

AGRICULTURAL LABOR RELATIONS BOARD

INITIAL STATEMENT OF REASONS IN SUPPORT OF PROPOSED REGULATORY ACTION TO:

- **Adopt New Section 20247.1 and 20410;**
- **Amend Sections 20150, 20155, 20160, 20162, 20164, 20166, 20169, 20170, 20190, 20192, 20216, 20217, 20219, 20220, 20222, 20235, 20236, 20238, 20240, 20241, 20242, 20243, 20246, 20248, 20249, 20250, 20262, 20274, 20282, 20286, 20290, 20291, 20299, 20300, 20310, 20305, 20325, 20330, 20335, 20350, 20355, 20360, 20363, 20365, 20370, 20375, 20377, 20382, 20385, 20390, 20393, 20400, 20401, 20402, 20407, 20408, 20910; and**
- **Repeal Section 20168.**

PROBLEM STATEMENT

The proposed regulations aim to modernize and update the rules governing the Agricultural Labor Relations Board's (ALRB or Board) administrative procedures, including to provide more efficiency and clarity to parties before the Board.

Transition to Non-Gendered Terms

The Board's existing regulations use gendered pronouns. In 2018, the California State Assembly adopted Assembly Concurrent Resolution No. 260 to encourage state agencies to use gender-neutral terms and to avoid gendered pronouns when drafting policies, regulations, and other guidance. (Assem. Conc. Res. No. 260, Stats. 2018 (2017-2018 Reg. Sess.) res. ch. 190, p. 5899; see also Assem. Bill No. 378, Stats. 2021 (2021-2022 Reg. Sess.) ch. 50.)

The proposed regulations will remove gendered pronouns and replace them with gender-neutral terms. (See proposed regulations 20220, 20222, 20243, 20274, 20290, 20291, and 20299; see also proposed regulations 20217, 20246, 20249, 20250, 20262, 20300, 20310, 20363, 20370, 20375, 20377, 20385, 20390, 20407.)

Filing and Service Regulations

The Board's existing regulations allow parties to file hardcopies of documents with requirements in many instances that multiple copies of the documents be submitted. The Board's regulations also contain various references to outdated methods of filing or service, including by facsimile, mailgram, telegraph, and telegram. In 2017, the Board adopted new regulation 20169 to allow parties an option to file documents electronically. Since adopting this new filing option, nearly all parties practicing before the Board now file documents electronically.

The proposed regulations will remove references to outdated methods of filing and serving documents, and also will eliminate requirements that multiple copies of documents be filed with the Board. The proposed regulations also will require parties represented by counsel before the

Board to file documents electronically, while preserving an option for parties who are not represented by counsel to file paper copies of documents. (See proposed regs. 20150, 20155, 20160, 20162, 20164, 20166, 20169, 20170, 20240, 20241, 20246, 20249, 20262, 20282, 20286, 20305, 20325, 20363, 20365, 20370, 20375, 20382, 20385, 20393, 20400, 20401, 20402, 20407, 20408; see also proposed regs. 20219, 20242, 20250, 20300.)

This approach is consistent with filing rules applicable in California state courts. (Code Civ. Proc., § 1010.6, subd. (g); Cal. Rules of Court, rule 8.71; Fresno County Superior Court, Local rule 4.1.2(A); Monterey County Superior Court, Local Rule 1.6; Santa Cruz County Superior Court, Local Rule 1.3.01.) The California Public Employment Relations Board also recently adopted similar filing rules. (Cal. Code Regs., tit. 8, § 32110.) The National Labor Relations Board also has adopted similar rules. (29 U.S.C. § 102.5(c).)

Unfair Labor Practice Proceedings

The Board's existing regulations require a prehearing conference before a formal evidentiary hearing in an unfair labor practice case. The prehearing conference typically is held several weeks before commencement of the formal hearing for the purpose of addressing certain evidentiary or logistical issues. To assist the parties and administrative law judges in identifying important legal or factual issues sooner in the proceeding, and to make subsequent proceedings and hearing preparations more efficient, the proposed regulations add a case management conference requirement after a respondent files an answer to a complaint. (See proposed reg. 20247.1.) While settlement conferences often are held in unfair labor practice proceedings, the proposed regulations will require a settlement conference in all unfair labor practice cases to encourage informal and prompt resolution of labor disputes. (See proposed reg. 20248.)

Current regulations impose strict requirements on a party's ability to request a continuance of a hearing after the hearing has commenced. The proposed regulations provide administrative law judges more flexibility to grant continuances of up to 10 business days upon a showing of good cause. (See proposed reg. 20190.) Existing regulations do not require a party to inform the assigned administrative law judge of the other parties' positions on the request. The proposed regulations will require parties who seek extensions of time to make diligent efforts to obtain other parties' positions concerning the extension request and to inform the judge of their positions. (See proposed reg. 20192.) This will allow the judge to rule more efficiently on extension requests.

