

## Final Modified Regulatory Text:

### ~~§ 20290. Initiation of Compliance Proceedings.~~

~~(a) If it appears that a controversy exists with respect to the compliance with a Board order, a court decree enforcing a Board order, or an administrative law judge's decision which has become final, and such controversy cannot be resolved without a formal proceeding, the regional director shall issue in the name of the Board and serve on all parties a compliance specification as provided in subdivisions (a), (b), (c) or (d) of section 20291. The specification shall be consistent with precedent under the Act and shall contain, or be accompanied by, a notice of hearing. In the alternative and in appropriate circumstances, the regional director shall issue and serve on the parties a notice of hearing without a specification as provided in section 20291(e). The notice of hearing with or without specification may provide for a hearing to be held before an administrative law judge not less than fifteen (15) days after the service of the notice; it shall be filed with the executive secretary and served on each party as provided in sections 20160, 20164, and 20169.~~

~~(b) Whenever the regional director deems it appropriate in order to effectuate the purposes and policies of the Act or to avoid unnecessary costs and delay, the regional director may consolidate with a complaint and notice of hearing issued pursuant to section 20220, a compliance specification based on that complaint. After the opening of the pre-hearing conference, consolidation shall be subject to approval of the administrative law judge or the Board as provided in section 20244. Issuance of a compliance specification shall not be a prerequisite or bar to Board initiation of proceedings in an administrative or judicial forum which the Board or regional director determines to be appropriate for obtaining compliance with a Board order.~~

~~Note: Authority cited: Section 1144, Labor Code. Reference: Section 1160.3, Labor Code.~~

### § 20290. Compliance With Board Decision Ordering Monetary Remedies.

(a) If the Board has issued a decision finding the person named in the complaint has engaged or is engaging in an unfair labor practice and ordering the payment of a monetary remedy, the executive secretary shall immediately assign the matter to an administrative law judge for further proceedings to determine the specific amount of monetary relief owed. Assignment to the administrative law judge who previously heard the case is preferred, but not required if the original judge is not available.

(b) Within 90 days after the date of the Board's decision ordering the payment of a monetary remedy, or such further time as the Board may permit, the regional director shall file and serve on the parties a compliance specification as provided in section 20292, which shall contain or be accompanied by a notice of hearing. In the alternative and in appropriate circumstances, the regional director shall issue and serve on the parties a notice of hearing without a specification as provided in subdivision (d) of section 20292. The notice of hearing with or without specification may provide for a hearing to be held before the administrative law judge not less than 15 days

after service of the notice, and shall be filed with the executive secretary and served on all parties.

(c) Each person alleged as a respondent in the specification or notice of hearing without specification shall file and serve an answer thereto within 15 days from the date of service of the specification or notice of hearing without specification. The answer shall state specifically which facts alleged in the specification or notice of hearing without specification are admitted, which are denied, and which are outside the knowledge of the respondent or any of its agents. Any allegation not expressly denied shall be deemed admitted. Except for matters not reasonably ascertainable by a respondent, a general denial or a denial on information and belief shall not suffice. As to such reasonably ascertainable matters, including, but not limited to, gross backpay, actual wages, comparable contract(s), and fringe benefits, if a respondent disputes either the accuracy of the facts or figures in the specification or the premises on which they are based, it shall specifically state the basis for its disagreement, setting forth in detail its position as to the applicable premises and furnishing the appropriate supporting facts and figures, including a specific alternative methodology for computing amounts owed should the respondent dispute the validity of the methodology used in the specification.

(d) If a respondent fails to file an answer within the time prescribed by this section, the administrative law judge may, either with or without taking evidence in support of the allegations, find the allegations of the specification or the notice of hearing without specification to be true and issue an appropriate recommended order. If a respondent files an answer, but fails to deny any allegation of the specification or notice of hearing without specification in the manner required by subsection (c) of this section, such allegation shall be deemed admitted and may be so found without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

(e) Specifications, notices of hearings without specification, and answers to them may be amended in the same manner as complaints and answers to complaints. Specifications and notices of hearing without specification may be withdrawn in the same manner as complaints. After the issuance of a specification or notice of hearing without specification, the procedures provided for in sections 20235 through 20298 shall be followed so far as applicable.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

~~§ 20291. Contents of Compliance Specification or Notice of Hearing Without Specification.~~

~~(a) Contents of specification with respect to allegations concerning the amount of backpay due. With respect to allegations concerning the amount of backpay due, the specification shall specifically and in detail show, for each employee:~~

~~(1) The backpay period;~~

~~(2) The amount of gross backpay owed, the method of its computation, the data used in making the computation, and the reasons for selecting the method and data utilized;~~

~~(3) The amount and source of interim earnings, the method of allocation, e.g., weekly average, and the reasons for selecting that method;~~

~~(4) Amount and type of expenses claimed;~~

~~(5) Net backpay, including the method of calculation and the reasons for selecting that method;~~

~~(6) Missing or deceased discriminatees and the requested method for handling their claims;~~

~~(7) The interest due to the date of the specification and a demand for appropriate interest thereafter; and~~

~~(8) Any other pertinent information.~~

~~(b) Contents of specification with respect to allegations concerning the amount of bargaining makewhole due. The bargaining makewhole specification shall specifically and in detail show for all employees entitled to bargaining makewhole, including employees entitled to a makewhole supplement to backpay:~~

~~(1) The bargaining makewhole period;~~

~~(2) Actual gross earnings, or gross backpay for discriminatees not working during the bargaining makewhole period;~~

~~(3) The bargaining makewhole wage rate; the comparable contract(s) or other economic measures upon which it is based, together with the reasons for their selection; and the manner in which the makewhole rate was derived from the comparable contract(s) or other economic measures;~~

~~(4) Fringe benefits owed, the contract(s) or other economic data from which they were derived, the reasons for utilizing the contract(s) or other data, and the method by which fringe benefits were derived from the contract(s) or other data;~~

~~(5) Net bargaining makewhole and/or bargaining makewhole supplement due;~~

~~(6) The interest due to the date of the specification and a demand for appropriate interest thereafter;~~

~~(7) Any other pertinent information;~~

~~(c) Contents of specification with respect to allegations other than the amount of backpay or makewhole due. With respect to allegations other than the amount of backpay or makewhole due, the specification shall contain a detailed description of the respects in which the person(s) named as respondent(s) have failed to comply with the Board order, court decree, or final~~

administrative law judge's decision, including the remedial acts claimed to be necessary for compliance by the respondent(s).

