

AGRICULTURAL LABOR RELATIONS BOARD

INITIAL STATEMENT OF REASONS IN SUPPORT OF PROPOSED REGULATORY ACTION TO ADOPT TITLE 8, SECTION 20169 AND TO AMEND SECTIONS 20170, 20234, 20240, 20241, 20242, 20282, 20286, 20363, 20393, 20400, 20401, 20402, 20407, and 20408

PROBLEM STATEMENT

The methods of filing and service of documents now provided for by the Agricultural Labor Relations Act (ALRA) and the Board's regulations have not kept up with the changes being implemented by the State judiciary of California as codified in section 1010.6 of the Code of Civil Procedure and in Rule 8.71 of the California Rules of Court, and by the other preeminent labor relations agencies, nationally by the National Labor Relations Board (NLRB) at section 102.114 NLRB Rules and Regulations and within our State by the Public Employee Relations Board (PERB) at section 32135 CCR, title 8. Both of these agencies now permit optional electronic filing (e-filing) of documents. The public is becoming increasingly savvy about technology and has come to expect technology will be used most state agency interactions. Moreover, the Board's currently existing methods of filing and service are not in keeping with initiatives sponsored by the State of California to conserve natural resources, such as trees, by reducing the amount of paper used.

While the Board presently does not have the resources to create a system for uploading and submitting documents via its website, the adoption of section 20169 would provide parties with the option of filing and serving documents through existing electronic mail (e-mail) systems.

BENEFITS

Adoption of section 20169 regarding the e-filing and service of documents will reduce the time now spent by Board staff on the processing of paper originals and copies of any documents served through the currently codified methods of service. Board staff efficiency would increase and would free them to address other duties more quickly. Delivery of documents to Board counsel, the Executive Secretary and the Board would become faster as the creation of paper copies with accompanying distribution would become unnecessary. This creates greater efficiency, reduces costs in paper and in copier toner and inks. It will allow the appropriate legal staff to immediately review documents on their computers, rather than having to wait for copies to be created.

Adoption of e-filing of documents will reduce parties' mailing costs (postage, couriers, etc.) paper and other supply costs, reduce file storage costs and staff costs for litigants. It will give parties faster and easier access to served papers, briefs and exhibits. There would be no cost for parties to avail themselves of the e-filing option. With respect to information security, electronic filing of documents would be safe and secure and in compliance with all security protocols established for state agencies.

Many individuals who may or will represent themselves in front of the Board might not have computers or otherwise might not have access to the internet; therefore, it would be inappropriate to require that e-filing be mandatory. Therefore, under the proposed regulations, e-filing will be a voluntary option for the filing and service of documents on or by parties and on or by the Board.

PURPOSE AND NECESSITY

Adopt Section 20169, subdivision (a):

To inform parties that filing and service of documents by e-mail is an available option for service and filing of documents on or with the Board and for service of documents on other parties. As discussed above, e-filing will not be mandatory because many individuals who may or will represent themselves in front of the Board might not have computers or otherwise might not have access to the internet.

Adopt Section 20169, subdivision (a) (1):

To inform parties which documents may or may not be filed and served by email. This provision is necessary because the Board has preliminarily determined that it is prudent to exclude from e-filing documents that must include signed declarations under penalty of perjury.

Adopt Section 20169, subdivisions (a) (2) (A) and (a) (2) (B):

To describe the two conditions under which a party can agree to accept electronic service of documents. These provisions are necessary to specify the two ways a party can indicate it agrees to accept service of documents electronically and to ensure that all parties and the Board have correct email addresses.

Adopt Section 20169, subdivision (a) (3):

To inform parties of the form and content an electronically filed or served document must take. This provision is necessary to inform parties that the format of emailed documents must be the same format of all documents filed with the Board.

Adopt Section 20169, subdivision (a) (4):

To specify when electronically submitted documents will be considered timely filed. This provision parallels that of section 20168(a) (4), “Provisions for Use of Facsimile Machines and Expedited Service,” and is necessary to prevent confusion over when documents submitted by email will be considered timely filed. Parties will submit documents to a designated email address which will be monitored by a designated individual throughout the day. That individual will work during regular business hours; therefore, in order to allow sufficient time for that individual to confirm that documents filed electronically have been received and accepted prior to the close of business on the designated day, parties must email documents no later than 4 p.m. (see proposed section 20169 (e) below).