The proposed regulations include provisions to assist parties unfamiliar with some of the Board's processes. Many charging parties before the Board are farm workers who are unrepresented by counsel. If a charge is dismissed without issuance of a complaint, there is a short timeframe for parties to request review by the general counsel. The proposed regulations will allow the general counsel to review a charge dismissal sua sponte in situations where the charging party is a farm worker not represented by legal counsel or any other representative. (See proposed reg. 20219.) Also, existing regulations allow parties to appeal certain prehearing or evidentiary rulings to the Board. The Board has adopted a rule in its precedent that it will only consider such appeals in limited circumstances. (*Premiere Raspberries, LLC* (2012) 38 ALRB No. 11.) To clarify this

standard for parties considering such an appeal, the proposed regulations will specify the standard applied by the Board. (See proposed reg. 20242.)

Finally, while the general counsel has broad investigatory and prosecutorial authority with respect to unfair labor practice charges, existing regulations do not provide for, or are silent with respect to, the use of certain tools to assist in investigations. The proposed regulations seek to address this and increase efficiencies in the general counsel's investigation of charges. The proposed regulations allow regional directors to ask a party charged with committing an unfair labor practice a limited number of written interrogatories regarding threshold issues to ensure the identification of the proper parties to the proceeding. (See proposed reg. 20216.) The proposed regulations also allow the general counsel to request further information from a charged party where the charged party asserts an affirmative defense based on an agricultural employee's immigration status. (See proposed reg. 20235.) The proposed regulations also clarify and seek to make more efficient the use of administrative subpoenas in unfair labor practice proceedings. First, the proposed regulations clarify that investigatory subpoenas may be used to obtain testimony from a witness in addition to the production of records, and also that disobedience of a subpoena may be punished by the use of evidentiary sanctions to prevent a party from benefitting from evidence it failed to produce. (See proposed regs. 20217, 20238, 20250; *Coastal Vineyard Care Associates* (June 11, 2019) ALRB Admin. Order No. 2019-02; *Bannon Mills, Inc.* (1964) 146 NLRB 611.) Second, to increase efficiencies in the resolution of disputes in the context of compliance with a subpoena, the proposed regulations require parties to produce privilege logs where records are withheld on the basis of a claim of privilege, and also establish a time period in which a party opposing a request for enforcement of a subpoena may respond to such a request. (See proposed regs. 20217, 20236, 20250.) Last, the proposed regulations clarify that the Board may delegate responsibility for the judicial enforcement of administrative subpoenas to the general counsel. (See proposed regs. 20217, 20250.)

Representation Proceedings (Elections)

Existing law imposes a number of requirements on agricultural employers engaged in the cultivation of cannabis to protect the security of production facilities. (See Bus. & Prof. Code, §§ 26051.5, 26201; Cal. Code Regs., tit. 4, § 15042 et seq.) This can present an obstacle to a labor organization's ability to serve a petition for a representation election personally on an owner, officer, or director of the employer. The proposed regulations allow personal service of a representation petition on a security guard stationed at the site, provided that service on the employer through other means is also subsequently provided. (See proposed reg. 20300.)

Existing regulations require an agricultural employer to produce a list of its current employees to a labor organization that has filed a notice of intention to take access within a defined period of time and that establishes support from at least 10% of the employees. The United States Supreme Court in *Cedar Point Nursery v. Hassid* (2021) 141 S.Ct. 2063 held the Board's access regulation (reg. 20900) is unconstitutional to the extent it fails to provide for compensation to property owners. The proposed regulations will allow a labor organization to obtain a list of an employer's employees upon a showing of 10% support from the employees without the requirement of having filed a prior notice of intent to take access. (See proposed reg. 20910.) Also, to facilitate communication with the employees, the proposed regulations further add

several categories of contact information to the list an employer must produce to a labor organization upon a showing of 10% support or after a petition for a representation election has been filed, including telephone numbers and email addresses. (See proposed regs. 20310, 20910.)

