

AGRICULTURAL LABOR RELATIONS BOARD

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

- **Repeal existing sections 20290, 20291, 20292, and 20293; and**
- **Adopt new sections 20290, 20291, 20292, 20293, 20294, 20295, 20296, 20297, 20297.5, 20391, and 20411.**

PROBLEM STATEMENT

The Agricultural Labor Relations Board (ALRB or Board) is a quasi-judicial administrative agency charged with administering and enforcing the Agricultural Labor Relations Act (ALRA or Act), codified at Labor Code section 1140 et seq., a landmark law enacted in 1975 that extended collective bargaining rights to California 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.

This proposed regulatory action primarily is designed to implement recent statutory amendments to the ALRA as enacted by Assembly Bill No. 113 (AB 113), Statutes of 2023, chapter 7, which took effect immediately when signed by the Governor on May 15, 2023. In addition, this proposed regulatory action implements new Labor Code section 1160.10 (Assem. Bill No. 2183 (2021-2022 Reg. Sess.), Stats. 2022, Ch. 673, § 4), which took effect on January 1, 2023, and requires the Board assess civil penalties against agricultural employers found to have committed unfair labor practices.

AB 113 added new Labor Code section 1156.37 to the ALRA, which introduces a new “majority support petition” process for certain labor organizations to become certified to represent agricultural employees in collective bargaining negotiations and dealings with their employers. The Board currently has no regulations in place to govern administrative proceedings when this type of petition is filed. This creates problems for staff responsible for processing these types of petitions, as well as parties involved in such proceedings.

AB 113 also added new appeal bond statutes to the ALRA, which require agricultural employers to post an appeal bond with the Board as a condition to seeking judicial review of Board orders awarding monetary remedies or involving economic benefits to agricultural employees. The amount of a bond required in a given case is the specific amount of the monetary remedy awarded by the Board in an unfair labor practice case or the economic value of a collective bargaining agreement reached through mandatory mediation and conciliation proceedings. In unfair labor practice cases, the specific amount of monetary relief, such as backpay or bargaining makewhole relief owed to workers as a result of an employer’s unlawful conduct, is determined through administrative “compliance,” or remedial, proceedings.

In adopting new unfair labor practice appeal bond requirements, AB 113 also restructured how the Board's compliance proceedings are conducted. Before AB 113, decisions of the Board finding a party committed an unfair labor practice and order payment of a monetary remedy could be appealed immediately to seek judicial review in the courts of appeal. Only after such judicial review proceedings would subsequent administrative (compliance) proceedings occur in order to determine the specific amount of the monetary remedy ordered by the Board. Under AB 113, Board decisions ordering the payment of a monetary remedy are no longer subject to immediate appeal, but rather must be referred directly to administrative compliance proceedings in order to determine the amount of the monetary remedy. As noted above, the specific amount of the monetary remedy as determined by the Board through such proceedings represents the amount of the appeal bond an agricultural employer must post as a condition to seeking judicial review of the entire administrative proceeding conducted by the Board (i.e., both the initial liability decision and subsequent remedial decision). The Board's existing regulations do not conform to this restructuring of the Board's compliance proceedings as required by AB 113.

Finally, new Labor Code section 1160.10, as added by AB 2183, requires the Board to assess civil penalties up to \$10,000 or \$25,000 against employers found to have violated the ALRA, depending on the nature of the violation committed. While the statute describes the factors to be considered by the Board in determining the amount of penalties to be assessed, the statute does not describe the procedures to be used by the Board in making such determinations.

ANTICIPATED BENEFITS

As indicated above, the proposed regulations are designed to implement recent statutory amendments to the ALRA as enacted by AB 113, as well as the civil penalties statute added by AB 2183.

With respect to new Labor Code section 1156.37, the proposed regulatory action adopts rules and procedures governing the handling and investigation of majority support petitions filed by labor organizations seeking to become designated as the exclusive collective bargaining representative for agricultural employees in dealings with their employers. The proposed regulatory action thus will provide critical guidance to ALRB staff responsible for processing majority support petitions, as well as defining the respective rights and obligations of labor organizations and agricultural employers involved in such proceedings, in addition to other interested parties or affected stakeholders.

The proposed regulatory action also aims to make more efficient the Board's administrative compliance proceedings after the Board has issued a decision finding a labor organization or agricultural employer has committed an unfair labor practice in violation of the ALRA. Under prior law when the Board ordered a monetary remedy, such as backpay to affected workers or bargaining makewhole relief to employees denied the benefits of a collective bargaining agreement due to their employer's unlawful conduct, a party could seek judicial review of the Board's unfair labor practice liability decision before the specific amount of the monetary relief owed was determined. After AB 113, such administrative compliance proceedings to determine the amount of a Board-ordered monetary remedy must commence immediately after the Board finds a party has committed an unfair labor practice for which a monetary remedy is due, and

such proceedings must be completed within one year. The proposed regulations implement such procedures while aiming to make such proceedings involving monetary remedies more efficient and expedient. In addition, the proposed regulations include amendments to the Board's compliance proceedings involving other types of non-monetary remedies ordered by the Board in unfair labor practice cases to make such proceedings more efficient across the board and to bring quicker resolution to disputes involving Board-ordered remedies.

