

## **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:

- 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.

#### **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. A written request for a hearing may be made to ALRB Executive Secretary Santiago Avila-Gomez by letter or email at the addresses below.

#### **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 April 22, 2024, 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](mailto: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.

General reference for **proposed section 20290** of the Board’s regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code. General reference for **proposed section 20291** of the Board’s regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code. General reference for **proposed section 20292** of the Board’s regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code. General reference for **proposed section 20293** of the Board’s regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code. General reference for **proposed section 20294** of the Board’s regulations: Sections 1149.3, 1160.3, 1160.8, 1160.10, 1160.11, Labor Code. General reference for **proposed section 20295** of the Board’s regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code. General reference for **proposed section 20296** of the Board’s regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code. General reference for **proposed section 20297** of the Board’s regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code; Sections 995.020, 995.120, 995.130, 995.140, 995.160, 995.170, 995.185, 995.330, 995.340, Code of Civil Procedure. General reference for **proposed section 20297.5** of the Board’s regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code; Sections 995.130, 995.160, 995.170, 995.710, 995.740, Code of Civil Procedure. General reference for **proposed section 20391** of the Board’s regulations: Section 1156.37, Labor Code. General reference for **proposed section 20411** of the Board’s regulations: Sections 1164, 1164.3, 1164.5, Labor Code; Sections 995.020, 995.120, 995.130, 995.140, 995.160, 995.170, 995.185, 995.330, 995.340, 995.710, 995.740, Code of Civil Procedure.

## **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 protects and enforces the organizational rights of farmworkers and oversees labor relations disputes between growers and the unions representing farmworkers. The proposed regulatory action generally is intended to implement recent 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.

The ALRA declares the policy of this state “to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing ... for the purpose of collective bargaining or other mutual aid or protection.” (Lab. Code, § 1140.2.) The California Supreme Court has recognized “[a] central feature in the promotion of this policy” is the Act’s secret-ballot election procedure by which agricultural employees may elect representatives for the purpose of negotiating with their employers regarding wages, hours, or other terms and conditions of employment. (*J.R. Norton Co. v. ALRB* (1979) 26 Cal.3d 1, 8; see Lab. Code, § 1156.3.)

New Labor Code section 1156.37 establishes an alternative to the secret-ballot election process by which certain labor organizations may be selected by employees to serve as their collective bargaining representative in dealings with their employers upon demonstrating proof of support from a majority of workers. Proposed regulation section 20391 implements this new “majority support petition process,” and this proposed rulemaking will provide critical guidance to staff

responsible for processing and investigating such petitions and to parties regarding the handling of majority support petitions and their rights and obligations during such proceedings.

The Board also is responsible for adjudicating administrative complaints of unfair labor practices by agricultural employers and labor organizations. (Lab. Code, §§ 1153, 1154, 1160, 1160.3.) Such complaints are prosecuted by the Board's general counsel, who has final authority on behalf of the Board with respect to the investigation and prosecution of unfair labor practice charges. (Lab. Code, § 1149.) Labor Code section 1160.3 expressly authorizes the Board to award certain remedies to redress the effects of unfair labor practices, including backpay when necessary to make workers whole in cases where an employer's unlawful conduct in terminating or disciplining a worker has caused a loss of pay. (See *Superior Farming Co. v. ALRB* (1984) 151 Cal.App.3d 100, 123-124; *Lily's Green Garden, Inc.* (2022) 48 ALRB No. 3, pp. 4-5.) Labor Code section 1160.3 also authorizes the Board to award "bargaining makewhole" relief to workers when necessary to compensate them for losses incurred as a result of an employer's unlawful bargaining conduct. (*Tri-Fanucchi Farms* (2017) 3 Cal.5th 1161, 1163.)

Under prior law, allegations regarding an agricultural employer's or labor organization's liability for engaging in unfair labor practices were litigated initially, and a party could obtain judicial review of a Board decision on issues of unfair labor practice liability before the commencement of any administrative proceedings to determine the specific amount of a monetary remedy due to workers.

Following the statutory amendments enacted by AB 113, administrative remedial proceedings to determine the amount of a monetary remedy awarded by the Board will be litigated immediately after a Board decision finding unfair labor practice liability and before judicial review of the Board's proceedings is available to a party. (Lab. Code § 1160.3 [AB 113 (2023-2024 Reg. Sess.), § 14].) Furthermore, new Labor Code section 1160.11 requires an agricultural employer who seeks to obtain judicial review of a Board decision where a monetary remedy has been awarded to post an appeal bond in the amount of such monetary remedy as a condition to obtaining judicial review. The proposed regulatory action implements these statutory revisions to the Board's administrative proceedings for determining the amount of monetary remedies owed to workers by restructuring existing regulations governing such remedial proceedings to make them more efficient. The proposed regulations include deadlines by which a compliance "specification" (which operates as a form of pleading during these types of remedial proceedings, similar to a complaint) must issue following a Board decision and include pleading requirements whereby respondents must clearly identify disputed or denied allegations in a specification. In addition, the proposed regulations adopt procedures for determining the amount of civil penalties owed by an employer found to have engaged in an unfair labor practice pursuant to Labor Code section 1160.10. Under the proposed regulations, specifications in remedial proceedings involving monetary and non-monetary remedies, as well as civil penalties, may be consolidated in a single proceeding. This proposed rulemaking also provides guidance to agricultural employers regarding how appeal bonds, or cash deposits in lieu of a bond, will be processed and handled by the Board after the specific amount of the monetary remedy owed is determined.

