not expired, as specified in Labor Code 2810.4(b)(1)(B), against a prior offender for the violation of a labor or employment law or regulation.**
- (i) The phrase "final citation or ODA" means a citation or order, decision or award issued by the Labor Commissioner as specified in Labor Code section 2810.4(a)(8)(B) that was not appealed.**

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Article 2. Compilation and Maintenance of Public List of Port Drayage Motor Carriers

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

~~Labor Code section 2810.4(b)(1), which lists the types of information that the Division of Labor Standards Enforcement is required to post on its website with respect to port drayage motor carriers, recognizes that the source of information may derive from a public or private entity. (a)~~ The Labor Commissioner's Office ~~will~~ shall include ~~unsatisfied judgments resulting from proceedings before the Labor Commissioner~~ on the public website list internet webpage an unsatisfied final court judgment, tax assessment, or tax lien, resulting in a finding of a port drayage motor carrier's unlawful conduct specified in Labor Code section 2810.4(b)(1)(A), from the following sources:

- (1) Labor Commissioner citations, Labor Commissioner orders, decisions or awards, or any other legal action brought by the Labor Commissioner.
- (2) Private parties and Other public entities that have provide essential information regarding an unsatisfied final court judgment, or a publicly-available tax assessment or tax lien for a port drayage motor carrier, as defined in Labor Code section 2810.4(a)(4), may who submit such information to the Labor Commissioner's Office via email: SB1402@dir.ca.gov, in accordance with subsection (c) of this section. Upon review of the essential information provided by a private party or other public entity, the Labor Commissioner shall notify the port drayage motor carrier pursuant to Section 13877.
- (3) A private party who, personally or through their authorized representative, provides essential information regarding an unsatisfied final judgment in accordance with subsection (c) of this section.

(b) Prior Offenders. The Labor Commissioner shall post on the internet webpage the name, address, and essential information of a prior offender, who has an existing final court judgment, tax assessment, tax lien, or final citation or ODA that arose from unlawful conduct relating to misclassification of employees as independent contractors, if a subsequent liability is issued, even if the period for appeal has not expired, from the following sources:

- (1) An unsatisfied final or non-final judgment or a final citation or ODA arising from proceedings before the Labor Commissioner that includes a finding that a port drayage motor carrier has violated a labor or employment law or regulation.
- (2) Other public entities that provide information in accordance with subsection (c) of this section regarding a port drayage motor carrier's subsequent violation of a labor or employment law or regulation.
- (3) A private party, who personally, or through their authorized representatives, provides information in accordance with subsection (c) of this section regarding a port drayage motor carrier's subsequent violation of a labor or employment law or regulation.

(c) Requests by Private Party or Other Public Entity to Post Liability Determinations.

- (1) The Labor Commissioner's Office shall post liability determinations described in subsections (a)(2) and (3) or (b)(2) and (3), or both if applicable, along with essential information to the internet webpage only if a written request is provided by the private party or other governmental entity. The manner and form of a written request and submission provided to the Labor Commissioner's Office shall be acceptable if the private party or other governmental entity complies with the following:

- (A) The submission includes documentary evidence that a liability determination was made and that the determination was against a port drayage motor carrier as defined in Labor Code section 2810.4(a). This evidence shall consist of:**
- (i) The final or non-final liability determination by a governmental authority or court, which includes, but is not limited to, a conformed copy of a final judgment, ruling, citation, or other decision, and any qualifying prior final or subsequent non-final determinations of liability for a prior offender, as applicable;**
 - (ii) Evidence that the liable party engaged in “port drayage services” or otherwise qualifies as a “port drayage motor carrier” under Labor Code section 2810.4(a); and**
 - (iii) If applicable, evidence to demonstrate that the port drayage motor carrier is a “successor” as defined in section 13875(e).**
- (B) The submission provides the full and complete name and last known address of the port drayage motor carrier. If the port drayage motor carrier is a corporation, limited liability company or other entity registered with the Secretary of State, the submission shall include a copy of the most recent statement of information or other registration document filed with the Secretary of State.**
- (C) For requested postings relating to prior offenders, the submitting private party or other public entity shall identify in the written request each submitted liability determination as a prior or subsequent liability determination as described in subdivision (b), as applicable.**
- (D) The request and all other required documentation shall be submitted to the Labor Commissioner’s Office, Attn: 2810.4 Copy of Final Order, 1500 Hughes Way, Suite C-202, Long Beach, CA 90810, or can be submitted in pdf format via email to: SB1402@dir.ca.gov.**
- (2) Upon review of the information provided by a private party or other public entity and determination that sufficient evidence has been provided to permit a posting, the Labor Commissioner shall notify the port drayage motor carrier pursuant to Section 13877.**