Finally, existing law establishes certain circumstances under which it may be appropriate for the Board to dismiss a petition for a representation election, i.e., to block an election where it is alleged the agricultural employer has engaged in unlawful conduct. (*Cattle Valley Farms* (1982) 8 ALRB No. 24; see *Arnaudo Brothers, LP* (2013) 39 ALRB No. 9; see also *Bishop v. NLRB* (5th Cir. 1974) 502 F.2d 1024.) Alternatively, the Board in such cases may proceed with an election but order the ballots cast impounded, until after the resolution of any allegations of unlawful conduct. (*Id.* at pp. 14-15; see also NLRB Casehandling Manual, Part 2, Representation Proceedings, §§ 11730-11733.) The Board previously has addressed such issues and articulated factors it will consider in taking certain approaches on a case-by-case basis. The Board's application of its impoundment policies were criticized by the Fifth District Court of Appeal in *Gerawan Farming, Inc. v. ALRB* (2018) 23 Cal.App.5th 1129. The proposed regulations will provide clearer guidance to parties appearing before the Board and articulate more clearly the rules governing the Board's authority to block elections or impound ballots in representation proceedings, including the circumstances under which such actions may be taken and timeframes governing the use of such procedures. (See proposed regs. 20300, 20360, 20390.)

Mandatory Mediation and Conciliation

In 2018, the Legislature adopted new Labor Code section 1164.10 to provide for supplemental mandatory mediation and conciliation proceedings when terms of a contract previously ordered into effect by the Board expired or became moot during subsequent judicial review proceedings. (Assem. Bill No. 2751, Stats. 2018 (2017-2018 Reg. Sess.) ch. 718.) The Board has not since adopted regulations governing such proceedings.

The Board's proposed new regulation 20410 will set forth procedures governing supplemental mandatory mediation and conciliation proceedings under Labor Code section 1164.10, thereby providing clarity and guidance to interested parties.

ANTICIPATED BENEFITS

As indicated above, the proposed regulations are designed to offer greater clarity to parties appearing before the Board and to make the Board's processes more efficient.

Transition to Non-Gendered Terms

The proposed regulations will remove gendered terms from the Board's regulations in an effort to make them more inclusive and conform with state policy encouraging the use of non-gendered language.

Filing and Service Regulations

The proposed regulations will remove references to outdated modes of filing and serving documents. The proposed regulations adopt an approach generally requiring electronic filing of documents with the Board, consistent with the approach of California state courts and comparable administrative agencies like the National Labor Relations Board and Public Employment Relations Board. These provisions also will facilitate the service of documents between the parties to Board proceedings, and eliminate unnecessary and wasteful requirements that multiple copies (in many cases up to six copies) of documents be filed with the Board.

Unfair Labor Practice Proceedings

The proposed regulations aim to increase efficiencies in unfair labor practice proceedings. By requiring case management conferences early in the proceedings, the Board intends for the parties, and administrative law judges, to identify disputed issues early on as a means of streamlining subsequent proceedings. The Board also intends to encourage further efforts by the parties to resolve cases informally and more promptly by requiring settlement conferences in all unfair labor practice cases, potentially saving the time and resources of the parties and the Board. The proposed regulations also offer greater ability to administrative law judges to grant continuances requested by parties.

The proposed regulations also aim to increase efficiencies in the general counsel's investigation and prosecution of unfair labor practice charges. By allowing regional directors to propound interrogatories during an investigation, the general counsel's office will be able to identify the proper and correct parties to the proceedings early on. Similarly, the proposed regulations will aid in the enforcement of administrative subpoenas issued in unfair labor practice proceedings by requiring parties to produce privilege logs identifying records withheld based on claims of privilege, thereby allowing the subpoenaing party and administrative law judge the ability to more efficiently and effectively assess the merits of a party's objections. Also, to provide an alternative to potentially lengthy judicial enforcement proceedings where a party refuses to comply with a subpoena, the proposed regulations codify existing precedent allowing a party to seek evidentiary sanctions in unfair labor practice cases in order that the Board's processes are not frustrated or delayed based on a party's noncompliance.

Representation Proceedings (Elections)

The proposed regulations will preserve the ability of a labor organization to obtain a list of an employer's current employees upon proof of support of at least 10% of the employees without the prerequisite of filing a notice of intention to take access following the United States Supreme Court's decision in *Cedar Point Nursery v. Hassid*. By also adding several categories of contact information to the employee lists, including telephone numbers and email addresses, the proposed regulations will facilitate a labor organization's ability to communicate with farm workers. The proposed regulations also will clarify the standards and circumstances under which the Board may dismiss a petition for a representation election or, alternatively, order the ballots cast in an election impounded and not counted where there are allegations a party engaged in unlawful conduct, including by codifying principles adopted by the National Labor Relations

Board in its casehandling manuals and precedent, as well as the Board's own precedent. The proposed regulations will thereby provide greater clarity, guidance, and transparency to parties in representation proceedings. Finally, the proposed regulations will facilitate the service of representation petitions on employers engaged in the cultivation of cannabis where security measures required by law pose challenges to service of a petition directly on an owner, officer, or director of the employer. By allowing a labor organization to serve a petition personally on a security guard stationed at the worksite, with later service on an owner, officer, or director of the employer, the proposed regulations will remove obstacles to a labor organization's efforts to organize agricultural employees in the cannabis industry.

