

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

ADDING SUBCHAPTER 15: PUBLIC LIST OF CERTAIN PORT DRAYAGE MOTOR  
CARRIERS AND CUSTOMER SHARING OF LIABILITY  
UNDER LABOR CODE SECTION 2810.4

**INITIAL STATEMENT OF REASONS**

**INTRODUCTION**

The Labor Commissioner proposes to exercise her rulemaking authority under Labor Code section 2810.4(k) to adopt new Subchapter 15, Chapter 6, Division 1, of Title 8 of the California Code of Regulations, which addresses the Labor Commissioner’s maintenance of a public website list of port drayage motor carriers with outstanding judgments and enforcement of joint and several liability between port drayage motor carriers that appear on the public list and their customers.

California is home to three of the five busiest ports in the nation: the Port of Los Angeles, the Port of Long Beach, and the Port of Oakland.<sup>1</sup> The port drayage industry is an important part of California’s economy and employs approximately 25,000 drivers who move goods (also known as freight) between California’s ports and distribution centers.<sup>2</sup> California port truck drivers provide important drayage services,<sup>3</sup> enabling stores to receive their inventory for consumer goods throughout the state, with additional freight moving across the country.<sup>4</sup> “They [California’s port truck drivers] are an integral part of the supply chain for many of the big-box stores that are found in nearly every community.”<sup>5</sup>

A 2017 investigation by USA Today found port trucking companies “in Southern California have spent the past decade forcing drivers to finance their own trucks by taking on debt they could not afford.”<sup>6</sup> These same port drayage drivers are routinely misclassified as independent contractors when in fact they are employees under California and federal laws.<sup>7</sup> Since 2012, the

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<sup>1</sup> Bill Analysis, Senate Appropriations Committee, 2017-2018 Regular Session, Senate Bill 1402, May 7, 2018, at p. 1.

<sup>2</sup> Senate Bill 1402 (Lara, 2018), Chapter 702, section 1(a).

<sup>3</sup> Drayage services involve transporting goods (generally through containers) a short distance via ground freight using trucking services. (See Bill Analysis, Senate Appropriations Committee, 2017-2018 Regular Session, Senate Bill 1402, May 7, 2018, at p. 1.)

<sup>4</sup> *Id.* at p. 1.

<sup>5</sup> *Id.*

<sup>6</sup> Senate Bill 1402 (Lara, 2018), Chapter 702, section 1(c) (quoting *Rigged: Forced into Debt: Worked Past Exhaustion, Left with Nothing*, Brett Murphy, USA Today Investigative Report, June 16, 2017).

<sup>7</sup> *Id.*, section 1(f).

Labor Commissioner's Office has awarded in excess of \$45 million in unlawful deductions from wages and out-of-pocket expenses to more than 400 drivers.<sup>8</sup>

In September 2018, Senate Bill ("SB") 1402, introduced by Senator Lara, was enacted to bring about greater accountability in the port trucking industry by requiring the Labor Commissioner to create a public list of trucking companies with outstanding judgments and imposing shared liability on customers that continue to use these companies if there are future labor violations.<sup>9</sup> This law, codified at Labor Code section 2810.4, went into effect on January 1, 2019. (SB 1402, Chapter 702, Statutes of 2018.)

The Labor Commissioner has maintained a public list of port trucking companies with outstanding judgments on its website since the law went into effect.<sup>10</sup> This rulemaking action further implements and clarifies the procedures used to compile the public list and to be removed from the public list, as well as the manner in which customer liability will be enforced. The relevant provisions of the existing law are described below.

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

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

### **Proposed Article 1. Definitions Used in Subchapter**

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

Section 13875 includes definitions which provide meanings to terms used in Labor Code section 2810.4 and these regulations. The definitions will more specifically describe and thus clarify the terms used in the statute and the way the Labor Commissioner's Office (LCO) is interpreting them for purposes of carrying out the statutory requirement to maintain a public list of port drayage motor carriers with outstanding judgments and for purposes of enforcing joint and several liability for customers who continue to use such motor carriers. Setting forth definitions is necessary to ensure that the meaning of key terms used in the statute and regulations is clear and that the terms will be interpreted consistently by the public and the LCO.

Subsection (a) defines "alleged conduct," as this term is used in Labor Code section 2810.4(b)(2)(B), to describe in more detail the type of information the Labor Commissioner proposes to include in a notice to a port drayage motor carrier to apprise the motor carrier of the unlawful behavior that the LCO has identified, which would warrant adding the motor carrier to the public list. Identification of what constitutes unlawful behavior, i.e., the unsatisfied final court judgment, tax assessment or tax lien and any corresponding amounts, is necessary to provide a more specific explanation of what would justify being added to the public list. It also

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<sup>8</sup> See *id.*, section 1(h).

<sup>9</sup> *California lawmakers pass bill to try to end trucker labor abuse by putting onus on stores*, Brett Murphy, USA Today, Sept. 5, 2018.

<sup>10</sup> See

[https://www.dir.ca.gov/DLSE/List\\_Port\\_Trucking\\_Companies\\_Outstanding\\_Judgments.html](https://www.dir.ca.gov/DLSE/List_Port_Trucking_Companies_Outstanding_Judgments.html).

gives the motor carrier an opportunity to cure the unlawful behavior in a timely manner, in order to avoid being placed on the public list.

Subsection (b) describes the agency, i.e., the Division of Labor Standards Enforcement (DLSE, Division, the Labor Commissioner, or Labor Commissioner's Office), which is authorized pursuant to Labor Code section 2810.4(k) to adopt these regulations. Pursuant to Labor Code section 95, the Labor Commissioner may enforce the provisions of the Labor Code and all labor laws of the state not specifically vested in any other officer, board or commission. Since the agency is referenced using various names publicly and in the Labor Code, this provision is necessary for the public to understand that the specified names refer to the same agency in connection with this subchapter.

