

TITLE 8. AGRICULTURAL LABOR RELATIONS BOARD

NOTICE OF PROPOSED RULEMAKING

The Agricultural Labor Relations Board (ALRB or Board) proposes to adopt, amend, and repeal the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to:

- Adopt new sections 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.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or the representative of any interested person, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or the representative of any interested person, may submit written comments relevant to the proposed regulatory action to the Board. Comments also may be submitted by email to Santiago.Avila-Gomez@alrb.ca.gov. The written comment period closes on January 17, 2023, which is 46 days after the publication of this notice. The Board will consider only comments actually received by that time. Written comments shall be submitted to:

Santiago Avila-Gomez, Executive Secretary
Agricultural Labor Relations Board
1325 J Street, Suite 1900-B
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Pursuant to Labor Code section 1144, the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions, and effectuate the purposes and policies, of the Agricultural Labor Relations Act (ALRA or Act), codified at Labor Code section 1140 et seq.

General reference for **section 20150** of the Board's regulations: 1151.4(a), 1156.3, 1156.7(c), (d), 1160.2, 1160.3, and 1160.5, Labor Code. General reference for **section 20155** of the Board's regulations: Sections 1151.4(a), 1156.3, 1156.7(c), (d), 1160.2, 1160.3, and 1160.5, Labor Code. General reference for **section 20160** of the Board's regulations: Sections 1151.4(a), 1156.3, 1156.7(c), (d), 1160.2, 1160.3, and 1160.5, Labor Code. General reference for **section 20162** of the Board's regulations: Sections 1151.3, 1151.4(a), 1156.3, 1156.7(c), (d), 1160.2, 1160.3, and 1160.5, Labor Code. General reference for **section 20164** of the Board's regulations: Sections 1151.3, 1151.4(a), 1156.3, 1156.7(c), (d), 1160.2, 1160.3, and 1160.5, Labor Code. General reference for **section 20166** of the Board's regulations: Section 1151.3, 1151.4(a), 1156.3, 1156.7(c), (d), 1160.2, 1160.3, and 1160.5, Labor Code. General reference for **section 20169** of the Board's regulations: Sections 1151.3, 1151.4(a), 1160.2, 1160.3, and 1160.5, Labor Code. General reference for **section 20170** of the Board's regulations: Sections 1151.3, 1151.4(a), 1156.3, 1156.7(c), (d), 1160.2, 1160.3, and 1160.5, Labor Code. General reference for **section 20190** of the Board's regulations: Sections 1140.2(b), 1156.3, 1160.2, and 1160.5, Labor Code. General reference for **section 20192** of the Board's regulations: Sections 1142(b), 1151.4(a), 1156.3, 1156.7(c), (d), 1160.2, 1160.3, and 1160.5, Labor Code. General reference for **section 20216** of the Board's regulations: Sections 1151(a) and 1160.2, Labor Code. General reference for **section 20217** of the Board's regulations: Sections 1151(a), and 1160.2, Labor Code. General reference for **section 20219** of the Board's regulations: Sections 1149, 1151.4(a), 1160.2, and 1160.5, Labor Code. General reference for **section 20220** of the Board's regulations: Sections 1151(a), 1160.2, 1160.5, and 1160.6, Labor Code. General reference for **section 20222** of the Board's regulations: Sections 1151.4(a), 1160.2, and 1160.3, Labor Code. General reference for **section 20235** of the Board's regulations: Sections 1160.2, Labor Code. General reference for **section 20236** of the Board's regulations: Sections 1160.2 and 1160.3, Labor Code. General reference for **section 20238** of the Board's regulations: Sections 1160.2 and 1160.3, Labor Code. General reference for **section 20240** of the Board's regulations: Sections 1160.2 and 1160.3, Labor Code. General reference for **section 20241** of the Board's regulations: Sections 1160.2 and 1160.3, Labor Code. General reference for **section 20242** of the Board's regulations: Sections 1160.2 and 1160.3, Labor Code. General reference for **section 20243** of the Board's regulations: Sections 1160.2 and 1160.3, Labor Code. General reference for **section 20246** of the Board's regulations: Section 1160.2, Labor Code. General reference for **proposed section 20247.1** of the Board's regulations: Sections 1160.2 and 1160.3, Labor Code. General reference for **section 20248** of the Board's regulations: Sections 1160.2 and 1160.3, Labor Code. General reference for **section 20249** of the Board's regulations: Sections 1160.2 and 1160.3, Labor Code. General reference for **section 20250** of the Board's regulations: Sections 1151, 1160.2, and 1160.3, Labor Code. General reference for **section 20262** of the Board's regulations: Sections 1145, 1160.2, 1160.3, Labor Code. General reference for **section 20274** of the Board's regulations: Sections 1151(a) and 1160.2, Labor Code. General reference for **section 20282** of the Board's regulations: Section 1160.3, Labor Code. General reference for **section 20286** of the Board's regulations: Sections 1160.2 and 1160.3, Labor Code.