The Board also administers mandatory mediation and conciliation proceedings under the ALRA, a form of interest arbitration designed to assist labor organizations in obtaining a first collective bargaining agreement with an agricultural employer. (Lab. Code, § 1164 et seq.) Similar to unfair labor practice appeal bonds for agricultural employers as described above, AB 113 amended Labor Code section 1164.5 to require agricultural employers to post an appeal bond in the amount of the economic value of a collective bargaining agreement ordered into effect by the Board as a condition of obtaining judicial review of a Board order.

This proposed rulemaking provides guidance to agricultural employers regarding the Board's processing and handling of an appeal bond or cash deposit in lieu of a bond when an employer seeks to obtain judicial review of a Board decision in mandatory mediation and conciliation proceedings.

Finally, last year the Legislature adopted Assembly Bill No. 2183 (2021-2022 Reg. Sess.), Stats. 2022, ch. 673, which added new Labor Code section 1160.10 to the ALRA. This statute requires the Board to assess civil penalties against an employer found to have committed an unfair labor practice, and describes certain factors relevant towards determining the amount of the penalties to be assessed. This proposed rulemaking describes the procedures to be used in determining the amount of civil penalties to be assessed against an employer, and thus provides guidance to ALRB staff and affected parties with respect to the manner in which such civil penalties will be determined and assessed.

## **INFORMATIVE DIGEST**

### **A. Repeal of Existing Regulations**

#### **Section 20290:**

Subdivision (a) describes the process for commencing a “compliance,” i.e., remedial, administrative proceeding 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. 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 requirements of a compliance specification and notice of hearing involving monetary remedies, including when the regional director may proceed with a notice of hearing without a specification, and the requirement that a notice of hearing may not set a hearing to be held before an administrative law judge less than 15 days after service of the notice.

Subdivision (b) authorizes a regional director of the Board to consolidate backpay and liability proceedings when deemed appropriate to do so, including for efficiency purposes and to avoid delay. 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 ascertainable 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.

Subdivision (b): The regional director is required to file and serve a compliance specification or notice of hearing without a specification within 90 days of the date of the Board's decision ordering payment of a monetary remedy. In certain cases 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. These provisions 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. 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. 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. These provisions 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. These provisions 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 provisions 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. 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. These provisions 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. These provisions 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. 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 subdivision incorporates 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. 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. These provisions 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 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.

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. These provisions 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.

### **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.

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.

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.

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.

### **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.

### **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.

### **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 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.

#### **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. An employer is required to provide notice to the Board of its intent to submit a deposit of cash so that the Board can arrange a time for the delivery of the deposit. This section further states the Board will hold a deposit in trust in an interest-bearing account. This section further describes the required contents of an agreement an employer must sign when making a deposit with the Board and authorizing the Board to execute and collect on the deposit if the Board's decision is upheld, including that the agreement shall be signed under penalty of perjury by an individual with authorized to sign on behalf of the employer. This section also provides that the Board will provide a receipt to the party confirming the deposit once the deposit is verified to be in the required amount and all other requirements for submitting the deposit are met.

#### **Proposed section 20391: Majority Support Petitions**

Subdivision (a) describes the requirements for filing and serving a majority support petition, including that the regional director must notify the employer named in the petition and whose employees are sought to be represented by the petitioning labor organization immediately upon receipt of all required materials for the petition. The petition must include a declaration signed under penalty of perjury attesting the contents of the petition are true to the best of the declarant's knowledge. Evidence of support from a majority of employees in the bargaining unit sought to be represented, whether on petitions or cards, must be physically delivered to a regional office of the Board. This section further describes the required contents of petitions or authorization cards signed by the employees, including that that a signature on a petition or card is valid for one year from the date of signature and that it may not be revoked during that time period.

Subdivision (b) describes the requirements for an employer to file a response to the petition, including a list of its agricultural employees. 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.

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. 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. In cases where the regional director determines the requirements for the filing of the petition are met but that the proof of employee

support from the labor organization 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. Any proof of support previously submitted but found by the regional director to be defective will be returned to the labor organization. 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, including 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, including a tally of the support received, and the executive secretary shall certify the result to the parties.

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.

Subdivision (e) states that the Board must dismiss objections that do not satisfy applicable filing and evidentiary requirements. The Board also must dismiss objections that, even if true, would not be sufficient to revoke the labor organization's certification. 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 section further states the general rules applicable to a hearing ordered by the Board.

