

TITLE 8. AGRICULTURAL LABOR RELATIONS BOARD

NOTICE OF PROPOSED RULEMAKING

The Agricultural Labor Relations Board (ALRB or Board) proposes to adopt 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 20951, 20952, 20953, 20954, and 20955.

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. The written comment period closes on May 8, 2023, which is 45 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

Comments also may be submitted by email to Santiago.Avila-Gomez@alrb.ca.gov.

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. Pursuant to Business and Professions Code section 26051.5, subdivision (a)(5)(D), the Board is required to process and investigate complaints that an employer licensed to conduct commercial cannabis activities has entered into a labor peace agreement with an organization that is not a bona fide labor organization, and the Board thus is authorized to adopt, amend, or repeal rules and regulations as may be necessary to implement this statutory process to secure compliance with the labor peace agreement requirements established by the Medicinal and Adult-Use

Cannabis Regulation and Safety Act (MAUCRSA), codified at Business and Professions Code section 26000 et seq., and to achieve labor peace and avoid disruptions in California's cannabis industry.

General reference for **proposed section 20951** of the Board's regulations: Sections 1153 and 1154, Labor Code; Sections 26001 and 26051.5, Business and Professions Code. General reference for **proposed section 20952** of the Board's regulations: Section 26001, Business and Professions Code. General reference for **proposed section 20953** of the Board's regulations: Section 26001, Business and Professions Code. General reference for **proposed section 20954** of the Board's regulations: Section 26001, Business and Professions Code. General reference for **proposed section 20955** of the Board's regulations: Section 26001, Business and Professions 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. Charges that an agricultural employer has committed an unfair labor practice in violation of Labor Code section 1153 or that a labor organization has committed an unfair labor practice in violation of Labor Code section 1154, for example, by interfering with or restraining agricultural employees in the exercise of rights protected under the ALRA, may be filed with the ALRB. The general counsel of the ALRB is authorized to investigate such charges. The general counsel also is empowered to issue complaints when it is determined there is reasonable cause to believe an unfair labor practice has been committed and to prosecute such allegations against the charged party. This proposed rulemaking action is intended to provide guidance to employers engaged in the cultivation of cannabis and labor organizations seeking to represent such agricultural employees regarding issues of potential unfair labor practice liability where more than one labor organization seeks to enter into a labor peace agreement with an employer engaged in the cultivation of cannabis.

The ALRB also is charged with responsibility for investigating complaints under the MAUCRSA that an employer licensed to conduct commercial cannabis activities has entered into a labor peace agreement with an organization that is not a bona fide labor organization. The proposed regulations are designed to clarify the rights and obligations of employers engaged in the cultivation of cannabis and labor organizations entering into labor peace agreements under the MAUCRSA. The proposed regulations further are intended to implement and give effect to the provisions of Business and Professions Code section 26051.5, subdivision (a)(5)(D), as adopted pursuant to Assembly Bill No. 195 (2021-2022 Reg. Sess.), § 3 (AB 195), which requires the ALRB to investigate complaints an employer licensed to conduct commercial cannabis activities has entered into a labor peace agreement with an organization that is not a bona fide labor organization. Pursuant to the statute, the ALRB is required to render a decision within 90 days after receiving such a complaint. The proposed regulations establish procedural

requirements in conducting such proceedings and provide clear guidance to affected parties and stakeholders regarding their rights and obligations in such proceedings.

INFORMATIVE DIGEST

Adoption of New Sections

Proposed Section 20951 adds provisions clarifying the rights and obligations of employers engaged in the cultivation of cannabis where more than one labor organization seeks to represent a bargaining unit or obtain a labor peace agreement and the circumstances under which an employer's conduct related to a labor peace agreement may constitute an unfair labor practice.

Proposed Section 20952 adds provisions establishing the process by which a party may file a complaint that an employer licensed to conduct commercial cannabis activities has entered into a labor peace agreement with an organization that is not a bona fide labor organization, and the process by which the accused licensee and organization may respond to a complaint.

Proposed Section 20953 adds provisions establishing the general counsel's authority to conduct investigations of labor peace agreement complaints and clarifies the rights and obligations of parties in such proceedings, including the duty to respond to interrogatories and subpoenas issued by the general counsel and negative inferences that may be drawn if a party fails to respond. These provisions are substantially similar to existing authority to investigate unfair labor practices.

Proposed Section 20954 adds provisions regarding the general counsel's authority to issue decisions on labor peace agreement complaints, the timing and contents of such decisions, provisions regarding how to request a hearing, and the general counsel's authority to decide whether to hold a hearing.

Proposed Section 20955 adds provisions regarding the rights of a party aggrieved by a decision reached by the general counsel on a labor peace agreement complaint to seek review of such decision before the board itself, and the obligation of the board to report to the Department of Cannabis Control any decisions finding an organization with whom a licensee has entered into a labor peace agreement is not a bona fide labor organization.