Subsection (c) defines the statutory term "essential information," as used in Labor Code section 2810.4(b)(1), to refer to the information that the Labor Commissioner will post on the public website list of motor carriers that have acted unlawfully and have not remedied the violations. This definition is necessary for the Labor Commissioner to effectuate the purpose of Labor Code section 2810.4 which, in large part, is to publicly post all relevant and important information relating to the monetary amount of the unsatisfied judgment for which the port drayage motor carrier is liable, as well as the monetary amount of any unsatisfied tax assessment or tax lien. Additional items include the date such liability was established (became final), any applicable reference number for the judgment, tax assessment or tax lien, which provides more specific, identifiable information relating to the motor carrier's illegal conduct. This illegal conduct includes a motor carrier's failure to pay a driver their wages, imposing unlawful expenses on the drivers, failure to remit payroll taxes, failure to provide workers' compensation insurance, or misclassification of drivers as independent contractors. Finally, the definition includes information regarding whether the entity is a port drayage motor carrier, or a successor to the predecessor motor carrier. This is necessary because it allows the public to identify the prior and current entity. For example, a driver could identify a company they previously worked for as the same motor carrier, which is now operating under a different name. This definition further creates an incentive for customers of motor carriers who want to reduce the likelihood of joint and several liability to properly identify the predecessor motor carrier, or its successor, in order to cancel their contract for services with the proper party – thereby increasing the likelihood the proper entity will be held accountable for its illegal conduct.

Subsection (d) defines the statutory term "notification by certified mail," as used in Labor Code section 2810.4(b)(2), to mean notification to the last listed address on the Notice of Entry of Judgment or any agent for service of process listed with the Secretary of State. This definition is necessary to clarify the addresses the Labor Commissioner proposes to use in order to provide the required pre-posting notice to motor carriers. The Labor Commissioner plans to use the last listed address on the Notice of Entry of Judgment, as this is typically used by the LCO to locate a defendant in a wage proceeding. Additionally, the Labor Commissioner may use the address of the motor carrier's agent for service of process as listed with the Secretary of State, as this is also a reliable address for purposes of providing legal notice. In general, providing notice by certified mail is a more secure means by which a motor carrier becomes aware of the likelihood it may be added to the public list. In sending the notice via certified mail to a motor carrier's last listed address on the Notice of Entry of Judgment or any agent for service of process listed with the

Secretary of State, the motor carrier is assured due process by which it can comply with the law or challenge it. Notice via certified mail also means a motor carrier will become aware of the requirements it must follow to avoid being added to the public list, which includes the satisfaction of an outstanding judgment, and decreases the risk of any allegations by a motor carrier that it never received the Labor Commissioner's notice. Additionally, notice via certified mail will confirm with the LCO that a motor carrier's contact information is current. Incorrect contact information could result in the inability to accurately identify or provide necessary information to the motor carrier, including information related to the addition or removal from the public list.

Subsection (e) provides a definition of "successor" for purposes of these regulations and Labor Code section 2810.4. The statute recognizes that it is prevalent in the port drayage industry for port drayage motor carriers with outstanding judgments, tax assessments or tax liens to dissolve and reorganize essentially the same operation under a new name, and it includes in the definition of port drayage motor carrier "an entity or individual who succeeds in the interest and operation of a predecessor port drayage motor carrier consistent with the provisions of Section 2684." Section 2684 is the definition of successor in the garment manufacturing industry. This regulatory definition is necessary, therefore, to provide clarity regarding a definition of "successor" for the port drayage industry that is consistent with Labor Code section 2684. The Labor Commissioner is proposing to model the definition on Labor Code section 2684, which is also consistent with the definitions of successorship in other industries regulated by the Labor Commissioner, *e.g.*, farm labor contractor licenses (Labor Code section 1698.9) and registrations in the janitorial (Labor Code section 1420(e)(2) and car wash (Labor Code section 2066) industries. Similar to Labor Code section 2684, if one or more of the criteria are established, this would be sufficient to determine whether a new business is a successor to a predecessor port drayage motor carrier. The Labor Commissioner will use these criteria to determine whether a port drayage motor carrier is a successor to a predecessor port drayage motor carrier that has an outstanding judgment, tax assessment, or lien that would warrant inclusion on the public list. When the Labor Commissioner establishes that a successor business has taken over a motor carrier with an unsatisfied judgment, tax assessment, or tax lien, the Labor Commissioner will send notice to the successor informing them of the predecessor motor carrier's unsatisfied judgment(s) and that they may be deemed the same employer for purposes of Labor Code section 2810.4. A successor motor carrier will be equally responsible for any outstanding wages owed to the driver, and the customers of a successor motor carrier that is placed on the public list will be subject to joint and several liability for future wage violations.

Subdivision (e)(1) describes one of the successorship criteria the Labor Commissioner can use to determine whether a business is a successor company to a predecessor motor carrier. This criterion involves the use of substantially the same equipment, facilities, or workforce to provide substantially the same services for substantially the same type of customers as the predecessor. It is necessary to propose this as one of the successorship criteria because businesses that close down and reopen in name only frequently use the same equipment, facilities, or workforce to provide the same services to the same customers.

Subdivision (e)(2) describes the second criterion the Labor Commissioner can use to determine whether a business is a successor company to a predecessor motor carrier. This criterion looks at the ownership, management, control of the workforce, or interrelations of business operations with the predecessor port drayage motor carrier. It is necessary to propose this as one of the successorship criteria because businesses that close down and reopen in name only frequently share owners and managers with the predecessor business and their business operations are frequently intermingled.

Subdivision (e)(3) describes the third criterion the Labor Commissioner can use to determine whether a business is a successor company to a predecessor motor carrier. This criterion focuses on whether the new business employs managers who controlled the wages, hours, or working conditions of the drivers owed wages, damages or penalties by the predecessor port drayage motor carrier. It is necessary to propose this as one of the successorship criteria because businesses that close down and reopen in name only will frequently employ the same managers who were directly or indirectly responsible for the previous wage violations.

Subdivision (e)(4) describes the fourth and last criterion the Labor Commissioner can use to determine whether a business is a successor company to a predecessor motor carrier. This criterion examines family relationships between the two businesses, and whether the new business is made up of any immediate family members 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. In addition, this provision provides a definition of “immediate family member,” in order to clarify the familial relationships that will be considered (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). It is necessary to propose this as one of the successorship criteria because businesses that close down and reopen in name only are often placed into the names or hands of family members.