The proposed regulations also provide guidance to agricultural employers now required to post an appeal bond as a condition of seeking judicial review of certain Board orders. Specifically, AB 113 requires an employer to post an appeal bond with the Board when seeking judicial review of a Board decision involving monetary remedies to farmworkers in unfair labor practice cases or setting the terms of a collective bargaining agreement after mandatory mediation and conciliation proceedings. In unfair labor practice proceedings, the amount of the appeal bond required is the amount of the monetary remedy ordered to be paid to the aggrieved farmworker(s). In mandatory mediation and conciliation proceedings, the amount of the appeal bond required is determined by the value of the economic benefits provided by the new collective bargaining agreement less the value of the employees' existing wages and benefits. The proposed regulatory action provides guidance to employers regarding the requirements for posting an appeal bond, or a cash deposit in lieu of a bond, with the Board and the procedures by which the Board will handle such bonds.

Finally, the proposed regulatory action includes guidance to ALRB staff and agricultural employers regarding the procedures by which the Board will determine the amount of civil penalties to be assessed against an employer found to have violated the ALRA. Under this proposed regulatory action, such determinations will be subject to compliance proceedings after an employer's unfair labor practice liability first has been determined. This will allow an expedient and efficient administrative process by which factors relevant to determining the amount of penalties to be assessed can be developed and established.

SECTION-BY-SECTION EXPLANATION FOR ADOPTION

A. Repeal of Existing Regulations

Section 20290:

Subdivision (a) describes the process for commencing administrative compliance proceedings when necessary to obtain a party's compliance with remedies ordered by the Board after finding the party has engaged or is engaging in an unfair labor practice. The process is commenced by the regional director's filing of a "specification," a form of pleading, accompanied by a notice of hearing. In certain cases a notice of hearing may be issued without a specification to commence a compliance proceeding. The notice of hearing issued with or without a specification may set a hearing date not less than 15 days after service of the notice. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt substantially similar language in proposed new section 20290, subdivision (b), regarding the issuance of compliance specifications involving monetary

remedies, the issuance of notices of hearing with or without a specification, and the requirement that a notice of hearing may not set a hearing less than 15 days after service of the notice.

Subdivision (b) authorizes a regional director of the Board to consolidate backpay and unfair labor practice liability proceedings when deemed appropriate to do so, including for efficiency purposes and to avoid delay. This section also states that issuance of a compliance specification is not required before the Board may seek judicial enforcement of its order to secure a party's compliance, and that issuance of a specification shall not bar the Board from subsequently commencing judicial enforcement proceedings to secure a party's compliance with a prior order. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt virtually identical language in proposed new section 20291.

Section 20291:

Subdivision (a) sets forth the requirements for a compliance specification involving an award of backpay to employees, including allegations regarding how the proposed backpay amount was calculated. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt virtually identical language in proposed new section 20292, subdivision (a).

Subdivision (b) sets forth the requirements for a compliance specification involving an award of bargaining makewhole to employees, including allegations regarding how the proposed makewhole amount was calculated. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt virtually identical language in proposed new section 20292, subdivision (b).

Subdivision (c) sets forth the requirements for a compliance specification involving non-monetary remedies ordered by the Board, including a requirement that the specification contain a detailed description of the respondent's alleged noncompliance with a Board order or court decree. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt substantially similar language in proposed new section 20293, subdivision (b).

Subdivision (d) allows a regional director, upon a showing of good cause, to issue a partial specification when unable to prepare a full specification as otherwise required. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt virtually identical language in proposed new section 20292, subdivision (c).

Subdivision (e) allows a regional director to issue a notice of hearing without a compliance specification in appropriate circumstances, which must set forth a clear and detailed statement of the matters in controversy and the relief sought. In such circumstances, the regional director must include in the notice of hearing the reason for proceeding without a specification, and the regional director must substantiate such reasons if requested. As part of the Board's

restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt virtually identical language in proposed new section 20292, subdivision (d).

Subdivision (f) allows a regional director in a compliance proceeding against a named respondent to allege that persons not named in the Board's order may be jointly or derivatively liable to comply with the Board's order. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt virtually identical language in proposed new section 20292, subdivision (e).

Section 20292:

Subdivision (a) requires each person named as a respondent in a compliance specification or notice of hearing without a specification to file an answer thereto within 15 days after service of the specification or notice of hearing. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt substantially similar language and the same 15-day answer deadline in proposed new section 20290, subdivision (c).

Subdivision (b) sets forth the contents required in an answer to a compliance specification or notice of hearing without a specification. The regulation requires a respondent to state which facts alleged in the specification or notice are admitted, denied, or outside the respondent's knowledge. Except for matters not reasonably ascertainable by a respondent, general denials are insufficient. As for other matters where a respondent disputes the facts or allegations by which a monetary remedy is calculated, the respondent must state the basis for its disagreement and state in detail its proposed methodology for calculating the amount of the remedy, including providing supporting facts and figures on which it relies. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt substantially similar language in proposed new section 20290, subdivision (c).

