

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

REPEAL SECTIONS 13660, 13661, & 13662
ADOPT SECTIONS 13660, 13660.1, 13661, 13662, 13663, 13663.5, 13664,
13665, 13665.5, 13666, 13666.1, 13666.2, 13666.5, 13667, & 13667.1
REGULATING FARM LABOR CONTRACTORS

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

Following the agency's review and consideration of comments providing during the 45-day comment period and at the public hearing, the Division of Labor Standards Enforcement (DLSE) issued an "Addendum to Initial Statement of Reasons" which is incorporated herein and can be located at Tab 7. The addendum accompanied DLSE's Notice of Modifications to Text of Proposed Regulations and Addendum to Initial Statement of Reasons for which a 15-day period for comment was provided pursuant to Government Code 11347.1.

ADDITIONAL DOCUMENTS ADDED TO THE RULEMAKING FILE

The following documents were added to the rulemaking file on April 1, 2014 and interested parties were notified and afforded the opportunity to comment upon within a 15-day time period which ended on April 16, 2014 as specified in the notice:

Documents referenced in the proposed regulations:

- Application for new license
- Application for renewal license
- Application for renewal license- Short form
- DE 9
- DE 9ADJ
- DE-9C
- DMV Form INF 1125
- IRS Form 8821
- LLC-12
- SI-200
- S&DC-STKNP
- Farm Labor Contractor Bond

Other Documents relied upon include:

- Cost sheet for replacement license
- Economic Impact Assessment
- Cost sheet for exam fee

Nonsubstantive Changes Made During OAL Review

Nonsubstantive changes were made to the regulation text, the three DLSE application forms, and the online application for consistency. The three application forms and online application were noticed as documents incorporated by reference. However, since the online application does not lend itself to incorporation by reference, DLSE and the Office of Administrative Law (OAL) determined during OAL's review of this action to put the contents of the three application forms and the online form into the regulations. The changes made to these documents and to the regulations were made to make the application forms and the online application conform to the regulations. Additional non substantive changes were made to the regulation text and the three forms to correct punctuation, grammar, spelling, and cross references. Final versions of the modified regulation text and the three application forms are attached as an Exhibit.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD FROM OCTOBER 25, 2013 TO DECEMBER 9, 2013 AND AT THE PUBLIC HEARING HELD ON DECEMBER 9, 2013

(See Table of Comments to Respective Sections of Regulations)

Comments are organized by regulation section. Written 45-day comments are identified by assigned number of commenter and assigned number within the comment letter (e.g. 10.02) Public hearing comments are identified in italics as "*PH*" followed by the time entry (*hour:minutes:seconds or minutes:seconds*) for the comment location on the digital recording of the hearing (e.g. *PH 1:23:45 or PH 09:34*)

Section 13660 - Application for New License

Comment 10.02; *PH 1:22:09*

Section 13660(a)(1) requires applicants to disclose their date of birth, driver's license number and Social Security number. Commenter asks if providing this sensitive information is necessary to positively identify the individual applying for a license. If it is, they would like DLSE to refrain from disclosing this information to the public in either documents or on our website. One commenter stated getting this information is valuable.

Response to 10.02; *PH 1:22:09*

Date of birth, driver's license numbers, and social security numbers are basic identifying information. This information is required to sufficiently identify the applicant for licensing purposes and will aid the division in identifying the correct person for collection of judgments and other enforcement purposes. The collection and protection of personal information is subject to the California Information Practices Act (Civil Code 1798 et seq.) and is not subject to disclosure under the California Public Records Act (see Government Code 6254(k) and 6276.34), so is not subject to release to the public. Therefore, the agency will not be making any changes in the information addressed.

Comments 3.01 and 8.01; PH 22:28

While it is fine to request a copy of the federal Migrant and Seasonal Worker Protection Act (MSPA) certificate as provided in 13660(a)(5), however, not all individuals that must be licensed as farm labor contractors under California law are required to register as farm labor contractors under MSPA (See *Mendoza v. Wright Vineyard Management*, 783 F.2d 941 (9th Cir. 1986)). It is suggested that we amend 13660(a)(5) to include the language "...when such certificate is required under the federal MSPA regulations."

Response to 3.01 and 8.01; PH 22:28

Labor Code 1684(a)(D)(6) requires the Labor Commissioner to ensure that applicants for a Farm Labor Contractors license that are required to register as a farm labor contractor pursuant to the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.) have registered. In view of the comment, DLSE has modified the text to provide clarity that individuals are required to provide federal registration information *if the applicant is required to register* under the federal program consistent with the state's qualifications for licensure stated in Labor Code 1684(a)(6) and 1690(f).

Comment 10.03

Section 13660(a)(6)(A-C) requires applicants that are sole proprietors, partnerships, corporations, or LLC's to provide information regarding the residence address, mailing address, and telephone number of all individuals, partners, corporate officers, managing agents, and LLC members. Commenter asks if providing this personal information in addition to a legitimate business contact is necessary. If it is, they would like DLSE to use it solely for enforcement purposes.

Response to 10.03

Providing this information is necessary for the reasons stated in the Addendum to Initial Statement of Reasons (p. 1 and 3) and while the agency considered the comment and the scope of information requested in the proposed text, it will not restrict the scope of information identified under the comment (other than other separate modifications made to the initial text) and will use the information for both licensing and enforcement purposes only as authorized by law.

Comments 3.02 and 8.02; PH 27:18

Section 13660(a)(8) requires applicants to indicate if they will utilize the services of any other individual or entity to perform regulated activities (recruit, solicit, hire, furnish, employ, or transport agricultural workers). The provision requires applicants to indicate if the identified

individuals/entities have ever been issued a farm labor contractors license and to furnish information requested in 13660(a)(1), as well as any farm labor contractors license numbers currently or formerly held by that individual/entity. Commenters assert it is unfair to make FLC's responsible for the acts of other business entities and state that there is no way to verify the information that the individual may or may not provide. Commenter's further state that individuals engaged in the above described activities are already registered as FLCs with the USDOL under MSPA regulations. They put forth the claim DLSE has no basis or authority to require this type of investigation into potential employees of the applicant for FLC license.

Response to comments 3.02 and 8.02; PH 27:18

After consideration DLSE agrees with commenters that the proposed text was unclear and has modified the language to provide more clarity to the scope of information required in the application item. However, DLSE disagrees with the commenter's underlying position that there is no authority for requiring information regarding individuals/entities an applicant will use to perform regulated activities nor that requiring FLCs to ascertain from the prospective individual/entity (whether licensed or an employee of an applicant) their work history as a previous license holder is without basis or authority. The required information for an applicant does not make the applicant responsible for previous acts of other businesses but addresses the proposed FLC operation by the applicant only because requiring the identification of individuals who will perform a regulated activity is critical to the qualifications (character, competency, and responsibility) of an applicant to hold a license. DLSE has amended the language of the provision to more clearly state its scope and the specific information omitting reference to another subsection. The required information made a requirement for a state FLC license is neither precluded by nor inconsistent with federal MSPA law (see 29 U.S.C. sec 1871) which contemplates and recognizes a state program's requirements as independent of federal FLC registration requirements.

Comment 5.01

The language of proposed section 13660(a)(8) needs to be clarified and should be changed as follows:

13660(a)(8) ~~Indicate whether the applicant will utilize the services of~~ The names of any other individual or entity the applicant will utilize to recruit, solicit, hire, furnish, employ, supervise, pay or transport agricultural workers. ~~If so, s~~State whether the other any listed person or entity has at any time in the past been issued a farm labor contractor's license, and provide the information required of the applicant in Subsection (a)(1) for ~~the other~~ each such person or ~~other~~ entity, as well as all farm labor contractor license numbers currently or formerly held by ~~that other~~ each such person or entity.

Response to comment 5.01

After consideration of this comment and the primary intent of this provision, DLSE has amended the text of this provision to more clearly provide the scope and items of information for those identified by the applicant as persons who will be performing regulated activities (another FLC or an employee of the applicant) as described in the Addendum to Initial Statement of Reasons

(pp. 3-4). The modifications sufficiently capture the commenter's proposed language, and the previous comment discussed above (Comments 3.02 and 8.02).

Comments 3.03, 8.03, and 10.04; PH 24:40

Commenter's believe the requirement in 13660(a)(9) that applicants for FLC license provide the name and business address of all growers they plan to contract with in the future and with whom they have contracted with in the past three years serves no purpose. They express concerns that DLSE is asking them to predict the future and state that they are already required to maintain records of past relationships which can be used for enforcement purposes. They point out that this is not required for licensing of those in the construction industry and questions our authority for imposing this type of reporting requirement. A commenter stated that growers are already required to be listed on employee notices required under Labor Code 2810.5.

Response to comments 3.03, 8.03, and 10.04; PH 24:40

DLSE has considered the comment and slightly amended the text for clarity and states the purpose and need for the information in the Addendum to Initial Statement of Reasons (p. 1 and 9) which informs DLSE of an applicant's planned operations at the time of application and history of operations, if any. Also, Labor Code 1698.9 provides for successor liability for a successor farm labor contractor due to a predecessor farm labor contractor's failure to pay owed wages or penalties to a former employee of the predecessor, whether the predecessor was a licensee or not, if the successor farm labor contractor meets one or more specified criteria. Among those criteria is that the successor farm labor contractor would offer substantially the same services as the predecessor farm labor contractor. Information regarding the growers a farm labor contractor plans to do business with, or have done business with in the past three years, aids DLSE in determining successor liability for enforcement purposes. Lastly, the notice to employee under Labor Code 2810.5 is provided to the employee not DLSE. This regulation only governs applications for a FLC license.

Comments 3.04 and 8.04; PH 26:27

Section 13660(a)(11) requiring applicants that plan to maintain a labor camp or other housing to furnish evidence of its location along with a copy of a health license or other verification of compliance with health and safety laws is duplicative of USDOL federal MSPA regulations for housing provided to agricultural workers. Commenters claim there is no provision in California law that gives DLSE the authority to regulate housing. They are also confused as to what we mean by "evidence" and feel that an address should suffice.

Response to comments 3.04 and 8.04; PH 26:27

DLSE has modified the text to remove reference to the word "evidence" and to more directly state the information, including address, regarding housing provided by workers to ensure compliance with applicable worker housing requirements. The agency, however, retains the requirement to require basic information regarding housing to determine compliance with housing laws applicable to FLCs who provide housing to workers as a state FLC licensing requirement. Federal law is intended to supplement and not replace or displace state farm labor contractor laws (29 U.S.C. Sections. 1871 and 1823). Provisions of the state FLC laws expressly refer to compliance with state housing requirements for agricultural workers contained in the

Health and Safety Code (Labor Code 1684(c)(2)) and is also incorporated in Labor Code 1690(a)&(d)).