~~(d) Use of Partial Specifications. Where, for good cause alleged and established at hearing, the regional director is unable to prepare a full specification as described in subdivision (a), (b) or (c), the regional director may issue a partial specification alleging in detail all information which is reasonably ascertainable, and the matter shall proceed on that basis.~~

~~(e) Use of Notice of Hearing without Specification. In appropriate circumstances, the regional director may issue a notice of hearing without a specification, containing a clear and detailed statement of the matter(s) in controversy and any relief sought. The regional director shall include in the notice of hearing the reason or reasons for dispensing with a specification and must substantiate such reason(s) if they are called into question during the course of the proceedings.~~

~~(f) Issues Involving Derivative Liability. Where the regional director believes that a person or persons not named in a Board order, court decree, or final administrative law judge's decision, is jointly or derivatively liable to comply with such order, decree, or decision, that liability may be determined in a compliance proceeding initiated under subdivision (a), (b), (c), (d), or (e), in which the regional director has named the person or persons as respondent(s) and has alleged the legal and factual basis for their joint or derivative liability.~~

Note: Authority cited: Section 1144, Labor Code. Reference: Section 1160.3, Labor Code.

#### § 20291. Compliance; Consolidation.

(a) Whenever the regional director deems it appropriate in order to avoid unnecessary costs and delay, the regional director may consolidate a complaint and notice of hearing issued pursuant to section 20220 with a compliance specification based on that complaint. The compliance specification shall be prepared in accordance with section 20292. After the opening of the pre-hearing conference, consolidation shall be subject to approval of the administrative law judge or the Board as provided in section 20244.

(b) Issuance of a compliance specification shall not be a prerequisite or bar to Board initiation of proceedings in an administrative or judicial forum which the Board or regional director determines to be appropriate for obtaining compliance with a Board order.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

#### § 20292. Answer to Compliance Specification.

(a) Filing and Service of Answer; Form. Each person alleged as a respondent in the specification or notice of hearing without specification shall, within fifteen (15) days from the service of the specification or notice of hearing without specification, file and serve an answer thereto as provided in sections 20160 and 20166.

~~(b) Contents of Answer. The answer shall state which facts alleged in the specification or notice of hearing without specification are admitted, which are denied, and which are outside the knowledge of the respondent or any of its agents. Any allegation not denied shall be considered admitted. Except for matters not reasonably ascertainable by a respondent, a general denial or a denial on information and belief shall not suffice. As to such reasonably ascertainable matters, including, but not limited to, gross backpay, actual wages, comparable contract(s), and fringe benefits, if respondent disputes either the accuracy of the facts or figures in the specification or the premises on which they are based, it shall specifically state the basis for its disagreement, setting forth in detail its position as to the applicable premises and furnishing the appropriate supporting facts and figures, including a specific alternative methodology for computing amounts owed should the respondent dispute the validity of the methodology used in the specification.~~

~~(c) Effect of Failure to Answer or to Plead Specifically and in Detail to Backpay and Makewhole Specification. If a respondent fails to file an answer within the time prescribed by this section, the administrative law judge may, either with or without taking evidence in support of the allegations and without notice to the respondent, find the allegations of the specification or the notice of hearing without specification to be true and issue an appropriate recommended order. If a respondent files an answer, but fails to deny any allegation of the specification or notice of hearing without specification in the manner required by subsection (b) of this section, and the failure to deny is not adequately explained, such allegation shall be deemed admitted, and may be so found without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.~~

Note: Authority cited: Section 1144, Labor Code. Reference: Section 1160.3, Labor Code.

§ 20292. Contents of Compliance Specification Involving Monetary Remedies or Notice of Hearing without Specification.

(a) A specification concerning the amount of backpay owed to an employee or employees shall specifically and in detail show, for each employee:

(1) The backpay period;

(2) The amount of gross backpay owed, the method of its computation, the data used in making the computation, and the reasons for selecting the method and data utilized;

(3) The amount and source of interim earnings, the method of allocation, e.g., weekly average, and the reasons for selecting that method;

(4) Amount and type of expenses claimed;

(5) Net backpay, including the method of calculation and the reasons for selecting that method.

(6) Missing or deceased discriminatees and the requested method for handling their claims;

(7) The interest due to the date of the specification and a demand for appropriate interest thereafter; and

(8) Any other pertinent information.

(b) A specification concerning the amount of bargaining makewhole due to employees in a represented bargaining unit or units shall specifically and in detail show for all employees entitled to bargaining makewhole, including employees entitled to a makewhole supplement to backpay:

(1) The bargaining makewhole period;

(2) Actual gross earnings, or gross backpay for discriminatees not working during the bargaining makewhole period;

(3) The bargaining makewhole wage rate; the comparable contract(s) or other economic measures upon which it is based, together with the reasons for their selection; and the manner in which the makewhole rate was derived from the comparable contract(s) or other economic measures;

(4) Fringe benefits owed, the contract(s) or other economic data from which they were derived, the reasons for utilizing the contract(s) or other data, and the method by which fringe benefits were derived from the contract(s) or other data;

(5) Net bargaining makewhole and/or bargaining makewhole supplement due;

(6) The interest due to the date of the specification and a demand for appropriate interest thereafter; and

(7) Any other pertinent information.