Subsection (f) clarifies that the statutory term “tax assessment or tax lien that can be released to the public under federal and state disclosure laws,” as used in Labor Code section 2810.4(b)(1), means only tax assessments or tax liens that have been made public. This definition is necessary because the Employment Development Department (EDD) and other taxing authorities cannot make publicly available tax assessments or tax liens due to federal and state non-disclosure laws. Consequently, this definition explains the Labor Commissioner will only post those tax assessments or tax liens that are already public, e.g., a tax lien that has been recorded at a county recorder’s office.

Subsection (g) provides a definition of “wages” for purposes of customer liability under Labor Code section 2810.4(a)(7). This definition is necessary because section 2810.4(a)(7) simply states that “wages” has the same meaning provided in Labor Code section 200, and includes “all sums payable to an employee or the state based upon any failure to pay wages, as provided by law.” “Wages” is defined under Labor Code section 200 as “all amounts for labor performed by employees of every description,” and “labor” as defined under Labor Code section 200 includes “labor, work, or service.” The proposed definition provides more specificity regarding various

types of “wages” under the Labor Code, and the types of damages and penalties that are “sums payable to an employee or the state based upon any failure to pay wages,” as follows:

Subdivision (g)(1) is necessary because it describes types of wages, including minimum, regular (contract-based), overtime, and other premium wages required by law. It also references other sections of the Labor Code that are regarded as wages, including Labor Code sections 226.2 (compensation of piece rate employees for rest and recovery periods and other nonproductive time); 226.7 (premium pay for failure to provide meal, rest, or recovery periods); 227.3 (payment for vested vacation time on termination of employment); 246 (paid sick days); and 2802 (unreimbursed business expenses).

Subdivision (g)(2) is necessary because it describes types of damages and penalties provided for by law that are due to the worker or the state upon a failure to pay wages. These include Labor Code sections 203 (penalty for willful failure to pay wages to discharged or quitting employee); 203.1 (penalty for bounced paycheck or insufficient funds to cash paycheck); 210 (penalty for failure to pay wages when due); 225.5 (penalty for unlawfully withholding wages due); 226 and 226.3 (damages and penalties relating to wage statement requirement); 248.5 (damages and penalties for paid sick leave violations); 558 (penalties for underpayment of wages due pursuant to provisions regulating hours and days of work); 1194.2 (damages for failure to pay minimum wage); and 1197.1 (damages and penalties for failure to pay minimum wage).

Subdivision (g)(3) is necessary because it incorporates any applicable right to recover interest that may be due for any sum described in this section. Wages are ordinarily determined from a specified date (when due) and subject to recovery of interest until the wages are paid (e.g., Labor Code section 98.1(c), Civil Code section 3289; also see, Code of Civil Procedure section 685.010).

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

### **Proposed Section 13876 (Sources of Information for Internet Website Posting)**

The purpose of this provision is to inform the public as to the sources of information for the website list of port drayage motor carriers that have unsatisfied final court judgments, tax assessments, or tax liens, and to provide a means for private parties to inform the LCO about information that is not within the LCO’s knowledge or possession, but which could warrant inclusion on the website list. This provision is necessary because the statute, Labor Code section 2810.4(b)(1), establishes that information held by both public and private entities may be a source of information for the website list, but the LCO only has access to sources of information that are within the LCO’s knowledge or possession, namely unsatisfied judgments resulting from LCO proceedings. A port drayage motor carrier may also be placed on the list based on information that is not known to the LCO, including tax assessments and tax liens that can be released to the public under federal and state disclosure laws and final court judgments that were obtained by private parties. The LCO has been informed by the taxing authorities that such tax information cannot be provided to the LCO for purposes of creating the public website list, as this would violate non-disclosure laws. However, if such information is in the public realm, such

as a tax lien that is recorded in a county recorder's office, then it can be posted publicly as part of the website list. Therefore, this provision instructs that private parties and other public entities that have information regarding an unsatisfied final court judgment, or a publicly-available tax assessment, or tax lien for a port drayage motor carrier, may submit such information to the LCO via email at the email address provided. Upon receipt of such information, the LCO will review it to determine whether it constitutes a basis for inclusion on the public website list. If the LCO determines that this information qualifies, the LCO will notify the port drayage motor carrier using the notice procedures set forth in the regulations.

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

This section builds upon the notice requirements in the statute to further establish the information that the LCO will provide to port drayage motor carriers prior to their placement on the website list. Specifically, in addition to the statutory requirement that a motor carrier be provided notice by certified mail no less than 15 business days prior to posting on the website including the name, email address, and number of a contact person at the LCO, the alleged conduct and a copy of the unsatisfied court judgment, assessment, order, decision, or award, and a copy of the rules governing removal of a posting, the notice will provide the following:

Subsection (a) provides basic information to the port drayage motor carrier about the fact that the LCO is required to maintain a public website list pursuant to Labor Code section 2810.4. This provision is necessary to provide the legal basis for the notice and to enable motor carriers to look up the law and its requirements, should they desire to do so.

Subsection (b) provides the definitions of "port drayage motor carrier" under Labor Code section 2810.4. This provision is necessary for motor carriers to understand how the term is defined and why they fall within the statutory definition(s).

Subsection (c) provides the basis for the port drayage motor carrier's identification for inclusion on the list. This provision is necessary – and the most critical part of the notice – because it informs the motor carrier regarding the "alleged conduct" that is the reason the LCO has identified the motor carrier for inclusion on the list. The LCO is proposing to define the statutory term "alleged conduct" to mean "an unsatisfied final court judgment, tax assessment, or tax lien, including the amount of such final court judgment, tax assessment or tax lien." (Proposed section 13875(a).) The alleged conduct that forms the basis for the motor carrier's identification will be provided to motor carriers, along with a copy of the unsatisfied judgment, assessment, or order (as required by statute) so that the motor carriers have an opportunity to review that information and either notify the LCO that it is incorrect or take steps to satisfy the judgment, assessment, or lien in order to avoid placement on the list.

Subsection (d) provides that the notice will lay out the procedures that apply to the next steps that can take place after notice is provided, including the ways in which the port drayage motor carrier can either avoid placement on the public list or request removal from the public list. These procedures are provided in sections 13878 through 13881 of the proposed regulations. This provision is necessary to enable motor carriers to take appropriate action upon receiving the notice.