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Section 13877. Notice to Port Drayage Motor Carriers

In addition to the notice requirements in Labor Code section 2810.4(b)(2), the notice that the Labor Commissioner’s Office will provide to port drayage motor carriers prior to posting their names, addresses, and other essential information on the Labor Commissioner’s ~~website~~ **internet webpage** will notify recipients of the following:

- (a) The fact that the Labor Commissioner is required to maintain a public list on the Labor Commissioner’s ~~website~~ internet webpage pursuant to Labor Code section 2810.4.
- ~~(b)~~ **The definitions of “port drayage motor carrier” under Labor Code section 2810.4.**
- ~~(e)~~ **(b)** The basis for the port drayage motor carrier’s identification for inclusion on the list.
- ~~(d)~~ **(c)** The information contained in Sections 13878 through 13881, which detail the ways in which the port drayage motor carrier can either avoid placement on the public list or request removal from the public list.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Section 13878. Response to Notice

- (a) A port drayage motor carrier that receives notice from the Labor Commissioner's Office regarding potential placement on the public list on the Labor Commissioner's ~~website internet webpage~~ must respond within ~~20 calendar~~ **15 business** days from the date of the notice sent by the Labor Commissioner, if the **motor** carrier believes it should not be placed on the public list of port drayage motor carriers with an unsatisfied final court judgment, tax assessment, or tax lien. ~~If 20 calendar days from the date of the notice falls on a weekend or holiday, the date for timely response will be the next business day immediately following the weekend or holiday.~~
- (b) A port drayage motor carrier that does not believe it should be placed on the public list because the judgment, assessment, or lien has been satisfied or settled must present adequate proof that it has satisfied the judgment, assessment, or lien, or entered into an approved settlement agreement dispensing of the judgment, assessment, or lien by submitting the following to the Labor Commissioner's Office:
- (1) ~~A Proof of Payment or Settlement form (WCA 128 PORT Proof of Payment or Settlement 12/2019), which the Labor Commissioner shall send along with the notice for the motor carrier to complete and submit, which is hereby incorporated by reference; and~~ **A written statement declaring under penalty of perjury that the judgment, assessment, or lien has been satisfied or that a settlement agreement dispensing with the judgment has been entered into; and**
 - (2) A copy of any of the following **documents** that applies. **For purposes of this subsection, "conformed copy" is a copy of an official document that was, in fact, filed in a court or administrative case which has a stamp, signature, or other indication on the document reflecting receipt for filing by the court or administrative body.**
 - a. **a conformed copy of an Acknowledgment of Full Satisfaction of Judgment form (Judicial Council EJ-100) (Rev. July 1, 2014) or other pleading that indicates full satisfaction of a judgment that is filed in a court case;**
 - b. an executed release from the judgment creditor approved by the Labor Commissioner's Office;
 - c. an executed release or settlement approved by the relevant taxing authority;
 - d. a court-approved settlement agreement;
 - e. a notarized settlement agreement;
 - f. a written settlement agreement signed by an authorized representative of the Labor Commissioner's Office or relevant taxing authority; ~~or~~
 - g. evidence of settlement payment, including any installment payment (if applicable) that has been made;
 - h. other evidence showing that the **port drayage** motor carrier has otherwise satisfied the judgment, assessment, or lien; **or**
 - i. **a conformed copy of a final ruling, order, opinion, or other written disposition demonstrating that a port drayage motor carrier that is a prior offender prevailed on an appeal of a subsequent non-final judgment, ruling, citation, tax assessment, tax lien, order, decision, or award filed in a court or administrative forum.**
- (c) The port drayage motor carrier must mail a completed **Proof of Payment or Settlement written statement** with all accompanying documentation **as required by Subsection (b)**, postmarked no later than ~~20 calendar~~ **15 business** days from the date of the notice to the Labor Commissioner's