Subdivision (c) describes the consequences where a respondent fails to file an answer to a compliance specification or notice of hearing without a specification or files an answer but fails to deny an allegation. If the respondent does not file an answer, the administrative law judge may find the allegations of the specification or notice of hearing to be true and issue a recommended order. If the respondent filed an answer but did not deny an allegation of the specification or notice of hearing, the administrative law judge may deem the allegation admitted. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt substantially similar language in proposed new section 20290, subdivision (d).

Section 20293:

Subdivision (a) states that a compliance specification or notice of hearing without a specification, and answers to them, may be amended in the same manner as unfair labor practice complaints and answers. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt identical language in the first sentence of proposed new section 20290, subdivision (e).

Subdivision (b) states that a compliance specification or notice of hearing without a specification may be withdrawn in the same manner as an unfair labor practice complaint. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt identical language in the second sentence of proposed new section 20290, subdivision (e).

Subdivision (c) states that after the issuance of a compliant specification or notice of hearing without specification, procedures applicable to the processing of unfair labor practice cases shall apply. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re-adopt identical language in the third sentence of proposed new section 20290, subdivision (e).

B. Adoption of New Regulations

Proposed section 20290: Compliance Proceedings Involving Monetary Remedies

Subdivision (a): After the Board issues a decision ordering a respondent to pay a monetary remedy, the executive secretary of the ALRB is required to immediately assign the matter to an administrative law judge for further proceedings to determine the specific amount of the monetary relief owed. This procedure regarding the immediate referral of Board decisions awarding monetary remedies to compliance proceedings to determine the amount of the monetary remedy ordered to be paid is necessary to comply with new statutory amendments to the ALRA as enacted by AB 113. (Lab. Code, §§ 1149.3, subd. (a), 1160.3.)

Subdivision (b): The regional director is required to file and serve a compliance specification with a notice of hearing within 90 days of the date of the Board's decision ordering payment of a monetary remedy. In certain cases (*as provided under proposed reg. 20292, subd. (d), which is based on existing reg. 20291, subd. (e)*), the regional director may issue a notice of hearing without a specification. A notice of hearing accompanying a specification or issued without a specification may set a hearing not less than 15 days after the date of service of the notice of hearing. The requirement a hearing not be allowed less than 15 days after issuance of a specification or notice of hearing without a specification will allow a respondent an adequate opportunity to prepare for a hearing, while at the same time accommodating the need for expedient processing of Board orders to ensure compliance with the remedies ordered by the Board. The provisions of this subdivision incorporate substantially similar language from existing regulation 20290, subdivision (a), which is proposed to be repealed and re-adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (c): Each person named as a respondent in a compliance specification or notice of hearing without a specification shall file an answer thereto within 15 days from the date of service of the specification or notice. This answer deadline allows a respondent ample opportunity to review the allegations stated in the specification or notice of hearing without specification, and to respond to them, while at the same time accommodating the need to process compliance proceedings in an expedient manner, particularly in cases involving monetary remedies where compliance proceedings must be completed within one year of the date of the

Board order providing such remedies. The answer shall state specifically which facts alleged in the specification or notice are admitted, denied, or outside the knowledge of the party. Allegations not expressly denied will be deemed admitted. A statement generally denying the allegations of a specification or a denial based only on the party's lack of information are not sufficient. These specificity requirements in an answer will enable the parties and administrative law judges to readily ascertain and identify what issues or allegations are in dispute and the reasons for such disputes. This is necessary to facilitate the prompt and expedient processing of compliance proceedings, and will assist parties and judges in preparing cases for hearing. If a respondent disputes facts or allegations concerning the calculation of a monetary remedy, the respondent must set forth facts and figures to support its own calculations and provide its own proposed method for calculating the amount of the monetary remedy. Again, this requirement will assist in the ascertainment of what specific issues are in dispute between the parties and will allow for the expedient processing of compliance cases, including the ability of the parties and judges to prepare for hearing. The provisions of this subdivision incorporate substantially similar language from existing regulation 20292, subdivisions (a) and (b), which are proposed to be repealed and re-adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (d): When a respondent does not file an answer to a specification or notice of hearing without a specification within the time allowed, the administrative law judge may find the allegations of the specification or notice of hearing to be true, and issue a recommended order consistent with such a determination. If a respondent does file an answer but fails to deny an allegation in the specification or notice of hearing, the administrative law judge will deem the allegation to be admitted without taking evidence on it. Consistent with the explanations provided in the preceding subdivision, these requirements are necessary to ensure the prompt and efficient processing of compliance cases and the ability of parties and judges to adequately prepare for hearing. The provisions of this subdivision incorporate substantially similar language from existing regulation 20292, subdivision (c), which is proposed to be repealed and re-adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (e): This subdivision states that (1) a compliance specification or notice of hearing without a specification, and answers to them, may be amended in the same manner as unfair labor practice complaints and answers; (2) a specification or notice of hearing without a specification can be withdrawn in the same manner as an unfair labor practice complaint; and (3) after issuance of a specification or notice of hearing without a specification, the procedures governing unfair labor practice proceedings generally will apply to proceedings to determine the amount of the monetary remedy owed by the respondent. These rules thus incorporate and adopt the Board's pre-hearing and hearing procedures governing unfair labor practice proceedings, including regarding pre-hearing discovery, subpoenas, hearing procedures, and exceptions to administrative law judges' decisions, for purposes of compliance proceedings. The provisions of this subdivision incorporate identical language from existing regulation 20293, subdivisions (a), (b), and (c), respectively, which are proposed to be repealed and re-adopted here as part of the restructuring of the Board's compliance proceedings.