Comments 3.05 and 8.05

Section 13660(a)(14) requires applicants to provide specific information regarding vehicles and drivers engaged in transportation of farm laborers. Commenter's believe this provision to be duplicative of USDOL enforcement of MSPA regulations regarding transportation of farm workers.

Response to comments 3.05 and 8.05

The language in the text has been modified for clarity and adds language (modified for reasons other than the comment as stated in the Addendum to ISOR (p. 5)). The required information is made a requirement for a state FLC license and is neither precluded by nor inconsistent with federal MSPA law (see 29 U.S.C. sec 1871) which contemplates and recognizes a state's program requirements as independent of federal FLC registration requirements. While there may be some duplication with federal MSPA, this regulation implements state requirements in Labor Code 1695(a)(6), 1696.3, 1696.4(a) and Vehicle Code 12519. Since the registration of vehicles and drivers is required under state statutes, the required information is reasonably necessary to implement state requirements and DLSE has chosen to retain the required information in the regulation, as amended. (Note: the portion of the text addressing vehicle liability insurance has been moved to Section 13660(b)(10); see modified text and Addendum to ISOR, p. 11)

Comments 3.06 and 8.06; PH 28:37

Section 13660(a)(15) requires applicants who plan to operate in connection with another business provide identifying information regarding such business. Commenter's believe this is an unfair and invasive requirement that needlessly violates people's right to financial privacy.

Response to comments 3.06 and 8.06; PH 28:37

The regulation text only requests information identifying (by name, business type, and address) any other business for which the applicant's FLC business operations will be conducted and seeks no specific financial information as suggested by the commenter. As a business conducting regulated activities, the information is reasonably necessary to evaluate the nature and extent (character) of the applicant's business which includes his or her use of another business *in performing any regulated activities*. DLSE declines to change the text of the regulation.

Comment 10.5

Section 13660(a)(16)(A)(i-vii) asks the applicant to answer questions related to prior violations of law. Commenter requests that we clearly state to the regulated public that disclosure of this information could lead to denial of an FLC license.

Response to comment 10.5

The items in the subsection require information regarding prior violations of law that relate to prompt payment of wages due and other applicable worker health and safety violations. Labor Code 1690(d) specifies as grounds for revocation, suspension, or refusal to renew the license of any "licensee...who has violated...any law of the State of California regulating the employment of employees in agriculture, the payment of wages to farm employees, or the conditions, terms,

or places of employment affecting the health and safety of farm employees...”. The items in this portion of the regulation regarding past history is relevant to determining fitness of an applicant (character, competency, and responsibility) and relate to the likelihood of complying with laws in the future (licenses apply prospectively) and guards against issuance of a license to an applicant that has previously engaged in activities which would result in the revocation, suspension, or refusal to renew a farm labor contractor’s license. Consideration of the comment led DLSE to reject express language stating the disclosure requirement in conditional terms (i.e., that a denial of an FLC “could result” from a disclosure since DLSE has tempered the potential harsh effect by providing that an applicant explain any identified incident pursuant to (a)(16)(B) which is to be evaluated by DLSE. Additionally, other provisions in the regulatory package adequately address the need for truthful disclosures and consequences for providing false information in an application, e.g. see Labor Code 1690(b), and proposed Sections 13660 and 13666.5)

Comments 3.07 and 8.07; PH 30:44

Section 13660(a)(16)(A)(iii) asks the applicant to disclose if they have any liens or suits pending against them in court. Commenter’s state that liens and suits are not evidence of misconduct and assert that unproven allegations cannot serve as a basis to interfere with the operation of a business.

Response to comments 3.07 and 8.07; PH 30:44

Upon consideration of the comment, DLSE agrees with the commenter’s central point and the language has been removed from the proposed regulations.

Comments 3.08 and 8.08

Section 13660(a)(16)(A)(v) asks the applicant to provide information regarding any charges or citations for violating any federal, state, or local law relating to working conditions or workers health or safety. Commenters state that a citation or charge is not evidence of misconduct where the charge is never proven and asserts that it is a criminal act in California to inquire about an arrest that does not lead to conviction as part of an examination for a professional license. Commenters feel it would be inappropriate to consider denial based on unproven accusation and suggest that we limit our inquiry to violations that have been established. They also request that we limit the period of inquiry to three years.

Response to comments 3.08 and 8.08

Upon consideration of the comment, DLSE acknowledges the commenter’s primary point that issuance of citation or making a charge does not establish liability. The language has been removed from the proposed regulations.

Comment PH 31.39

Section 13660(a)(16)(A)(vi) requires information regarding a guilty plea, nolo contendere, or conviction of a crime which is substantially related to working conditions or workers’ health or safety. Commenter objects to no time restriction for the information and that such convictions may have been so many years ago and not relevant to current qualifications.

Response to comment PH 31.39

After consideration, DLSE modified the text in Section (a)(16)(A) to provide that the required information, including this subsection, would only pertain to occurrences within the last 10 years.

Comments 3.09 and 8.09; PH 32:00

Section 13660(a)(16)(A)(vii) asks the applicant to disclose information regarding any licenses or permits issued by a state agency that has been suspended, revoked, denied, or had any disciplinary action imposed. Commenter's believe that the request is overly broad as it covers any license issued by any agency. They ask that we limit the inquiry to activities that bear some connection to the activities of a farm labor contractor.

Response to comments 3.09 and 8.09; PH 32:00

After consideration of the comment DLSE determined that a modification of the text to restrict the inquiry to licenses issued pursuant to Labor Code or Business & Professions Code which regulate business activities which generally involve employment of others. Additionally, DLSE amended the proposed text to restrict all incidents of past history identified in (a)(16)(A) to have occurred within the last 10 years. Also, see Addendum to ISOR (pp. 5-6) for purpose and need for the required information.

Comments 3.10, 8.10, and 10.06; PH 10:50 and 32:43

Section 13660(a)(17) requires applicants to indicate if they filed a tax return with the federal government for the previous year. Commenters state that this is redundant because we already ask for filing of IRS form 8821 in 13660(a)(13). Additionally, comment 10.06 expresses the idea that filing of a previous year's tax return should not have any bearing on the agency's licensing decision.

Response to comments 3.10, 8.10, and 10.06; PH 10:50 and 32:43

After consideration DLSE agreed with the primary concerns provided in the commenters' statements and the language has been removed from the proposed regulations.

Comments 2.01 and 5.02; PH 12:36 and 1:15:38

Section 13660(a)(18) (subsequently moved to 13660(a)(17) due to renumbering) asks applicants to submit a list providing identifying information for any relative who has ever held or applied for a FLC license and whether any such license has been denied or revoked. This provision also provides a list of relations that are considered for purposes of this application. Comment 2.01 feels that this regulation places an undue burden on the applicant to investigate all relatives cited to determine if they have ever been denied or had revoked a FLC license and proposes that we limit the inquiry to immediate family members living with the applicant. On the other hand, comments 5.02 and 1:15:38 are in favor of this regulation and believes this will help combat the problem of "other family members seeking and obtaining a new FLC license after employees filed a claim against the family member who held the original FLC license for having committed labor violations." They would like us to add "aunt", "uncle", and "cousin" to the list.

Response to comments 2.01 and 5.02; PH 12:36 and 1:15:38

Upon considering commenters' points, DLSE determined to retain the scope of the relatives identified in the text (removed duplication of "cousin") and amended the text to provide clarity

that required disclosure be based on “knowledge” of the applicant and that the period be restricted to the last 10 years. The amended text including its purpose and need (renumbered to Section 13360(a)(17)) is further explained in the Addendum to ISOR (p. 7).

Comments 2.02, 3.11, 6.01, and 8.11; PH 8:35 and 55:48

Section 13660(a)(19) requires applicants to certify that they are aware of all applicable worker safety requirements related to agricultural working conditions. All commenter’s on this section point out that Cal OSHA and the Dept. of Pesticide Regulation already require employers to comply with all worker health and safety requirements and state that this regulation is unnecessary and duplicative because the existing testing and continuing education requirements provide evidence of the FLC’s knowledge in these areas. They believe it adds nothing to the existing legal obligations of an FLC and only serves to make the application process more difficult. Commenter’s 2.02 and 6.01 also express fear that this certification will leave FLC vulnerable to revocation of their license for a technical violation.

Response to comments 2.02, 3.11, 6.01, and 8.11; PH 8:35 and 55:48

DLSE has considered the comments on 13660(a)(19) and determined that such certification is required to ensure that applicants are aware of all applicable laws. Existing FLC testing does not demonstrate operational knowledge of *all* applicable laws and continuing education also does not ensure operational knowledge or enhance awareness *all* applicable laws. Since it is the responsibility of all licensees to be aware of all applicable laws it is up to the licensee to ensure, above and beyond existing testing and continuing education requirements that they are aware of all laws and to certify so as a requirement for FLC licensure. Certification leaves the licensee no more vulnerable to revocation of their license as ignorance of the law would not be considered a valid reason for not complying with the law. It is unclear what the comment suggests in stating a fear of revocation for a technical violation because a failure to certify would result in a denial of the application at the outset for refusal to comply with an application requirement. Any revocation is determined on a case-by-case basis after a license is issued which would be a post-application action, so there is no danger of revocation based upon a failure to certify. Rather, an FLC’s violation of a worker safety provision during the license period would independently subject him or her to suspension or revocation of their license after a review and determination by DLSE on a case-by-case basis. This provision will remain for the reasons stated here but is moved to proposed Section 13660(a)(21)(F) along with other certifications and its purpose and need are stated in the Addendum to the ISOR (pp. 8 – 13360(a)(21)(F)).

Comment 3.12

Section 13660(b)(2) sets the examination fee which provides for three attempts to pass the written exam. Failure to pass after three attempts will result in the application is rejected, all fees forfeited, and specifies that applicants are not able to re-apply or retake the test until the beginning of the next calendar year. Commenter asks if the exam can be offered verbally for FLC’s with low literacy, impairments such as dyslexia, or test phobia.

Response to comment 3.12

The exam is already offered verbally as an accommodation for people with disabilities pursuant to the Americans with Disabilities Act (ADA) [29 U.S.C. section 12131 et seq] and available in non-English languages. No regulatory action is needed for accommodating a disability which

qualifies for accommodation under the ADA. The initial text has been amended due to renumbering and is now at Section 13360(b)(1)(B) and its purpose and need are stated in the Addendum to ISOR (p. 9-10).

Comment *PH 1:22:40*

Section 13660(b)(5) requires an applicant to provide a surety bond which meets specified statutory requirements. Commenter states that this will help with recovery of wages for workers.

Response to comment *PH 1:22:40*

DLSE agrees with the comment and independently modified the text to remove language regarding the deposit of an undertaking in lieu of a bond to be consistent with language in Labor Code 1684(a)(3). See Addendum to ISOR (p.10).