Office, Attn: SB 1402 Proof of Payment or Settlement, ~~300 Oceangate, Suite 302, Long Beach, CA 90802~~ 1500 Hughes Way, Suite C-202, Long Beach, CA 90810, or must submit a completed *Proof of Payment or Settlement* **as required by Subsection (b)**, with all accompanying documentation electronically **in pdf format** no later than midnight on the ~~20th calendar~~ **15th business day** from the date of the notice via email to: SB1402@dir.ca.gov.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Section 13879. Labor Commissioner Disposition of Responses Timely Received

- (a) If the port drayage motor carrier ~~completes and submits the *Proof of Payment or Settlement form (WCA 128 PORT Proof of Payment or Settlement 12/2019)* and accompanying documentation~~ **provides a timely response as required by section 13878** no later than ~~20 calendar~~ **15 business** days from the date of the notice, ~~as set forth under Section 13878~~, the motor carrier will not be placed on the public list pending the Labor Commissioner's determination of whether the motor carrier presented adequate proof that the judgment, assessment, or lien has been satisfied, or proof of an approved settlement dispensing of the judgment, assessment or lien.
- (b) The Labor Commissioner will inform the port drayage motor carrier by letter:
- (1) If the **port drayage** motor carrier will not be placed on the list with respect to a specific judgment, assessment, or lien because sufficient proof has been provided demonstrating that the judgment, assessment, or lien identified has been satisfied or settled. However, port drayage motor carriers with more than one judgment, assessment, or lien who fail to present sufficient proof that all outstanding judgments, assessments, or liens have been satisfied will be placed on the public list.
 - (2) If the **port drayage** motor carrier will be placed on the public list because the motor carrier entered into a settlement agreement but the Labor Commissioner's Office has determined that a settlement payment (including any installment payment) has not been timely made according to the terms of the settlement agreement.
 - (3) If the **port drayage** motor carrier will be placed on the public list because the Labor Commissioner's Office determines that the motor carrier has not provided sufficient proof that the judgment, assessment, or lien identified has been satisfied or settled.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Section 13880. Labor Commissioner Disposition Where No Timely Response or No Response Received

- (a) If a port drayage motor carrier does not ~~complete and submit the *Proof of Payment or Settlement form (WCA 128 PORT Proof of Payment or Settlement 12/2019)*~~ **provide a response as required by section 13878** within ~~20 calendar~~ **15 business** days from the date of the notice, ~~under Section 13878~~, then the port drayage motor carrier will be placed on the public list.
- (b) After being placed on the public list:
- (1) The port drayage motor carrier will not receive any additional notice from the Labor Commissioner's Office; and
 - (2) The port drayage motor carrier will continue to appear on the list ~~unless it requests removal because~~ **until it complies with Labor Code section 2410.4(b)(1)(D)**,

including submitting evidence to the Labor Commissioner as specified in section 13881 that it has satisfied the judgment, tax assessment, or tax lien, final citation or ODA, or entered into an approved settlement agreement dispensing of the judgment, assessment, or lien liability which is the subject of the posting on the list and the Labor Commissioner makes a determination that it no longer qualifies for posting on the list under Labor Code section 2810.4.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Section 13881. Removal from Public List

(a) After a port drayage motor carrier has been placed on the public list, the Labor Commissioner ~~may~~ **shall** remove the **motor** carrier from the list ~~if it subsequently provides the Labor Commissioner with sufficient proof of satisfaction or settlement of the judgment, assessment, or lien.~~ **within 15 business days upon the following:**

(a) The Labor Commissioner's Office determines after review of submitted documents specified in subsections (1), (2), and (3) that there has been full payment of an unsatisfied judgment or any other final liability for all violations identified in Labor Code sections 2810.4(b)(1)(A)-(B) or that the port drayage motor carrier has entered into an approved settlement dispensing of the judgment or liability; or, in the case of a subsequent liability against a prior offender, the prior offender prevailed in an appeal.

