

## **INITIAL STATEMENT OF REASONS**

### **PROBLEM STATEMENT**

These proposed regulations serve two distinct purposes. First, these proposed regulations aim to implement amendments to the Orange County Transit District Act (OCTDA), San Francisco Bay Area Rapid Transit (SFBART) Act, and Sacramento Regional Transit District Act (Sacramento RTD Act), statutory schemes that establish collective bargaining rights for certain employees of the Orange County Transportation Authority, the San Francisco Bay Area Rapid Transit District, and the Sacramento Regional Transit District. The legislative amendments conferred jurisdiction on PERB to adjudicate unfair practice charges by and against these Public Utilities Code-created transit districts or unions representing employees of those districts. Second, these regulations provide a long-overdue update to existing regulations regarding representation matters for transit districts. The existing regulations have not been materially revised since 1983 and in many cases do not track PERB administrative practice and procedure.

As a result of the enactment of Assembly Bill 355 (Stats. 2019, Ch. 713), effective January 1, 2020, PERB acquired responsibility for the administration and enforcement of labor relations in the OCTDA, which is codified at Division 10, Part 4, Chapter 4 of the Public Utilities Code, sections 40122.1 and 40122.2. As a result of the enactment of Assembly Bill 2850 (Stats. 2020, Ch. 293), effective January 1, 2021, PERB acquired responsibility for the administration and enforcement of labor provisions in the SFBART Act, which is codified at Division 10, Part 2, Chapter 4 of the Public Utilities Code, section 28848 et seq. As a result of the enactment of Senate Bill 598 (Stats. 2021, Ch. 492), effective January 1, 2022, PERB acquired responsibility for the administration and enforcement of the labor provisions of the Sacramento RTD Act if elected to do so by a bargaining unit's representative, which is codified at Division 10, Part 14, Chapter 6 of the Public Utilities Code, which is codified at section 102398 et seq. These new statutory enactments require amendments to PERB's existing regulations and the adoption of new regulations in order to fully implement PERB's jurisdiction.

The OCTDA, SFBART Act, and Sacramento RTD Act charge PERB with administering and enforcing these acts, but do not establish procedures for processing alleged violations. Rather, the acts leave it to the Board to determine the procedures that it will implement in order to administer and enforce the acts. PERB regulations either must be created or modified in order to include the statutory mandates of the OCTDA, SFBART Act, and Sacramento RTD Act, including the filing and processing of unfair practice charges.

Government Code section 3541.3, made applicable to the OCTDA pursuant to Public Utilities Code section 40122.1, subdivision (a), applicable to the SFBART Act pursuant to Public Utilities Code section 28849, subdivision (b), and applicable to the Sacramento RTD Act pursuant to Public Utilities Code section 102399(b), provides PERB with the power and duty to investigate unfair practice charges and alleged violations of the public sector labor relations statutes it administers, and to adopt rules and regulations to effectuate the policies underlying the acts it administers. The OCTDA, pursuant to Public Utilities Code section 40122.1, subdivision (b),

provides that the determination of unfair practice charges under the OCTDA is within the exclusive jurisdiction of the Board. The SFBART Act, pursuant to Public Utilities Code section 28860, subdivision (b), similarly provides that the determination of unfair practice charges under the SFBART Act is within the exclusive jurisdiction of the Board. And the Sacramento RTD Act, pursuant to Public Utilities Code section 102408, subdivision (b), also provides that the initial determination of unfair practice charges under the Sacramento RTD Act is within the jurisdiction of the Board if an exclusive representative so elects to move its bargaining unit under the Board's jurisdiction. In order to exercise its jurisdiction and perform its duties under the OCTDA, SFBART Act, and Sacramento RTD Act, PERB must implement a procedure for processing alleged violations of the OCTDA, SFBART Act, and Sacramento RTD Act. The proposed regulations apply PERB's existing unfair practice procedures for processing alleged violations of the OCTDA, SFBART Act, and Sacramento RTD Act. The proposed regulation changes that have been identified as necessary for the implementation of PERB's responsibilities pursuant to the OCTDA, SFBART Act, and Sacramento RTD Act are described below.

This rulemaking package also includes amendments to PERB's existing regulations concerning representation matters under the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA), the Transit District Law, the Fresno Metropolitan Transit District Act of 1961, the Golden Empire Transit District Act, the Marin County Transit District Act of 1964, the North County Transit District Act, the OCTDA, the Sacramento RTD Act, the San Diego County Transit District Act of 1965, the Mills-Deddeh Transit Development Act, the SFBART Act, the San Mateo County Transit District Act, the Santa Barbara Metropolitan Transit District Act of 1965, the Santa Clara Valley Transportation Authority Act, the Santa Cruz Metropolitan Transit District Act of 1967, the Southern California Rapid Transit District Law, the San Joaquin Regional Transit District Act, and the West Bay Rapid Transit Authority Act. The proposed amendments restructure PERB's regulations and clarify the rights of parties and the procedures in representation matters. The current regulations' deficits are many. Currently, PERB's transit representation regulations are scattered across three separate chapters, Chapters 1, 6 and 9, leading to confusion and unnecessary disputes. The bulk of the transit regulations (Chapter 9) were promulgated by the Department of Industrial Relations (DIR) in 1983. When the Legislature transferred the State Mediation and Conciliation Service (SMCS) from DIR to PERB in July 2012, PERB assumed jurisdiction over appeals from SMCS determinations in transit representation matters. After this transfer was complete, PERB adopted the pre-existing transit act regulations, without any material changes. After forty years, the existing regulations are outdated, out of sync with PERB administrative practice and procedure, and difficult for constituents to follow and PERB to administer. Among the most glaring deficits, the existing regulations refer to the various representation petitions by reference to the federal National Labor Relations Act (NLRA). The current regulations use terminology borrowed from the NLRA which is not generally familiar to public sector practitioners and refer to petition types that do not correspond to the types of petitions PERB routinely processes. Moreover, many of the individual regulations lack clarity in that one regulation may cover many disparate topics in an unclear way, leading to several wrong interpretations by SMCS and PERB and to confusion by practitioners as to the appropriate petition to file or procedure to follow. The existing regulations also require adherence to relevant federal law and procedure,