(c)(1) Where, for good cause alleged and established at hearing, the regional director is unable to prepare a full specification as described in subdivisions (a) or (b), the regional director may issue a partial specification alleging in detail all information which is reasonably ascertainable, and the matter shall proceed on that basis.

(2) If the regional director's inability to prepare a full specification is attributable to a respondent's failure to produce records needed to determine or calculate the amount of a monetary remedy ordered by the Board, the respondent's noncooperation shall be pled by the regional director in the partial specification. If the respondent's noncooperation relates to the regional director's efforts to calculate gross earnings or backpay amounts, the regional director may include in the partial specification a reasonable approximation of the gross earnings or backpay amounts based on data available to the regional director. A partial specification under this paragraph shall be accompanied by a motion to preclude the respondent from disputing the

regional director's calculations or introducing evidence previously demanded by the regional director.

(d) In appropriate circumstances, the regional director may file a notice of hearing, without a specification, containing a clear and detailed statement of the matters in controversy and any relief sought. The regional director shall include in the notice of hearing the reason or reasons for dispensing with a specification and must substantiate such reasons if they are called into question during the course of the proceedings.

(e) Where the regional director believes that a person not named in a Board order, court decree, or final administrative law judge's decision, is jointly or derivatively liable to comply with such order, decree, or decision, that liability may be determined in a compliance proceeding initiated under this section or section 20293 in which the regional director has named the person as a respondent and has alleged the legal and factual basis for their joint or derivative liability.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

§ 20293. Processing of Compliance Proceedings.

~~(a) Specifications, notices of hearings without specification, and answers to them may be amended in the same manner as complaints and answers to complaint.~~

~~(b) Specifications and notices of hearing without specification may be withdrawn in the same manner as complaints.~~

~~(c) After the issuance of a specification or notice of hearing without specification, the procedures provided for in sections 20235 through 20298 shall be followed so far as applicable.~~

~~Note: Authority cited: Section 1144, Labor Code. Reference: Section 1160.3, Labor Code.~~

§ 20293. Compliance With Non-Monetary Remedies.

(a) Where a Board decision orders only non-monetary remedies and it appears there is a controversy with respect to compliance with such Board order or court decree enforcing a Board order, and such controversy cannot be resolved without a formal proceeding, the regional director shall file and serve on all parties a compliance specification as described in subdivision (b) or a notice of hearing without a specification consistent with subdivision (d) of section 20292. The specification or notice of hearing shall be filed within 90 days after the Board's decision becomes final or within such further time as the Board may permit. The provisions of subdivisions (c), (d), and (e) of section 20290 regarding the filing of an answer to a compliance specification or notice of hearing and other applicable procedures shall apply in proceedings regarding compliance with non-monetary remedies ordered by the Board.

(b) With respect to allegations other than the amount of backpay or makewhole due, including, but not limited to, cease and desist orders, notice remedies, or bargaining orders not involving

bargaining makewhole, the specification shall contain a detailed description of the respects in which the person named as respondent has failed to comply with the Board order or court decree, including the remedial acts claimed to be necessary for compliance by the respondent.

(c) Where a Board decision orders both monetary and non-monetary remedies, the regional director may include in a specification or notice of hearing without a specification as described in section 20292 allegations concerning compliance with the non-monetary remedies ordered by the Board. If the non-monetary remedies are not included in such proceedings, separate compliance proceedings concerning such non-monetary remedies may be initiated within 90 days after the Board's decision becomes final, or such further time as the Board may permit. A Board decision ordering the payment of monetary remedies is deemed final when the Board issues a determination of the specific amount of the monetary remedies following the initiation of compliance proceedings and no appeal is sought therefrom or when a reviewing court dismisses an employer's appeal or otherwise affirms the Board's decision.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

§ 20294. Compliance; Determination of Amount of Civil Penalties.

(a) If the Board has issued a decision finding an agricultural employer has engaged or is engaging in an unfair labor practice, the regional director shall file and serve a specification as described in subdivision (b), or a notice of hearing without a specification as described in subdivision (d) of section 20292, to determine the amount of civil penalties to be assessed against the employer. The specification or notice of hearing shall be filed within 90 days after the Board's decision becomes final or within such further time as the Board may permit. The provisions of subdivisions (c), (d), and (e) of section 20290 regarding the filing of an answer to a compliance specification or notice of hearing and other applicable procedures shall apply in proceedings to determine the amount of civil penalties owed by an employer.

(b) A specification concerning the amount of civil penalties owed by an employer shall specifically set forth facts relevant to a determination of the amount of the penalties to be assessed in accordance with the governing statute authorizing such penalties.

(c) A specification concerning the amount of civil penalties owed by an employer may be included:

(1) With a specification, or notice of hearing without a specification, pursuant to section 20292 where monetary remedies also have been ordered by the Board;

(2) With a specification, or notice of hearing without a specification, pursuant to section 20293 where the Board has not ordered monetary remedies; or

(3) With a specification, or notice of hearing without specification, pursuant to section 20295 where an administrative law judge's decision has become final.



(d) When a specification involving civil penalties owed by an employer is included with another specification or notice of hearing as described in subdivision (c), the timeframes governing such other type of specification shall apply.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.10, 1160.11, Labor Code.

§ 20295. Compliance; Final Administrative Law Judge Decision.

In cases where an administrative law judge's decision has found the person named in the complaint has engaged or is engaging in an unfair labor practice and such decision becomes final pursuant to subdivision (a) of section 20286 because no exceptions were filed, compliance proceedings concerning such remedies or civil penalties ordered by the administrative law judge shall proceed in accordance with the timeframes and requirements set forth in section 20290, subdivision (a) of section 20293, or subdivision (a) of section 20294, as applicable.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.10, 1160.11, Labor Code.