Mandatory Mediation and Conciliation

Existing law allows a party to a contract ordered through mandatory mediation and conciliation to request supplemental mandatory mediation and conciliation with the Board in the event that terms of the contract expire or become moot during the pendency of subsequent judicial review proceedings. However, the Board has not yet adopted regulations specifying the rules applicable to such proceedings. The proposed regulations will provide clarity and guidance to parties regarding the rules governing supplemental mandatory mediation and conciliation proceedings.

SECTION-BY-SECTION EXPLANATION FOR ADOPTION

A. Adoption of New Sections

Proposed Section 20247.1 requires a case management conference to be held in an unfair labor practice case between the parties and assigned administrative law judge.

Proposed Section 20410 adds procedures to govern supplemental mandatory mediation and conciliation proceedings between a certified labor organization and agricultural employer.

B. Amendments to the Text of Existing Regulations

Section 20150 describes formatting and document requirements for filings with the Board. The proposed amendments provide for easier-to-read font requirements, describe new formatting requirements for electronically filed documents and documents not electronically filed, and requires parties or their representatives to include an email address with their address on the filing caption page.

Section 20155 states every document filed with the Board must be signed by the filing party or its representative. The proposed amendments allow for use of electronic signatures and replace gendered terms with non-gendered language.

Section 20160 states the office locations where parties should file certain types of documents and the number of copies to be submitted. The proposed amendments require all parties represented by counsel or other representative to file documents with the Board electronically, while parties not represented by counsel or other representative may continue to file hard-copy

documents with the Board. The proposed amendments remove the requirements a party file multiple copies of a document with the Board for hard-copy filings.

Section 20162 requires parties or their representatives to include their names, addresses, and telephone numbers on their initial filings with the Board or to file a notice of appearance with the executive secretary stating such information. The proposed amendments require parties or their representatives also to provide their email addresses on their initial filings or in a notice of appearance.

Section 20164 describes service requirements for filings in Board proceedings. The proposed amendments require the Board and represented parties to file and serve documents electronically, while parties not represented may file hard-copy documents with the Board and must be served with hard-copies of filings by the Board or other parties.

Section 20166 describes requirements for serving parties with filings in proceedings before the Board. The proposed amendments incorporate proposed new electronic filing requirements and replace gendered terms with non-gendered language.

Section 20169 states requirements for electronically filing documents with the Board. The proposed amendments require parties represented by counsel or other representative to file documents with the Board electronically, while unrepresented parties may file hard-copy documents with the Board. The proposed amendments further describe certain formatting requirements for electronic filings, including pagination, document naming, and file-size requirements. The proposed amendments also change the deadline from 4:00 p.m. to 5:00 p.m. for a document filed electronically to be considered filed that same business day. The proposed amendments also describe methods for electronically serving other parties. The proposed amendments state a party may request permission to file a document in hard-copy form where file-size or other technical complications prevent use of electronic filing.

Section 20170 describes the calculation of time periods for filings with the Board based on when a document is served. The proposed amendments clarify that service of a document may be done by mail, overnight delivery, in person, or electronic filing, and the timeframe for another party to file a document will run from the date of one of these actions. The proposed amendments also change the added time to respond to a document served by mail from 3 days to 5 days, provide that 2 business days shall be added to the time to respond to a document served by overnight courier, and state that no extra days are added to the time to respond to a document served electronically. The proposed amendments also remove references to outdated methods of filing or service by facsimile.

Section 20190 describes requirements for filing a request for a continuance of hearing dates. The proposed amendments add references to settlement conferences a party may seek to continue. The proposed amendments also extend the length of a continuance an administrative law judge may grant after a hearing has begun from two business days to 10 business days, and state that requests for continuances of longer than 10 business days must be supported by extraordinary circumstances. The proposed amendments also make other technical non-substantive changes to the language.

Section 20192 states the requirements for a party to file a request for an extension of time to perform some action, including that a party requesting an extension must state the position of the other party when filing its request. The proposed amendments require a party requesting an extension of time to include with the request a declaration stating the other party's position on the request or, if the party was unable to obtain the other party's position, a description of the party's efforts to contact the other party to obtain its position.

Section 20216 directs a regional director to investigate the allegations contained in an unfair labor practice charge. The proposed amendments allow the regional director limited authority to serve interrogatories to the charged party during the investigation.