Proposed section 20291: Consolidating Unfair Labor Practice and Compliance Proceeding

Subdivision (a): A regional director may consolidate an unfair labor practice complaint with a compliance specification involving a monetary remedy alleged to be owed when the regional director deems it appropriate to do so, including to avoid unnecessary cost and delay. In cases involving a limited number of farmworker charging parties and/or limited amounts of alleged backpay owed to workers, consolidation of the unfair labor practice liability proceedings with proceedings to determine the amount of backpay actually owed increases efficiency in the Board's processes. (See, e.g., *Ocean Mist Farms* (2020) 46 ALRB No. 5 [consolidated proceeding].) Consolidation of a compliance specification with an unfair labor practice complaint after a pre-hearing conference has begun requires the approval of the administrative law judge or the Board. The requirement that a judge or the Board approve consolidation after a pre-hearing conference in the unfair labor practice case is necessary to allow a respondent a fair opportunity to respond to a request for consolidation and to present arguments why consolidation may not be appropriate at that stage of proceeding. The provisions of this subdivision incorporate substantially similar language from existing regulation 20290, subdivision (a), which is proposed to be repealed and re-adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (b): The regional director's issuance of a compliance specification is not required before the Board may commence judicial proceedings to obtain a party's compliance with remedies ordered by the Board pursuant to Labor Code section 1160.8. Similarly, the regional director's issuance of a compliance specification shall not bar the Board from commencing judicial proceedings to obtain a party's compliance with remedies ordered by the Board. The provisions of this subdivision incorporate identical language from the final sentence of existing regulation 20290, subdivision (b), which is proposed to be repealed and re-adopted here as part of the restructuring of the Board's compliance proceedings.

Proposed section 20292: Specification or Notice of Hearing Involving Monetary Remedies

Subdivision (a) sets forth the required contents for a compliance specification involving the amount of backpay ordered to be paid to an employee or employees. This subdivision incorporates identical language from existing regulation 20291, subdivision (a), which is proposed to be repealed and re-adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (b) sets forth the required contents for a compliance specification involving the amount of a bargaining makewhole remedy ordered to be paid to workers. This subdivision incorporates identical language from existing regulation 20291, subdivision (b), which is proposed to be repealed and re-adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (c) allows a regional director to issue a partial specification when unable to prepare a full specification. In such cases, the regional director must establish good cause why the regional director is unable to prepare a full specification. Permitting a regional director to proceed on the basis of a partial specification will allow proceedings to determine the amount of

a monetary remedy to proceed on the basis of information available to a regional director, which is necessary in certain cases where a respondent either delays, fails, or refuses to produce information necessary to prepare a full calculation of a monetary remedy ordered to be paid by the Board. Allowing the use of partial specifications in such circumstances will avoid delays in the Board's administrative processes and enable the Board to complete processing of a compliance case involving monetary remedies within the one-year statutory deadline. (See Lab. Code, § 1149.3, subd. (a).) The partial specification must set forth in detail all information reasonably available to the regional director in preparing the partial specification and calculating the amount of the monetary remedy owed. This will allow the administrative law judge to assess the extent to which a respondent has not provided information necessary for complete calculations, which can lead to more efficient proceedings where the parties and judge are aware of the issues in the case and likely to be litigated at a hearing. The provisions of this subdivision incorporate virtually identical language from existing regulation 20291, subdivision (d), which is proposed to be repealed and re-adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (d) allows a regional director to file a notice of hearing without a specification when the regional director deems it appropriate to do so. Proceeding in this manner without a specification may be appropriate in cases involving legal theories or issues preliminary to specific calculations of monetary awards, including, for example, methods by which remedies should be calculated where the calculations may be complex or rely on a variety of factors, particularly in cases involving bargaining makewhole relief. Proceeding without a specification also may be appropriate where there are threshold issues involving a party's liability, such as successorship issues, which may affect the effectuation of the Board's non-monetary remedies, too. The Board has approved the use of a notice of hearing without issuance of a specification in a case involving legal disputes over the methods by which to calculate a monetary remedy before issuance of a specification adopting specific calculations. (*J.R. Norton Co., Inc.* (1984) 10 ALRB No. 42, p. 1, fn. 2.) The notice of hearing must contain a detailed statement of the matters in dispute, the relief sought, and the reason for proceeding without a specification. The regional director will be required to substantiate the reasons for not proceeding with a specification if called upon to do so. The provisions of this subdivision incorporate virtually identical language from existing regulation 20291, subdivision (e), which is proposed to be repealed and re-adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (e) allows a regional director to allege and have determined the joint or derivative liability of a party not named as a respondent in the Board's order directing payment of a monetary remedy. When the regional director contends a person is jointly or derivatively liable for a monetary remedy, the regional director must allege the legal and factual basis for such a contention. These provisions are necessary to allow parties to assess the bases upon which their liability may be determined and allow for efficient processing and determination of such issues. Procedures to determine the joint or derivative liability of parties also is necessary to ensure the effectuation of Board-ordered remedies in cases where multiple parties may be responsible to achieve full compliance. The provisions of this subdivision incorporate virtually identical language from existing regulation 20291, subdivision (f), which is proposed to be repealed and re-adopted here as part of the restructuring of the Board's compliance proceedings.