§ 20296. Compliance; Continuing Monetary Liability During Review.

If the Board has issued a decision ordering the payment of a monetary remedy and the amount of that monetary remedy has continued to accrue during the course of judicial proceedings to review the Board's decision, and the challenge to the Board's decision is dismissed or the Board's decision otherwise is affirmed, the regional director shall commence a compliance proceeding to determine the amount of such remaining monetary liability in accordance with the procedures set forth in section 20290.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code.

§ 20297. Unfair Labor Practice Appeal Bonds.

(a) The appeal bond required by Labor Code section 1160.11 shall be executed by a licensed surety. The term "licensed surety" has the same meaning as the term "admitted surety insurer" as defined in section 995.120 of the Code of Civil Procedure within the Bond and Undertaking Law (Code Civ. Proc., § 995.010 et seq.). The bond shall be in writing, signed by the surety under oath, and include the following:

(1) A statement that the surety is liable on the obligations of Labor Code section 1160.11 as the statute providing for the bond; and

(2) The name, street address, telephone number, and email address at which both the agricultural employer who has given the bond and surety may be served with notices, papers, and other documents, including as provided for under Code of Civil Procedure section 995.010 et seq.

(b) The bond shall be in the following form:

“Agricultural Labor Relations Board Decision: (Decision name, year, volume, and number.)

Whereas (name of the agricultural employer) desires to give a bond for the filing of (a petition, appeal, or specify other applicable form of seeking judicial review of an order of the Board) in (name of the court where the action has been or will be filed) as provided by Labor Code section 1160.11; now, therefore, the undersigned (surety) hereby obligates itself to the Agricultural Labor Relations Board under the statutory obligations, in the amount of ... dollars.”

(c) Upon receipt of the bond, the Board shall promptly file the bond with the reviewing court.

Note: Authority cited: Section 1144, Labor Code. Reference: 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, 995.320, 995.330, 995.340, Code of Civil Procedure.

§ 20297.5. Cash Deposits in Lieu of Appeal Bond.

(a) Pursuant to subdivision (b) of section 1160.11 of the Labor Code, an agricultural employer may make a cash deposit with the Board in lieu of an appeal bond. The deposit shall be in an amount equal to or in excess of the amount that would be required to be secured by the bond if the bond were given by a licensed surety. For purposes of this section, the term “cash” means lawful coin or currency of the United States, and also includes cash equivalent forms of payment such as checks, cashier’s checks, and money orders.

(b)(1) Cash Deposits. An agricultural employer who chooses to deposit cash, in the form of currency or coin of the United States, with the Board in lieu of an appeal bond shall provide the executive secretary with written notice of its intent to do so. Such notice must be received no later than 10 days after the date of the Board’s order from which the employer seeks to obtain judicial review. The notice may be sent directly to the executive secretary, including by email, and need not be served on other parties to the proceeding. The executive secretary shall coordinate and arrange a time and location with the employer to deliver the cash deposit.

(2) An agent of the Board shall be present at the time of delivery of the cash deposit. The deposit shall be accompanied by an agreement executed by the agricultural employer authorizing the Board to collect or otherwise apply the deposit to enforce the liability of the agricultural employer on the deposit. The agreement shall include the name, street address, telephone number, and email address at which the agricultural employer may be served with notices, papers, and other documents. The agreement shall be signed under penalty of perjury and further shall expressly state the individual signing it has authority to do so on behalf of the agricultural employer. The Board will make a form available to the agricultural employer for use in complying with the requirements of this subdivision.

(3) Upon verifying the amount of the cash deposit, the Board agent shall provide the agricultural employer a receipt confirming the deposit with the Board. The deposit shall be held in trust by the Board in an interest-bearing account.

(c)(1) Cash Equivalent Deposits. An agricultural employer who chooses to make a deposit with the Board in the form of a check, cashier's check, or money order in lieu of an appeal bond shall submit such deposit to the executive secretary. The deposit must be received by the executive secretary no later than 20 days after the date of the Board's order from which the employer seeks to obtain judicial review. The check or money order shall be made payable to the "Agricultural Labor Relations Board."

(2) The deposit shall be accompanied by an agreement executed by the agricultural employer authorizing the Board to collect or otherwise apply the deposit to enforce the liability of the agricultural employer on the deposit. The agreement shall include the name, street address, telephone number, and email address at which the agricultural employer may be served with notices, papers, and other documents. The agreement shall be signed under penalty of perjury and further shall expressly state the individual signing it has authority to do so on behalf of the agricultural employer. The Board will make a form available to the agricultural employer for use in complying with the requirements of this subdivision.

(3) The deposit shall be held by the Board in trust in an interest-bearing account. Upon the successful deposit of the check or money order into the account, the executive secretary shall provide a written receipt to the agricultural employer confirming the deposit with the Board.

Note: Authority cited: Section 1144, Labor Code; Reference: 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.

§ 20391. Majority Support Petitions Under Labor Code Section 1156.37.

(a) A majority support petition shall be in writing and signed by hand or electronically. Forms for such petitions will be supplied by the regional offices of the Board upon request and also made available on the Board's web site. A petition shall contain a declaration, signed under penalty of perjury, that the petition's contents are true and correct to the best of the declarant's knowledge. The petition shall be filed in person at the regional office nearest the location of the employer whose employees the labor organization seeks to represent. A labor organization filing a majority support petition shall attest in its petition that it (1) has filed LM-2 reports with the federal Office of Labor-Management Standards for the preceding two years, and (2) is or was a party to a collective bargaining agreement covering agricultural employees as defined in subdivision (b) of Labor Code section 1140.4 that was in effect on May 15, 2023. The petition is deemed filed upon the appropriate regional office's receipt of all required information, including proof of service of the petition on the employer and evidence of majority support, as described in subdivision (a)(2). Immediately upon confirming all required materials have been submitted, the regional office shall notify the employer by telephone and email, if available, of (1) the date and time of the filing of the petition, and (2) the case number assigned to the petition.