Section 20217 states procedures governing subpoenas issued by the General Counsel during the investigation of an unfair labor practice charge. The proposed amendments confirm the authority of the General Counsel to issue subpoenas requiring the attendance of a witness to provide testimony, in addition to subpoenas requiring the production of documents. The proposed amendments also require a party objecting to a subpoena on privilege grounds to produce a privilege log. The proposed amendments also provide a party opposing an application to enforce a subpoena an opportunity to respond to the application. The proposed amendments also confirm that the Board may delegate authority to the General Counsel to seek judicial enforcement of a subpoena, and also that the General Counsel may seek evidentiary sanctions against a party who refuses to comply with a subpoena. The proposed amendments also replace gendered terms with non-gendered language and make other technical non-substantive changes to the language.

Section 20219 allows for review of a regional director's decision to dismiss an unfair labor practice charge. The proposed amendments allow the General Counsel to grant review on the General Counsel's own motion of a dismissal of an unfair labor practice charge filed by an agricultural employee. The proposed amendments also update references to the filing and service regulations to reflect requirements that represented parties file documents electronically while permitting unrepresented parties to file documents non-electronically.

Section 20220 describes the process by which the General Counsel issues a complaint based on an unfair labor practice charge. The proposed amendments replace gendered terms with non-gendered language.

Section 20222 allows for the amendment or withdrawal of unfair labor practice charges. The proposed amendments replace gendered terms with non-gendered language.

Section 20235 allows a respondent in an unfair labor practice case to serve on the General Counsel a request for particulars seeking more information if the allegations of the complaint lack specificity. The proposed amendments allow the General Counsel to serve a respondent with a request for particulars where an answer asserts a defense based on a charging party's immigration status.

Section 20236 allows a party in an unfair labor practice proceeding to request documents from another party before hearing. The proposed amendments require a party objecting to the production of documents based on a claim of privilege to provide a privilege log.

Section 20238 states the process for a party to compel another party to comply with pre-hearing discovery requests, and allows an administrative law judge to order evidentiary sanctions against a non-complying party. The proposed amendments clarify that evidentiary sanctions may be ordered in cases involving a party's failure to comply with a subpoena.

Section 20240 describes procedures for filing and responding to motions before or after hearing in unfair labor practice proceedings. The proposed amendments incorporate other proposed changes to require electronic filing by represented parties, as well as to remove references to outdated methods of service by facsimile. The proposed amendments also replace gendered terms with non-gendered language.

Section 20241 describes procedures for filing motions between the time of a prehearing conference and the close of a formal hearing in unfair labor practice proceedings. The proposed amendments incorporate other proposed changes to require electronic filing by represented parties, as well as remove the requirement a party file multiple copies of a document with the Board.

Section 20242 states the procedure for a party to file an application with the Board seeking review of an order by an administrative law judge or executive secretary. The proposed amendments clarify that the Board will not consider an application seeking review of issues that can be reviewed in exceptions to a final administrative law judge decision, provide a party who seeks to oppose an application to the Board an opportunity to respond to it, and make other technical non-substantive changes to the language.

Section 20243 allows a party in an unfair labor practice case to make a motion to the administrative law judge for a decision to be entered in its favor after the other party's presentation of evidence. The proposed amendments replace gendered terms with non-gendered language.

Section 20246 describes procedures for a party to apply to an administrative law judge for permission to take the deposition of a witness. The proposed amendments remove the requirement a party file multiple copies of a document with the Board and replace gendered terms with non-gendered language.

Section 20248 allows an administrative law judge the option to hold a settlement conference with parties to an unfair labor practice proceeding. The proposed amendments requires administrative law judges to hold settlement conferences, and make other technical non-substantive changes to the language.

Section 20249 describes prehearing conferences held between the parties and administrative law judge in unfair labor practice proceedings. The proposed amendments correct a typographical

error, replace gendered terms with non-gendered language, and remove references to outdated methods of service or filing by facsimile.

Section 20250 states the procedures for parties issuing and responding to subpoenas in unfair labor practice proceedings. The proposed amendments require a party who objects to production of documents based on a claim of privilege to produce a privilege log. The proposed amendments also update references to the filing and service regulations to reflect requirements that represented parties file documents electronically while permitting unrepresented parties to file documents non-electronically. The proposed amendments also confirm that the Board may delegate authority to the General Counsel to seek judicial enforcement of a subpoena, and also that the General Counsel may seek evidentiary sanctions against a party who refuses to comply with a subpoena. The proposed amendments also provide a party opposing an application to enforce a subpoena an opportunity to respond to the application. The proposed amendments also replace gendered terms with non-gendered language and make other technical non-substantive changes to the language.