Proposed section 20293: Compliance Involving Non-Monetary Remedies

Subdivision (a) requires a regional director to file a compliance specification or notice of hearing without a specification involving non-monetary remedies ordered by the Board within 90 days of the date the Board's decision becomes final. A respondent is required to file an answer within 15 days after service of the specification or notice. These provisions are necessary to ensure the prompt and expedient processing of compliance proceedings and to avoid delays in effectuating the remedies ordered by the Board in an unfair labor practice case.

Subdivision (b) sets forth the required contents of a compliance specification involving non-monetary remedies, such as cease-and-desist orders, bargaining orders where a labor organization or employer is ordered to bargain in good faith with the other, or notice remedies ordered by the Board. In such cases, the specification must include a detailed description of the manner in which the respondent has not complied with the Board's order and state the acts necessary to obtain the party's compliance. Requiring a specification include the details by which a respondent has not complied with Board-ordered remedies will allow respondents to assess the allegations against them and respond accordingly in answering the specification, and will assist the parties and administrative law judges in identifying the issues in dispute, which will ensure more efficient processing of cases and hearings. The provisions of this subdivision incorporate substantially similar language from existing regulation 20291, subdivision (c), which is proposed to be repealed and re-adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (c) allows a regional director to combine allegations regarding monetary and non-monetary remedies in a single compliance specification, or notice of hearing without a specification, when the Board's unfair labor practice order includes both monetary and non-monetary remedies. If the non-monetary remedies are not included in a compliance specification regarding monetary remedies, the regional director may commence a compliance proceeding involving the non-monetary remedies at a later date within 90 days after the Board's decision concerning the monetary remedies becomes final. A Board decision ordering the payment of a specific monetary amount becomes final when no appeal is sought and the time to appeal has expired, or when an appeal is filed and the appeal is dismissed or the Board's order affirmed. Although non-monetary remedies are not subject to the one-year processing deadline under Labor Code section 1149.3, subdivision (a), this rule would allow a regional director to consolidate non-monetary remedies with proceedings to determine the amount of monetary remedies, which would increase efficiency in effectuating the Board's remedies and avoid subsequent, and potentially duplicative, compliance proceedings at a later date after review of the monetary remedies is concluded.

Proposed section 20294: Compliance Involving Civil Penalties

Subdivision (a) requires a regional director to file a compliance specification or notice of hearing without a specification regarding the amount of civil penalties to be paid by an agricultural employer within 90 days after the Board's decision finding the employer committed an unfair labor practice becomes final. A respondent must file an answer within 15 days after service of the specification or notice of hearing. These provisions are necessary to ensure the

prompt and expedient processing of compliance proceedings and to avoid delays in effectuating the remedies ordered by the Board in an unfair labor practice case.

Subdivision (b) requires a specification regarding the amount of civil penalties owed by an employer to set forth specific facts relevant to determining the amount of the civil penalties to be assessed. This will allow a respondent the ability to assess the allegations against them in determining the recommended amount of the penalties as set forth in the specification, and will enable respondents to respond to such allegations when filing an answer.

Subdivision (c) allows a specification concerning civil penalties owed by an employer with a specification involving monetary remedies ordered by the Board, a specification involving non-monetary remedies ordered by the Board, or with a specification following an administrative law judge's decision that has become final because no exceptions were filed with the Board. Allowing the consolidation of compliance proceedings involving different forms of remedies ordered by the Board will increase efficiencies in the Board's processes and avoid duplicative or serial proceedings.

Subdivision (d) provides that when a specification involving civil penalties is included with another specification involving monetary or non-monetary remedies, or when an administrative law judge's decision has become final, that timeframes governing such other compliance proceedings will apply. The adoption of timeframes governing consolidating compliance proceedings will provide clarity and ensure the expedient and efficient processing of compliance cases.

Proposed section 20295: Compliance After Administrative Law Judge Decision

This section establishes timeframes governing compliance proceedings when an administrative law judge's decision ordering monetary or non-monetary remedies, or both, as well as civil penalties, becomes final because no exceptions were filed with the Board. In such cases, a compliance specification or notice of hearing without specification regarding the ordered remedies and civil penalties, if any, shall be filed within 90 days after the administrative law judge's decision becomes final, and any answers thereto must be filed within 15 days after service of the specification or notice of hearing. An administrative law judge's decision becomes final when the time for a party to file exceptions to it has expired. The filing and procedural deadlines described in this rule are necessary to ensure the prompt and expedient processing of compliance cases and to avoid delays in effectuating Board-ordered remedies.

Proposed section 20296: Continuing Monetary Liability During Judicial Review

This section establishes a compliance procedure to collect on behalf of workers the full scope of a monetary remedy that continues to accrue during the course of subsequent judicial review proceedings after a previous unfair labor practice and compliance proceeding. In such cases, the regional director is required to issue a specification regarding the additional monetary relief owed within 90 days after the judicial review proceedings are final, and the respondent must file an answer within 15 days after service of the specification. These deadlines will ensure the prompt and efficient processing of such supplemental compliance cases to determine the

scope of any additional monetary liabilities that continued to accrue while a case remained pending judicial review. These deadlines are necessary to ensure compliance with Labor Code section 1149.3, subdivision (b), which requires such proceedings to be completed within one year.