notwithstanding statutory variance and that some enabling acts do not reference federal law at all. Finally, the TEERA regulations, which currently occupy an entire chapter despite the fact that they apply only to a small group of supervisory employees of the Los Angeles County Metropolitan Transit Authority, are overly complex, unclear in their limited application, and improperly involve PERB in the request for recognition process without the parties' consent.

## **ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS**

The OCTDA, SFBART Act, and Sacramento RTD Act amendments affect thousands of employees across the Orange County Transportation Authority, San Francisco Bay Area Rapid Transit District, and Sacramento Regional Transit District for the purposes of collective bargaining, the employee organizations that represent these employees, and the employers. A purpose of the OCTDA, SFBART Act, and Sacramento RTD Act is to promote full communication between the transit district employers and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the transit district employers and public employee organizations. The proposed regulatory changes will implement the Board's jurisdiction over matters arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and will extend application of PERB's existing unfair practice procedures to alleged violations of the OCTDA, SFBART Act, and Sacramento RTD Act. Because PERB's unfair practice charge process is well-established, the implementation of these procedures for matters arising under the OCTDA, SFBART Act, and Sacramento RTD Act will aid in the expedient resolution of disputes arising under these acts, in furtherance of the policies underlying the acts. The proposed regulations will ensure that the procedural and substantive rights of these transit district employees, employee organizations, and the transit district employers will be protected. California residents will receive the benefit of stable collective bargaining and dispute resolution in the form of continuous delivery of the essential services that the transit district employers and its employees provide to California communities.

The proposed changes to the regulations concerning representation matters under TEERA and other specified transit district acts will clarify parties' rights and PERB's procedures, thereby improving public sector labor relations. A decade after PERB gained jurisdiction over transit representation matters, and four decades after the majority of the regulations' initial promulgation, the proposed revisions represent a complete rewrite and reordering of existing regulations for the purpose of clarifying transit representation practice and procedure and guiding SMCS, PERB itself, and PERB's constituents and practitioners in its application. The proposed revisions will place all transit representation regulations, currently scattered over three chapters, in one chapter, containing individual articles which address separate subjects in a clear manner. The proposed regulations will no longer describe representation petitions by reference to the NLRA, but instead, in separate articles, will describe each available petition using terminology familiar to PERB practitioners and tracking PERB's general representation practice, while still maintaining adherence to federal law, where necessary. The proposed regulations will correct an error of law in the existing regulations, which requires adherence to relevant NLRA law and procedure in all instances, notwithstanding statutory variations in the enabling acts, by adding to

the existing regulation a definition of when federal law is relevant. The proposed unit determination provisions, which codify the community of interest factors set out in controlling appellate court decisions and PERB's recent precedential decisions, will provide the parties and SMCS hearing officers with guiding principles for initial unit determination and accretion matters, and stave off disputes caused by misunderstanding of the applicable principles. Finally, the proposed regulations will streamline the existing TEERA regulations, fix an error of law, and clarify that those regulations are only applicable to supervisory employees of the Los Angeles County Metropolitan Transit Authority.

## **SECTION BY SECTION EXPLANATION FOR ADOPTION**

### **A. Adoption of New Sections**

**Proposed section 32019** defines terms applicable for cases filed under the OCTDA.

Proposed subdivision (a) adopts a definition of "OCTDA," to mean the "Orange County Transit District Act" (Public Utilities Code section 40000 et seq.). The Orange County Transit District Act is referred to as the "OCTDA," and the definition in this proposed section reflects the common usage of this term. This proposed subdivision is necessary to promote clarity throughout the Board's regulations.

Proposed subdivision (b) defines the terms "employer," "PUC transit employer," or "authority" to mean the Orange County Transportation Authority, as established in Public Utilities Code section 40060 et seq. The proposed subdivision is necessary to promote clarity regarding the different ways to which the Orange County Transportation Authority may be referred to throughout the Board's regulations.

**Proposed section 32019.5** defines terms applicable for cases filed under the San Francisco Bay Area Rapid Transit District Act.

Proposed subdivision (a) adopts a definition of "SFBART Act," to mean the "San Francisco Bay Area Rapid Transit District Act" (Public Utilities Code section 28848 et seq.). The San Francisco Bay Area Rapid Transit District Act is referred to as the "SFBART Act," and the definition in this proposed section reflects the common usage of this term. This proposed subdivision is necessary to promote clarity throughout the Board's regulations.