Section 20262 describes the authority of administrative law judges in Board proceedings. The proposed amendments replace gendered terms with non-gendered language, and remove a requirement that multiple copies of a statement of facts describing a party's misconduct be filed with the executive secretary.

Section 20274 requires the production of witness statements after a witness has testified in an unfair labor practice hearing. The proposed amendments replace gendered terms with non-gendered language.

Section 20282 states the procedures and requirements for filing exceptions with the Board to an administrative law judge's decision in an unfair labor practice case. The proposed amendments incorporate other proposed changes to require represented parties to file documents electronically with the Board, remove the requirement a party file multiple copies of a document with the Board, remove the requirement that the Board physically return to a party portions of a legal brief exceeding the page limit, and make other non-substantive technical changes.

Section 20286 states an administrative law judge's decision in an unfair labor practice case becomes final if exceptions are not filed with the Board, and provides parties may file motions for reconsideration of any Board order or decision. The proposed amendments remove a reference to the section regarding filing or serving documents by facsimile, which the Board proposes to repeal.

Section 20290 provides for the commencement of proceedings to secure compliance with a Board order. The proposed amendments replace gendered terms with non-gendered language, update references to requirements for filing a notice of hearing, and make other non-substantive technical changes in the language.

Section 20291 describes the contents of a compliance specification or notice of hearing. The proposed amendments replace gendered terms with non-gendered language and make other non-substantive technical changes in the language.

Section 20299 provides rules governing the Agricultural Employee Relief Fund. The proposed amendments make non-substantive technical changes in the language.

Section 20300 states the requirements for filing a petition for certification. The proposed amendments allow a petition for certification to be signed by hand or electronically and remove the requirement of filing multiple copies of a certification petition with the Board. The proposed amendments also allow service of a certification petition on a security guard stationed at a location where employees are working, and state the petitioning party must notify the employer by email and overnight delivery where service of the petition is made on anyone other than an officer, owner, or director of the employer. The proposed amendments also confirm a regional director's authority to dismiss a petition where there is pending an unfair labor practice complaint against the employer containing certain allegations of unlawful conduct, and state the regional director may order an election to proceed, with the ballots cast in the election impounded, if there are charges of unfair labor practices against the employer for which no complaint has yet issued. The proposed amendments also replace gendered terms with non-gendered language and make other technical non-substantive changes to the language.

Section 20305 describes the required contents of a petition for certification. The proposed amendments require the representative of the party filing the petition to include an email address with the required contact information.

Section 20310 states the requirements for an employer after a representation petition is filed. The proposed amendments require the employee list to be produced by the employer also include employees' telephone numbers and email addresses, and state the employer must produce an electronic list if it maintains the information electronically. The proposed amendments also require an employer to maintain accurate records of its employees' contact information. The proposed amendments also require an employer to provide the email address of a labor contractor supplying labor during the relevant pay period(s), in addition to the current requirement the employer provide the labor contractors' names, addresses, and telephone numbers. The proposed amendments also replace gendered terms with non-gendered language and make other technical non-substantive changes to the language. The proposed amendments also update the reference citations for the regulation.

Section 20325 describes the required contents of a petition for intervention in a representation election. The proposed amendments require the representative of the party seeking to intervene to include an email address with the required contact information. The proposed amendments also add authority and reference citations.

Section 20330 states procedures applicable to representation election proceedings when more than one petition for certification is filed. The proposed amendments make technical non-substantive changes to the language.

Section 20335 provides for the consolidation or severance of proceedings involving representation election petitions or election objections and unfair labor practice proceedings. The

proposed amendments replace gendered terms with non-gendered language and make other non-substantive technical changes in the language.

Section 20350 describes representation election procedures. The proposed amendments replace gendered terms with non-gendered language.

Section 20355 describes procedures for challenging the eligibility of an individual to vote in a representation election. The proposed amendments replace gendered terms with non-gendered language, and add authority and reference citations.

Section 20360 states the process for counting ballots cast in a representation election, and confirms the Board's authority to impound (i.e., securely store but not count) ballots cast in an election where there are unresolved allegations of misconduct or unlawful conduct. The proposed amendments state ballots may be impounded based on unresolved unfair labor practice allegations, and specify the timeframes for which the ballots may remain impounded. The proposed amendments also add authority and reference citations.

Section 20363 states the procedure for a party to file challenges to ballots cast in a representation election. The proposed amendments update the references to filing and service requirements to remove a reference to filing or service by facsimile, remove the requirement a party file multiple copies of a document with the Board, and replace gendered terms with non-gendered language.

Section 20365 describes procedures for filing and resolving objections to a representation election. The proposed amendments require a represented party to file objections electronically and an unrepresented party to file objections personally with the executive secretary. The proposed amendments also remove the requirement a party file multiple copies of the objections with the Board and make other technical non-substantive changes to the language.