Proposed section 20297: Unfair Labor Practice Appeal Bonds

This section sets forth requirements for an agricultural employer who must post an appeal bond with the Board as a condition to seeking judicial review of a Board decision in an unfair labor practice case. This section requires a bond be issued by a licensed surety, which is necessary to ensure compliance with Labor Code section 1160.11, subdivision (b), which includes such a requirement where an employer intends to post a bond as a condition to seeking judicial review of a Board decision. This section further details the required contents of the bond the employer must post with the Board, and provides the Board shall file the bond with the reviewing court. These rules are necessary to comply with provisions of the Bond and Undertaking Law (Code Civ. Proc., § 995.010 et seq.) regarding the posting with and handling of appeal bonds by state officials, including specifically Code of Civil Procedure sections 995.320 through 995.340.

Proposed section 20297.5: Cash Deposit in Lieu of Appeal Bond

This section sets forth requirements for an agricultural employer who seeks to deposit cash or a cash-equivalent (i.e., check, cashier's check, or money order) with the Board in lieu of an appeal bond as a condition to seeking judicial review of a Board decision in an unfair labor practice case, as allowed by Labor Code section 1160.11, subdivision (b). When an employer intends to make a deposit of cash, the employer must provide notice of its intent to do so to the Board within 10 days after the Board's decision. Notice must be provided to the executive secretary of the Board. This requirement is necessary to ensure such notices are provided to a proper designee of the Board. The requirement that notice be provided within 10 days after issuance of a Board decision is necessary to allow the Board time to arrange for the safe and secure delivery of the cash deposit. Where an employer intends to submit a deposit of a cash-equivalent (check, cashier's check, money order), the employer must provide notice to the Board of its intent to do so within 20 days after the Board's decision. Notice must be made to the executive secretary. The notice deadline is necessary to enable the Board to deposit the payment in an account and verify availability of the funds.

With respect to both cash and cash-equivalent deposits, this section sets forth the required contents of an agreement an employer must provide at the time of deposit authorizing the Board to collect or otherwise apply the deposit to enforce the employer's liability if the employer's appeal is dismissed or the Board's decision otherwise is affirmed during judicial review proceedings. This requirement, including the contents of the agreement as described, are necessary to comply with applicable provisions of the Bond and Undertaking Law (Code Civ. Proc., § 995.010 et seq.), specifically Code of Civil Procedure section 995.710, subdivision (c). In addition, the agreement must be signed under penalty of perjury by an individual authorized to sign on behalf of the employer, which is necessary to ensure the employer's agreement to be bound by the representations set forth in the agreement required to be submitted with a deposit in

lieu of a bond. This section further specifies the Board will hold a deposit in trust in an interest-bearing account, which is necessary to comply with requirements for handling cash deposits as set forth in the Bond and Undertaking Law (Code Civ. Proc., § 995.010 et seq.). This section further states the Board will hold a deposit, whether made in cash or a cash-equivalent, in trust in an interest-bearing account. Again, this requirement is necessary to ensure compliance with the handling of such deposits under the Bond and Undertaking Law, specifically Code of Civil Procedure section 995.710, subdivision (a)(1).

Proposed section 20391: Majority Support Petitions

Subdivision (a) describes the requirements for filing and serving a majority support petition, including that the petition shall be signed under penalty of perjury stating that the contents of the petition are true to the best of the declarant's knowledge. The petition shall be filed electronically consistent with Board regulations generally requiring the electronic filing of documents, and shall be served personally on the employer whose employees the labor organization seeks to represent, consistent with requirements in Labor Code 1156.37, subdivision (d). The petitioning labor organization must submit proof it has filed LM-2 reports for the previous two years and that it had a collective bargaining agreement in effect covering agricultural workers as of May 15, 2023, both of which are required conditions for the filing of a petition under subdivision (a) of Labor Code section 1156.37. Evidence of proof of support from employees in the bargaining unit sought to be represented also must be physically delivered to the appropriate regional office of the Board, and this subdivision sets forth the required contents of proof of support submitted by a labor organization. Such support may be in the form of petitions or authorization cards, signed by employees and dated. The cards or petitions also must identify the name of the employer to whom the petition relates and advise that the signatures are valid for one year, are equivalent to a vote in favor of the petitioning labor organization, and may not be revoked. These requirements are necessary to ensure employees understand the significance and purpose of the petitions or cards they are signing in expressing their support for a labor organization, particularly in light of the fact that this process differs from other labor organizing procedures under the ALRA where employees may vote in a secret ballot election. (See Lab. Code, § 1156.3, subd. (b).) Upon receipt of a petition and proof of support, the regional director must notify the employer named in the petition. This requirement is necessary to ensure prompt notice to the employer, including regarding applicable deadlines for responding to the petition.

Subdivision (b) describes the requirements for an employer to file a response to the petition, including a list of its agricultural employees. The employer must serve its employee list electronically pursuant to Labor Code section 1156.37, subdivision (d). The employer's response and employee list must be filed and served within 48 hours after personal service of the majority support petition on the employer, which is required to conform to statutory requirements under Labor Code section 1156.37, subdivision (d).