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

This section provides detailed information regarding how a port drayage motor carrier can respond to the notice it received in order to avoid placement on the public list.

Subsection (a) provides a period of 20 calendar days from the date of the notice for a port drayage motor carrier to respond, and provides that if 20 calendar days falls on a weekend or holiday, the date for timely response will be the following business day. This provision is necessary to establish a clear rule about how much time a motor carrier has to respond to a notice if it believes it should not be placed on the public list and how such time will be counted.

Subsection (b) provides instructions regarding how a port drayage motor carrier must respond if it does not believe it should be placed on the public list because the judgment, assessment, or lien has been satisfied or settled, including the requirement to present adequate proof of satisfaction or settlement. This provision is necessary because after the LCO has identified a basis for including the motor carrier on the list, the motor carrier has the right to contest the information on which the LCO relied in making that determination. In doing so, it is necessary for the motor carrier to demonstrate the inaccuracy of that information with appropriate proof, as discussed in the subsequent subdivisions of this subsection.

Subdivision (b)(1) sets forth the requirement that the motor carrier respond by filling out *A Proof of Payment or Settlement* form (WCA 128 PORT Proof of Payment or Settlement), which is incorporated by reference. The LCO has determined that use of this form is necessary because it is the most efficient way for motor carriers to provide the relevant information, and for LCO staff to review the information and provide a timely response. If a form is not used, this could lead to delays and missing information; in short, the form allows for orderly processing.

The form asks the motor carrier whether the person or entity named on the form is currently on the website list and if so, whether the motor carrier is requesting removal from the list. The form also asks the motor carrier to indicate whether it has satisfied a judgment, assessment, or lien, or has entered into an approved settlement dispensing of the judgment, assessment, or lien. Next, the form asks the motor carrier to indicate what type of proof it is providing of the satisfaction or settlement, and instructs the motor carrier to attach a copy of the document(s). The form provides instructions on where to submit the form and the required documents, and notifies the motor carrier that failure to complete this form and submit a copy of proof of payment or settlement within 20 calendar days of the date of the notice will result in placement on the public list. The form also notifies the motor carrier that if it has been placed on the list and wishes to be removed, it can submit this form and a copy of the applicable documents by mail or email as indicated. Finally, the form requires a signature, printed name, date, telephone number, email address, and the person's job title/position.

Subdivision (b)(2) requires a motor carrier that does not wish to be placed on the website list to provide, in addition to the *Proof of Payment or Settlement* form, a copy of proof



that it has satisfied or settled the judgment, assessment, or lien. This requirement is necessary for the LCO to determine whether the motor carrier should not be placed on the list. The motor carrier could provide many different forms of proof, as described below and in the proposed regulation. It is necessary to list the forms of proof in order to inform the motor carrier regarding the specific documentation that a motor carrier can use to demonstrate satisfaction or settlement.

Subdivision (b)(2) a. allows a motor carrier to submit an acknowledgement of Satisfaction of Judgment form, which is a Judicial Council form (EJ-100) that is used to document when a court judgment has been satisfied. It is necessary to include this form on the list because it is the most common and widely-used method for demonstrating that a judgment has been satisfied.

Subdivision (b)(2) b. allows a motor carrier to submit an executed release from the judgment creditor approved by the LCO. It is necessary to include such a release because when the LCO approves a release the judgment is considered to be satisfied or settled.

Subdivision (b)(2) c. allows a motor carrier to submit an executed release or settlement approved by the relevant taxing authority. It is necessary to include this because the LCO will rely upon documentation from the relevant taxing authority as proof that a matter involving the tax authority has been satisfied or settled.

Subdivision (b)(2) d. allows a motor carrier to submit a court-approved settlement agreement. It is necessary to include this because the settlement of a private action filed in court is generally done by means of a court-approved settlement agreement.

Subdivision (b)(2) e. allows a motor carrier to submit a notarized settlement agreement. This provision is necessary because parties may enter into a settlement agreement that is formalized through notarization.

Subdivision (b)(2) f. allows a motor carrier to submit a written settlement agreement signed by an authorized representative of the LCO or relevant taxing authority. It is necessary to include such a settlement agreement because when the LCO or a taxing authority signs the settlement agreement, this is evidence of an approved settlement agreement dispensing of the judgment.

Subdivision (b)(2) g. allows a motor carrier to submit evidence of settlement payment, including any installment payment (if applicable) that has been made. This provision is necessary because a settlement may be demonstrated by payment, sometimes in installments.

Subdivision (b)(2) h. allows a motor carrier to submit other evidence showing that the motor carrier has satisfied the judgment, assessment, or lien. It is necessary to

include this provision because there may be another written record or instrument of the satisfaction that does not consist of any of the previously described instruments but otherwise demonstrates satisfaction of a liability amount specified in the notice.

Subdivision (c) provides that a port drayage motor carrier must either mail or email the *Proof of Payment or Settlement* with all accompanying documentation to the LCO at the address and email address listed. This provision further provides that mail must be postmarked no later than 20 calendar days from the date of the notice or submitted electronically no later than midnight on the 20<sup>th</sup> calendar day from the date of the notice. These instructions are necessary to inform the motor carrier about what has to be submitted, where it has to be submitted, and when it has to be submitted. The LCO determined that 20 calendar days is a reasonable time period for a port drayage motor carrier to sufficiently confirm the status of its own prior liability and to obtain the necessary document or other evidence demonstrating satisfaction of the liability(ies) described in the LCO's notice under Section 13877. A time period which extends beyond 20 calendar days from the date of the LCO's notice in order to demonstrate satisfaction of a liability, on balance, would unreasonably delay action by the LCO in maintaining a current and accurate list on its website. This time period recognizes that simple information demonstrating satisfaction of a prior liability can be more readily provided by the port drayage motor carrier. Affording the trigger date to commence on the date of the notice from the LCO as well as expiration of the 20-days based on the postmark date or email (also date stamped) for the response reasonably ensures that the motor carrier can easily and objectively calculate the response period under the notice.

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

This section explains how the LCO will handle responses received within 20 calendar days of the date of the notice informing the motor carrier that it has been identified for placement on the public website list.