(b) (1) A port drayage motor carrier shall present such proof by completing and submitting a *Proof of Payment or Settlement form* (WCA 128 PORT—Proof of Payment or Settlement 12/2019) and written statement under penalty of perjury stating the basis for removal of the listing, along with the accompanying documentation specified in subsections (2) and (3), as applicable, by mail to the Labor Commissioner's Office, Attn: SB 1402 Proof of Payment or Settlement, 300 Ocean Gate, Suite 302, Long Beach, CA 90802 1500 Hughes Way, Suite C-202, Long Beach, CA 90810, or electronically in pdf format via email to: SB1402@dir.ca.gov.

(2) For purposes of sufficiently documenting the payment or satisfaction of a judgment, tax assessment, or tax lien or a citation or ODA, the port drayage motor carrier shall identify and provide the documentation required under Section 13878, as applicable.

(3) For purposes of sufficiently documenting a disposition regarding a port drayage motor carrier who is a prior offender who prevailed on appeal from a subsequent non-final judgment or ruling or final citation or ODA, the motor carrier shall identify and provide a conformed copy of the final judgment, ruling, citation, tax assessment, tax, order, decision, or award which indicates the final disposition on the appeal.

(4) The port drayage motor carrier shall also provide documentation to show that violations of any labor or employment law or regulation subject to a final judgment or final citation or ODA have been sufficiently abated. This documentation shall include: a statement under penalty of perjury that the port drayage motor carrier does not currently engage in the labor practices identified as unlawful in the final judgment, final citation or ODA, and a description of the steps the motor carrier took to abate the violation(s).

Subject to the Labor Commissioner's request, the agency may determine whether an applicable violation was abated by reviewing any documents the motor carrier is required to maintain under the Labor Code, wage orders, or any other applicable law.

- (e) ~~The Proof of Payment or Settlement form (WCA 128 PORT Proof of Payment or Settlement 12/2019) will be available on the Labor Commissioner's website: https://www.dir.ca.gov/dlsc/List_Port_Trucking_Companies_Outstanding_Judgments.html.~~
- (d)(b) The Labor Commissioner's Office will inform the **port drayage** motor carrier by letter of the agency's determination of whether the motor carrier has presented sufficient proof ~~of satisfaction or settlement of the judgment, assessment, lien to merit removal from the public list.~~
- (c) If a port drayage motor carrier on the public list has multiple liability determinations posted on the public list, a separate request for removal must be provided for each determination. Each removal request will be considered individually and only the liability determination that is the subject of that removal request may be removed.
- (e) ~~In accordance with Labor Code section 2810.4 subdivision (b)(1), the port drayage motor carrier's listing shall be removed from the public list within 15 business days of the Labor Commissioner's determination that there has been full payment of the unsatisfied judgment, assessment, or lien, or that an approved settlement dispensed with the judgment, assessment, or lien.~~

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Section 13882. Notice to Port Drayage Motor Carrier Successors