Proposed subdivision (b) defines the terms "employer," "PUC transit employer," or "authority" to mean the San Francisco Bay Area Rapid Transit District, as established in Public Utilities Code section 28848 et seq. The proposed subdivision is necessary to promote clarity regarding the different ways to which the San Francisco Bay Area Rapid Transit District may be referred to throughout the Board's regulations.

**Proposed section 32019.6** defines terms applicable for cases filed under the Sacramento Regional Transit District Act.

Proposed subdivision (a) adopts a definition of "Sacramento RTD Act," to mean the "Sacramento Regional Transit District Act" (Public Utilities Code section 102000 et seq.). The Sacramento Regional Transit District Act is referred to as the "Sacramento RTD Act," and the

definition in this proposed section reflects the common usage of this term. The proposed subdivision is necessary to promote clarity throughout the Board's regulations.

Proposed subdivision (b) defines the terms "employer," "PUC transit employer," or "District" to mean the Sacramento Regional Transit District, including all operations and extensions of its transportation system, regardless of modality or vehicle type, and excluding temporary bus lines as defined in the Public Utilities Codes section 102000 et seq. The proposed subdivision is necessary to promote clarity regarding the different ways to which the Sacramento Regional Transit District may be referred to throughout the Board's regulations.

Proposed subdivision (c) defines the term "exclusive representative" to mean an accredited employee organization recognized or certified as the exclusive negotiating representative of employees in an appropriate unit within the District. The proposed subdivision is necessary to promote clarity throughout the Board's regulations.

Proposed subdivision (d) explains that an exclusive representative may elect to move one or more of its bargaining units to PERB's jurisdiction for unfair practice charges. The proposed subdivision further states that notification by the exclusive representative shall be filed through e-PERB with the General Counsel or the General Counsel's designee, and the exclusive representative shall serve the District pursuant to Section 32140 of the Board's Regulations. The proposed subdivision also states that such election shall be irrevocable for that unit.

Public Utilities Code section 102408, subdivision (b)(1), sets forth that an exclusive representative may elect for PERB jurisdiction over one or more of its bargaining unit, requires that notice be given to the General Counsel or designee and served on the District, and states that the election is irrevocable. The proposed subdivision protects these rights provided for in the Public Utilities Code. Service of notice is necessary so that the District will be aware of which bargaining units are subject to PERB's jurisdiction.

Proposed subdivision (e) defines the term "opt in unit" to mean a bargaining unit which the exclusive representative elects to be subject to PERB's jurisdiction for unfair practice charges. Because the Sacramento RTD Act allows exclusive representatives to elect for bargaining units to fall under PERB's jurisdiction, the proposed subdivision is necessary to define a term distinguishing the units that fall under PERB's jurisdiction and to promote clarity and consistency within the Board's regulations.

**Proposed section 32095** adopts a definition of the term "bargain" to encompass its various meanings found across statutes and PERB's case law, specifically that the term "bargain" is equivalent to "meet and confer" and "meet and negotiate." The proposed section is necessary to promote clarity throughout the Board's regulations and processes.

**Proposed section 32613** describes employer unfair practices under the OCTDA.

Proposed subdivision (a) makes it unlawful for the Orange County Transportation Authority to impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of their exercise in protected rights under the OCTDA.

Proposed subdivision (b) makes it unlawful for the Orange County Transportation Authority to deny to employee organizations rights guaranteed to them by the OCTDA or local rules and regulations.

Proposed subdivision (c) makes it unlawful for the Orange County Transportation Authority to refuse or fail to meet and confer with an exclusive representative.

Proposed subdivision (d) makes it unlawful for the Orange County Transportation Authority to dominate or interfere with formation or administration of employee organizations, to support an organization, or show preference for one organization over another.

Proposed subdivision (e) makes it unlawful for the Orange County Transportation Authority to fail to exercise good faith when participating in impasse procedures.

Proposed subdivision (f) makes it unlawful for the Orange County Transportation Authority to adopt or enforce rules or regulations not in conformance with Public Utilities Code sections 40000, et seq.

Proposed subdivision (g) makes it unlawful for the Orange County Transportation Authority to violate the Public Employees Communication Chapter.

Proposed subdivision (h) makes it unlawful for the Orange County Transportation Authority to violate the Prohibition on Public Employers Deterring or Discouraging Union Membership.

Proposed subdivision (i) makes it unlawful for the Orange County Transportation Authority to violate in any other way the OCTDA or any local rule or regulation.

The proposed subdivisions are necessary to protect the rights of employees to be represented by a representative of their choosing, and to protect the rights of employee organizations to represent their members, by making it an unfair practice for the employer to engage in conduct that might jeopardize those rights. The proposed subdivisions are necessary to provide clarity regarding the legal obligations of the Orange County Transportation Authority and what conduct may be considered the basis of an unfair practice charge before PERB.

**Proposed section 32613.5** describes employee organization unfair practices under the OCTDA.

Proposed subdivision (a) makes it unlawful for an employee organization to cause or attempt to cause the Orange County Transit District Authority to engage in conduct prohibited by the OCTDA or local rules and regulations.

Proposed subdivision (b) makes it unlawful for an employee organization to impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the OCTDA or local rules and regulations.

Proposed subdivision (c) makes it unlawful for an employee organization to refuse or fail to meet and confer in good faith.