Subsection (a) provides that if the motor carrier timely submits the *Proof of Payment or Settlement* form and accompanying documentation, the motor carrier will not be placed on the public list pending the LCO's determination whether the motor carrier has presented adequate proof that the judgment, assessment, or lien has been satisfied or settled. See the previous discussion above for the 20-day response period under Section 13878(c) which is incorporated here. This provision is necessary to ensure that a motor carrier will not be placed on the public list prematurely. Further, it allows the LCO ample time to evaluate the evidence provided.

Subsection (b) provides that the LCO will notify the motor carrier by letter of its determination. This is necessary to create a clear means by which the motor carrier will receive the LCO's response to the information it provided.

Subdivision (b)(1) provides the first type of determination the LCO may make upon reviewing the motor carrier's response and proof, which is to not place the motor carrier 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. This option is necessary

because in many cases, the information provided by the motor carrier will be sufficient, resolving the question whether the motor carrier should be placed on the public list. However, this provision also cautions that 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. This is necessary to make clear that providing adequate proof regarding one judgment, assessment, or lien does not automatically clear a motor carrier where there are multiple judgments, assessments, or liens.

Subdivision (b)(2) provides the second type of determination the LCO may make upon reviewing the motor carrier's response and proof, which is to place the motor carrier on the public list because the motor carrier has not made timely payments under a settlement agreement. This option is necessary because failure to make a settlement payment (or an installment payment in a settlement agreement) demonstrates that the motor carrier is non-compliant with a settlement agreement, which therefore warrants placement on the public list.

Subdivision (b)(3) provides the third type of determination the LCO may make upon reviewing the motor carrier's response and proof, which is to place the motor carrier on the public list because the motor carrier has not provided sufficient proof that the judgment, assessment, or lien has been satisfied or settled. This option is necessary because there may be instances in which the proof submitted to the LCO does not adequately prove that the judgment has been satisfied or settled, and therefore, the motor carrier should be placed on the list.

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

This section explains how the LCO will proceed if there is no timely response to the notice, or no response at all.

Subsection (a) provides that the motor carrier will be placed on the public list if there is no response or an untimely response (more than 20 calendar days from the date of the notice). This provision is necessary to establish a clear rule that the LCO will move forward in the absence of a response or a timely response, after having given the motor carrier an opportunity to respond.

Subsection (b) establishes what will happen after a motor carrier is placed on the public list. This is necessary to provide clear rules about further communication with the LCO regarding the list.

Subdivision (b)(1) provides that after being placed on the public list, the motor carrier will not receive any additional notice from the LCO. This provision is necessary to establish that there is no further action that the Labor Commissioner will take with respect to a motor carrier's placement on the list.

Subdivision (b)(2) provides that after being placed on the public list, the motor carrier will continue to appear on the list unless it requests removal because it has satisfied or settled a judgment, assessment, or lien. This provision is necessary to establish that the motor carrier must actively seek removal if it wishes to be

removed from the list. The following section contains the procedures for seeking removal.

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

This section provides the procedures for removal from the public list.

Subsection (a) provides that in order to be removed from the public list, a motor carrier must provide sufficient proof of satisfaction or settlement of the judgment, assessment, or lien. This provision is necessary to establish the basis for removal from the list after having been placed on it.

Subsection (b) provides instructions for presenting proof to the LCO in order to be removed from the list, including submission of a *Proof of Payment or Settlement* form and accompanying documentation by mail or email. This provision is necessary to inform motor carriers on the public list regarding the steps to take to be removed from the list.

Subsection (c) states that the *Proof of Payment or Settlement* form will be available on the Labor Commissioner's website and provides a link to where the form will be posted. This provision is necessary to direct motor carriers to the site where they can download the required form.

Subsection (d) provides that the LCO will inform the motor carrier by letter of the agency's determination as to whether the motor carrier presented sufficient evidence to warrant removal from the public list. This is necessary to create a clear means by which the motor carrier will receive the LCO's response to the request for removal.

Subsection (e) provides the timeframe for removing the motor carrier from the public list upon a determination by the LCO that there has been satisfaction or settlement of the judgment, assessment, or lien. Per the statute, this must be done within 15 business days. Although this provision is somewhat duplicative of the statute, it is nevertheless necessary because it clarifies that the LCO will treat satisfaction or settlement of assessments and liens in the same manner as judgments. Additionally, including the 15 business-day timeframe in the regulation provides comprehensive information to the motor carrier about the procedures for removal of a posting, as contemplated by Labor Code section 2810.4(b)(2)(C), rather than requiring a motor carrier to refer back to the statute to learn the timeframe.

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

As explained earlier under proposed Section 13875(e), a "port drayage motor carrier" that may be placed on the public list includes an entity or individual who succeeds in the interest and operation of a predecessor port drayage motor carrier. This section creates a separate notice that will be provided to successor motor carriers in order to provide more specific notice for successors that outlines their rights. In all other respects, this notice is the same as the notice that will be provided to all other port drayage motor carriers, as described in the regulatory proposal and below.

Subsection (a) provides that the successor notice will contain all of the information contained in the Notice to Port Drayage Motor Carriers, including the ways in which the

motor carrier can either avoid placement on the public list or request removal from the public list (proposed Sections 13877 through 13881), as well as the statutory requirements in Labor Code section 2810.4(b)(2), and the following additional provisions. This is necessary to establish that the successor notice will be separate and distinct from the other port drayage motor carrier notice, though it will contain all of the same basic information that is being provided to other port drayage motor carriers.

Subdivision (a)(1) provides that the notice will inform the successor that it has been identified as a successor based on one or more of the criteria for successors set forth in proposed Section 13875(e), and that the predecessor motor carrier identified in the notice has an unsatisfied final court judgment, tax assessment, or tax lien. This provision is necessary to provide basic information to the successor about the law, including the legal basis for applying this law to a successor of a predecessor that has an outstanding judgment, assessment, or lien.

Subdivision (a)(2) provides that a motor carrier that has been identified as a successor has the right to request an informal hearing on this matter, and that it may do so by using a *Request for Hearing* form, though use of this form is optional and merely provided for convenience. Regardless of the format, the motor carrier must submit a request for hearing in writing. This provision is necessary to give the successor an opportunity to contest in a hearing the LCO's identification of this entity as a successor before the successor is placed on the public list.