- (a) In addition to the information contained in Sections 13878 through 13881 and the notice requirements of Labor Code section 2810.4(b)(2), the Labor Commissioner's Office ~~will~~ shall notify port drayage motor carrier successors of the following:
- (1) That the port drayage motor carrier has been identified as a successor to the predecessor port drayage motor carrier listed in the notice with an unsatisfied final court judgment, tax assessment, or tax lien based on one or more of the criteria for a successor as defined in Section 13875(e).
 - (2) That the port drayage motor carrier may request an informal hearing on the matter of successorship before the Labor Commissioner, by ~~completing and~~ submitting a *Request for Hearing form* ~~which will accompany the notice. Use of this form is an optional method of filing a request for a hearing, but the request for hearing must be submitted~~ request in writing that shall expressly identify the dispute as to successorship.
 - (3) That all responses to the notice must be postmarked or emailed in pdf format no later than 20 calendar 15 business days of the date of the notice from the Labor Commissioner. ~~If 20 calendar days from the date of the notice falls on a weekend or holiday, the date for timely response will be the next business day immediately following the weekend or holiday.~~
 - (4) That if the successor does not complete and submit the ~~Proof of Payment or Settlement form (WCA 128 PORT Proof of Payment or Settlement 12/2019)~~ request in writing and accompanying documentation or submit a request for hearing within ~~20 calendar~~ 15

business days from the date of the notice to the same mailing address or email address **in pdf format**, the successor:

- a. Will be placed on the public list;
- ~~b. Will waive the right to request a hearing on the matter of successorship before the Labor Commissioner;~~
- e. ~~b.~~ Will not receive any additional notice from the Labor Commissioner's Office; and
- d. ~~c.~~ Will continue to appear on the list **unless the successor requests removal because the underlying judgment, assessment, or lien against the predecessor port drayage motor carrier has been satisfied, or an approved settlement agreement dispensing of the judgment, assessment, or lien has been executed, and the Labor Commissioner's Office subsequently determines that the successor should be removed pursuant to Section 13881 until such time as the Labor Commissioner determines the successor or its predecessor should be removed from the list.**

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Article 3. Hearing Procedures, Judicial Review

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

(a) **Initial Placement on the Public List of a Successor.**

- ~~(a)~~(1) After a port drayage motor carrier that has been identified as a successor to a predecessor port drayage motor carrier with an unsatisfied final court judgment, tax assessment, or tax lien receives the notice described in Section 13882 and submits a timely request for hearing within ~~20~~ **calendar 15 business** days of date of the notice, the Labor Commissioner will assign the matter to a hearing officer for hearing. The proceeding under this section is an informal hearing conducted in accordance with the adjudication provisions of the Administrative Procedure Act, Chapters 4.5 and 5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the rules set forth in this article. Except as specifically provided herein, the provisions of Title 2, Division 3, Part 1, Chapter 5 of the Government Code (commencing with Government Code section 11500) shall not apply to these proceedings.
- ~~(b)~~(2) The subject matter of the hearing includes whether the port drayage motor carrier is an entity or individual who succeeds in the interest and operation of the predecessor port drayage motor carrier as defined in Section 13875(e). The Labor Commissioner will present evidence of successorship. The request for hearing will be deemed to dispute the Labor Commissioner's successorship determination ~~and~~. **If the request is timely made within 15 business days of the date of notice pursuant to section 13882,** the successor will not be placed on the public list until a determination has been made on successorship after a hearing conducted in accordance with the procedures set forth in this article, and such hearing decision is final.
- ~~(c)~~(3) Subpoenas and subpoenas duces tecum may be issued for the attendance of witnesses at the hearing, and for the production of documents at any reasonable place and time or at a hearing, in accordance with the procedures set forth at Government Code sections 11450.05 to 11450.50.

(b) **Successors on the Public List that Challenge Continued Placement.**

- (1) **A port drayage motor carrier that is on the public list as a successor who subsequently contends that they were aggrieved in any manner due to a lack of notice or knowledge of their placement on the list or due to mistake, inadvertence, surprise, or excusable neglect, may submit a written request for consideration by the Labor Commissioner at any time**

that the successor motor carrier is on the public list. A request for consideration that challenges continued placement on the list under this subsection must be delivered to the Labor Commissioner in the same manner as specified in Subsection (a) of this section. The request shall specifically identify and fully describe the basis for the challenge to continued placement on the list and must be accompanied by supporting documentation, if any, that is relevant to the challenged placement on the public list.