Proposed subdivision (d) makes it unlawful for an employee organization to fail to exercise good faith while participating in impasse procedures.

Proposed subdivision (e) makes it unlawful for an employee organization to violate the Public Employees Communication Chapter.

Proposed subdivision (f) makes it unlawful for an employee organization to violate the Prohibition on Public Employers Deterring or Discouraging Union Membership.

Proposed subdivision (g) makes it unlawful for an employee organization to violate the OCTDA or local rules or regulations in any other way.

The proposed subdivisions are necessary to protect the rights of employees to be represented by a representative of their choosing, and to protect the bargaining rights of employers, by making it an unfair practice for an employee organization to engage in conduct that might jeopardize those rights. The proposed subdivisions are necessary to provide clarity regarding the legal obligations of employee organizations representing employees of the Orange County Transit District Authority and what conduct may be considered the basis of an unfair practice charge before PERB.

**Proposed section 32614** describes employer unfair practices under the SFBART Act.

Proposed subdivision (a) makes it unlawful for the San Francisco Bay Area Rapid Transit District to impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of their exercise in protected rights under the SFBART Act.

Proposed subdivision (b) makes it unlawful for the San Francisco Bay Area Rapid Transit District to deny to employee organizations rights guaranteed to them by the SFBART Act.

Proposed subdivision (c) makes it unlawful for the San Francisco Bay Area Rapid Transit District to knowingly provide an exclusive representative with inaccurate information or refuse or fail to meet and confer with an exclusive representative.

Proposed subdivision (d) makes it unlawful for the San Francisco Bay Area Rapid Transit District to dominate or interfere with formation or administration of employee organizations, to support an organization, or show preference for one organization over another.

Proposed subdivision (e) makes it unlawful for the San Francisco Bay Area Rapid Transit District to fail to exercise good faith when participating in impasse procedures.

Proposed subdivision (f) makes it unlawful for the San Francisco Bay Area Rapid Transit District to violate the Public Employees Communication Chapter.

Proposed subdivision (g) makes it unlawful for the San Francisco Bay Area Rapid Transit District to violate the Prohibition on Public Employers Deterring or Discouraging Union Membership.

Proposed subdivision (h) makes it unlawful for the San Francisco Bay Area Rapid Transit District to violate in any other way the SFBART Act.

Public Utilities Code section 28849, subdivision (a), recognizes the right of employees to join employee organizations of their own choice, to be represented, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford employees a voice at work. The proposed subdivisions are necessary to protect these rights by making it an unfair practice for the employer to engage in conduct that might jeopardize those rights. The proposed subdivisions are necessary to provide clarity regarding the legal obligations of the San Francisco Bay Area Rapid Transit District and what conduct may be considered the basis of an unfair practice charge before PERB.

**Proposed section 32614.1** describes employee organization unfair practices under the SFBART Act.

Proposed subdivision (a) makes it unlawful for an employee organization to cause or attempt to cause the San Francisco Bay Area Rapid Transit District to engage in conduct prohibited by the SFBART Act.

Proposed subdivision (b) makes it unlawful for an employee organization to impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the SFBART Act.

Proposed subdivision (c) makes it unlawful for an employee organization to refuse or fail to bargain in good faith.

Proposed subdivision (d) makes it unlawful for an employee organization to fail to exercise good faith while participating in impasse procedures.

Proposed subdivision (e) makes it unlawful for an employee organization to violate the Public Employees Communication Chapter.

Proposed subdivision (f) makes it unlawful for an employee organization to violate the Prohibition on Public Employers Deterring or Discouraging Union Membership.

Proposed subdivision (g) makes it unlawful for an employee organization to violate the SFBART Act.

Public Utilities Code section 28849, subdivision (a), recognizes the right of employees to join employee organizations of their own choice, to be represented, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford employees a voice at work. The proposed subdivisions are necessary to protect these rights by making it an unfair practice for the employee organization to engage in conduct that might jeopardize those rights. The proposed subdivisions are necessary to provide clarity regarding the legal obligations of employee organizations representing employees of San Francisco Bay Area Rapid Transit District and what conduct may be considered the basis of an unfair practice charge before PERB.



**Proposed section 32614.2** describes employer unfair practices under the Sacramento RTD Act.

Proposed subdivision (a) makes it unlawful for the Sacramento Regional Transit District to impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of their exercise in protected rights under the Sacramento RTD Act.

Proposed subdivision (b) makes it unlawful for the Sacramento Regional Transit District to deny to employee organizations rights guaranteed to them by the Sacramento RTD Act.

Proposed subdivision (c) makes it unlawful for the Sacramento Regional Transit District to knowingly provide an exclusive representative with inaccurate information or refuse or fail to meet and confer with an exclusive representative.

Proposed subdivision (d) makes it unlawful for the Sacramento Regional Transit District to dominate or interfere with formation or administration of employee organizations, to support an organization, or show preference for one organization over another.

Proposed subdivision (e) makes it unlawful for the Sacramento Regional Transit District to fail to exercise good faith when participating in impasse procedures.

Proposed subdivision (f) makes it unlawful for the Sacramento Regional Transit District to violate the Public Employees Communication Chapter.

Proposed subdivision (g) makes it unlawful for the Sacramento Regional Transit District to violate the Prohibition on Public Employers Deterring or Discouraging Union Membership.