Comments 3.13 and 8.12

Section 13660(b)(6) requires applicants to provide a copy of the applicants previous year tax filings with the IRS, FTB, and EDD forms. Commenters assert this is an invasion of financial privacy and point out instances in which the courts have ruled against disclosure of tax return information unless it clearly appears they are relevant to the subject matter of the action and the information is not otherwise readily available.

Response to comments 3.13 and 8.12

After consideration of the comment, DLSE determined that the actual IRS, FTB, and EDD filings are not necessary for inclusion in an initial or new application for an FLC license and removed the language from the proposed regulation.

Comment 3.14; *PH 35:00*

Section 13660(b)(8) requires applicants to provide evidence of completion of 8 hours of approved educational classes. Commenter feels the language of this regulation is unclear and requests that the language be changed to reflect that the 8 hours of education be completed in the previous 12 months as opposed to the previous year.

Response to comment 3.14; *PH 35:00*

Upon consideration of the comment DLSE declines to reword the text due to the statutory language in Labor Code 1684(b)(2) which refers to “each year.” Since licenses are issued for one year, a reasonable interpretation is that the educational classes be taken within one year previous to a license period. Since this would equate to a 12 month period prior to a license period for the applicant (and not based on the calendar year, DLSE believes such interpretation already accomplishes the objective stated by the commenter. The reasons and need for the regulation is further addressed in the Addendum to ISOR (p. 10, text renumbered to 13360(b)(6).

Comments *PH 1:16:55, PH 1:17:31, 1:18:02, 1:19:20*

Section 13660(b)(9) requires a statement that an applicant has satisfied all final court judgments and Labor Commissioner awards, or has an agreement in place paying such debts involving the issue of unpaid wages. Commenter agrees that Labor Code 273 requires that this be in an application. However, a fundamental flaw in current law is that growers are shielded from direct

liability. The regulation should also address Labor Code 2810 and require that a grower contract be disclosed to DLSE or the worker and, if the contract is oral, that it be reduced to writing. Commenter states that even after 70 years of FLC law, we're still trying to fix it.

Response to comments *PH 1:16:55, PH 1:17:31, 1:18:02, 1:19:20*

DLSE agrees with many of the comments but declines, at this time, to expand the regulation to address the comments because of the scope of this section addressing application requirements. Further development of requirements in other cited statutes would fall under subsequent rulemaking and may require modification of statutes.

Comments 2.03, 3.15, 6.01, 8.13

13660(b)(10) requires applicants to certify that they will provide all protective measures, materials, and equipment in order to comply with heat illness injury prevention requirements. All commenters on this section point out that Cal/OSHA already require employers to comply with all worker health and safety requirements and state that this regulation is unnecessary and duplicative. They believe it adds nothing to the existing legal obligations of an FLC and only serve as a symbolic gesture doing nothing other than making the application process more burdensome. Commenter's 2.03 and 6.01 also express fear that this certification will leave FLC vulnerable to revocation of their license for a technical violation.

Response to comments 2.03, 3.15, 6.01, 8.13

DLSE has considered the comments on 13660(b)(10) and determined that certification is reasonably necessary to reinforce awareness and proactively incentivize applicants to provide all protective measures, materials, and equipment in order to comply with heat illness injury prevention requirements as a worker safety requirement in the FLC law. It is the responsibility of the licensee to ensure that they are in compliance with all laws and regulations. Certification leaves the licensee no more vulnerable to revocation of their license as ignorance of the law would not be considered a valid reason for not complying with the law. It is unclear what the commenters suggest in stating a fear of revocation for a technical violation because a failure to certify would result in a denial of the application at the outset for refusal to comply with an application requirement. A revocation must be determined on a case-by-case basis after a license is issued which would be a post-application action, so there is no danger of revocation based upon a failure to certify. This provision will remain for the reasons stated here but is moved to proposed Section 13660(a)(21)(F) along with other certifications and explained in the Addendum to the ISOR (p. 8 – renumbered to 13360(a)(21)(F)).

Comments 5.03

13660(b)(10) requires applicants to certify that they will provide all protective measures, materials, and equipment in order to comply with heat illness injury prevention requirements. This commenter expresses their approval of this inclusion but would like us to add applicable sections from the Labor Code and Food & Agriculture Code sections to cover other health and safety provisions that are significant to farm work in order to ensure that applicants become familiar with various regulations that keep working conditions safe in the field. They propose we amend the regulations as follows:

13660(b)(10) Applicant certification that he or she will provide all protective measures, materials and equipment necessary to comply with heat illness prevention requirements (see Title 8, California Code of Regulations, Section 3395), as well as California Labor Code sections 6400, 6401, 6401.7, 6403, and 6404), California Food & Agriculture Code sections 12980- 12988, and applicable regulations at each work site where work is to be performed.

Response to comment 5.03

DLSE considered the comment and suggestion but declined to incorporate the language into the text. DLSE identified heat illness prevention as a critical threat to health and safety of farmworkers for the reasons stated in the Addendum to ISOR [p. 7-8 regarding discussion for 13360(a)(21)(F)(ii) due to renumbering]). Heat illness is a specifically identified health threat to FLC workers under the certification language as a requirement for licensure consistent with the objective of FLC laws which protect the health and welfare of workers. The certification does not diminish other statutory obligations applicable to all employers, including those suggested by the commenter, but the text is intended to highlight the specific problem of heat illnesses. Increasing the listing of applicable sections as suggested to include general workplace safety conditions would go beyond the scope of the intended certification language and go beyond the specific identification of an applicant's awareness and implementation of heat illness prevention measures as a requirement for FLC licensure. Also, Labor Code 1695(a)(9) requires licensees to provide information and training on applicable laws and regulations commencing with Section 12980 of the Food and Agricultural Code and is addressed in a separate section (Section 13666.2) and is addressed in Addendum to ISOR (p. 25).

Comments 3.16 and 8.14; PH 37:06

Section 13660(c) provides that the Labor Commissioner may request additional supporting documentation as proof of information provided on the application. Commenter's feel this is overly broad in scope. They request that we specify or provide examples of the types of supporting documentation we may require and/or amend the language such that the documentation that can be requested is limited to documentation that has a direct connection to the performance of the duties of a farm labor contractor.

Response to comments 3.16 and 8.14; PH 37:06

After consideration DLSE agrees with the commenter's statements that the text is overly broad in scope. It is the intent of this regulatory action to provide the regulated population with clarity as to the types of information that is required to obtain a farm labor contractor's license. In keeping with that intention, this provision has been removed from the proposed regulations.

Section 13660.1 - Character, Competency, and Responsibility

Comments 2.04, 3.17, 6.02, and 8.15; PH 37:49

Section 13660.1(a)(1) provides that any violation of a provision of the Labor Code or Title 8 of the California Code of Regulations can be considered in determining fitness for a license. All commenters express the belief that this provision is overly broad. Commenter 8.15 points out that often a contractor will accept a citation without contest because the fine may be less than the cost of litigation. All commenters ask that the regulation be re-worded to reflect that only the

most serious, repeated, or willful violations of the Labor code and Title 8 be considered when assessing an applicant's character, competency, and responsibility.

Response to comments 2.04, 3.17, 6.02, and 8.15; PH 37:49

DLSE considered and declined to incorporate the suggestion to only state the more serious, repeated or willful violations (which is separately addressed in subsection (a)(4)). DLSE disagrees that the agency should only consider violations of the Labor Code or Title 8 of the California Code of Regulations when determining fitness of the applicant to hold a license. In requiring consideration of such violations, it does not require a denial of an application due to existence of violations, however, the information will be considered along with other information provided in or along with the application since past history of violations with labor laws are relevant and reasonably necessary to determining an applicant's fitness to hold a license. The requirement that such violations are subject to examination and an applicant has a record of a violation does not necessarily mean that a license must be denied but only that the information will be reviewed and considered. DLSE has accepted the suggestion to modify the language to more clearly require violations which are reduced to "final determinations" to clarify that any citations or charges which are not reduced to a final determination are not subject to required examination which eases any perceived denial of an application based on receiving a citation or settling a case involving a violation. The reasons and need for the regulation is further addressed in the Addendum to ISOR (p. 13-14).

Comments 3.18 and 8.16

Section 13660.1(a)(3) provides that crimes involving physical violence against persons can be considered cause for denial of a license. Commenter's are concerned that there is restriction on how far back we can ask presenting the example of a person convicted of battery, a misdemeanor crime that carries a sentence of 6 months, 20 years ago could be denied their livelihood years or decades later.

Response to comments 3.18 and 8.16

DLSE disagrees with the characterization that the text means that the specified crimes can be considered cause for denial because it is stated as information which will be considered by DLSE when determining an applicant's fitness. Any denial must be made on a case-by-case basis and is subject to review pursuant to procedures specified in Labor Code 1686. DLSE has determined that an applicant's history of crimes involving physical violence against persons is very relevant and must be reviewed as a condition for holding a license due to a potential risk for workplace violence. DLSE also believes that proposed Section 13660.1(b) provides an applicant with a means to establish that he or she is rehabilitated which will also be considered by DLSE. While DLSE elected to keep the basic text, but has amended the text to add language providing that the required information cover the last 7 years to set a more reasonable period of time the information is required to be considered. The reasons and need for the regulation is further addressed in the Addendum to ISOR (p. 13-14).

Comments 2.05 and 2.06

13660.1(b)(2) provides that a person will be considered rehabilitated from misdemeanor crimes substantially related to the qualifications, functions, or duties of an FLC three years after time from release from incarceration or completion of probation without the occurrence of additional

criminal acts. Commenters feel the amount of time proposed following a disqualifying event is prohibitive and requests that we reduce this to a more reasonable length of time or deleted in its entirety and handled on a case-by-case basis. Additionally, the commenter would like us to specifically define which misdemeanors result in disqualification and to define the term “substantially related” as it pertains to the qualifications, functions, or duties of a licensee.

Response to comments 2.05 and 2.06

After considering the comment, DLSE declines to modify the text. DLSE disagrees that the three year period for misdemeanor convictions is prohibitive since it provides a general standard which can be increased or decreased under the provisions of Section 13360.1(b)(4) which must be determined on a case-by-case basis. Because misdemeanor crimes can consist of so many varied actions or conduct, DLSE has restricted the rehabilitation standard to those convictions which are substantially related to qualifications, functions, or duties of licensees. The agency’s objective is to provide standards which provide guidelines for determining rehabilitation with respect to misdemeanor crimes without exhaustively listing all possible misdemeanor violations because of the variation of crimes and circumstances. DLSE has determined that the text establishes a sufficient standard which will be applied on a case-by-case basis to take into account the possible variations for purposes of demonstrating rehabilitation while maintaining focus on convictions which involve acts substantially related to activities of contractors who seek to hold a license. The reasons and need for the regulation is further addressed in the Addendum to ISOR (p. 14).