(1) Service of Petition on Agricultural Employer. A majority support petition shall be served upon the employer in the manner set out herein. A petition must be accompanied by proof of service of the petition on the employer by verified return of the person making personal service. Service on the employer may be accomplished by personal service upon any owner, officer, or director of the employer, or by leaving a copy at an office of the employer with a person apparently in charge of the office or other responsible person. If such service is not possible, the petition may be personally served upon a supervisor of employees covered by the petition. For an employer engaged in the cultivation of cannabis, the petition may be served personally upon a security guard stationed at any location where employees covered by the petition work. If service is made by delivering a copy of the petition to anyone other than an owner, officer, or director of the employer, the petitioner shall immediately provide notice to the owner, officer, or director of the employer declaring that a majority support petition is being filed and stating the name and location of the person actually served. Such notice shall include a copy of the petition and be provided by email, if an email address is available, or by a courier providing overnight delivery, and the petitioner shall file with the regional office proof that the notice was sent and received.

(2) Evidence that a majority of the currently employed employees in the bargaining unit support the petitioner shall be delivered, in person, to the appropriate regional office as soon as possible after the petition is filed pursuant to subdivision (a). Such evidence shall consist of originals of either: (A) authorization cards, signed by employees, dated, and providing that the signer authorizes the union to be their collective bargaining representative, or (B) a petition to the same effect signed by employees, each signature dated. Authorization cards or petitions submitted as evidence of majority support also shall identify the name of the agricultural employer to which the cards or petitions pertain and shall clearly state that (i) signing the card or petition is a vote in support of the petitioning labor organization; (ii) a signature on the card or petition is valid for one year from the date it is signed; and (iii) a signature on the card or petition may not be revoked.

(A) Authorization Card Format. Authorization cards used for purposes of a majority support petition shall be in the format prescribed below; provided that, an authorization card signed and dated before the effective date of this regulation may be accepted as valid by the regional director if the card is in substantial compliance with the requirements of this subdivision. The Board will make authorization cards available for printing or downloading directly from the ALRB’s web site, including Spanish language versions.

<p><b><u>AUTHORIZATION FOR UNION REPRESENTATION</u></b></p> <p>I, _____, authorize  <small>(Employee's Name, Printed)</small></p> <p>_____ to be my collective bargaining representative  <small>(Labor Organization's Name, Printed)</small></p> <p><b>for purposes of negotiating wages, hours, and other terms and conditions of employment with _____.</b>  <small>(Employer's Name, Printed)</small></p> <p><u>Employee Information</u></p> <p>Address: _____</p> <p>Telephone/Cell Phone: _____</p> <p>Email: _____</p> <p>Signature: _____</p> <p>Date: _____</p> <p>Witnessed by <i>(if applicable)</i>, Printed Name: _____</p> <p>Witness Signature <i>(if applicable)</i>: _____</p> <p><b>Signing this card is a vote for the named labor organization. A signature is valid for one (1) year from the date it is signed. A signature on this card cannot be revoked during this one (1) year period.</b></p>
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(B) Petition Format. Petitions used for purposes of a majority support petition shall clearly state at the top of the petition “AUTHORIZATION FOR UNION REPRESENTATION.” Underneath this header the following shall be clearly stated: “I authorize [printed name of labor organization] to be my collective bargaining representative for purposes of negotiating wages, hours, and other terms and conditions of employment with [printed name of agricultural employer].” This authorization language shall be followed by a table including fields for the following information: (1) employee’s printed name, (2) employee’s home address, (3) employee’s telephone or cell phone number, (4) employee’s email address, (5) employee’s signature, (6) the date the employee signed the petition, and (7) the signature of a witness, if necessary, in cases where an employee requires assistance in reading or interpreting the contents of the petition. In addition, the bottom of the petition shall expressly state in bold typeface: “Signing this petition is a vote for the named labor organization. A signature is valid for one (1) year from the date it is signed. A signature on this card cannot be revoked during this one (1) year period.” The Board will make printed petitions available at its offices and for printing or downloading directly from the ALRB’s web site, including Spanish language versions. A petition containing signatures dated before the effective date of this regulation may be accepted as valid by the regional director if the petition is in substantial compliance with the requirements of this subdivision.

(3) No employee authorization dated more than one year prior to the date of filing of the petition shall be counted to determine a showing of majority support. An authorization card or authorization petition signed by an employee at a time when the employee was not working for the employer shall, if otherwise valid, be counted in determining whether a showing of majority support is established.

(4) Notice to Agricultural Employees. Within 48 hours after the regional director notifies the employer pursuant to subdivision (a) that the petition has been accepted for filing, or the next business day after the 48-hour period expires if it does so on a Saturday, Sunday, or legal holiday, the regional director or the regional director's agent(s) shall issue to the employer a notice to all agricultural employees at the employer's workplace regarding the filing of the majority support petition. A copy of the notice shall be provided to the labor organization. The employer shall post the notice in conspicuous places on its property and notify the regional director and labor organization of the date and locations of the posting of the notice. The posting shall remain in place until the regional director makes a final determination whether majority support has been established. All parties shall be required to cooperate fully in the dissemination of the notice to the employer's agricultural employees.

(b) Within 48 hours after personal service of the petition on the employer named in the petition, the employer shall file with the Board and serve personally on the labor organization its response to the petition. If the 48-hour period expires on a Saturday, Sunday, or legal holiday, the time to file the response shall be extended to the corresponding hour on the next business day.