General reference for **section 20290** of the Board's regulations: Section 1160.3, Labor Code. General reference for **section 20291** of the Board's regulations: Section 1160.3, Labor Code. General reference for **section 20299** of the Board's regulations: Section 1161, Labor Code. General reference for **section 20300** of the Board's regulations: Sections 1142(b), 1156.2, 1156.3, 1156.4, 1156.5, 1156.6, and 1156.7, Labor Code. General reference for **section 20310** of the Board's regulations: Sections 1156.3, 1156.4, and 1157.3, Labor Code. General reference for **section 20305** of the Board's regulations: Section 1157, Labor Code. General reference for **section 20325** of the Board's regulations: Section 1156.3, Labor Code. General reference for **section 20330** of the Board's regulations: Section 1156.3, Labor Code. General reference for **section 20335** of the Board's regulations: Section 1156.3, Labor Code. General reference for **section 20350** of the Board's regulations: Sections 1156.3, 1156.7, and 1157.2, Labor Code. General reference for **section 20355** of the Board's regulations: Section 1156.3, Labor Code. General reference for **section 20360** of the Board's regulations: Sections 1156.3 and 1156.7, Labor Code. General reference for **section 20363** of the Board's regulations: Sections 1156.3 and 1157, Labor Code. General reference for **section 20365** of the Board's regulations: Section 1156.3, Labor Code. General reference for **section 20370** of the Board's regulations: Sections 1142(b), 1145, 1151, 1151.3, 1156.3, 1156.7(c), (d), Labor Code. General reference for **section 20375** of the Board's regulations: Sections 1156.3(c) and 1157.2, Labor Code. General reference for **section 20377** of the Board's regulations: Section 1156.3, Labor Code. General reference for **section 20382** of the Board's regulations: Sections 1155.2 and 1156.6, Labor Code. General reference for **section 20385** of the Board's regulations: Sections 1142(b), 1156, 1156.2, Labor Code. General reference for **section 20390** of the Board's regulations: Sections 1156.3 and 1156.7(c), (d), Labor Code; *Montebello Rose Co. v. ALRB* (1981) 119 Cal.App.3d 1; *Cattle Valley Farms* (1982) 8 ALRB No. 24. General reference for **section 20393** of the Board's regulations: Sections 1142(b), 1156.3, and 1156.7, Labor Code. General reference for **section 20400** of the Board's regulations: Sections 1156.3, 1164, 1164.11, and 1164.12, Labor Code. General reference for **section 20401** of the Board's regulations: Sections 1164, 1164.11, and 1164.12, Labor Code. General reference for **section 20402** of the Board's regulations: Sections 1151, 1164, 1164.11, and 1164.12, Labor Code. General reference for **section 20407** of the Board's regulations: Section 1164, Labor Code. General reference for **section 20408** of the Board's regulations: Section 1164.3, Labor Code. General reference for **proposed section 20410** of the Board's regulations: Sections 1164 and 1164.10, Labor Code. General reference for **section 20910** of the Board's regulations: Sections 1152 and 1157.3, Labor Code.