Comment 2.05

13660.1(b)(3) provides that a person will be considered rehabilitated from “other act(s)” substantially related to the qualifications, functions, or duties of an FLC three years from the commission of the act(s) without the occurrence of additional act(s). Commenter feels the amount of time proposed following commission of unidentified misdemeanor convictions or acts that are “substantially related” to the qualifications, functions, or duties of a FLC is excessive.

Response to comment 2.05

Upon consideration of the comment, DLSE disagrees that the standard is excessive in either its scope or failure to identify all misdemeanor convictions substantial related to the qualifications, functions, or duties of a FLC for the same reasons as stated in response to the previous comments 2.05 and 2.06. The reasons and need for the regulation is further addressed in the Addendum to ISOR (p. 14).

Comments 3.19 and 8.17; PH 39:41

Section 13660.1(c) provides that no FLC license will be issued to applicants with unsatisfied judgments or decisions against them that would be covered by the surety bond. Commenter’s point out that this wording does not allow for a decision to be under appeal at the time an application is submitted and express concern that such applicants may be denied the benefits of due process under the law.

Response to comments 3.19 and 8.17; PH 39:41

DLSE considered the comment and disagrees with the statement that the text does not allow for a decision to be under an appeal. The inclusion of the word “final” in the text prior to “judgment of

a court or decision of an administrative agency” has only one legally tenable meaning which requires that appeal rights have been exhausted. The exhaustion of appeal rights is a condition to a judgment or decision being final, i.e., if a judgment or decision is on appeal, it is not final. Despite this only tenable interpretation, DLSE has inserted the word “final” before “decision of an administrative agency” in order to make finality even more clear.

Section 13660.2 - Date a Denied Applicant May Reapply for Licensure

Comment 6.03

Section 13660.2 provides that an applicant may apply no sooner than one year following denial of an application for lack of character, competency, or responsibility. Commenter is concerned that, especially in instances where the rehabilitation period is greater than one year, the one year timeline may not be sufficient to remedy the deficiency. Commenter suggests we provide information to applicants about how much time they need to wait before re-applying in order to avoid needlessly submitting additional applications.

Response to comment 6.03

Upon consideration of the comment, DLSE determined that the 1 year period for submitting an application following denial would be inconsistent with Labor Code 1685(b) and 1695.8 which specifies a lapse of 3 years. Accordingly, DLSE removed the proposed section and text.

Section 13661 - Application for Renewal of License

Comments 3.20 and 8.18; PH 28:24, PH 40:41

Section 13661(a) provides that a renewal must submit for renewal 90 days prior to expiration of a current license. Commenter’s think DLSE should be able to process applications in 60 days. 90 days is too long and will penalize those who procrastinate. Also, DLSE should have arrangements with other state and federal agencies rather than require applicants to duplicate paperwork for regulating agencies.

Response to comments 3.20 and 8.18; PH 28:24, PH 40:41

DLSE considered the comment and agrees with the commenters’ suggestion to replace 90 days with 60 days which has been incorporated in the text of the regulation. The reasons and need for the regulation is further addressed in the Addendum to ISOR (p. 14-15). Existing laws and policies, including privacy and information technology requirements of various agencies within the state and between state and federal agencies do not currently provide for readily transferable exchange of information at this time.

Comments 3.22 and 8.20; PH 41:06

13661(c)(6) provides that an applicant using the short form application for renewal (DLSE 401-S rev. 11/12) must provide information about vehicles the applicant will use to transport employees. Commenter’s assert that this is regulated and enforced by USDOL under MSPA regulations. They feel this regulation is unnecessary and duplicative.

Response to comments 3.22 and 8.20; PH 41:06

DLSE has considered the comment and has modified the text of the regulation (moved to Section 13360(a)(14) but retains the required submission of the information for the same reasons stated in responses to Comments 3.04 and 8.04 and Comments 3.05 and 8.05 regarding the independence of state FLC licensing and federal FLC registration. The reasons and need for the regulation is further addressed in the Addendum to ISOR for Section 13660(a)(14), at p. 5).

Comments 3.21, 8.19, and 11.02; PH 41:56

Section 13661(c)(7) requires renewal applicants to provide a current list of individuals/entities they will utilize the services of to recruit, solicit, hire, furnish, employ, or transport agricultural workers. The provision requires applicants to provide the name and address information for any of the identified individuals/entities that have ever been issued a farm labor contractors license or have been denied. Commenter's say it is unfair to make FLC's responsible for the acts of other business entities. They are concerned that this requirement does not fall within DLSE's regulatory authority, that there is nothing in the statute imposing this requirement, and state that this is the purview of the USDOL. Comment 11.02 simply would like the language to clarify if we are asking about State FLC licenses or Federal FLC licenses.

Response to comments 3.21, 8.19, and 11.02; PH 41:06

After considering the comments DLSE has elected to retain the required information items (moved to Section 13660(a)(8)) but has modified the text for clarity. The authority for the text is Labor Code 1699 and the provision implements Labor Code 1684(a)(1) and (2) which sections are subject to DLSE authority and not the U.S. Department of Labor. Also, since state FLC requirements pertain to a "license" which is stated in the text and federal requirements pertain to a "registration" which is not included in the text, there is no need to further designate whether the required information pertains to federal registrations. DLSE determined that it is essential that those persons performing regulated activities for or on behalf of the licensee be disclosed on the application. (See Addendum to ISOR (pp. 3-4).

Comment 3.24

Section 13661(c)(8) through (10) and 13661(c)(14) through (16) specifies various requirements for a short form application for renewal (DLSE 401-S rev. 11/12). Commenter claims these items are not actually represented on the form.

Response to comment 3.24

DLSE considered the comment, modified the sections cited by the commenter, and updated the renewal application forms to reference the items under the respective sections cited in the comment. The revised application forms were provided along with documents in the 15-day notice of modifications and posted on DLSE's website for public review and comment. (Note: Sections 13661(c)(8) through (10) and (c)(15)-(16) were moved due to modified text in 13661(c)(1) through (3) which now references and incorporates the specified items in Section 13660(a) and (b); Section 13661(c)(14) was modified (removed unnecessary text) and renumbered to (c)(4).)

Comment 2.10

13661(c)(13) provides that renewal applicants provide evidence of completion of 8 hours of continuing education during the previous licensing period. Commenter requests that we change

this requirement to “has completed a class of up to eight hours at any time within the twelve months of the termination date of the FLC license citing anecdotal evidence that there is insufficient time to obtain a certificate of completion in time for renewal purposes.

Response to comment 2.10

DLSE considered the comment and declines to make the suggested change as unnecessary and confusing (a class of up to 8 hours) since the language tracks the statutory language which does not require completion of the 8 hours of classes at a single time within a year. Enrollment in classes which total 8 hours but must be accomplished during the year (a 12-month period) prior to the license period which is sought under the application which covers a one year period prior to expiration of a current license. (Note: subsection (c)(13) was moved due to modified text in (c)(3) which now references and incorporates the specified item in modified Section 13660(b)(6).)

Comments 2.07 and 6.04

Section 13661(c)(15) requires renewal applicants to certify that they are aware of all applicable work safety requirements related to agricultural working conditions. Both commenter’s on this section point out that Cal OSHA and the Dept. of Pesticide Regulation already require employers to comply with all worker health and safety requirements and state that this regulation is unnecessary and duplicative because they are already required to comply with all worker health and safety requirements. Both commenter’s express fear that this certification will leave FLC vulnerable to revocation of their license for a technical violation.

Response to comments 2.07 and 6.04

After considering the comments, DLSE declined to remove the text and further explains the purpose and necessity for the certification in Addendum to ISOR (p. 8). The certification is required for purposes of FLC licensing and designed to enhance awareness of obligations applicable to an FLC in the license application as a condition of licensure. DLSE does not have authority to enforce worker health and safety standards which are enforced by Cal/OSHA and Department of Pesticide Regulation. (Note: subsection (c)(15) was moved due to modified text in (c)(1) which now references and incorporates the specified item in modified Section 13660(a)(21)(F).) See response to comments 2.02, 3.11, 6.01, and 8.11 above which addresses same concern regarding revocation for technical violation of a certification.

Comment 5.04

Section 13661(c)(16) requires applicants to certify that they will provide all protective measures/equipment necessary to comply with heat illness injury prevention requirements. This commenter would like us to add applicable sections from the Labor Code and Food and Agriculture regulations to cover other health and safety provisions that are significant to farm work in order to ensure that applicants become familiar with various regulations that keep working conditions safe in the field. They propose we amend the regulations to include additional Labor Code and Food & Agricultural Code sections.

Response to comment 5.04

After considering the comment, DLSE declined to modify the text for the same reasons provided in response to Comment 5.03. (Note: subsection (c)(16) was moved due to modified text in (c)(1) which now references and incorporates the specified item in modified Section 13660(a)(21)(F).)

Comment 6.04

13661(c)(16) requires applicants to certify that they will provide all protective measures/equipment necessary to comply with heat illness injury prevention requirements. This commenter points out that Cal OSHA already require employers to comply with all worker health and safety requirements and state that this regulation is redundant because existing regulations already require them to comply with all worker health and safety requirements. Commenter expresses concern that this certification will leave FLC vulnerable to revocation of their license for a technical violation.

Response to comment 6.04

DLSE considered and declined to make substantive changes to the text for the same reasons specified in response to comments 2.03, 3.15, 6.01, 8.13. (Note: subsection (c)(16) was moved due to modified text in (c)(1) which now references and incorporates the specified item in modified Section 13660(a)(21)(F).)

Section 13662 - Written Examinations

Comments 6.05 and 6.06; *PH 16:30*

Section 13662 describes who shall sit for the written examination for individuals, partnerships, corporations, and LLC's. In comment 6.05 it is suggested that we add to the regulations a provision stating that the Labor Commissioner will provide test takers with a list of the questions they missed along with the correct answers so that they can improve their knowledge. In comment 6.06 this commenter recommends that we allow FLC's in good standing with more than 10 years experience are allowed to take classes in lieu of the examination on a "more infrequent basis" if they have demonstrated compliance with applicable labor laws and regulations.

Response to comments 6.05 and 6.05; *PH 16:30*

DLSE considered and declined to modify the text as proposed in the comments. Providing test takers with a list of the question and correct answers would facilitate the distribution of both questions and answers in exams and create an administrative burden due to the limited number of exams currently available to administer. Release of missed questions and answers would lead to eventual release of many questions and answers which would diminish the primary objective for the exam which is to test knowledge over a scope of areas applicable to all FLCs. Also, providing any exception (full or qualified exception) to the exam (taking classes in lieu of examination) for FLCs having more than 10 years of experience would conflict with Labor Code 1684(c)(1) providing statutory exemption for exam-taking only under specified circumstances. So modification of the exam requirement requires legislative action to accomplish the commenter's objective.