Proposed subdivision (h) makes it unlawful for the Sacramento Regional Transit District to violate in any other way the Sacramento RTD Act.

Public Utilities Code section 102400 recognizes the right of employees to join employee organizations of their own choice, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The proposed subdivisions are necessary to protect these rights by making it an unfair practice for the employer to engage in conduct that might jeopardize those rights. The proposed subdivisions are necessary to provide clarity regarding the legal obligations of the Sacramento Regional Transit District and what conduct may be considered the basis of an unfair practice charge before PERB.

**Proposed section 32614.3** describes employee organization unfair practices under the Sacramento RTD Act.

Proposed subdivision (a) makes it unlawful for an employee organization to cause or attempt to cause the Sacramento Regional Transit District to engage in conduct prohibited by the Sacramento RTD Act.

Proposed subdivision (b) makes it unlawful for an employee organization to impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or

otherwise interfere with, restrain, or coerce employees because of the exercise of rights guaranteed to them by the Sacramento RTD Act.

Proposed subdivision (c) makes it unlawful for an employee organization to refuse or fail to bargain in good faith.

Proposed subdivision (d) makes it unlawful for an employee organization to fail to exercise good faith while participating in impasse procedures.

Proposed subdivision (e) makes it unlawful for an employee organization to violate the Public Employees Communication Chapter.

Proposed subdivision (f) makes it unlawful for an employee organization to violate the Prohibition on Public Employers Deterring or Discouraging Union Membership.

Proposed subdivision (g) makes it unlawful for an employee organization to violate the Sacramento RTD Act.

Public Utilities Code section 102400 recognizes the right of employees to join employee organizations of their own choice, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The proposed subdivisions are necessary to protect these rights by making it an unfair practice for the employee organization to engage in conduct that might jeopardize those rights. The proposed subdivisions are necessary to provide clarity regarding the legal obligations of employee organizations representing employees of the Sacramento Regional Transit District and what conduct may be considered the basis of an unfair practice charge before PERB.

**Proposed Subchapter 1** regards general provisions relevant to all representation proceedings under Public Utilities Code transit district acts. The separation of Subchapter 1 from the proposed Subchapter 2, which includes new and existing regulations regarding representation procedures under the Los Angeles County Metropolitan Transportation Authority, is necessary because representation proceedings regarding transit district acts other than TEERA will now be located in the proposed Subchapter 3.

**Proposed section 70050** differentiates that Subchapter 2 of Chapter 6 pertains to TEERA, while Subchapter 3 pertains to all other transit labor relations acts under the PUC. This proposed section is necessary to clarify the structure of Chapter 6, particularly since this package proposes dividing Chapter 6 into three Subchapters, changing what was previously Subchapter 1 into Subchapter 2, and replacing Chapter 9 with Chapter 6, Subchapter 3.

**Proposed Subchapter 2** regards representation procedures under TEERA. Previously, Chapter 6, Subchapter 1, regarded such representation procedures. The separation of Subchapter 1, which includes provisions relevant to TEERA and other transit district acts, from the proposed Subchapter 2 is necessary because representation proceedings regarding transit district acts other than TEERA will now be located in the proposed Subchapter 3.

**Proposed section 71015** requires parties, except for unrepresented individual natural persons as provided in Chapter 1 of these Regulations, to file all documents using e-PERB. This proposed section is necessary to reflect PERB's updated electronic filing regulations and provide clarity to parties regarding how documents should be filed with PERB.

**Proposed section 71091** states that Board investigations will be conducted in accordance with Chapter 6, Article 4 of PERB's regulations, which governs Board investigations in TEERA representation cases. This proposed section is necessary to provide guidance on how Board investigations in request for recognition cases will be conducted and maintain consistency within the Board's procedures.

**Proposed Article 8** governs requests for amendment of certification filed pursuant to TEERA. This proposed article is necessary to provide guidance on how parties can request an amendment of certification in TEERA cases.

**Proposed section 71690** states that requests for amendment of certification under TEERA are governed under Chapter 1, Subchapter 6, Article 3 of PERB's regulations, which governs PERB's general procedures for requests for amendment of certification. This proposed section is necessary to provide guidance on PERB's procedures for determining requests for amendments of certification under TEERA and maintaining consistency within the Board's procedures.

**Proposed Article 9** regards decertification petitions. This proposed article is necessary to provide guidance on how parties can file petitions for decertification under TEERA.

**Proposed section 71695** states that petitions for decertification under TEERA are governed by Chapter 1, Subchapter 6, Article 4 of PERB's regulations, which governs PERB's general procedures for decertification petitions. This proposed section is necessary to provide guidance on how parties can file petitions for decertification under TEERA and maintain consistency within the Board's procedures.

**Proposed Article 10** regards unit modification petitions. This proposed article is necessary to provide guidance on how parties can file unit modification petitions under TEERA.

**Proposed section 71698** states that unit modification petitions under TEERA are governed by Chapter 1, Subchapter 6, Article 6 of PERB's regulations, which governs PERB's general procedures for unit modification petitions. This proposed article is necessary to provide guidance on how parties can file unit modification petitions under TEERA and maintain consistency within the Board's procedures.