Subdivision (a)(3) sets forth the timeframe for responding, which is 20 calendar days from the date of the notice, and if 20 calendar days falls on a weekend or holiday the date for timely response will be the following business day. The LCO determined that 20 calendar days is a reasonable time period for a port drayage motor carrier to determine whether to contest the matter of successorship and submit a written request for hearing. A time period which extends beyond 20 calendar days from the date of the LCO's notice in order to contest successorship would unreasonably delay action by the LCO in maintaining a current and accurate list on its website. This time period recognizes that a decision to contest successorship that requires submission of a written request for hearing can be readily provided by the port drayage motor carrier and that the preparation and submission of any evidence would occur at the later hearing. Providing the trigger date to commence on the date of the notice from the LCO, as well as expiration of the 20-days based on the postmark date or email (date stamped) for the response reasonably ensures that the motor carrier can easily and objectively calculate the response period. This provision is necessary to establish a clear rule about how much time a successor has to respond to a notice and how such time will be counted.

Subdivision (a)(4) provides the following consequences for failure to complete and submit the *Proof of Payment or Settlement* form with accompanying documentation or to submit a request for hearing within 20 calendar days from the date of the notice:

Subdivision (a)(4) a. provides that the successor will be placed on the public list. This provision is necessary to establish a clear rule that where there is no response, or an untimely response, the successor will be placed on the list.

Subdivision (a)(4) b. provides that the successor will waive the right to request a hearing on the matter of successorship before the Labor Commissioner. This provision is necessary to put the successor on notice that a failure to respond and contest the successorship matter will be deemed a waiver of the right to request such a hearing in the future, such as in a future proceeding where the successor is held liable for the predecessor's liability.

Subdivision (a)(4) c. provides that after being placed on the public list, the successor will not receive any additional notice from the LCO. This provision is necessary to establish that there is no further action that the Labor Commissioner will take with respect to a successor's placement on the list.

Subdivision (a)(4) d. provides that after being placed on the public list, the successor will continue to appear on the list unless it requests removal because it has satisfied or settled the predecessor's judgment, assessment, or lien. This provision is necessary to establish that the successor must actively seek removal if it wishes to be removed from the list. The notice will also include the same procedures for removal that apply to all other port drayage motor carriers, as established in proposed Section 13881.

### **Proposed Article 3 (Hearing Procedures, Judicial Review)**

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

**Section 13883** provides standards for conducting hearings, including rules of evidence and the role of the hearing officer for hearings held under this new article. The standards are primarily based on similar provisions in the garment manufacturing regulations, a registration program that the Labor Commissioner also administers, and has found to provide hearing procedures that are efficient to administer and which meet due process requirements for providing a fair hearing. Similar administrative procedural standards also exist and are codified in regulations in other registration programs administered by the Labor Commissioner regarding car washes, foreign labor contractors, and janitorial businesses.

Subsection (a) provides that an informal hearing shall be conducted by a hearing officer appointed by the Labor Commissioner. The Labor Commissioner has determined that hearings requested by port drayage motor carriers that have been identified as successors should be held 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, which provide for an informal hearing. The Labor Commissioner's Office conducts informal hearings throughout its program areas, including wage claims, citation appeals, and licensing and registration denials, suspensions, and revocations. This is in contrast to the formal hearing rules of procedure contained in the administrative adjudicatory provisions in the Government Code contained in Chapter 5 of Part 1, Division 3 of Title 2, commencing with Government Code section 11500. These Government Code sections authorize an agency to adopt its own procedures for adjudicatory proceedings which are expressly

adopted by an agency, and the agency has determined that providing rules of procedure in these regulations will more effectively inform parties of procedures to contest a successorship determination. Similar to other administrative hearings conducted by the Labor Commissioner under other statutes, legal due process requires that a party be provided a fair hearing (*Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731) requiring that the hearing officer who determines the matter is a designated person who is independent of the person who initiated or otherwise determined the successorship, and must conduct a hearing in a fair and independent manner.

Subsection (b) explains the subject matter to be considered in a hearing by the Labor Commissioner to determine whether a business is a successor to a port drayage motor carrier as defined in Section 13875(e), how evidence will be presented, and the fact that a hearing request stays the placement of the motor carrier on the list until a determination is made following the hearing, and that determination becomes final. This section is necessary because it establishes the content of the hearing and the Labor Commissioner's role in presenting evidence to establish successorship. It is also necessary to establish the impact of a hearing request and the process by which a putative successor would be placed on the list following the hearing officer's determination becoming final.

Subsection (c) provides mechanisms available to the parties for the purpose of commanding the attendance of witnesses at the hearing and for the production of documents relevant to the issue of determining successorship liability.

### **Proposed Section 13884 (Rights of Parties at Hearing; Taking of Evidence; Rules of Procedure)**

**Section 13884** provides for rights of a party appearing at a hearing and establishes housekeeping requirements for the parties and hearing officer who conducts a hearing under the article. The standards are primarily based on similar provisions in the garment manufacturing regulations, a registration program that the Labor Commissioner administers, and has found to provide hearing procedures which are efficient to administer and meet due process requirements for providing a fair hearing. Recognizing that the subchapter regulates in a new area and subjects persons who have not been subject to previous regulation, the Labor Commissioner determined that the rights and standards in this section warrant express provisions to more clearly inform affected persons of the standard hearing procedures within the subchapter.

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

Subsection (c) provides for recording or transcribing of a hearing which is designed to constitute an administrative record of the hearing proceeding and is necessary in the case of judicial review of the agency's determination pursuant to Sections 13883 (requiring a hearing upon timely request for hearing) and 13887 (providing for judicial review of a decision after hearing), and to comply with Code of Civil Procedure section 1094.5, which requires an administrative record for judicial review. In the Labor Commissioner's experience with other programs which have hearing proceedings, a party sometimes requests that a hearing proceeding be transcribed by a court reporter in lieu of or supplemental to electronic recording of the proceeding. This is

necessary to ensure that there is a single transcript prepared which will constitute the record of the hearing proceedings which can be relied upon by the hearing officer and parties, and for use in any subsequent judicial review if sought by a party, and provide that the party requesting that the proceedings be transcribed shall bear the costs of all transcripts.