Adopt Section 20169, subdivision (a) (5):

To specify the electronic format and maximum file size of any electronically filed document. The provision is necessary to ensure that all documents filed electronically with the Board are in a standard format and that they do not exceed a file size which the agency’s email system can accept.

Adopt Section 20169, subdivision (a) (6):

To specify the format of the file name of any document filed electronically. This provision is necessary to ensure that the file names of all documents are consistent and easily organized by the date filed.

Adopt Section 20169, subdivision (b):

To instruct parties regarding the service of documents filed electronically. This provision is necessary because most documents filed with the Board must also include proof that the filing party has provided copies of the document(s) to all other parties involved in a legal action before the Board.

Adopt Section 20169, subdivision (c):

To inform parties that they do not need to file multiple copies of documents with the Board when they file documents electronically. This provision is necessary to facilitate one of the benefits of the e-filing process which is the reduction of paper and other supply costs.

Adopt Section 20169, subdivision (d):

To inform parties that the Executive Secretary may require that certain filings be made by email in order to facilitate prompt processing and consideration of such filings. This provision is necessary to facilitate one of the benefits of the e-filing process, which is greater efficiency, and the ability of appropriate legal staff to review documents as soon as possible after they are filed.

Adopt Section 20169, subdivision (e):

To inform parties that they will receive via email, a confirmation of receipt of documents filed electronically. This provision is necessary so parties will be on notice that they will receive an email communication indicating that their filing has been received and accepted.

Adopt Section 20169, subdivision (f):

To specify where parties can find the email address to be used for filing documents electronically. This provision is necessary so parties wishing to submit documents via email can locate the designated email address to use when submitting documents. The agency's webmaster will ensure that the email address is updated as needed.

Amend Section 20170, subdivision (a):

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169.

Amend Section 20170, subdivision (c):

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169 (a)(4).

Adopt Section 20170, subdivision (e):

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169.

Amend Section 20234:

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169.

Amend Section 20240, subdivision (a):

To conform the regulation to proposed section 20169 by adding necessary references to proposed section 20169.

Amend Section 20241, subdivision (a):

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169.

Amend Section 20242, subdivision (b):

To conform the regulation to proposed section 20169 by adding necessary references to proposed section 20169.

Amend Section 20282, subdivision (a):

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169.

Amend Section 20282, subdivision (b):

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169.

Amend Section 20286, subdivision (c):

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169.

Amend Section 20363, subdivision (a):

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169.

Amend Section 20393, subdivision (a), subdivision (a)(4) and subdivision(c):

To conform the regulation to proposed section 20169 by adding necessary references to proposed section 20169.

Amend Section 20400, subdivision (a), subdivision (b) and subdivision (c):

To conform the regulation to proposed section 20169 by adding necessary references to proposed section 20169.

Amend Section 20401, subdivision (a):

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169.

Amend Section 20402, subdivision (d)(6)(B):

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169.

Amend Section 20407, subdivision (c):

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169.

Amend Section 20408, subdivision (a):

To conform the regulation to proposed section 20169 by adding a necessary reference to proposed section 20169.

ECONOMIC IMPACT ASSESMENT

The proposed regulation contemplates the use of the Board's existing Microsoft Outlook email system, so there will be no need to purchase additional software and/or hardware.

Parties that appear before the Board currently use email to communicate with agency staff. Similarly, the Board's Executive Secretary currently makes frequent use of email to communicate with parties, often attaching to his emails curtesy copies of pertinent documents that have been saved in Portable Document Format (PDF).

The Board's initial determination is that the adoption of the proposed regulation would not have any additional cost impacts on parties who appear before the Board. In addition, the adoption of e-filing may actually reduce costs to litigants because use of the e-filing options will reduce parties' mailing costs (postage, couriers, etc.) paper and other supply costs, reduce file storage costs and staff costs for litigants. To support this initial determination, the Board relies on input solicited from individuals, groups and associations who regularly file documents with the Board in two surveys distributed in 2012 and 2015. All who responded indicated that they believed e-filing would result in cost savings and would not increase their costs.

REASONABLE ALTERNATIVES TO THE REGULATION

As discussed above, the proposed regulation contemplates the use of the Board's existing Microsoft Outlook email system. The Board presently does not have the resources to create or purchase an electronic filing service provider (EFSP), such as "TrueFile" for uploading, submitting and managing documents. Therefore, there is currently no reasonable or more cost effective alternative to the proposed regulation.