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. In cases involving such allegations, this section describes the procedures by which the Board will review them and, if appropriate, set such allegations for hearing. This section further describes the timeframes applicable to hearings conducted in such cases. 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.

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. If the Board grants a consolidation request, this section describes the procedures applicable to a hearing on such issues.

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.

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

This section adopts the unfair labor practice appeal bond and cash deposit requirements 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.

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. There are no other regulations adopted by any other state agency that affect the procedures or laws affected by the proposed regulatory action. 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 statutory amendments to the ALRA enacted by AB 113, including specifically the majority support petition process and new appeal bond provisions.

The proposed regulatory action will provide guidance to ALRB staff and affected parties regarding the processing, handling, and investigation of majority support petitions, and describing affected parties' respective rights and obligations with respect to the processing and disposition of majority support petitions.

In addition, the proposed regulatory action will make more efficient the Board's remedial administrative proceedings in unfair labor practice cases, including specifically with respect to orders involving monetary remedies. In the past, a party aggrieved by a Board decision finding unfair labor practice liability could seek immediate judicial review of the Board's decision, and any subsequent administrative proceedings to effectuate the remedies ordered by the Board, including monetary remedies, would not occur until after the completion of such judicial review proceedings. As a result, workers found to be owed monetary relief could have to wait years after

a Board decision before any subsequent proceedings to determine the actual amount of money they are owed. And a party could also seek judicial review of that subsequent Board decision determining the extent of a party's monetary liability, thereby adding further delays for farmworkers entitled to receive a monetary remedy. Under AB 113, remedial proceedings where the Board has awarded monetary relief now must occur before judicial review is available to parties in order to determine the specific amount of the monetary remedy owed. This is because the amount of the monetary remedy will represent the amount of the appeal bond, or cash deposit in lieu of a bond, an employer must post with the Board as a condition of seeking judicial review. This bond requirement will secure payment of the money owed to the workers in the event the employer's judicial challenge to the Board's decision is unsuccessful. This proposed regulatory action restructures the Board's administrative remedial proceedings to occur immediately following the issuance of a Board decision where unfair labor practice liability is found and a monetary remedy is awarded, and imposes new filing deadlines in such proceedings to make the proceedings more efficient and to comply with new statutory requirements that such proceedings be completed in less than one year. The proposed regulatory action also provides guidance to parties regarding procedures governing the Board's handling and processing of appeal bonds or cash deposits when an agricultural employer seeks judicial review of a Board decision awarding a monetary remedy.

Also, the proposed regulatory action includes guidance to ALRB staff and affected parties regarding the procedures by which the Board will determine the amount of civil penalties owed by an employer found to have committed an unfair labor practice. Labor Code section 1160.10 requires the Board to assess civil penalties against an employer found to have committed an unfair labor practice. Subdivision (b) of section 1160.10 describes the factors relevant towards determining the amount of the penalties. This proposed regulatory action would refer determination of the amount of civil penalties owed by an employer to the Board's compliance proceedings, thereby establishing procedures to be used to establish facts relevant to setting the amount of the penalties.

Finally, the procedures described in the proposed regulatory action relating to the Board's handling and processing of appeal bonds in unfair labor practice cases also will provide guidance to parties regarding similar bond requirements in mandatory mediation and conciliation proceedings. Under prior law, an employer who sought to challenge a Board decision ordering into effect a collective bargaining agreement reached through mandatory mediation and conciliation proceedings could do so and effectively forestall and delay implementation of the collective bargaining agreement. Under AB 113, an employer who seeks to challenge a Board decision ordering a collective bargaining agreement into effect must post an appeal bond in the amount of the economic value of the collective bargaining agreement as a condition to seeking judicial review. This will secure for the benefit of the employees the economic value of the contract negotiated by their union on their behalf if the employer's judicial challenge is unsuccessful. This proposed regulatory action provides guidance to agricultural employers regarding the procedures governing the Board's handling and processing of appeal bonds or cash deposits in mandatory mediation and conciliation 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. Accordingly, 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 costs 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 detailing procedures governing the handling of majority support petitions where a labor organization seeks to be certified as the exclusive bargaining representative of an appropriate unit of agricultural employees. The proposed regulatory action will provide guidance to staff responsible for processing, handling, and investigating such petitions, as well as parties involved in such proceedings regarding their respective rights and obligations.

In addition, the ALRB aims to improve efficiencies in its administrative processes. The proposed regulatory action seeks to make the ALRB's administrative "compliance," or remedial, proceedings more timely and efficient in order that monetary remedies ordered by the Board, such as backpay owed to workers, are determined more expeditiously.

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.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board 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 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  
Telephone: (916) 894-6840  
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  
Telephone: (916) 894-6836  
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 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.

## **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/rulemaking/ab-113-implementing-regulations/> >.

## **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/rulemaking/ab-113-implementing-regulations/> > 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.