### **Proposed Section 13885 (Conduct of Hearing; Rules of Evidence; Role of Hearing Officer)**

Subsection (a) provides that a hearing shall be conducted by a hearing officer appointed by the Labor Commissioner. This is necessary to establish who will preside over the hearing.

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

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

Subsection (d) provides authority to the hearing officer to control the manner and order for presentation of evidence subject to the more specific standards specified in Section 13884 and to rule on excluding evidence in order to allow for an efficient proceeding, which is necessary to provide a basis for a reasoned decision by the hearing officer that also comports with due process.

**Proposed Section 13886 (Hearing Officer Decision)** provides the timing and procedure for preparation and delivery of a written decision by the hearing officer following a hearing. This proposed section further requires that the decision prepared by the hearing officer comply with the content requirements specified in Government Code section 11425.50, which is adopted for decisions under this section and establishes a standard for decision content that sufficiently allows for review of the factual and legal basis for the Labor Commissioner's decision and judicial review if sought by the affected person. This provision is necessary for the timely and effective disposition of a case following a hearing, and provides the parties with notice regarding the fact that the hearing officer will have within 45 calendar days of the conclusion of the hearing to issue her decision and that the hearing officer's decision will be delivered to the parties personally or sent to them by first class mail.

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

Subsection (a) provides a procedure through which an aggrieved person may seek judicial review of the Labor Commissioner's decision and is necessary to provide the party with a process for seeking further review. The procedure to seek judicial review falls under Code of Civil Procedure section 1094.5 (writ of mandate) and the section provides for a filing in superior court within 45 calendar days of service of the decision, which is reasonably



sufficient to initiate judicial review of the administrative decision which vests jurisdiction of the matter with the appropriate superior court. The language which states the consequence for a failure to file a timely petition is that the administrative decision is final is necessary to inform the affected person of administrative finality of the decision to which an aggrieved person is required to comply without further administrative review or action.

Subsection (b) provides notice that after a successorship decision becomes final, which could be if there is no timely petition for a writ of mandate or after disposition of the writ and any further appeal proceedings, the port drayage motor carrier successor will be placed on the public list.

Subsection (c) is necessary to clarify that a final decision pursuant to this section will be considered determinative in any future proceedings regarding liability for unpaid wages, unreimbursed expenses, damages and penalties, including applicable interest. It further explains that the decision may not be challenged or litigated again.

#### **Proposed Article 4 (Enforcement)**

##### **Proposed Section 13888 (Determining Customer Liability)**

This section sets forth the Labor Commissioner's proposed interpretation of key statutory terms that will be used to determine customer liability pursuant to Labor Code section 2810.4(b)(4). Specifically, the statute provides that a customer that uses a port drayage motor carrier on the public list will be jointly and severally liable for the motor carrier's subsequent violations "from the time the driver is dispatched to begin work on behalf of the customer until all tasks are completed incidental to that work, including the return of an unladen chassis or intermodal container to its point of origin, and the driver is ready to be dispatched to haul freight on behalf of another customer." This section describes the different possible scenarios and stages of work performed and completed by a port drayage truck driver on behalf of a customer who engages the use of a port drayage motor carrier that is on the public list. The subsections in this section, which describe the scope of that work from beginning to end, standardize rules that will be used to establish joint and several liability between customers and port drayage motor carriers on the public list. It is necessary to provide clarity around these statutory terms and phrases for customers and the affected motor carriers, as well as for the LCO in enforcement, and drivers who may seek to hold customers jointly and severally liable with the motor carrier for unpaid wages, interest, penalties and other damages owed to a truck driver pursuant to Labor Code section 2810.4(b)(3).

Subsection (a) provides the meaning of the phrase "from the time the driver is dispatched to begin work on behalf of the customer." This subsection provides multiple examples of when a driver is dispatched or, stated differently, when the truck driver begins to work or performs tasks for a customer. The Labor Commissioner is proposing that this will mean the earlier of the time the driver begins to wait to perform services on behalf of the customer, inspects the truck in preparation for performing 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. These activities are all associated with work that a driver might do because the customer has engaged the motor carrier to haul freight, and therefore these activities are done "on behalf of a customer." This subsection is necessary because it

explains the starting time for which a customer could be held jointly and severally liable with a port drayage motor carrier that is on the public list. A truck driver in the port drayage industry could work for one, primary customer or multiple customers who engage the use of a motor carrier in any given work week. Given the various and different scenarios and number of customers who might engage the use of a motor carrier that is on the public list, this definition also helps to establish when a truck driver first begins to perform services for a particular customer, in the event that the scope and extent of liability for that customer under Labor Code section 2810.4(b)(3) needs to be determined if a truck driver is also performing work for multiple customers in that workweek.

Subsection (b) explains that the phrase “until all tasks are completed incidental to that work” includes not just “the return of an unladen chassis or intermodal container to its point of origin” but also until the time a driver reaches their final destination, after completing all work for that customer. The Labor Commissioner believes this clarification is necessary because a driver often delivers the freight to a particular location for a customer and then delivers the unladen chassis or intermodal container to a final destination that is not the same as the point of origin. Further, this provision is necessary because a customer is jointly and severally liable with a port drayage motor carrier that is on the public list for all tasks in between being dispatched by the motor carrier to the time those tasks are completed and the driver is ready to be dispatched again, and delivery to final destination would be among those tasks. Additionally, a truck driver in the port drayage industry could perform work for one, primary customer or multiple customers who engage the use of a motor carrier in any given work week. Given the various and different scenarios and number of customers who might engage the use of a motor carrier that is on the public list, this provision helps to establish the completion of tasks for a particular customer, explaining that this could include the return or delivery of an unladen chassis or intermodal container to either its point of origin or final destination.

Subsection (c) provides a definition of the phrase “ready to be dispatched to haul freight on behalf of another customer” to mean 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. The Labor Commissioner is proposing this definition which includes several examples because it is necessary to establish clear rules for the end point of a particular customer’s joint and several liability with a port drayage motor carrier that is on the public list. A driver is not “ready to be dispatched to haul freight on behalf of another customer” until each of these items has been completed. Moreover, a truck driver in the port drayage industry could work for one, primary customer or multiple customers who engage the use of a motor carrier in any given work week. Given the various and different scenarios and number of customers who might engage the use of a motor carrier that is on the list, this provision helps to establish when a truck driver completely finishes the services they perform on behalf of a customer. In addition, this subsection provides guidance in understanding when a customer’s liability for unpaid wages, interest, penalties and other damages under 2810.4(b)(3) ends, especially where a truck driver subsequently is dispatched to perform work for another customer.