POLICY STATEMENT OVERVIEW

The ALRB is a quasi-judicial administrative agency charged with administering and enforcing the ALRA, a landmark law enacted in 1975 that extended collective bargaining rights to farmworkers who were excluded from the coverage of the National Labor Relations Act. The ALRB enforces and protects the organizational rights of farmworkers and oversees labor relations disputes between growers and the unions representing farmworkers.

The proposed regulations and amendments update the Board's filing and service requirements; replace gendered terms with non-gendered language; update procedures in unfair labor practice cases and clarify the rights and obligations of parties in unfair labor practice proceedings; update

requirements in representation election proceedings; and adopt procedures governing requests for supplemental mandatory mediation and conciliation under Labor Code section 1164.10.

These proposed regulatory actions 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 since then solicited input from stakeholders on proposals. The Board's designated regulations subcommittee held a workshop to receive input or proposals from stakeholders on March 11, 2021, and presented recommendations to the Board at its April 13, 2021 public meeting on concepts for proposed regulatory actions. 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 thereupon 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 proposals and directed the subcommittee to commence a formal rulemaking.

INFORMATIVE DIGEST

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.

For more information regarding specific proposed regulations or amendments to the existing regulations, please refer to the proposed regulatory language.

CONSISTENT AND COMPATIBLE WITH EXISTING STATE REGULATIONS

The Board has determined the proposed regulatory adoptions and amendments are not inconsistent or incompatible with existing regulations. The ALRB has exclusive jurisdiction to enforce and administer the provisions of the ALRA. There are no other regulations adopted by any other state agency that affect the procedures or laws affected by the proposed regulatory adoptions and amendments. Thus, the Board has concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The proposed rulemaking is intended to modernize, improve, and make more efficient the ALRB's administrative procedures.

Filing and Service Requirements

The proposed changes are modernized to eliminate outdated methods of filing and serving documents, such as "mailgram," "telegraph," and "facsimile," as well as requirements that parties file multiple copies of documents with the Board. Instead, the proposed changes generally require electronic filing and service of documents, consistent with trends among courts and other administrative agencies, while allowing parties who represent themselves to continue to file hard-copy documents with the Board. The proposed changes also provide that documents may be signed electronically.

Representation (Election) Proceedings

The proposed regulatory action updates provisions regarding the ALRB's election proceedings to modernize certain terms. The proposed changes add categories of contact information for workers to be included on the list of employees an employer must produce after the filing of a representation petition. The proposed changes also offer more clarity to parties in election proceedings by specifically describing circumstances that may warrant dismissal of a petition for an election (i.e., blocking an election) or the impounding of ballots in an election (i.e., where ballots are cast but not counted pending the resolution of related allegations of unlawful conduct by a party). Such principles previously have been addressed and developed by the Board through administrative orders or decisions on a case-by-case basis. By defining in regulation certain circumstances that may warrant dismissal of an election petition or impounding ballots cast in an election, the Board seeks to provide more clarity to the parties in such proceedings and guidance to staff administering election proceedings. With respect to the impounding of ballots, the Board also proposes to introduce timeframes and deadlines under which ballots are impounded. This is intended to make such proceedings more efficient, consistent with the expedited timeframes in which election proceedings otherwise occur.

Unfair Labor Practice Proceedings

The proposed regulatory action aims to improve efficiencies in the ALRB's unfair labor practice proceedings. To aid in the general counsel's investigation of a charge, the proposed changes also

allow a regional director the ability to serve on a charged party a limited number of interrogatories to ensure identification of the proper parties to a proceeding. Following issuance of an unfair labor practice complaint, the proposed changes would add a case management conference requirement. This will promote further communication between the parties, which is vital to the resolution of labor disputes. It also will allow the parties and assigned judge to begin narrowing the issues in dispute to make the hearings more efficient.