Subdivision (c) describes the investigation a regional director must conduct upon the filing of a majority support petition, including that the regional director must dismiss a petition when certain requirements necessary to determine a question of representation are not met. This is necessary to ensure adherence to statutory requirements regarding the filing of majority

support petitions under Labor Code section 1156.37, subdivision (b). A petitioning labor organization may amend a petition to cure a defect that otherwise would result in its dismissal, upon approval of the regional director. If a regional director dismisses a petition, the regional director must issue a letter to the parties explaining the reasons for the dismissal, and a party may seek review of the dismissal before the Board. These procedures are necessary to ensure petitions satisfy applicable filing requirements and also to ensure the parties an opportunity to obtain immediate Board review of a regional director's dismissal of a petition, including to correct any errors that would prevent the processing of a proper petition. In cases where the regional director determines the requirements for filing a petition are met but that the proof of employee support is insufficient to establish majority support, the regional director shall notify the parties of this determination in writing, and the labor organization is allowed 30 days to obtain and submit additional employee support. This is necessary to comply with statutory provisions entitling a labor organization an opportunity to submit additional proof of support under Labor Code section 1156.37, subdivision (e)(4). Any proof of support previously submitted but found by the regional director to be defective will be returned to the labor organization, which is required by Labor Code section 1156.37, subdivision (e)(2). At the conclusion of the 30-day cure period, the regional director shall have two days to complete its tally of the proof of employee support received and if majority support has been established. This two-day requirement is necessary to ensure the expedient processing of a majority support petition, and is consistent with other rapid deadlines set forth in the statute regarding the processing of majority support petitions. If at the conclusion of the 30-day cure period the labor organization still has not established proof of majority support, the regional director shall notify the executive secretary of this determination and provide a tally of employee support received, and the executive secretary shall certify the result to the parties. If the regional director determines proof of majority support to be established, the regional director shall notify the executive secretary of its determination and provide a tally of the support received, and the executive secretary shall certify the result to the parties. Certification of the result of a majority support petition, whether the labor organization has established majority support or not, is necessary to ensure compliance with statutory provisions barring the submission of subsequent representation petitions within one year. (See Lab. Code, §§ 1156.37, subd. (l), 1156.5.)

Subdivision (d) describes the requirements for an employer filing objections to the certification of a labor organization. The employer must file its objections within five days after service of the executive secretary's certification of the labor organization, consistent with the filing deadline set forth in Labor Code section 1156.37, subdivision (f)(1). Objections that the petitioned-for bargaining unit is inappropriate or that allegations in the petition are false must be supported by a detailed statement of the facts and law supporting such contentions. This is necessary to ensure objections are supported and to dissuade the filing of frivolous or baseless objections without support. Objections that a regional director's review of a petition was improper or that other misconduct affected the labor organization's proof of support must be supported by declarations setting forth facts to support such contentions. These requirements are consistent with existing law (see *Premiere Raspberries, LLC* (2017) 43 ALRB No. 2, p. 2, citing Cal. Code of Regs., tit. 8, § 20365, subd. (c)(2)(B)), and ensure objections are supported by proper evidence and dissuade against the filing of baseless or unsupported objections.

Subdivision (e) states that the Board must dismiss objections that do not satisfy applicable filing and evidentiary requirements. This is consistent with provisions in Labor Code section 1156.37, subdivision (f)(2) allowing the Board the ability to dismiss objections without a conducting a hearing, and further is consistent with existing law recognizing the authority of the Board to do so. (*Premiere Raspberries, LLC, supra*, 43 ALRB No. 2, p. 2; *J.R. Norton Co., Inc. v. ALRB* (1979) 26 Cal.3d 1, 17.) The Board also must dismiss objections that, even if true, would not be sufficient to revoke the labor organization's certification. This allows the Board an expedient method of disposing with objections that, even if true, would not affect the outcome of the majority support petition and the labor organization's certification, which would otherwise result in an unnecessary waste of time and resources. This section further describes the circumstances under which the Board will set objections for hearing, and requires that a hearing must begin within 14 days of the date of the Board's order unless the labor organization agrees to an extension. This 14-day deadline is consistent with the timeframe required by Labor Code section 1156.37, subdivision (f)(2). This section further states the general rules applicable to a hearing ordered by the Board, which are the same (and existing) rules applicable to hearings set on objections filed where a secret ballot election was held pursuant to Labor Code section 1156.3.