Section 20370 describes procedures for holding a hearing to resolve disputes involving election objections, challenges to ballots cast in an election, and other similar matters involving a labor organization's certification. The proposed amendments remove formatting requirements duplicative of requirements stated elsewhere in the Board's regulations, remove the requirement a party file multiple copies of a document with the Board, remove the requirement that the Board physically return to a party pages of a legal brief exceeding the page limit on exceptions filed with the Board, and make other technical non-substantive language changes to the language.

Section 20375 sets forth the process for conducting run-off elections when no party receives a majority of valid votes cast in a representation election. The proposed amendments remove an outdated reference to contacting a party by telegram, replace gendered terms with non-gendered language, and make other technical non-substantive changes in the language.

Section 20377 states rules for holding representation elections in strike circumstances. The proposed amendments replace gendered terms with non-gendered language.

Section 20382 states the process for a labor organization to file a petition to extend its certification. The proposed amendments remove the requirement a party file multiple copies of a

document with the Board, and make other technical non-substantive changes to the language. The proposed amendments also add authority and reference citations.

Section 20385 states the process for resolving disputes concerning clarification of a bargaining unit or amending a labor organization's certification. The proposed amendments require represented parties to file exceptions to a regional director's report electronically and unrepresented parties to file exceptions in person or by registered mail. The proposed amendments also remove the requirement a party file multiple copies of documents with the Board.

Section 20390 states the procedures for filing a petition to decertify a labor organization as the exclusive bargaining representative of an employer's agricultural employees. The proposed amendments confirm the authority of a regional director to dismiss a decertification petition where there is pending an unfair labor practice complaint against the employer containing certain allegations of unlawful conduct or, alternatively, may order an election to proceed with the ballots to be impounded. The proposed amendments also state the regional director may order an election to proceed, with the ballots cast in the election impounded, if there are charges of unfair labor practices against the employer for which no complaint has yet issued. The proposed amendments also require a party filing a decertification petition to provide the email address of its representative, and replace gendered terms with non-gendered language and make other technical non-substantive changes to the language.

Section 20393 states the procedure by which a party may obtain review of a dismissal of a representation petition or reconsideration of a Board order or decision in a representation proceeding. The proposed amendments update references to the regulations stating requirements for serving parties with documents filed with the Board to remove references to section 20168 regarding filing or serving documents by facsimile. The proposed amendments also remove the requirement a party file multiple copies of a request for review of a regional director dismissal of a representation petition, replace gendered terms with non-gendered language, and make other technical non-substantive changes to the language.

Section 20400 describes the requirements for a request for referral to mandatory mediation and conciliation. The proposed amendments update references to the regulations stating requirements for serving parties with documents filed with the Board to remove references to remove references to section 20168 regarding filing or serving documents by facsimile.

Section 20401 describes the requirements for filing an answer to a request for referral to mandatory mediation and conciliation. The proposed amendments update a reference to the regulations stating requirements for serving parties with documents filed with the Board to remove reference to remove references to section 20168 regarding filing or serving documents by facsimile.

Section 20402 states the procedures for Board review of a request for referral to mandatory mediation and conciliation. The proposed amendments update references to the regulations stating requirements for serving parties with documents filed with the Board to remove references to remove references to section 20168 regarding filing or serving documents by

facsimile. The proposed amendments also remove requirement a party file multiple copies with the Board of any exceptions to an administrative law judge decision, and made other technical non-substantive changes to the language.

Section 20407 describes the mandatory mediation and conciliation process. The proposed amendments remove a reference to section 20168 regarding filing or serving documents by facsimile, replace gendered terms with non-gendered language, and make other technical non-substantive changes to the language.

Section 20408 describes the procedure for obtaining Board review of a mediator's report in mandatory mediation and conciliation proceedings. The proposed amendments remove a reference to section 20168 regarding filing or serving documents by facsimile, and make other technical non-substantive changes to the language.

Section 20910 allows a labor organization to obtain a list of an agricultural employer's agricultural employees before filing a petition for a representation election if the labor organization can show support from at least 10% of the employees. The proposed amendments allow a labor organization to obtain a pre-petition list of employees without the requirement of filing a previous notice of intent to take access, and provide the labor organization may obtain only one employee list in any 120-day period. The proposed amendments also replace gendered terms with non-gendered language.

C. Repeal of Existing Regulations

Section 20168 states rules for filing and serving documents by facsimile. The proposed repeal of this section is consistent with the Board's proposal to update its filing and service requirements to remove references to outdated methods of filing or service in favor of electronic filing in most circumstances.