Section 13663 - Schedule for Processing Applications

Comments 2.08, 6.07 and 10.01

Section 13663(a) provides that the Labor Commissioner's office will have 60 days upon receipt of an application to inform the applicant of its decision regarding approval or denial. Comment 2.08 points out that there is the potential for a 30 day gap between license expiration and the last day an applicant can respond to a defect letter. Both commenters' would like us to send renewal packages 120 before expiration of the license to ensure sufficient time to complete the packet.

Response to comments 2.08, 6.07, 10.01

After considering the comment, DLSE did not modify the text of the regulation to address this comment (other modifications were made and addressed in the Addendum to ISOR (p. 17)). As courtesy DLSE will provide licensees with renewal information approximately 90 days prior to expiration of a license; however, the obligation is on the licensee to timely submit a renewal application as required in Section 13661. After submission of the application, DLSE will address defects and cures of defects in accordance with the text in this section and the agency believes that any gaps created will be addressed on a case case-by-case basis, including issuance of a temporary license, if appropriate (see Labor Code 1684.3 and subsection (b) of this regulation). Comment 10.01 does not propose an objection or modification but DLSE responds that the timelines and standards provided in the regulations are intended to provide timely and efficient processing of applications consistent with the comment.

Comments 3.25 and 8.21; PH 44:18

Section 13663(a)(3)(A) provides that an applicant has 60 days from the date of a defect letter to remedy the defect and return the application to the Labor Commissioner. 13663(a)(3)(B) provides that if an applicant fails to meet the deadline specified in 13663(a)(3)(A) the application will be rejected and the fee forfeited. Commenter's express concern that given the number of days prior to license expiration that renewal packets are sent out, and the timelines indicated for processing, that this limits the number of defect letters to one. Commenter's claim that the Labor Commissioner's office has stated in a letter that applicants would be required to start over after failure to provide information following two defect letters. They attest that many FLC lack the requisite formal education to complete these packets within a timeline that only permits for one defect letter. Comment 8.21 suggests we alter the timelines to provide for three defect letters.

Response to comments 3.25 and 8.21; PH 44:18

DLSE considered the comments and modified the text consistent with existing administrative practices and to provide clarity to the text. The modification effectively addresses the concern and provides reasonable opportunity for an applicant to address a deficiency or defect regarding the application. The section now provides for no more than two opportunities. The modifications, however, are not intended to accommodate any lack of formal education, but to provide more than a single opportunity to address a noticed defect or deficiency and effectively requires the applicant to act diligently in curing any defect or deficiency. See Addendum to ISOR for discussion of purpose and necessity for the modified text (p. 17).

Comments 3.26, 6.08, 6.09, and 8.22; PH 45:58

Section 13663(b) provides that the Labor Commissioner may issue a temporary license for processing delays that are not the fault of the applicant. Comments 3.26, 6.09 and 8.22 point out that, in the case of a delay that is not the fault of the applicant, a license extension should be

mandatory rather than discretionary. Comment 6.08 suggests the language should be broadened to provide that the Labor Commissioner may issue a temporary license in the case of exigent circumstances (i.e. a death in the family, accident, failure of U.S. Dept. of Labor to timely issue a registration). In comment 6.09, the commenter further states that a license extension should not be denied to an applicant that is responding to deficiencies and points out that the statute, as well as DLSE practice, suggests that an extension will be issued so long as the agency has not denied the application and makes the distinction that a notice of deficiency and opportunity to correct is not a denial.

Response to comments 3.26 6.08, 6.09, and 8.22; PH 45:58

DLSE declines to further modify the text as the stated points are sufficiently covered in the proposed text for subsection (b). The statute pertaining to issuance of a temporary is in the permissive “may” and not the mandatory “shall” and the regulation cannot broaden or restrict the specified authority conferred in the statute. Exigent circumstances would ordinarily include matters which are not the fault of the applicant such as death in the family, accident, etc. and the text sufficiently provides that agency will determine whether the delay is the fault of the applicant as well as whether to issue a temporary license on a case-by-case basis as not all circumstances can be captured in a regulation. In response to the comment that a license should not be denied so long as the agency has not denied the application and establishing a distinction that a notice of deficiency is not a denial, see response to Comment 3.25 and 8.21 regarding Section 13663(a), as modified, which addresses the comment. See also, Addendum to ISOR (p. 17)

Section 13664 - Surety Bonds; Establishing Annual Payroll

Comment 1.01

Section 13664(d) provides that the Labor Commissioner will retain the original bond for no less than three years after the employer ceases engaging in business. Commenter acknowledges the need to cover claims that may arise following termination of a bond but during the statute of limitations. However, they do not believe the statute of limitations is as long as three years. They are also concerned that the wording “after the employer ceases engaging in business” means that this is the only condition that will trigger the start of the three year holding period, which does not take into account an FLC that continues doing business but with another surety company backing the bond. They suggest that this provision is not necessary and recommend that this provision be deleted.

Response to comment 1.01

DLSE considered and modified the text to more clearly provide the intended protection for a surety bond in the event a business ceases its FLC operation. The modified language removes confusion with impacting a statute of limitations and reflects an intent that the bond by the Labor Commissioner for no more than six months afterwards in order to provide for claims arising prior to the closure of business. The section is not intended to modify any statute of limitation which may be otherwise applicable to a claim arising during the time prior to the business ceasing its operations.

Section 13665 - Education Program Approval; Course Criteria; List of Approved Courses.

Comments 3.27 and 8.23; PH 46.38

Section 13665(a)(7) provides that a resume must be provided as part of the application for approval of a proposed education program for all proposed instructor(s). Commenter's believe this regulation is unfair because there can be changes in instructor availability when education programs are planned in advance. A commenter states a concern for watering down the qualifications for instructors.

Response to comments 3.27 and 8.23; PH 46.38

After considering the comment, DLSE declined to delete or further restrict the requirement that that a proposed instructor's resume be included in an program proposed for approval by DLSE. The agency has determined that only approved instructors are authorized to conduct classes in order for applicants to achieve the benefit of the educational program and effectively satisfy the objectives of the educational requirement. While there may be instances of unavailability for a particular class, only instructors are currently approved by DLSE for the applicable subject can conduct the class in the event of an unforeseen substitution. (Note: the text was independently modified by DLSE to include the instructor qualification requirements which were previously in subsection (c)(2) of this section; see Addendum to ISOR (p. 19-20))

Comment 10.07

13665(c)(1) specifies the criteria for an FLC continuing education program that must be met in order to get approval which includes a list of the topics that must be covered. Commenter believes the topics list should be expanded to include courses outside the scope of compliance with regulations that could include business, human resource, or financial management that will better prepare FLCs to operate more viable businesses.

Response to comment 10.07

DLSE considered and modified the text for (c) to include FLC relevant class topics/subjects and sets hours requirements based on years of experience and a licensee's violation record consistent with DLSE's previous administrative practices. See Addendum to ISOR (pp. 20-21) for purpose and need for the text, as modified.

Comments 2.09, 2.09(a), 3.28, 6.10, 6.11, 8.24, 10.08; PH 11:58, PH 12:30

Section 13665(c)(2)(A-D) specified that a proposed instructor must have at least one of the qualifications described in A-D in order to be an instructor for an approved FLC education program. The summary and response for this section of the regulation addresses general comments on the overall qualification criteria and then identifying the specific criterion in subsequent comment summaries and responses to which the agency separately addresses.)

In general, commenters state that the stated criteria are too restrictive and will limit the pool of available instructors. Further, they are concerned that there is no explicit requirement that instructors have any actual experience or knowledge related to employing agricultural workers on the specified topics. Commenter's claim that FLC education and training has been successfully delivered by attorneys, trainers, and other experts in the area of agricultural human resource management that do not often possess a teaching credential or other formal education

described in the proposed regulation. Commenter's suggest that if the regulation is enacted the agency should include:

1. Employees of Federal, State, or Local agencies that are qualified to instruct in the subject matter and that DLSE will ensure such people are "readily available" as instructors for such classes.
2. Individuals in possession of a J.D. or are already College or University instructors
3. Individuals who have at least 5 years of experience as instructors in approved FLC programs.
4. Attorneys, trainers, and other experts in the area of agricultural human resource management to the qualifications to the criteria.
5. A provision that requires some verification of an instructor's competency, perhaps demonstrating this by taking and passing the licensing exam.

Response to comments 2.09, 2.09(a), 3.28, 6.10, 6.11, 8.24, 10.08; PH 11:58, PH 12:30

DLSE considered the general comments and suggestions by commenters and removed text requiring a teaching credential as an alternative qualification. The text specifying the alternative criteria was moved and added to Section 13665(a)(7) (See Addendum to ISOR, p. 19-20) The remaining options for instructor qualification sufficiently insure that an instructor have the minimum qualifications for instructing others through any of three qualification criteria: formal advanced education, exposure to in-depth instruction either as a bachelor's degree or equivalent (a juris doctorate (JD) or university/college instructor would meet and exceed this criteria), five years of experience in the technical occupation in the subject he or she will teach (e.g. an expert trainer through experience in the subject/topic attained in a relevant occupation), or an appropriate license to teach issued by an appropriate state or federal licensing/certification agency, affords qualified persons to instruct classes in an approved educational program. DLSE declined to incorporate a requirement that an instructor take and pass the exam taken by applicants/licensees because instructors should have minimal proficiency to instruct in the subjects/topics independently and beyond that of the applicants/licensees they will teach in an approved educational program.

Comments 3.28, 8.24; PH 47:49

Section 13665(b)(2)(A) (moved to subsection (a)(7)(A)) specifies the possession of a bachelor's degree (BA/BS) in the subject they propose to teach from an accredited institution of higher learning, or the equivalent of. Commenters do not believe that simple possession of a BA/BS is adequate qualification to teach FLC continuing education courses.

Response to comments 3.28 and 8.24

After considering the comment, DLSE declined to modify this alternative criterion as it specifies that the degree be related to the subject in which he or she will teach. The text sufficiently provides a standard upon which a provider can submit information on and for DLSE to determine whether a program's instructor qualifies for purposes of the FLC education requirements.

Comments 2.09, 2.09(a), 3.28, 6.10, 8.24

Section 13665(b)(2)(B) (moved to subsection (a)(7)(B)) specifies that possession of a valid adult or secondary school teaching credential. Commenter's do not believe that possession of an adult or secondary school teaching credential is adequate qualification to teach FLC CE courses and express concern that there is no explicit requirement that these individuals have any actual experience or knowledge of the subject.