(1) The employer's response to the petition shall set forth the employer's full and correct legal name, a description of the nature of its legal entity, a full and correct address, and the name, address, telephone number, email address, and the location and title of a person within the employer's organization who is authorized to accept service of papers or of an attorney retained by the employer who is authorized to accept service of papers on behalf of the employer. The person or attorney identified by the employer shall be authorized to make agreements with the Board and the parties regarding the petition. The employer's response shall also respond to each of the allegations of the petition regarding the scope of the petitioned-for unit, including that the number of employees employed by the employer during the payroll period immediately preceding the filing of the petition is not less than 50 percent of the employer's peak agricultural employment for the current calendar year, that no valid election or majority support petition process has been conducted within the 12 months preceding the filing of the petition, and that the petition is not barred by an existing collective bargaining agreement. The employer's response shall be accompanied by a declaration signed under penalty of perjury that the information set forth therein is true and correct. The regional office will provide forms for an employer's response upon request and such forms also shall be made available on the Board's web site.

(2) The employer's response to the petition shall be accompanied by a list of the employer's currently employed agricultural employees in the petitioned-for unit as of the payroll period immediately preceding the filing of the petition. The list shall contain the full names, current street addresses, landline and cellular telephone numbers, email addresses, job classifications, and crew or department of all agricultural employees, including employees hired through a labor contractor, in the bargaining unit sought by the petitioner in the payroll period immediately

preceding the filing of the petition. Service of the employer's employee list in electronic format may be by email or pursuant to subdivision (b) of section 20169 if the response is filed electronically with the Board. The Board shall notify the labor organization promptly after the employer's response is filed and, if the labor organization contends it has not received proper service of the response, the Board shall serve the employer's response on the labor organization.

(c) The regional director of the office in which the majority support petition is filed shall commence an investigation regarding the validity of the petition and accompanying proof of support after the petition is filed. Within three days after receipt of the employer's response, the regional director shall notify the parties of its determination whether (i) a bona fide question of representation exists, (ii) the bargaining unit described in the petition is appropriate, or (iii) the proof of support submitted with the petition is sufficient. If the time period for the regional director to make these determinations expires on a Saturday, Sunday, or legal holiday, the time for providing such notice to the parties shall be extended to the next business day.

(1) If the regional director determines the petition must be dismissed because a bona fide question of representation does not exist or the unit described in the petition is not appropriate, the regional director shall issue a dismissal letter to the parties setting forth the reasoning to support such determination. A petitioner may amend a majority support petition, upon approval of the regional director, to cure a defect that otherwise would result in dismissal of the petition under this paragraph.

(A) The regional director shall issue a dismissal letter to the petitioning labor organization and employer when the regional director has determined that the petition shall be dismissed based on grounds set forth in paragraph (1).

(B) The Board may review a dismissal based on the grounds set forth in paragraph (1) pursuant to the provisions of section 20393 and subdivision (b) of Labor Code section 1142. Board review of a petition dismissed by a regional director pursuant to paragraph (1) does not constitute a review of a majority support petition for purposes of Labor Code section 1156.5.

(2) If the regional director determines the petition satisfies the requirements of Labor Code section 1156.37 and this section but that the proof of support submitted with the petition is insufficient, the regional director shall notify the parties in writing of its determination. The labor organization shall have 30 days from the date of the regional director's notification to submit additional proof of support or to cure support submitted but found invalid by the regional director. In this regard, when the regional director has determined the labor organization's showing of support to be insufficient, the regional director shall return to the labor organization any support it has found invalid and shall state the reasons therefor. Within two days after the 30-day cure period closes, the regional director shall notify the parties whether proof of majority support has been established. If proof of majority support still has not been established, the regional director shall notify the executive secretary of its determination, setting forth a tally of the count conducted by the regional director that includes (1) the total number of employees in the bargaining unit, (2) the number of cards or petition signatures received, and (3) the number of cards or petition signatures found invalid. Upon receiving this notice from the regional director, the executive secretary shall certify the disposition of the majority support petition.

(3) If the regional director has concluded that a bona fide question of representation exists, the unit described in the petition is appropriate, and that proof of majority support is established, the regional director shall immediately notify the parties and the executive secretary of its findings. The regional director's notice shall include a tally of the count conducted by the regional director in determining that proof of majority support has been established, setting forth (1) the total number of employees in the bargaining unit, (2) the number of cards or petition signatures received, and (3) the number of cards or petition signatures found invalid. Upon receiving such notification, the executive secretary shall issue a certification designating the labor organization as the exclusive bargaining representative of the employer's agricultural employees in the unit described in the petition.

(4) Eligibility Disputes.

(A) During the course of the regional director's initial investigation of a majority support petition, including the proof of support submitted by the labor organization and the employee list produced by the employer, the regional director or a labor organization, for good cause shown, may challenge the eligibility of an individual included on the employer's employee list based on any of the grounds listed in regulation 20355, subdivisions (a)(1)-(7). The regional director shall designate such individual as "challenged" and promptly notify the employer of all such challenges and determine whether the parties are able to resolve the challenges informally. If the labor organization contends the employer's list omits agricultural employees who are eligible for inclusion in the bargaining unit, the labor organization shall submit a written statement to the regional director stating its position regarding the subject individuals' eligibility, including all evidence in support of its eligibility claims. The regional director shall not disclose to the employer the names of the individuals allegedly omitted from the employer's list or the evidence received from the labor organization regarding such individuals except as provided in subdivision (c)(4)(B)(ii) or (c)(4)(D)(ii).

(B)(i) Upon conclusion of the regional director's initial investigation of the petition, the regional director shall proceed to make a determination whether majority support has been established, excluding individuals challenged or allegedly omitted from the employer's list. If the labor organization has not established majority support, or if the number of challenged or allegedly omitted individuals is sufficient to affect the determination whether majority support is established, the regional director shall notify the parties in writing of its determination, and the labor organization shall have 30 days from the date of the regional director's notification to submit additional proof of support or to cure support previously submitted but found invalid and returned by the regional director.