D. Amendments Only to the Authority and Reference Citations of Existing Regulations

None.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The proposed regulations are intended to improve and make more efficient the Board's administrative processes, and to clarify the respective rights and obligations of parties to the Board's proceedings. The Board announced at its June 23, 2020 public meeting that it would be commencing a review of its regulations for purposes of improving the Board's administrative procedures, and the Board solicited input and proposals from stakeholders over the ensuing months. The Board's designated regulations subcommittee held a workshop to receive input or proposals from stakeholders on March 11, 2021. The subcommittee thereafter presented concepts for proposed regulatory actions to the Board at its April 13, 2021 public meeting. The Board approved the subcommittee's recommendations.

The subcommittee published proposed regulatory language in underline and strike-through format on September 22, 2021, reflecting the concept proposals approved by the Board. The Board approved the subcommittee's proposed regulatory language concerning its filing and service provisions, representation proceeding proposals, gender-neutralizing provisions, and supplemental mandatory mediation and conciliation. The Board directed the subcommittee to reconsider and modify proposals concerning unfair labor practice procedures.

The subcommittee issued a notice on October 20, 2021, soliciting further public input regarding its proposals. After considering the written comments received, the subcommittee issued updated reports on February 11, 2022, with proposals regarding unfair labor practice procedures, representation procedures, and supplemental mandatory mediation and conciliation. On February 22, 2022, the Board approved the subcommittee's final proposals and directed the subcommittee to commence a formal rulemaking.

ECONOMIC IMPACT ASSESSMENT (Gov. Code, § 11346.3, subd. (b))

The proposed regulations are designed to improve the Board's administrative processes by making the rules more efficient and clear in terms of instructing parties of their rights and obligations.

In accordance with Government Code section 11346.3, subdivision (b), the ALRB has made the following assessments regarding the proposed regulations:

Creation or Elimination of Jobs Within the State of California

The proposed regulations are designed to improve the Board's administrative processes by making the rules more efficient and clear. In doing so, no jobs in California will be created or eliminated.

Creation of New Businesses or Elimination of Existing Businesses Within the State of California

The proposed regulations are designed to improve the Board's administrative processes by making the rules more efficient and clear. In making these changes, no new businesses will be created or existing businesses eliminated, and the ability of businesses in California to compete with businesses in other states will not be impacted.

Expansion of Businesses Within the State of California

The proposed regulations are designed to improve the Board's administrative processes by making the rules more efficient and clear. The only parties affected by this regulatory action are agricultural employees, agricultural employers, and labor organizations representing agricultural employees. This regulatory action will not result in the expansion of any existing businesses in the California.

The ALRB will continue to investigate the potential for economic impact throughout this rulemaking process.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

By updating the updating Board's case adjudication processes and procedures, the Board will improve agricultural labor relations by providing processes that are more effective and efficient. The changes thus will provide a quicker means for the Board to address and resolve labor disputes, consistent with the legislative intent encouraging and favoring the prompt resolution of labor disputes. The changes also will promote fuller communication between agricultural employers and employees in resolving disputes. Modernizing the Board's filing requirements will benefit the state's environment by removing the necessity in most cases of producing and delivering paper copies of documents filed with the Board. Eliminating gendered language in the Board's regulations will foster the welfare of California residents by making the Board's regulations more inclusive.

The proposed regulatory action will not adversely affect the health and welfare of California residents, worker safety, or the state's environment. The proposed regulatory action will further the policies underlying prompt resolution of labor disputes. California residents' general welfare will be benefitted by stable labor relations and dispute resolution, which translates to less risk of disruption in California's agricultural industry.

INFORMATION RELIED UPON TO SUPPORT ALRB'S INITIAL DETERMINATION THAT THE PROPOSED REGULATORY ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The ALRB is charged with administering the provisions of the ALRA and enforcing the labor rights and obligations of agricultural employees, agricultural employers, and labor organizations representing agricultural employees. This regulatory action is designed to make the Board's administrative and case adjudication processes more efficient and to provide clearer guidance and instruction to parties appearing before the Board. As such, the ALRB initially has determined this proposed regulatory action will not have a significant adverse economic impact on business.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The ALRB has not identified any adverse impacts on small business as a result of these proposed regulations and has not identified alternatives that would lessen any adverse impact on small business. Thus, no such alternative has been proposed.

MANDATED USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT

The ALRB's proposed regulatory action mandate the use of specific technologies or equipment in that parties must file documents electronically with the Board via email. This requires parties

to have the proper computer hardware, internet access, and software to convert documents to PDF format and send using an email platform. The regulations provide an exemption to parties that are not represented by counsel or other representative before the Board.