Response to comments 2.09, 2.09(a), 3.28, 6.10, 8.24

After considering the comment, DLSE agrees and removed the text from this subsection.

Comments 2.09, 2.09(a), 6.10, 6.11; PH 1:02:39

Section 13665(b)(2)(C) (moved and renumbered to subsection (a)(7)(B)) provides an alternative criterion for instructor qualification and requires a minimum of 5 years of experience in the technical occupation in the subject he/she is to teach. Commenters feel that 5 years of experience is too restrictive and believes that some individuals may possess the necessary expertise in less than 5 years (i.e. a safety engineer from Cal/OSHA would be an expert in a shorter time due to constant exposure in the job occupation). They find the term "technical occupation" to be unclear and request that we clarify. A comment states that since no bachelor's degrees are provided in the special areas of courses, alternative criteria should be considered and provided.

Response to comments 2.09, 2.09(a), 6.10, 6.11; PH 1:02:39

After considering the comments, DLSE declined to modify the text since it sufficiently states an alternative criterion for instructor qualification which will focus on 5 years of experience attained in a technical occupation which involves the subject in which he or she will teach. DLSE has determined that the required experience be more specific than simple experience attained in a general occupation (e.g. clerk, laborer, or driver) and that a technical occupation adequately refers to an occupation which is more specific than a general occupation upon which the requisite experience is based. The text captures the intent to establish a basis for utilizing a person's experience in an occupation which is both relevant and sufficiently specific to the subject in which that the person will teach. The criterion adequately informs the provider of information they can submit for program approval and allow DLSE to determine whether a program's instructor qualifies. The proposed text balances having an overly restrictive standard with the need to ensure only sufficiently experienced persons in a technical occupation are qualified to instruct. The time period of 5 years of such qualifying experience is a reasonable substitute for more formal qualifications under the other alternative criteria.

Comments 2.09, 2.09(a), 6.10

Section 13665(b)(2)(D) (moved and renumbered to subsection (a)(7)(C)) provides an alternative criterion for instructor qualification requiring possession of a license to teach by an appropriate state licensing board or federal agency for the subject he/she is to teach. Commenter's express concern that there is no explicit requirement that these individuals have any actual experience or knowledge of the subject they propose to teach.

Response to comments 2.09, 2.09(a), 6.10

After consideration of the comments, DLSE disagrees that the criterion does not explicitly require that the person have any knowledge of the subject they propose to teach as it expressly provides that the certification/license pertain to the subject. DLSE determined that a person having the applicable proficiency would be qualified to teach the subject for purposes of the FLC education requirement.

Comment 11.01; PH 12:48

Section 13665(c)(3) provides that the instructional program be at least 8 hours long. Commenter wants to be able to complete the 8 hours training in 2 hour interval trainings at various training venues during the year so that they can choose topics they feel they are lacking knowledge or experience in.

Response to comment 11.01; PH 12:48

After considering the comment and independently reviewing the need for the text, DLSE removed the subsection as overly duplicative of the statutory language (Labor Code 1684(b)(2) and (c)(3) which also does not require that all classes be taken at one time. Also, based on the variations of classes provided in Section 13665(c)(1)-(2), as modified, classes need not be taken at one time.

Comment 6.12

Section 13665(e) provides that approval of an educational program is valid for one year. Commenter believes it would be beneficial to approve courses for more than one year. Suggests we either automatically approve applications with no significant changes for an additional year and/or approve courses for a period of no less than two years.

Response to comment 6.12

DLSE considered the comment and suggestion and determined that the time period for an approved program shall be two years instead of one year.

Comment 3.29 and 8.25; PH 50:28

Section 13665(g)(1) through (3) specifies changes to approved programs that must be reported to the Labor Commissioner. Commenters do not feel that minor changes in outline, materials, or schedule should affect the validity of an approved program. They also feel that they should be able to substitute instructors without providing notification so long as the instructors are approved and competent.

Response to comments 3.29 and 8.25; PH 50:28

After considering the comments, DLSE removed the requirement in (g)(2) to report changes in the dates, time, and location of a program. Additionally, the agency modified the requirement in (g)(3) (renumbered to (g)(2)) to inform DLSE of a change in any instructional staff which has not been previously approved in order to eliminate the need to report a substitution of an instructor with another instructor who has been approved and determined to be competent by DLSE. The agency declined to modify the requirement in (g)(1) because the text is necessary for DLSE to receive notice of any changes impacting the substance of the course in order to adequately oversee the educational program for compliance with statutory and regulatory requirements independent of a provider's determination whether a change is minor or material.

DLSE's Licensing and Registration unit staff can provide response or assistance for particular matters based on more specific matters sought to be changed.

Section 13665.5 - Records of Education

Comments 3.30 and 8.26; *PH 52:53*

Section 13665.5(a) requires providers of approved education courses to maintain for three years a record of licensees who have successfully completed an education program. Section 13665.5 (b) requires licensees to maintain for three years a record of all continuing education acquired during each license period. Commenters don't understand why we're requiring three years when a license is renewed annually, and course verification is only good for 12 months after the course is completed. Suggest the requirement be no more than two years.

Response to comments 3.30 and 8.26; *PH 52:53*

After considering the comments, DLSE determined that the time period for a provider to maintain the required program records shall be two years instead of three years.

Comments 3.31 and 8.27; *PH 53:47*

Section 13665.5(c)(2) specifies the information that records of education must contain the attendees license or certificate number. Commenter's state that some attendees may be preparing to apply for licensure, and as such may not have a license number to provide.

Response to comments 3.31 and 8.27

DLSE considered the comments and modified the requirement to indicate the license number "if applicable" to account for new or initial applicants enrolling in classes who do not have a FLC license number.

Section 13666 - Posting Rate of Compensation

Comments 2.11, 5.05, 6.13, and 7.01; *PH 1:22:30*

Section 13666 specifies the information that must be included on, along with format and font size specifications of the sign for the statutory requirement that FLC's post the rate of compensation they are paying their employees for that day. Commenter's feel this section is unnecessary because it's already in statute and duplicates several existing requirements. One commenter points out that we provide a "Statement of Pay Rates notice" on our website that is widely used and asks for clarification as to whether or not this proposed language is meant to change or alter that practice. Finally, most commenter's on this section point out that the statute is vague with respect to where the posting should be placed and the regulation does not provide clarity on this matter. They suggest additional language regarding placement of the sign.

Response to comments 2.11, 5.05, 6.13, and 7.01; *PH 1:22:30*

After considering the comments, DLSE declined to modify the text because the applicable statute (Labor Code 1695(a)(7)) provides that the posting must be prominently posted at the work site *and* on FLC vehicles, and leaves the agency to determine the lettering and size of the posting. The proposed regulation sufficiently specifies a minimum size for the posting and font size in

accordance with the statute. The regulatory language, by its terms, only pertains to the posting requirement in Labor Code 1695(a)(7).

Section 13666.1 - Identification Signage at Worksite

Comments 4.03, 6.16, 7.02, 9.01; *PH 9:49, PH 18:26, PH 19:15, PH 1:22:55, PH 1:23:55, PH 1:29:58*

Section 13666.1 implements a new requirement that FLC's place identification signage at access points and at the location crews are actually working. In the Std. 399 DLSE estimated that FLC's would spend ~\$70/sign in compliance with this provision. Commenter's believe this estimate is low and that it will cost substantially more than \$70/sign. Two of the commenter's think we should not limit the cost of compliance to the sign itself and would like us to include in our estimate of costs the time and expense to monitor and move signs from location to location within a field. In general, they feel these additional costs outweigh any benefit the signs may have. Commenter 9.01 feels this amounts to a new requirement that increases the potential for compliance violations without providing better employee protection and would like a better description of the enforcement obstacles these signs are meant to overcome. A commenter stated that this requirement is not imposed on other employers in other industries. Another stated that the requirement is good in order to prevent FLCs from hiding from the law, that a sign should be required at every entrance to the field, and that the name of the grower should be indicated on the sign.

Response to comments 4.03, 6.16, 7.02 and 9.01; *PH 9:49, PH 18:26, PH 19:15, PH 1:22:55, PH 1:23:55, PH 1:29:58*

DLSE considered the comments and determined to modify the text by removing one of the two initial signage requirements. DLSE determined that retaining the signage requirement specified in subsections (a)-(b) satisfies a critical need for enforcement staff to determine where FLCs are operating in an area due to the inherent lack of visibility due to changing work site locations when FLCs perform agricultural activities which fall under the coverage of FLC laws. All other businesses utilizing labor are subject to easier determination of their locations which are relatively more fixed locations, even if temporary. Farm labor operations using FLCs should have no advantage over other employers from the enforcement agency's ability to readily ascertain a work site where both labor is performed by workers and which can be subject to field inspection. The circumstances inherent with changing workplaces and mobile workforces should not so easily be an obstacle to field inspections by enforcement staff (see Labor Code 1682.8). DLSE removed the more portable second sign requirement in subsection (c) upon determining that the requirement in subsections (a)-(b) was a more fundamental manner to address the obstacle created by mobility of FLC's field operations in order to identify a FLC working in a specific field. The removal of (c) also reduces the material and operational costs per worksite identified in the comments but DLSE maintains the \$70 potential cost as a reasonable cost amount for the remaining signage requirement. See discussion of the need and purpose for this requirement is in the Addendum to ISOR (p. 24).

Comments 2.12, 3.32, 4.01, 6.14, 8.28, 9.02, 11.03; *PH 55:11, PH 56:17, PH 1:04:18*

13666.1(a) specifies that the licensee's name and license number must be included in the top half of the sign and a name and working telephone number in the bottom half of the sign. In general,

commenter's don't see how the signs will assist employees stating that the information is already contained in WH516 payday notice and the notice to employee under Labor Code 2810.5. They express concern that posting the name and number of supervisors violates their privacy and opens them up to potential harassment. Consideration should be given to who (between the employer and the supervisor) is responsible for the cell phone. They are afraid the proposed signs will be beneficial to roving state and federal regulatory agencies and "advocacy groups" that will use the information for frivolous complaints against employers and supervisors. Finally, commenters believe some employers might use information gleaned from the signs during times of labor shortages to steal crews.