(ii) Notwithstanding subdivision (c)(4)(B)(i), the regional director may proceed to resolve eligibility disputes regarding challenged or allegedly omitted individuals during the regional director's initial investigation when it is feasible to determine all eligibility disputes within such timeframe. If, after determining eligibility disputes, the labor organization has not established majority support, the regional director shall notify the parties in writing of its determinations, and the labor organization shall have 30 days from the date of the regional director's notification to submit additional proof of support or to cure support previously submitted but found invalid and



returned by the regional director. In providing such notice, the regional director shall not disclose the names of individuals alleged by the labor organization to be omitted from the employer's list. If, after determining eligibility disputes, the labor organization has established majority support, the regional director's notice shall include a tally consistent with subdivision (c)(4)(D)(ii).

(C) If the matter is referred to a 30-day cure period, the regional director shall investigate the eligibility disputes concerning individuals challenged or allegedly omitted from the employer's list, whether raised during the regional director's initial investigation or during the cure period, including the consideration of any evidence submitted by the parties.

(D) Within five days after the 30-day cure period closes, the regional director shall notify the parties and executive secretary whether the labor organization has established majority support.

(i) If the number of challenged or allegedly omitted individuals is not sufficient to affect the regional director's determination whether the labor organization has established majority support, the regional director's notice shall include a tally setting forth (1) the total number of employees determined to be in the bargaining unit, (2) the number of valid authorization cards or petition signatures received, (3) the number of authorization cards or petition signatures determined to be invalid, and (4) the number of challenged or allegedly omitted individuals. The executive secretary shall thereupon issue an appropriate certification.

(ii) If the number of challenged or allegedly omitted individuals is sufficient to affect the determination whether majority support is established, the regional director's notice must set forth the regional director's disposition of each eligibility dispute, including the identification of all individuals found to have been omitted from the employer's list, and thereupon shall include a tally setting forth (1) the total number of employees determined to be in the bargaining unit, (2) the number of valid authorization cards or petition signatures received, and (3) the number of authorization cards or petition signatures determined to be invalid. The regional director also shall serve on the parties all written statements and evidence received by the regional director from the parties concerning the disputed individuals and during its own investigation of the eligibility disputes. However, if the evidence includes any declarations or statements of non-supervisory agricultural employees other than those that are the subject of the eligibility disputes, the regional director shall serve on the parties only a summary of such declarations or statements prepared in a manner that does not reveal the identities of the other employees.

(E) Where the regional director issues a notice and tally pursuant to subdivision (c)(4)(B)(ii) or (c)(4)(D)(ii), the following procedures shall apply:

(i) If the regional director determines the labor organization has demonstrated majority support, the executive secretary shall issue a certification. The employer may challenge any eligibility disputes decided by the regional director by filing objections to the labor organization's certification in accordance with the provisions of Labor Code section 1156.37, subdivision (f) and subdivision (e)(2) of this regulation. If an objection concerning the eligibility of employees is set for hearing, the scope of examination at hearing shall be strictly limited to the eligibility of the employees to be included in the bargaining unit as comprised during the pay period immediately preceding the filing of the majority support petition.

(ii)(1) If the regional director determines the labor organization has not demonstrated majority support, the labor organization may obtain review of the regional director's disposition of eligibility disputes pursuant to Labor Code section 1142, subdivision (b) and subdivision (a) of regulation 20393 by filing an administrative appeal with the Board within five days after service of the regional director's notice and tally. The appeal must set forth in detail, supported by evidence, the labor organization's position on each eligibility disposition it disputes.

(2) The Board may administratively rule on disputed eligibility dispositions or may appoint an investigative hearing officer to conduct an investigative hearing regarding the eligibility determinations in dispute. The scope of inquiry and examination in such hearing shall be strictly limited to the eligibility of the disputed employees to be included in the bargaining unit as comprised during the pay period immediately preceding the filing of the majority support petition. The hearing shall be conducted in accordance with the procedures set forth in regulation 20370.

(3) If exceptions to the investigative hearing examiner's decision are filed pursuant to subdivision (j) of regulation 20370, the Board shall issue an order addressing the disputed eligibility determinations. The Board's order shall include a tally based on the recommended disposition of unresolved eligibility disputes, and the executive secretary shall thereupon proceed to issue an appropriate certification.

(d)(1) If an employer fails to respond to the petition, submits an employee list that is inaccurate or incomplete, or otherwise fails to cooperate with the regional director's investigation of the petition, and such failures or defects frustrate the regional director's determination of particular facts, the regional director may invoke any or all of the following presumptions:

(A) That the petition is timely filed with respect to the employer's peak of season.

(B) That all persons who have signed petitions or authorization cards in support of the petitioning labor organization are eligible to have their signatures counted by the regional director in determining whether majority support has been established. This presumption shall be invoked only when no employee list is submitted by an employer or when the regional director determines the list as submitted is substantially inadequate for the purpose of determining employee eligibility.

(2) The determination of whether or not an employee list substantially inadequate or untimely filed will be made by the regional director. If the regional director determines that a list is not complete or accurate, the regional director shall state the reasons therefor in writing and serve a copy of such written reasons on all parties.

(3) The failure of an employer to provide a complete or accurate employee list shall not be excused by the fact that the employer based its information on information supplied to it by a labor contractor.

(4) If the employer's employee list contains missing or incorrect contact information for the employees and such missing or incorrect information frustrates a labor organization's ability to

obtain additional employee support during a 30-day cure period, the employer's failure to provide a complete and accurate employee list shall be deemed to constitute voter suppression within the meaning of subdivision (j) of Labor Code section 1156.37.

(e) Board Review of Certification.