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

CONSISTENT AND COMPATIBLE WITH EXISTING STATE REGULATIONS

The Board has determined the proposed regulatory adoptions are not inconsistent or incompatible with existing regulations. The ALRB has exclusive jurisdiction to enforce and administer the provisions of the ALRA. While the Department of Cannabis Control is the administrative agency charged with primary responsibility for administering the MAUCRSA, including its various licensing requirements, the proposed regulations are not inconsistent or incompatible with regulations adopted by the Department of Cannabis Control, which are

codified at California Code of Regulations, title 4, section 15000 et seq. The Department of Cannabis Control has not adopted regulations regarding alleged violations of labor peace agreements, and such allegations otherwise are within the jurisdiction of the ALRB to the extent they involve conduct constituting unfair labor practices, as defined under the ALRA, and involve agricultural employers or employees. Moreover, the ALRB is charged with primary responsibility for investigating complaints a cannabis licensee has entered into a labor peace agreement with an organization that is not a bona fide labor organization.

There are no other regulations adopted by any other state agency that affect the procedures or laws affected by the proposed regulatory adoptions. 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 implement relevant provisions of the MAUCRSA concerning alleged violations of a cannabis licensee's labor peace agreement obligations.

Current law requires an applicant for a license to cultivate cannabis under the MAUCRSA to declare in its application it is an agricultural employer within the meaning of the ALRA. If an applicant has 20 or more employees, it is required to confirm it has entered into a labor peace agreement with a labor organization, or, if it has less than 20 employees, that it will enter into such an agreement in the future promptly upon hiring a 20th employee. Recent amendments adopted in AB 195 lower the threshold at which a licensee must enter into a labor peace agreement to those with 10 or more employees effective July 1, 2024. The proposed regulatory action provides guidance to growers and labor organizations in this industry about their respective rights and obligations concerning labor peace agreements, and when violations of such agreements or rights may be unlawful under the ALRA. The proposed regulatory action also will implement the complaint procedure adopted in AB 195 regarding allegations a licensee has entered into a labor peace agreement with an organization that is not a bona fide labor organization, thereby providing guidance to affected parties regarding their rights and obligations in such proceedings.

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. Moreover, as there are no federal regulations governing licensing or labor peace agreement requirements in the cannabis industry, 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 result in additional costs to the ALRB in administering the labor peace agreement complaint procedures established by AB 195 in Business and Professions Code section 26051.5, subdivision (a)(5)(D). The proposed action will not result in any new costs or savings to any other 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 proposed regulations clarify procedures to comply with obligations already enacted in statute. The Board concludes that the adoption of the proposed regulations 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 currently lacks regulations offering guidance to parties engaged in the cannabis industry regarding their rights and obligations under the ALRA with respect to labor peace

agreement requirements under the MAUCRSA. By providing clear guidance to affected stakeholders regarding the procedures by which the Board will process and investigate labor peace agreement complaints under the MAUCRSA, including the parties' rights and obligations in such proceedings, the Board's proposed regulatory action will improve administration of the MAUCRSA's licensing and labor peace agreement requirements. The proposed regulatory action further will provide clear information to parties affected by such labor peace agreement requirements of their rights and obligations with respect to allegations a party is in violation of a labor peace agreement and establish efficient and effective procedures by which such complaints are processed. The proposed regulations thus will benefit workers, labor organizations, and employers licensed to conduct commercial cannabis activities concerning their rights with respect to labor peace agreements.

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, and this will benefit administration of the MAUCRSA's labor peace agreement requirements, which themselves are designed to ensure labor peace and avoid workplace disruptions in California's burgeoning cannabis industry. California residents' general welfare will be benefitted by stable labor relations and dispute resolution, which translates to less risk of disruption in California's cannabis industry.

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 announced at its August 10, 2022 public meeting that it would be developing regulations to implement the labor peace agreement complaint provisions of AB 195. The Board's designated regulations subcommittee published proposed regulatory language in on August 26, 2022, and presented its recommendation to the Board at its August 31, 2022 public meeting. No public comments were received at the August 31 meeting, and 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 approved the subcommittee's proposal at the August 31 meeting and directed the subcommittee to commence a formal rulemaking.

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

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 at its August 10, 2022 public meeting that it would be developing regulations to implement the labor peace agreement complaint provisions of AB 195. The Board's designated regulations subcommittee published proposed regulatory language in underline and strike-through format on August 26, 2022, and presented its recommendation to the Board at its August 31, 2022 public meeting. The subcommittee's proposal regarding these cannabis regulations includes proposed new regulation 20951, which the subcommittee previously proposed to the Board during earlier pre-rulemaking activities (that preceded the commencement of the Board's formal rulemaking file no. Z2022-1121-01), based on the subcommittee's assessment that it is appropriate to include that proposed regulation in this separate rulemaking relating specifically to the cannabis industry. During those prior pre-rulemaking activities, the subcommittee published its original proposed regulation 20951 on September 22, 2021, and public comment regarding the proposed regulation was received at the Board's October 10, 2021 public meeting. The subcommittee thereafter published an updated proposed regulation on February 11, 2022, which was approved by the Board on February 22, 2022.

On August 31, 2022, the Board approved the subcommittee's recommendation to adopt this new chapter of regulations relating to the cannabis industry and, specifically here, labor peace agreement requirements under the MAUCRSA.

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 website 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 also will 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.