**Proposed Subchapter 3** governs representation proceedings under Public Utilities Code transit labor relations acts other than TEERA. This proposed Subchapter will contain the guidelines provided in and replace the current Chapter 9 of the Board's regulations, which governs procedures under specified transit district acts and laws. Replacing Chapter 9 with Chapter 6, Subchapter 3 will place all transit district act procedures in one chapter and thereby create more organized regulations.

**Proposed Article 1** governs general provisions regarding representation proceedings under Public Utilities Code transit labor relations acts other than TEERA. This proposed article is necessary to provide guidance on the regulations applicable to all the following representation procedures.

**Proposed section 72000** introduces the transit labor relations acts under PERB's jurisdiction other than TEERA and defines terms under those acts.

Subdivision (a) defines "PUC transit employer" to mean the Alameda-Contra Costa Transit District, the Fresno Metropolitan Transit District, the Golden Empire Transit District, the Marin County Transit District, the North County Transit District, the Orange County Transit District, the Sacramento Regional Transit District, San Diego County Transit District, the San Diego Metropolitan Transit System, the San Francisco Bay Area Rapid Transit District, the San Mateo County Transit District, the Santa Barbara Metropolitan Transit District, the Santa Clara Valley Transportation Authority, the Santa Cruz Metropolitan Transit District, the Los Angeles County Metropolitan Transportation Authority, the San Joaquin Regional Transit District, and the West Bay Rapid Transit Authority, as the case may be. This proposed subdivision is necessary to clarify how the term "PUC transit employer" will be used throughout this subchapter and because section 93000, which previously contained this definition, is proposed to be repealed as part of this rulemaking package.

Subdivision (b) defines "law" to mean the Transit District Law, Public Utilities Code, Section 24501 et seq.; Fresno Metropolitan Transit District Act of 1961, Public Utilities Code, Appendix 1, Section 1.1 et seq.; Golden Empire Transit District Act, Public Utilities Code, Section 101000 et seq.; Marin County Transit District Act of 1964, Public Utilities Code, Section 70000 et seq.; North County Transit District Act, Public Utilities Code, Section 125000 et seq.; Orange County Transit District Act of 1965, Public Utilities Code, Section 40000 et seq.; Sacramento Regional Transit District Act, Public Utilities Code, Section 102000 et seq.; San Diego County Transit District Act of 1965, Public Utilities Code, Section 90000 et seq.; Mills-Deddeh Transit Development Act, Public Utilities Code, Section 120000 et seq.; San Francisco Bay Area Rapid Transit District Act, Public Utilities Code, Section 28500 et seq.; San Mateo County Transit District Act, Public Utilities Code, Section 103000 et seq.; Santa Barbara Metropolitan Transit District Act of 1965, Public Utilities Code, Section 95000 et seq.; Santa Clara Valley Transportation Authority, Public Utilities Code, Section 100000 et seq.; Santa Cruz Metropolitan Transit District Act of 1967, Public Utilities Code, Section 98000 et seq.; Southern California Rapid Transit District Law, Public Utilities Code, Section 30000 et seq.; San Joaquin Regional Transit District Act, Public Utilities Code, Section 50000 et seq.; and West Bay Rapid Transit Authority Act, Public Utilities Code, Appendix 2, Section 1.1 et seq. This proposed subdivision is necessary to clarify how "law" will be used throughout this subchapter, and because section 93000, which previously contained this definition, is proposed to be repealed.

Subdivision (c) provides definitions for relevant terms. Subdivision (c)(1) defines "employer" or "PUC transit employer" as the governing board of a PUC transit employer, including any person acting as an agent of the employer. This definition is necessary to provide clarity in the meaning of the term as it is used in proposed Subchapter 3.

Subdivision (c)(2) defines “employee” or “PUC transit employee” to mean any employee of any PUC transit employer. This definition is necessary to provide clarity in the meaning of the term as it is used in proposed Subchapter 3.

Subdivision (c)(3) defines “employee organization” to mean any organization of any kind in which PUC transit employees participate and that exists for the purpose, in whole or in part, of dealing with public transit employers concerning grievances, labor disputes, wage, hours, and other terms and conditions of employment. This definition is necessary to provide clarity in the meaning of the term as it is used in proposed Subchapter 3.

Subdivision(c)(4) defines “certified organization” to mean an employee organization that has been certified by SMCS as the exclusive representative of employees in an appropriate unit after a proceeding under these regulations. This definition is necessary to provide clarity in the meaning of the term as it is used in proposed Subchapter 3.

Subdivision (c)(5) provides that representation proceedings concerning the Sonoma-Marina Area Rail Transit District are subject to the MMBA and local rules, not these regulations. This definition is necessary to provide clarity in the meaning of the term as it is used in proposed Subchapter 3.

Subdivision (c)(6) defines “hearing officer” as a hearing officer appointed by the Director. This definition is necessary to provide clarity in the meaning of the term as it is used in proposed Subchapter 3.

Subdivision (c)(7) defines “window period” as the 31-day period which is not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of understanding negotiated by the PUC transit employer and the exclusive representative. The “window period” is necessary to support the policy furthered by what is colloquially referred to as the “contract bar.” The purpose of the contract bar is to balance the need for stability during the term of a memorandum of understanding with the employees’ right to free choice of their representative. The window period creates this balance by providing a designated period of time in which a representation petition may be properly filed during the term of a memorandum of understanding. Accordingly, this proposed section is necessary to provide clarity to the parties regarding when a representation proceeding may be initiated under transit district labor relations acts other than TEERA during the term of a memorandum of understanding.