Response to comments 2.12, 3.32, 4.01, 6.14, 9.02, 11.03; PH 55:11, PH 56:17, PH 1:04:18

After considering the comments, DLSE declined to remove or modify the text of the regulation and determined that the purpose and benefit of identification signage containing contact information for work at that field outweighs the risks of harassment identified by the commenters. The primary purpose of the signage requirement is identification for purposes of the administration and enforcement of the licensing program which has an overall objective aimed at the welfare and health of the workers. DLSE acknowledges that the sign can also be beneficial for workers and emergency responders who have means of identifying the FLC supervisor for the particular field and day and a contact phone number (unlike what is contained in Labor Code 2810.5 notices). An FLC is responsible for conducting regulated activities for the FLC in the field (whether performed by the FLC, another FLC or an employee supervisor/crew leader) and there are diminished privacy rights when performing a licensed activity. The text contains no requirement that supervisor's personal phone numbers be identified (but must use a working phone number). The fears in the comments regarding roving enforcement agencies and advocacy groups who will file frivolous appeals complaints and creating a potential for stealing of crews at times of labor shortages as potential results from the signage requirement are too speculative of a new requirement to meaningfully respond. The requirement is designed to alter the status quo which previously has fostered both lack of visibility and accountability in fields where an FLC operates. The signage requirement and its implementation obligations are upon the licensee to ensure that a working phone number is placed on the sign for the respective supervisor or crew leader identified on the sign.

Comments 2.12, 3.32, 4.02, 6.15, 7.02, 8.28, 10.09, 11.03

13666.1(b) specifies that the sign be 4 feet by 4 feet and initially placed within 30 ft. and clearly visible from the access road where workers enter the worksite. Commenter's claim they have no right to place signs on grower's land and fear that growers might find it intrusive. Further, because multiple FLCs often use one access road for several farms it might result in confusion for workers at the site and may create a hazard related to movement of people, equipment, and supplies. One commenter does not think a sign on the access road is necessary. They think a single sign at the field access point is adequate.

Response to comments 2.12, 3.32, 4.02, 6.15, 7.02, 10.09, 11.03

DLSE considered the comments and declined to remove the text of the regulation as proposed. The intent of the sign is that it is temporary and simply a means to identify an FLC operating at a work site and would be less intrusive than a vehicle carrying workers onto the premises for the purpose of providing the services for the grower. Also, the agency did not receive any objections

from growers to substantiate the concern. The agency modified the text to add the language “nearest the worksite” to further clarify the placement of the sign “within 30 feet and clearly visible from the access road and where the workers enter the worksite” in recognition that access roads may separate portions of large fields.

Comments 2.12, 7.03, and 10.09; PH 1:05:14

Section 13666.1(c) requires licensees to post an additional sign containing the licensees name and a working number for the crew supervisor, no smaller than 3 feet by 3 feet, and in reasonably close proximity to where each crew is working. Commenter’s questions the need for two unique signs in two separate places that convey the same information. Comment 7.02 points out that the proposed FLC identity signs proposed to be placed at the entrance to fields will reduce the prominence of pesticide warning signs increasing the hazard of inadvertent exposure to workers. They suggest we solicit input from Dept. of Pesticide Regulation to evaluate the impact of FLC identity signs on pesticide warning signs. A commenter stated that the regular moving of the sign improperly adds to the work and responsibilities of supervisors.

Response to comments 2.12, 7.03, and 10.09; PH 1:05:14

After considering the comments and upon further independent review of the text, DLSE removed subsection (c) from the section. See also, response to comments 2.12, 3.32, 4.01, 6.14, 9.02, 11.03.

Section 13666.2 - Worker Safety Training of Crew Leaders and Forepersons

Comments 2.13, 3.33, 4.04, 5.06, 6.17, 7.04, 8.29, 10.10, and 11.04; PH 09:03, PH 09:13, PH 17:19, PH 59:25; PH 1:26:04; PH 1:31:30

Section 13666.2(a) provides that supervisors and crew leaders provide quarterly heat illness and pesticide safety training to employees. Most commenters claim that we have no authority to regulate safety training because Cal/OSHA already regulates this requiring it initially and annually and that training be provided by specially qualified instructors. Most claim that this regulation is a duplication/expansion of regulations already enforced by Cal/OSHA that does not significantly improve the quality of safety training. One commenter claims we offered no explanation of why it is necessary to train supervisors quarterly when Cal/OSHA has no such requirement. The commenter states it is incumbent upon us to explain why this is necessary for supervisory personnel. Comment 3.33 claims that much of the essential “training” takes place in the course of day to day communication anyway. Commenter 7.04 would like more flexibility to provide training in identified hazards as heat illness is not a significant risk in all agricultural areas (i.e. coastal regions). Commenter 10.10 claims that this regulation exceeds Cal/OSHA requirements and thinks DLSE should employ the same training requirement to FLC’s supervisory personnel that Cal/OSHA applies to other such individuals in other industries. Commenter 5.06 would like the regulation expanded to include relevant Labor Code sections to help highlight to FLC’s crew leaders their duties to maintain a safe and healthful work environment. One commenter states that periodic training will better enhance safety of workers and the requirement should go further regarding this type of training.

Response to comments 2.13, 3.33, 4.04, 5.06, 6.17, 7.04, 8.29, 10.10, and 11.04; PH 09:03, PH 09:13, PH 17:19, PH 59:25; PH 1:26:04; PH 1:31:30

After considering the comments regarding this section, DLSE chose to retain the supervisor training requirement with some modifications. Regarding the authority for the requirement, DLSE has authority to promulgate rules and regulations for the purpose of administering and enforcing the requirements of the FLC statutes (Labor Code 1682 et seq.) The section establishes a more specific standard for supervisor safety training which is referenced as a duty for FLC licensees *under the FLC law* (Labor Code 1695(a)(9)) and uniquely enforceable by DLSE through suspension or revocation of a license. Regarding the purpose and need for the regulation, see Addendum to ISOR (pp. 25-26). The reference to heat illness prevention and pesticide requirements identified in this section effectively incorporates content standards for the subjects under the respective referenced laws, and thus, is not inconsistent or duplicative of the standards in the referenced laws. Further, this section directs that the season-appropriate supervisor training be done at least quarterly for purposes of FLC license requirements. DLSE anticipates that most FLCs can integrate this requirement into their existing safety training programs with minimal impact on their training operations and provides for minimal record-keeping of the supervisor training required under FLC laws. In response to the comments, the agency modified the text to provide a reasonable standard of 15 minutes total which can be performed during one session or over the quarter to ensure supervisors are cognizant of current worker safety conditions and prevention measures. Additionally, the primary reference that the supervisor training “shall pertain to season-appropriate subjects covering worker safety which includes, but is not limited to...” contemplates other subjects which may be regionally specific and recognizes that heat illness and pesticide use is not necessarily an all year threat in all regions of the State. The requirement specifically identifies heat illness prevention and pesticide use precautions as necessary when such conditions are present during any quarter of the year and training and record-keeping must reflect actual training of supervisors.

Comments 3.34, 4.04, 6.17, 7.05, 8.29, 10.10, and 11.04

Section 13666.2(b) provides that licensees maintain records of quarterly safety training and specifies the type of information to be kept and for how long. Commenter’s assert that this regulation is duplicative because Cal/OSHA and the California Department of Pesticide Regulation already require documentation of training for supervisors. Documentation is also required as part of a written injury and Illness Prevention Program.

Response to comments 3.34, 4.04, 6.17, 7.05, 8.29, 10.10, and 11.04

DLSE considered the comments and determined that the text is necessary to minimally and adequately provide a means of confirming actual training required under subsection (a) of the regulation for purposes of FLC requirements. Regarding the purpose and need for the regulation, see Addendum to ISOR (pp. 25-26). For purposes of compliance with this FLC record keeping requirement, documentation of supervisor training required by Cal/OSHA or Department of Pesticide Regulation would be acceptable by DLSE if the documentation contains the information items required under this subsection and such documentation is maintained by the FLC for 2 years.

Section 13667 - Procedure to Obtain Damages from the Farmworker Remedial Account

Comment 5.07; PH 1:27:37

Section 13667(d) provides that the Labor Commissioner may order an investigatory hearing in the event declarations submitted in support of the application for recovery are insufficient to sustain a recovery. Commenter 5.07 notes that there are other less extensive measures that may be taken when a complete investigatory hearing may be unnecessary. In order to save costs and time for the Labor Commissioner and other parties involved, the statute should offer an alternative means for obtaining further information to determine if recovery of damages is warranted and suggests inserting language indicating that the agency “may request further information for clarification to support the claim, or when deemed necessary. One commenter stated that the regulation establish a good procedure in order to help workers get paid, including holding an investigatory hearing.

Response to Comment 5.07; PH 1:27:37

After considering the comment, DLSE appreciates the suggestion but determined that the suggested modification to the text was not necessary. The intent of the subsection is to establish, by regulation, the Labor Commissioner’s basic discretionary authority to order an investigatory hearing under the specified criteria and not to qualify discretion beyond ordering a hearing. The agency recognizes that independent of the text language, it has authority to request and receive supplemental information and/or declaration *prior to ordering* an investigatory hearing for a claim for recovery from the account. Such authority is necessary to insure that workers are not denied recovery due to curable defects or deficiencies in a worker’s claim. The regulation is intended to simply provide the circumstances when a hearing may be ordered and does not preclude prior request for or submission of information for clarification of an item in a claim.

Comment 11.05

Section 13667(e) provides that a farm labor contractor may seek recovery on behalf of his/her employees from the Farmworker Remedial Account if unable to pay due to default by the grower or packer. This section also provides that FLC must first proceed against his or her bond before submitting a claim to the Farmworker Remedial Account. Commenter feels that once DLSE has established that the failure to pay any employee is due to lack of payment by the grower or packer, and prior to proceeding on the FLC’s bond, that the DLSE should support the FLC in recovering those wages along with corresponding workmen’s compensation fees and taxes, including action under Labor Code 2810.

Response to comment 11.05

After considering the comment, DLSE determined not to remove or modify the text requiring that an FLC must exhaust remedies against the his or her bond before applying to the remedial account on behalf of his or her employees. The purpose of the bond is to provide a dedicated source for recovery of damages suffered by workers due to nonpayment of wages and other amounts pursuant to Labor Code 1684(a)(3). Subsection (e) is intended to regulate the claims against the Farmworker Remedial Account and provide conditions for an FLC to recover on behalf of his or her employees. DLSE has determined that the condition requiring exhaustion of remedies against the FLCs bond ensures that any distributed funds from the account to an FLC (on behalf of his or her workers) only occur under circumstances where the alternative source of recovery from the bond is not available and such distribution is appropriate, including criteria specified in subsection (f). While DLSE recognizes that claims against a bond may impact the

FLCs ability to secure a bond in the future, the consequences to the business cannot displace the primary purpose of the account which is to provide a source of recovery for workers who have been already damaged by non-payment of wages and other amounts due them. Requiring the FLC to first exhaust remedies against his or her bond (a security previously obtained by the FLC) better protects the account and the availability of account funds for other workers in the state. The other points raised in the comment extend beyond the scope of the regulatory section.