The proposed changes also will allow the general counsel a limited right to seek further information from a respondent who asserts a defense in an answer to an unfair labor practice complaint based on a worker's immigration status. Respondents currently have the ability to seek such further information from the general counsel when a complaint contains vague or ambiguous allegations, and this proposed change would allow the general counsel a similar limited right. This will allow further refinement and narrowing of issues in dispute for cases that ultimately go to hearing. While settlement conferences generally are held in unfair labor practice cases as a matter of practice, the proposed changes would require settlement conferences in all unfair labor practice cases, thus ensuring an opportunity for the parties to attempt to resolve their dispute consistent with the policy of encouraging the informal resolution of labor disputes. In addition, the proposed changes would allow parties to agree to short continuances or extensions of time, with approval of the assigned judge, without having to satisfy burdensome requirements or added procedures for approving such requests, as is the case under the Board's current regulations. This will give the parties and judge more control over scheduling issues where only short continuance or extensions are requested.

The proposed changes to the Board's unfair labor practice regulations also seek to more clearly state certain rights and obligations of the parties in such proceedings. The proposed changes will require privilege logs be produced where a party objects to a discovery request or subpoena on attorney-client privilege grounds. Such changes will assist other parties and assigned judges in evaluating such privilege objections on a much more timely and informed basis, and thus will serve to make resolution of any such disputes more efficient.

The proposed changes to the Board's unfair labor practice regulations also make clear certain matters previously left to development through the Board's administrative orders or decisions or otherwise established in the Board's precedent. The proposed changes will state clearly the standard a party must satisfy before the Board will grant an application for interim review of an administrative law judge's ruling. This standard currently is stated in the Board's precedent, but stating the standard in the regulation governing interim appeals is intended to provide more clarity to the parties. The proposed changes also confirm the general counsel may issue investigatory subpoenas requiring testimony from witnesses, and further that a party's disobedience of a subpoena may be grounds for the imposition of evidentiary sanctions. While these matters are established in case precedent, adding these terms to the regulations will provide more clarity regarding the parties' respective rights and obligations in unfair labor practice proceedings.

Mandatory Mediation and Conciliation

The proposed regulatory action specifies procedures for handling requests for supplemental mandatory mediation and conciliation pursuant to Labor Code section 1164.10, which became effective on January 1, 2019. No such proceedings have been conducted by the Board since the statute took effect, and the statute does not specify the rules applicable to such proceedings. The proposed regulatory action informs the parties of the applicable rules for supplemental mandatory mediation and conciliation, as well as their respective rights and obligations in such proceedings.

Non-Gendered Language

The proposed regulatory changes replace gendered terms with non-gendered language, in accordance with Assembly Concurrent Resolution No. 260 (September 5, 2018).

NO EXISTING AND COMPARABLE FEDERAL REGULATION OR STATUTE

The Board has determined that there are no existing, comparable federal regulations or statutes addressing the matters encompassed by this regulatory action. Agricultural employees are excluded from coverage under the National Labor Relations Act, and labor relations between agricultural employers and employees are governed by state law under the ALRA. As the proposed regulatory changes apply solely to agricultural employers and employee organizations under the jurisdiction of the ALRA, the Board has concluded that these regulations are neither inconsistent nor incompatible with existing federal regulations or statutes.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Board has made the following initial determinations:

Mandate, cost or savings imposed on local agencies and school districts: The proposed action will not impact local agencies or school districts, result in any costs or savings to local agencies or school districts, or impose any new mandate on local agencies or school districts that must be reimbursed pursuant to Government Code section 17500 et seq.

Cost or savings to state agency: The proposed action will not result in any new costs or savings to any state agency.

Non-discretionary cost or savings imposed upon local agencies: The proposed action will not result in any non-discretionary cost or savings to local agencies.

Cost or savings in federal funding to the state: The proposed action will not result in any new costs or savings to the state.

Cost impact on private persons or directly affected businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: The proposed action will have no significant adverse economic impact on California businesses.

Significant effect on housing costs: The proposed action will have no effect on housing costs.

Business Reporting Requirement: The proposed action will not require a report to be made.