**Proposed section 72001** applies Chapter 1, Subchapter 2 of PERB’s regulations to representation proceedings involving transit labor relations acts under the PUC and further outlines filing and service requirements.

Proposed subdivision (a) states that section 32110 of the Board’s regulations regarding electronic filing of documents applies to PUC transit representation documents filed with SMCS, except that electronic filing is not mandatory for unrepresented individuals. This proposed subdivision is necessary to reflect PERB’s updated electronic filing requirements.

Proposed subdivision (b) provides that the PERB Sacramento Regional Office will be the appropriate location for filing documents with SMCS in PUC transit representation matters.

Because PERB has three regional offices across California, this proposed subdivision is necessary to clarify that the Sacramento Regional Office will be the appropriate filing location for all PUC transit representation matters, regardless of location.

Proposed subdivision (c) applies section 32140 of the Board's regulations regarding service to PUC transit representation documents. The proposed subdivision is necessary to clarify that PERB's service requirements are applicable to representation matters in PUC transit district acts.

Proposed subdivision (d) allows any person authorized to act on behalf of the PUC transit employer to receive service of documents. The proposed subdivision is necessary to provide guidance to parties on the appropriate person to serve when serving documents on a PUC transit employer.

**Proposed Article 2** governs petitions for certification filed pursuant to PUC transit district acts other than TEERA. Guidance regarding petitions for certification under these transit district acts was previously contained in sections 93005, 93010, and 93015, but with the proposed changes, the information regarding certification petitions will be covered across sections 72005, 72010, 72020, and 72025. The proposed article is necessary to better organize the Board's regulations and to separate petitions for certification from other representation matters under these PUC transit districts.

**Proposed section 72005** provides the procedure for employee organizations to petition to be certified as the exclusive representative of an appropriate unit of employees under PUC transit district acts other than TEERA.

Proposed subdivision (a) allows an employee organization to file a petition for certification with SMCS and lists the forms such a petition may take. Filing the petition for certification with SMCS is necessary to initiate the certification process with PERB. Subdivision (a)(1) allows an employee organization to file an initial petition wishing to be certified as the exclusive representative where there is no incumbent exclusive representative. Subdivision (a)(2) allows an employee organization to file a petition to decertify and replace an incumbent exclusive representative. Subdivision (a)(3) allows an employee organization to file a severance petition to sever a group of employees who are already members of a large established unit represented by an incumbent exclusive representative. The proposed subdivision and its subparts are necessary to clarify the different ways an employee organization can petition for certification depending on the circumstances of the petition, including whether there is an incumbent representative and whether the petitioner seeks to represent the entire unit or not.

Proposed subdivision (b) requires a petition to be filed in the Sacramento Regional Office. This subdivision also requires a signature and lists the information required in the petition. Subdivision (b)(1) requires the contact information for the employee organization and agent to be contacted. Subdivision (b)(2) requires the contact information for the transit employer and the employer's agent to be contacted. Subdivision (b)(3) requires a description of the proposed unit. Subdivision (b)(4) requires the approximate number of employees in the proposed unit. And subdivision (b)(5) requires the contact information for any other employee organization known to have an interested in representing employees as well as a description of any contracts

covering the employee in the unit. This information is necessary to facilitate PERB's communication with the parties.

Proposed subdivision (c) requires that the petition be accompanied by proof of at least 30 percent support of employee in the unit. Subdivision (c)(1) directs to section 32700 of the Board's regulations for the definition of proof of support. Using the existing standard for determining the sufficiency of proof of support is necessary to avoid confusing and to maintain consistency in PERB's procedures for all the labor relations statutes it administers. Proof of 30 percent support is threshold of employee support that an employee organization must make when filing a petition for certification under PERB's existing representation regulations which apply to non-PUC transit certification petitions. Using the same threshold in petitions for certification filed under PUC transit district acts is necessary to avoid confusion and to maintain consistency in PERB's procedures for all of the labor relations statutes it administers.

Subdivision (c)(2) states that an adequate showing of interest may also be demonstrated by proof that (i) the petitioner held a contract covering employees in a utility or facility at the time it was acquired by the PUC transit employer, (ii) the PUC transit employer assumed such collective bargaining agreement, and (iii) the proposed unit is identical to the previously established unit. Because PUC transit employers may acquire new facilities, and some of the PUC transit district acts require the PUC transit employer to appoint existing employees at that facility to be appointing to comparable positions within the transit district, this subdivision is necessary to allow those employees to maintain representation without providing 30 percent proof of support. This will ensure that that transit district employees remain represented by their chosen exclusive representative, even with a new PUC transit district employer, and help maintain fair collective bargaining.

Subdivision (c)(3) states that proof of support will only be filed at the Sacramento Regional Office. Proof of support is excluded from service on other parties because this information is confidential.

Proposed subdivision (d) requires service and proof of service of the petition, excluding proof of employee support. Service and proof of service are necessary to ensure that all parties receive adequate notice of the petition for certification and can take any appropriate action.

The proposed section is necessary to replace sections 93005, 93010, and 93015, which are proposed to be repealed.