Section 13667.1 - Hearing

Comment 5.08

Section 13667.1 provides that the Labor Commissioner has the authority to order an investigatory hearing to determine the amount of damages suffered by an employee or other claimant seeking recovery from the Farmworker Remedial Account. In order to add more precision and guidance as to when it is necessary for the Labor Commission to exercise this authority commenter suggests adding language providing criteria for ordering an investigative hearing relating to a claim of recovery from the remedial account.

Response to comment 5.08

DLSE considered the comment and suggestion and declines to modify the regulatory text. In the context of a claim for recovery from the account, the investigatory hearing is solely for the purposes of determining whether the claim is one that can be paid through the Account and the amount of the claim, namely, did the claimant work for an FLC, not get paid by the FLC, and how much is owed in wages and damages. The investigatory hearing is not used to make a determination of employer fault or liability but only used where there are issues regarding the claim which needs further examination. The final result of an investigatory hearing is that the claimant has submitted a valid claim for wages and damages and is eligible for payment from the Fund. There needs to be flexibility in ordering an investigatory hearing because the reasons underlying the claim and/or issues regarding claim for recovery from the Account may be varied and novel.

Section 13667.4 - Payment of Wage Claims Against the Farmworker Remedial Account

Comment 5.09

13667.4 provides that the Labor Commissioner shall pay all valid claims against the Farmworker Remedial Account in the order received. Commenter feels the title of this section needs to be changed from “Payment of Wage Claims...” to “Payment of Damage claims...” given that the remedial account is not limited to recovery of wages alone. They also believe clarity could be added to this section by the addition of a sentence describing the kinds of damages that can be recovered from the account.

Response to comment 5.09

DLSE considered the comment and proposed additional language and declined to incorporate the suggested language for the reason that it would be overly duplicative of language currently expressed in statute (Labor Code 1684(a)(4)) which specifies the kinds of damages that can be recovered from the account using the same language.

General Comments Regarding Procedure and Matters Referring to Text of Regulations

Comment *PH 1:28*

Many of the regulations are unclear and while reasonable regulations are acceptable these aren't. There should be clear what the problems the regulations seek to address.

Response to Comment *PH 1:28*

In addition to the statements contained in the Notice of Proposed Regulations, DLSE subsequently issued an Addendum to Initial Statement of Reasons which supplemented the purpose and need for each of the regulations.

Comments *PH 4:09, 4:24, PH 7:52, PH 8:35*

No notices of (public) hearing were sent to farm labor contractors. There should have been meetings prior to proposing regulations, the Oakland location for the public hearing and the recent cold weather likely prevented many from attendance.

Response to Comments *PH 4:09, 4:24, PH 7:52, PH 8:35*

DLSE complied with the provisions of the Administrative Procedure Act (Government Code sections 11342 et seq.) which included publication of the notice and public hearing in the Notice Register. All persons who have requested to be notified of regulatory actions were sent notices of the proposed rulemaking and public hearing date, time and location.

Comment *PH 14:38*

DLSE's statement in the Notice of Rulemaking indicated that there would be no impact on contractors' ability to compete. Contractors already operate at a disadvantage and the regulations will impose more obligations on those who are providing a valuable service in the agricultural industry.

Response to Comment *PH 14:30*

DLSE respectfully disagrees with the commenter and has determined that the standards contained in the regulations are reasonable and will provide a more level playing field for farm labor contractors statewide. DLSE acknowledges the valuable role of contractors play within the industry when establishing processes and procedures which will better meet a primary objective of the Farm Labor Contractor laws aimed at addressing the welfare and safety of workers.

SUMMARY AND RESPONSES TO COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC FROM APRIL 1, 2014 TO APRIL 16, 2014

Section 13660 - Application for License

Comment 15.1-2.03

Section 13660(a)(8)(A)(ii) requires an applicant to identify each individual or entity who will perform regulated activities for the FLC, including whether each has previously held an FLC license within the last 10 years. The comment states that an FLC applicant does not have access to a database for all applications for the past 10 years and suggest that DLSE should consider

making a database for applicants to utilize to verify whether any supervisor has applied for a license within the last 10 years.

Response to Comment 15.1-2.03

DLSE considered the comment and declined to incorporate the suggestion at this time as it is not administratively feasible. DLSE determined that a more immediate, effective, and less costly alternative is for FLC applicants to ascertain such information when selecting a person or entity who will perform regulated activities for the applicant business seeking a license. It is the licensee who controls who it hires to perform regulated activities which is certainly an important matter for FLC businesses and exercise of due diligence by the applicant is required of the licensee in ascertaining this information.

Comment 15.1-1.01

Section 13660(a)(9) provides that that applicants provide the name and business address of all growers they plan to contract with in the future. Commenter indicates that adding this disclosure requirement as a condition for determining justification for licensure is premature when the applicant is in fact seeking to obtain a license for the first time and is a speculative exercise to generate data. The commenter states that the required disclosure should not be used to establish a data point as to whether a farming operation is, has, or will utilize the services of a farm labor contractor. Further, there is concern that inferring information about the applicant's character based on a speculative list could result in a misleading evaluation of both the applicant and the potential farming operation.

Response to Comment 15.1-1.01

DLSE considered the comment and declined to remove or modify the text. The information is intended to address information which is relevant to determining the nature and extent of the planned FLC business which addresses the character of the FLC business which is a required standard for one's qualification to hold a license under Labor Code Section 1684(a)(2). See, Addendum to Initial Statement of Reasons (p. 4) and Response to comments 3.03, 8.03, and 10.04; *PH 24:40*.

Section 13661 - Application for Renewal of License

Comment 15.1-2.02

Section 13661(a) provides that an applicant must submit for renewal 60 days prior to expiration of a current license. Commenter questions why the section states 60 days when the agency has stated that license applications are processed in 30 days which should be the maximum day requirement. Also, there are likely significant numbers of FLCs who may wait and procrastinate and not be able to control when other agencies (US DOL or US IRS) are able to process requests for registrations on a timely basis.

Response to Comment 15.1-2.02

DLSE considered the comment and cannot discern whether the concern is that the 60 day requirement is too long or too short. If the commenter is stating that it is too long, DLSE reduced the number of days from 90 to 60 based on comments raised during the initial 45-day period (see, "**Response to comments 3.20 and 8.18; *PH 28:24, PH 40:41***"). If the commenter is

concerned that it is too short because FLCs cannot control when some other agencies are able to process requests for information or registrations, DLSE determined that the 60 day period is a reasonable standard for filing a renewal application to account for both the submission of required documents, review of the application and other items, and provide for defect notices and time for applicant responses to defect notices. While DLSE strives to reduce the number of days for processing applications, the time requirement reasonably balances what DLSE's receives from the range of both procrastinators to earlier filings as well as levels of completeness of information and items.

Comment 15.1-2.05

Section 13661(a) provides that an applicant must submit for renewal 60 days prior to expiration of a current license. Commenter indicates that while DLSE requires that renewal applications be submitted 60 days prior to expiration of the license, in this section DLSE allows for 60 days from receipt of an application to provide notification to the applicant of acceptance, rejection, or requesting additional information. The FLC should not have to wait for 60 days and should receive a response within 30 to 45 days from a submitted application to allow sufficient time to respond as needed.

Response to Comment 15.1-2.05

DLSE considered the comment and declined to modify the text to incorporate the suggestion. The regulation was intended to establish standards for both applicants and actions by the agency on submitted applications. DLSE strives to process applications within a shorter time period than 60 days but determined that the 60 day period is a reasonable standard given the administrative activities for the licensing program and setting that standard does not mean that actions on applications will not be made sooner.

Section 13663 - Schedule for Processing Applications

Comment 15.1-2.06

Section 13663(b) provides that the Labor Commissioner may issue a temporary license if he or she is unable to complete the determination within 60 days and the delay is not the fault of the applicant. Commenter states that the issuance of a temporary license should be automatic and the word "shall" should replace "may".

Response to Comment 15.1-2.05

DLSE considered the comment and declined to modify the text to incorporate the suggested word replacement. See "Response to comments 3.26 6.08, 6.09, and 8.22; *PH 45:58*" which addressed the same subject.

Section 13666.1 - Identification Signage at Worksite

Comment 15.1-2.01

Section 13666.1(a) specifies that the licensee's name and license number must be included in the top half of the sign and a name and working telephone number in the bottom half of the sign. The commenter indicates that other forms (DLSE Form 445 and USDOL WH 516) are required to be posted at the worksite and each contains the employer name and contact data. Also, FLCs do not

own property where they work and growers may not want or allow the posting of a large sign at the edge of their property as many field sites may be obscured by planted trees and shrubs

Response to Comment 15.1-2.01

See, “Response to comments 2.12, 3.32, 4.01, 6.14, 9.02, 11.03; *PH 55:11, PH 56:17, PH 1:04:18*” and related “Response to comments 2.12, 3.32, 4.02, 6.15, 7.02, 10.09, 11.03” which addressed the same matter. Additionally, DLSE determined that the objective of this section providing FLC identification in a sign containing the specified information in this section serves a different objective and purpose than the other notices containing more specific information and that the presence of the latter at the worksite does not meet the same objective of the identification signage requirement.

Section 13666.2 - Worker Safety Training of Crew Leaders and Forepersons

Comment 15.1-2.04

Section 13666.2(b) provides that licensees conduct quarterly supervisor safety training of at least 15 minutes each quarter. Commenter states that the requirement does not take into consideration or provide credit to FLCs who provide many hours of supervisor training but less frequently. Also, the training requirement is much too limited and should take into account everything from Cal/OSHA requirements, sexual harassment, to wage and hour compliance and management of work injuries. The commenter states that the certification by the FLC for records of the quarterly training requiring that the information is “true and complete” is unclear.

Response to Comment 15.1-2.04

DLSE considered the comments and declined to modify the text of the regulation. The requirement does not preclude an FLC from integrating other training it conducts in complying with other laws when satisfying the requirements of this section. So long as the requirements of this section are met and records are retained containing the required information, there would be compliance during the quarter in which the training occurred. This requirement sets a minimum of 15 minutes each quarter and certainly allows more time and other subjects which are season-related. The term “true and complete” in the context it is used refers to the information contained on the record of the training and DLSE determined that no further clarification is needed. The meaning is reasonably evident from the words used that the certification is to the truth and completeness of the information required to be on the training record.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

Except as addressed in comments from the public to the initial and modified regulations, no alternatives were proposed that would lessen any adverse economic impact on small business.

ALTERNATIVES DETERMINATION

DLSE has determined that no alternative it considered or that was otherwise identified and brought to the to its attention would be more effective in carrying out the purpose for which the

action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments and new sections adopted by DLSE are the only regulatory provisions identified by the agency that accomplish the goal of regulating farm labor contractors to ensure their initial and continuing fitness to engage in regulated activities under the Farm Labor Contractor Law which is designed for protecting the welfare and safety of workers in the agricultural industry. Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the agencies attention.