(2) The Labor Commissioner may hold a hearing on the subject of the continued placement on the list based on the request. Any hearing shall be held in accordance with the procedures set forth in Sections 13883(a)(3) and 13884-13887.

(c) No right to further relief shall accrue unless a request by a successor is first made to the Labor Commissioner.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Section 13884. Rights of Parties at Hearing; Taking of Evidence; Rules of Procedure

- (a) Each party to a hearing shall have the right to appear in person and by counsel; to call and examine witnesses and cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; to rebut evidence; and to introduce documentary exhibits and other evidence.
- (b) Oral evidence shall be taken on oath and affirmation.
- (c) The hearing proceedings shall be electronically recorded. In lieu of or supplemental to an electronic recording, the hearing officer shall allow a party to have the proceedings transcribed by a court reporter, provided that the court reporter furnish the Labor Commissioner with a certified copy of the transcript as soon as it is prepared, and that the party requesting that the proceedings be transcribed pay the cost of all transcripts.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Section 13885. Conduct of Hearing; Rules of Evidence; Role of Hearing Officer

- (a) The hearing shall be presided over by a hearing officer appointed by the Labor Commissioner.
- (b) The hearing need not be conducted according to the technical rules of evidence relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions, except that the rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.
- (c) Hearsay evidence may be used to supplement or explain other evidence, but shall not of itself be sufficient to support a finding, if it is objected to at the hearing. An objection is timely if made before submission of the case.
- (d) The hearing officer appointed by the Labor Commissioner who presides over the hearing, in exercising sound discretion, may control the order of presentation of evidence at the hearing; keep out repetitive and cumulative evidence; and otherwise rule out evidence.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Section 13886. Hearing Officer Decision

Within 45 calendar days of the conclusion of the hearing, the hearing officer shall prepare a written decision based on the record of the proceedings, including the hearing, which shall contain a statement of the factual and legal basis of the decision as provided in Government Code section 11425.50. Copies of the hearing officer's decision shall be delivered to the parties personally or sent to them by first class mail.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Section 13887. Judicial Review

- (a) A port drayage motor carrier successor aggrieved by a decision issued pursuant to Section 13886 may seek review of the decision made after a hearing held pursuant to this article by filing a petition for writ of mandate to the appropriate superior court pursuant to section 1094.5 of the Code of Civil Procedure within 45 calendar days after service of the decision. If no petition is timely filed with the appropriate superior court, the decision shall be the final administrative order.
- (b) Once a hearing officer's decision that a **port drayage** motor carrier is a successor becomes final, either when there is no petition for writ of mandate that is timely filed or after disposition of the writ and any further appeal proceedings, the port drayage motor carrier successor will be placed on the public list. **In addition, if a petition for writ of mandate is timely filed, the port drayage motor carrier successor may be placed on the public list unless the court stays the hearing officer's decision.**
- (c) A decision that has become final as provided in this section will be determinative in any future proceeding regarding liability for unpaid wages, unreimbursed expenses, damages and penalties, including applicable interest, and may not be challenged or litigated again.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.

Article 4. Enforcement

Section 13888. Determining Customer Liability

For purposes of determining customer liability under Labor Code section 2810.4, the following terms used in Labor Code section 2810.4(b)(4) mean as follows:

- (a) "From the time the driver is dispatched to begin work on behalf of the customer" means the earlier of the time the driver inspects the truck in preparation for performing services on behalf of the customer, begins to wait to perform services on behalf of the customer, begins to perform services on behalf of the customer by hauling freight, or begins to perform work that is compelled by the necessity of the employer's business on behalf of the customer.
- (b) "Until all tasks are completed incidental to that work" includes, in addition to either returning the unladen chassis or intermodal carrier to its point of origin, delivering the unladen chassis or intermodal carrier to its final destination.

(c) “Ready to be dispatched to haul freight on behalf of another customer” means the later of all tasks associated with becoming ready to take on a new assignment, including any vehicle maintenance, completion of paperwork, and obtaining of fuel.

Note: Authority: Section 2810.4, Labor Code. Reference: Section 2810.4, Labor Code.