Subdivision (f) describes procedures applicable when a labor organization files a majority support while a majority support petition filed by another labor organization already has been filed and is pending with the Board. In such cases, the second petition will be held in abeyance pending determination of the first petition, unless the second petition alleges the labor organization that filed the first petition was assisted, supported, created, or dominated by an employer. These rules are necessary to ensure compliance with requirements set forth in Labor Code section 1156.37, subdivision (h). In cases involving allegations of unlawful assistance, support, creation, or domination, this section describes the procedures by which the Board will review them and, if appropriate, set such allegations for hearing. Specifically, this section requires such allegations to be supported by declarations. This will ensure allegations properly are supported and dissuade against the filing of frivolous or baseless allegations lacking support. This section further describes the timeframes applicable to hearings conducted in such cases. Hearings ordered by the Board must commenced within 14 days after the Board's order, and the assigned independent hearing examiner must issue a decision within 21 days after the hearing concludes. Parties are allowed 10 days from the date the hearing examiner issues a decision to file exceptions with the Board, as well as five days to respond to any exceptions filed. If exceptions are filed, the Board must issue a decision within 90 days from the date the first petition was filed. These deadlines are necessary to comply with timing requirements in Labor Code section 1156.37, subdivision (h) pertaining to instances where a petition is filed while another majority support petition already is pending with the Board, including the requirement that the Board issue a decision within three months (90 days). This section further states the penalties applicable to a labor organization or its representatives that are found to have been supported, assisted, created, or dominated by an employer, including that an organization found to have been unlawfully supported or assisted by an employer may be barred for one year from filing subsequent representation petitions, and organizations found to be unlawfully created or dominated by an employer will be permanently barred from filing future representation petitions. These penalties are based upon and consistent with those set forth in Labor Code section 1156.37, subdivision (h).

Subdivision (g) describes procedures by which the executive secretary will notify the general counsel when employer objections or a majority support petition contains allegations of employer assistance, support, creation, or domination. Upon notice from the executive secretary, the general counsel may request to consolidate such objections or allegations with any pending unfair labor practice charges containing similar allegations. Such a request must be filed within 10 days after the executive secretary provides notice to the general counsel. This deadline is necessary to ensure the prompt and expedient processing of majority support petitions and related objections or allegations of unlawful conduct and to avoid delays. If the Board grants a consolidation request, this section describes the procedures applicable to a hearing on such issues, which will follow the hearing rules and procedures applicable in unfair labor practice proceedings.

Subdivision (h) states that a majority support petition “campaign” by a labor organization will be deemed to be underway if the labor organization can establish proof of support of at least 10% of an employer’s agricultural employees. This threshold requirement applies to situations where a labor organization alleges an employer engaged in an unfair labor practice or misconduct or takes adverse action against an employee during the course of a labor organization’s majority support petition campaign under subdivisions (j) and (k) of Labor Code section 1156.37. Under section 1156.37, subdivision (j), a labor organization may be certified by the Board if an employer who engages in an unfair labor practice or misconduct during such a campaign and the Board finds the chances of a new majority support petition reflecting the fair and free choice of the employees to be slight. Under section 1156.37, subdivision (k), an employer who takes adverse action against an employee during a campaign is presumed to have taken such action for unlawful retaliatory purposes unless the employer rebuts the presumption by “clear and convincing” evidence. The 10% support threshold required by this section is necessary to implement the provisions of Labor Code section 1156.37, subdivisions (j) and (k), and to provide clarity and guidance to affected parties, including labor organizations who may make such allegations of unlawful conduct as described in those subdivisions, as well as employers who may be subject to heightened liabilities or risks under those subdivisions.

Proposed section 20411: Appeal Bonds and Cash Deposits in MMC Cases

This section adopts the unfair labor practice appeal bond and cash deposit requirements set forth in proposed sections 20297 and 20297.5, respectively, for purposes of the appeal bond an employer is required to post with the Board as a condition to seeking judicial review of a Board order in mandatory mediation and conciliation proceedings.

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

The Board’s Regulations Subcommittee issued its original draft of proposed regulatory language to implement the statutory amendments to the ALRA enacted by AB 113 on June 9, 2023. The subcommittee conducted a public workshop on June 23, at which it received public comment and input from interested persons and stakeholders. On September 27, the subcommittee published updated proposed regulatory language, which was presented to the full Board and the public at

the Board's October 4 public meeting. At this meeting, the Board approved the subcommittee's proposal and directed the subcommittee to commence a formal rulemaking.

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

The proposed regulations are designed to implement the new majority support petition and appeal bond requirements enacted by AB 113.

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 implement the new majority support petition and appeal bond requirements enacted by AB 113. 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 implement the new majority support petition and appeal bond requirements enacted by AB 113. 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 implement the new majority support petition and appeal bond requirements enacted by AB 113. The only parties affected by this regulatory action are employees, labor organizations, and employers engaged in the agricultural industry. 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

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 the expedient determination of questions of representation when a labor organization seeks to represent workers in their negotiations and dealings with their employers. This, in turn, will contribute to achieving stability and labor peace and avoiding disruption in our agricultural industry due to labor disputes. The proposed regulatory action also furthers policies in favor of the prompt resolution of labor disputes, including the determination of monetary remedies owed to workers to make them whole when unfair labor practices have been committed

by employers or labor organizations. 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. 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. Thus, the proposed regulatory action will not adversely affect the health and welfare of California residents, worker safety, or the state's environment.

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 provide guidance and clarity regarding the processing of majority support petitions by labor organizations seeking to represent agricultural employees in collective bargaining negotiations with their employers. This regulatory action also provides guidance to employers who must post bonds, or cash deposits in lieu of bonds, to appeal certain Board decisions involving monetary remedies or economic benefits owed to workers. In such matters, the amount of a bonds or deposit is measured by the amount of liability an employer is owed to workers. 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 does not mandate the use of specific technologies or equipment.