### **Anticipated Benefits, Government Code § 11346.2(b)(1)**

The proposed regulations are intended to establish standards for creating and maintaining the public list mandated by SB 1402, including formal implementation of notice procedures the Labor

Commissioner is required to carry out. Further, the proposed regulations are intended to provide clarity regarding enforcement of customers' joint and several liability under the law.

The primary benefit of the regulatory proposal is that it will incentivize and facilitate payment of unpaid wages, damages, and penalties due to workers and the state. In order to avoid losing business with customers who are concerned about having joint and several liability for future violations, motor carriers with outstanding judgments will pay off these outstanding debts. As a result, port truck drivers who have obtained judgments for unpaid wages and unreimbursed expenses but never actually received their back wages will finally receive what is owed to them, allowing them to support their families and their communities. The Labor Commissioner's Office had awarded in excess of \$45 million in unlawful deductions from wages and out-of-pocket expenses to more than 400 drivers at the time this law went into effect, but drivers had actually received little of those awards due to nonpayment by the motor carriers. The potential benefit to workers is therefore millions of dollars in wages owed. Since the law went into effect on January 1, 2019, approximately \$1.2 million has been paid, and adoption of the regulatory proposal will further encourage payment of unpaid wages to drivers.

In addition to the enormous benefits to the welfare of workers, the state (and all taxpayers) will benefit by receiving overdue tax payments from port trucking companies that have outstanding tax assessments and tax liens. Further, port trucking companies will be aided by clear rules regarding how motor carriers are placed on the list and how they can be removed from the list. Finally, customers who do business with port trucking companies will benefit from the transparency of the list on the Labor Commissioner's website, so that they can avoid potentially being held jointly and severally liable for future wage violations incurred by a port trucking company that appears on the list. Thus, the regulatory action furthers the mission of the Labor Commissioner' Office, which is to ensure a just day's pay to every worker and promote economic justice. In addition, the proposed regulation increases transparency in business and government by setting forth rules for compiling and maintaining the list and for customers to avoid liability. Finally, the proposed action indirectly prevents discrimination, and promotes fairness and social equity.

**Economic Impact Assessment, Government Code § 11346.2(b)(2)**

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

**Sources Relied Upon, Government Code § 11346.2(b)(3)**

None.

**Reasonable Alternatives Rejected, Government Code § 11346.2(b)(4)**

The Labor Commissioner has initially determined that no alternatives would be more effective in carrying out the purpose that underlies the proposed regulatory action, or would be at least as effective or less burdensome on the regulated public (port drayage motor carriers and businesses that use port drayage motor carriers).

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

The Labor Commissioner's Office has determined that the proposal will not have a significant adverse impact on business based on analysis of the costs of compliance.

Based on the first year of the Labor Commissioner's Office administering this program whereby a list of port drayage companies with outstanding judgments is maintained on the Labor Commissioner's Office website, the Labor Commissioner's Office has determined that a small number of companies respond to the notice sent to these companies informing them about the law and providing them an opportunity to respond and avoid placement on the list (26 companies/year). Typically a company that responded after receiving the notice would forward it to an attorney who responded to the Labor Commissioner's Office and either provided proof of payment or negotiated a settlement to satisfy the judgment. The Labor Commissioner's Office estimates that it takes 2.5 hours of attorney time to review the notice, discuss with the trucking company, and respond to the Labor Commissioner's Office. Based on a mean hourly wage for an attorney in California of \$82.48,<sup>11</sup> the total cost for a small or typical business to respond to the notice and avoid placement on the list is estimated to be \$206.20 ( $\$82.48 \times 2.5 \text{ hours} = \$206.20$ ).

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

The Labor Commissioner's Office does not anticipate the creation or elimination of jobs within the state attributed to this proposal.

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

The costs and benefits will be borne by existing businesses and will not create or eliminate businesses.

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

There is no anticipated expansion of businesses currently doing business within the state attributed to this proposal.

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

The primary benefit of the regulatory proposal is that it will incentivize and facilitate payment of unpaid wages, damages, and penalties due to workers and the state. In order to avoid losing business with customers who are concerned about having joint and several liability for future violations, motor carriers with outstanding judgments will pay off these outstanding debts. As a result, port truck drivers who have obtained judgments for unpaid wages and unreimbursed expenses but never actually received their back wages will finally receive what is owed to them, allowing them to support their families and their communities. The Labor Commissioner's Office

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<sup>11</sup> <https://www.bls.gov/oes/current/oes231011.htm#st> (May 2018 Bureau of Labor Statistics)

had awarded in excess of \$45 million in unlawful deductions from wages and out-of-pocket expenses to more than 400 drivers at the time this law went into effect, but drivers had actually received little of those awards due to nonpayment by the motor carriers. The potential benefit to workers is therefore millions of dollars in wages owed. Since the law went into effect on January 1, 2019, approximately \$1.2 million has been paid, and adoption of the regulatory proposal will further encourage payment of unpaid wages to drivers.

In addition to the enormous benefits to the welfare of workers, the state (and all taxpayers) will benefit by receiving overdue tax payments from port trucking companies that have outstanding tax assessments and tax liens. Further, port trucking companies will be aided by clear rules regarding how motor carriers are placed on the list and how they can be removed from the list. Finally, customers who do business with port trucking companies will benefit from the transparency of the list on the Labor Commissioner's website, so that they can avoid potentially being held jointly and severally liable for future wage violations incurred by a port trucking company that appears on the list. Thus, the regulatory action furthers the mission of the Labor Commissioner' Office, which is to ensure a just day's pay to every worker and promote economic justice. In addition, the proposed regulation increases transparency in business and government by setting forth rules for compiling and maintaining the list and for customers to avoid liability. Finally, the proposed action indirectly prevents discrimination, and promotes fairness and social equity.