The Board has determined the proposed regulations will not affect small business because the proposed regulations will not result in any additional costs or burdens on small businesses.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Board concludes that the adoption of the proposed regulations and amendments will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

BENEFIT ANALYSIS

The ALRB aims to improve efficiencies in its administrative processes and provide more clarity to parties engaged in proceedings before the Board. More efficient procedures, the promotion of fuller communication between parties, and clearer statements of the parties' rights and obligations, as well as the standards applied by the Board in adjudicating disputes, will improve the ALRB's resolution of labor disputes. Earlier resolution of labor disputes will lead to more timely remedies to farmworkers. 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 of the ALRA by facilitating more timely resolution of labor disputes. Stable labor relations and efficient dispute resolution will benefit California residents' welfare, and lead to less instances or possibilities of disruptions in the state's vital agricultural industry. 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 make the Board's regulations more inclusive.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), a rulemaking agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency 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 Board has solicited input from the public and interested stakeholders concerning proposed regulatory actions at its public meetings over the past two years, including at the Board's April 13, 2021 public meeting at which the concepts proposed to be implemented through this rulemaking action were discussed, the Board's October 12, 2021 public meeting at which the regulatory language included with this notice was discussed, and the Board's February 22, 2022 meeting at which the regulatory proposals were approved for rulemaking. No reasonable alternatives to the regulatory actions proposed to be taken by the Board here have been identified or brought to its attention by any member of the public or stakeholder.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Any questions or suggestions regarding the proposed action should be directed to:

Santiago Avila-Gomez, Executive Secretary
Agricultural Labor Relations Board
1325 J Street, Suite 1900-B
Sacramento, CA 95814
Email: Santiago.Avila-Gomez@alrb.ca.gov

The backup person for these inquiries is:

Todd M. Ratshin, Chief Board Counsel
Agricultural Labor Relations Board
1325 J Street, Suite 1900-B
Sacramento, CA 95814
Email: Todd.Ratshin@alrb.ca.gov

Please direct requests for copies of the proposed text (i.e., the express terms) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, to Santiago Avila-Gomez at the above address.

PRELIMINARY ACTIVITIES

The ALRB announced it would be undertaking a review of its regulations at its June 23, 2020 public meeting, and at its August 11, 2020 public meeting invited the public and stakeholders to provide input on proposed regulatory actions and designated a subcommittee to present recommended rulemaking actions to the Board. The Board solicited public input again at its October 13 and December 8, 2020 public meetings. The Board's regulations subcommittee held a workshop for stakeholders to present regulatory proposals on March 11, 2021. At the Board's April 13, 2021 public meeting, the regulations subcommittee presented to the Board its concept proposals for regulatory actions, which the Board approved. On September 22, 2021, the regulations subcommittee published its draft regulatory revisions for implementing the proposals

approved by the Board, and presented the draft regulatory revisions to the Board at its October 12, 2021 public meeting. 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 its proposals concerning unfair labor practice procedures.

The subcommittee thereupon 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 proposals and directed the subcommittee to commence a formal rulemaking.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the express terms of the proposed regulations and the initial statement of reasons. Copies of these documents may be obtained by contacting Santiago Avila-Gomez at the above address and are also available on the Board's web site at <<https://www.alrb.ca.gov/statutes-regulations/regulatory-activity/>>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding a hearing, if one is requested, and considering all timely and relevant comments, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, the modified text with changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations as revised. Requests for copies of any modified regulations and/or the final statement of reasons should be sent to the attention of Santiago Avila-Gomez at the above address. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the final statement of reasons may be obtained by contacting Santiago Avila-Gomez at the above address or accessed on the ALRB's web site as set forth below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this notice of proposed action, the initial statement of reasons, and the text of the proposed regulations in underline and strikeout, can be accessed on the ALRB's web site at <<https://www.alrb.ca.gov/statutes-regulations/regulatory-activity/>> throughout the rulemaking

process. Written comments received during the written comment period will also be posted on the ALRB's web site. The final statement of reasons or, if applicable, notice of a decision not to proceed will be posted on the ALRB's web site following the Board's action.