(1)(A) Within five days after service of a certification issued by the executive secretary, the labor organization may file an application to review the certification where it is alleged an employer engaged in misconduct that would render slight the chances of a new majority support campaign reflecting the free and fair choice of employees. The application shall be accompanied by declarations setting forth facts which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to certify the labor organization in accordance with Labor Code section 1156.37, subdivision (j). The application shall be filed with the executive secretary pursuant to subdivision (a)(1) of section 20160 or electronically pursuant to section 20169, with proof of service on the other parties. No extensions of time to file an application will be granted, nor may an application be amended or supplemented once filed.

(B) The Board shall dismiss a labor organization application that does not satisfy the requirements of subdivision (e)(1)(A).

(C) With respect to a labor organization application not dismissed pursuant to subdivision (e)(1)(B), the Board shall dismiss an application that, even if true, would not be sufficient to certify the labor organization as the exclusive bargaining representative of the agricultural employees sought to be represented by the labor organization's majority support petition. Where an application sets forth allegations that would be sufficient to certify the labor organization as the employees' exclusive bargaining representative and there are material facts in dispute, the Board shall direct an investigatory hearing regarding such objections. The hearing shall commence within 14 days of the date of the Board's order and shall be conducted in accordance with regulation 20370.

(2) Within five days after service of a certification issued by the executive secretary, the employer may file objections to the certification on grounds the allegations of the petition are false, the unit described in the petition is not appropriate, the regional office's review of the petition and proof of support were conducted improperly, or other misconduct affected the labor organization's proof of support. The objections shall be filed with the executive secretary pursuant to subdivision (a)(1) of section 20160 or electronically pursuant to section 20169, with proof of service on the other parties. No extensions of time to file objections will be granted, nor may objections be amended or supplemented once filed.

(A) Objections alleging the regional director improperly determined the unit described in the petition to be appropriate or that the allegations of the petition are false shall be supported by a detailed statement of the facts and law relied upon in making such claims.

(B) Objections alleging the regional office's review of the petition and proof of support were conducted improperly or that other misconduct affected the labor organization's proof of support

shall be accompanied by declarations setting forth facts which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to revoke the labor organization's certification.

(C)(1) The Board shall dismiss objections that do not satisfy the requirements of subdivision (e).

(2) With respect to objections not dismissed pursuant to subdivision (e)(2)(C)(1), the Board shall dismiss objections that, even if true, would not be sufficient to revoke the certification. Where objections set forth allegations that would be sufficient to revoke the certification and there are material facts in dispute, the Board shall direct an investigatory hearing regarding such objections. The hearing shall commence within 14 days of the date of the Board's order, unless the labor organization agrees to an extension, and shall be conducted in accordance with regulation 20370.

(f) If a majority support petition has been filed with an appropriate regional office of the Board and a second majority support petition pertaining to the same bargaining unit of agricultural employees is filed, the Board shall hold the second petition in abeyance pending resolution of the first petition, subject to paragraph (2).

(1) If it is determined the first petition filed with the Board has established proof of majority support and that the labor organization that filed the petition should be certified as the employees' exclusive bargaining representative, the Board shall proceed to dismiss the second petition.

(2)(A) If the second petition alleges the first petition was filed by a labor organization assisted, supported, created, or dominated by an employer, the Board shall conduct a hearing on such allegations if both of the following are established:

(i) The second petition is filed while the first petition remains pending and before any certification regarding the first petition has issued; and

(ii) The second petition alleges facts of employer assistance, support, creation, or domination supported by declarations.

(B) In cases where the Board has determined it appropriate to conduct a hearing based on the allegations of the second petition, such a hearing shall commence within 14 days and the independent hearing examiner shall issue a recommended decision within 21 days after the conclusion of the hearing. Within 10 days after the independent hearing examiner issues a recommended decision, any party to the hearing may file with the Board exceptions and a brief in support of the exceptions to the recommended decision. A party opposing the exceptions may file an answer to them within 5 days after service of the exceptions and brief. If exceptions are filed, the Board shall issue a decision within 90 days from the date the first petition was filed.

(C) If it is determined that the labor organization that filed the first petition was unlawfully created or dominated by an employer, that labor organization and its representatives, agents, or officers shall be disqualified permanently from filing any further representation petitions with the Board. If it is determined that the labor organization that filed the first petition was unlawfully

assisted or supported by an employer, that labor organization and its representatives, agents, or officers shall be disqualified from filing any further representation petitions with the Board for a period of one year.

(D) The Board shall dismiss a second petition that does not satisfy the requirements of subparagraph (2)(A).

(g) When an application is filed by a labor organization pursuant to subdivision (e)(1), objections are filed by an employer pursuant to subdivision (e)(2), or a second majority support petition has been filed alleging a first petition was filed by a labor organization unlawfully assisted, supported, created, or dominated by an employer, the executive secretary shall notify the general counsel and provide copies of such filings. Within 10 days after the executive secretary provides this notice to the general counsel, the general counsel may file with the Board a motion seeking to consolidate any unfair labor practice charges containing allegations that mirror the allegations of any application, objections, or a second-filed petition. If consolidation is granted, any resulting hearing will be governed by the procedures set forth in Chapters 4 and 6 of the Act.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1142, 1156.37, Labor Code.

#### § 20411. Appeal Bonds and Cash Deposits in Mandatory Mediation and Conciliation Proceedings.

(a) The appeal bond required by Labor Code section 1164.5 shall be subject to the requirements and procedures described in section 20297, and the bond shall reference Labor Code section 1164.5 in place of section 1160.11 as applicable.

(b) A cash deposit in lieu of an appeal bond, as allowed under Labor Code section 1164.5, shall be subject to the requirements and procedures described in section 20297.5.

Note: Authority cited: 1144, Labor Code. Reference: Sections 1164, 1164.3, 1164.5, 1164.10, Labor Code; Sections 995.020, 995.120, 995.130, 995.140, 995.160, 995.170, 995.185, 995.320, 995.330, 995.340, 995.710, 995.740, Code of Civil Procedure.