**Proposed section 72010** describes the process for the Board's determination of proof of support of petitions for certification filed pursuant to PUC transit labor relations acts other than TEERA. Proof of support is defined under Section 32700 of existing PERB regulations. The purpose of proof of support is to demonstrate employee support for a particular employee organization or petition to warrant invoking Board processes to establish or change an employee unit or run an election.

Proposed subdivision (a) requires the PUC transit employer to file with PERB within 20 days of service of the petition a list of employees employed in the claimed unit as of the last date of the

payroll period immediately preceding the date the petition was filed. This proposed subdivision is necessary to provide the employer with certainty as to when it must provide the list of employees. The list of employees is necessary for the Board to determine whether the petitioner has sufficiently demonstrated proof of support. The employer is required to provide this information because it is in possession of this information and best-suited to produce it. Limiting the list of employees to those who were on the payroll as of the date the petition was filed allows the Board to determine proof of support at the time the petition was filed.

Proposed subdivision (b) states that the Director of SMCS may allow a petitioner 10 extra days to perfect insufficient proof of support if the initial determination of proof of support is insufficient. This proposed subdivision is necessary because it allows the petitioning employee organization to gather additional proof of employee support rather than requiring it to start the certification process from the beginning when the employee organization is faced with an initial determination of insufficient proof of support.

Proposed subdivision (c) requires the Director to inform parties in writing of the determination of proof of support. This proposed subdivision is necessary to provide clarity to the parties regarding the Board's obligations in proof of support determinations.

**Proposed section 72020** concerns amendments to a petition for certification.

Proposed subdivision (a) allows a petition for certification to be amended to correct technical errors or add or delete job classifications from the proposed unit at any time prior to the issuance of the notice of hearing or notice of intent to conduct election. This proposed subdivision is necessary to provide the petitioner with flexibility to correct mistakes that are generally non-substantive in nature, subject to the requirements provided in proposed subdivision (b) for amendments that add new job classifications to a proposed unit. These types of corrections will most likely not affect the parties' rights, especially if the Board has yet to determine that a hearing is necessary regarding the petition. The requirement of service and proof of service by the petitioner is necessary to ensure that any interested parties receive notice and a copy of the amended petition.

Proposed subdivision (b) specifies additional requirements for amendments to a petition for certification when a petitioning organization seeks to add new job classifications to a proposed unit. Proposed subdivision (b)(1) requires the petitioning employee organization provide additional proof of support, if needed to maintain standing as a petitioner, and to file the proof of support with the amended petition with PERB. This proposed subdivision is necessary to ensure that if the amendment to the petition is to add new job classifications to the proposed unit that the standard threshold of at least 30 percent of employee support that an employee organization must make when filing a petition for certification is maintained, as required under proposed section 72005, subdivision (c).

Proposed subdivision (b)(2) provides that the employer is to file a response to the amended petition within 15 days following service on the parties of the Board's determination regarding the adequacy of proof of support unless the Board directs otherwise. This proposed subdivision is necessary to create a reasonable time period in which the employer must respond to the



amended petition, but does provide the Board with discretion to adjust the time period as circumstances warrant. Proposed subdivision (b)(2) further provides that the employer's response is to conform with the requirements for employer responses for petitions for certification set forth in proposed Section 72025, and this language is necessary for the reasons set forth in proposed Section 72025.

Proposed subdivision (c) provides that any amendments to the petition to correct technical errors or to add or delete job classifications from a party's proposed unit following the issuance of the notice of hearing are at the discretion of the hearing officer. Once the notice of hearing has issued, the parties have begun preparing in earnest to litigate a dispute involving the petition. Allowing the petitioning employee organization to amend the petition at this late stage has the potential to disrupt the proceedings by creating undue delay. Accordingly, this proposed subdivision is necessary to provide the hearing officer with discretion to balance the benefit of amending the petition at this late stage against any impediment caused by the amendment. This proposed subdivision also subjects the hearing officer's discretion to approve an amendment to add job classifications to the requirement that sufficient proof of support is provided if needed as discussed above for proposed subdivision (b)(1).

**Proposed section 72025** concerns the employer's response to a petition for certification.

Proposed subdivision (a) requires the employer to file a response to a petition for certification within 15 days of SMCS's determination regarding the adequacy of proof of support of the petition. This proposed subdivision is necessary to create a reasonable time period in which the employer must respond to the petition.

Subdivision (b) requires the employer to serve the response and provide proof of service. This proposed subdivision is necessary to confirm that the employer complied with its obligation to provide a response to the petition and notice to parties of the response.

Subdivision (c) provides specific information the employer must provide in drafting its response. This proposed subdivision is necessary to ensure that the employer's response contains all relevant information.

Proposed subdivision (c)(1) requires the response to contain the employer's contact information. This subdivision is necessary to facilitate communication with the employer.

Proposed subdivision (c)(2) requires the employer to state its position regarding the petition. Specifically, proposed subdivision (c)(2)(A) inquires whether the employer reasonably doubts the appropriateness of the proposed unit, and if so, what classifications or positions remain in dispute, and for the employer to explain its position regarding the dispute. Proposed subdivision (c)(2)(B) inquires whether the employer has other reasons to believe that a representation election should not be held in the proposed unit, and if so, for the employer to explain those reasons. The information requested in the two proposed subdivisions is necessary to put the parties on notice of the employer's objections to the petition in the event any exist. Providing this information will also facilitate the board's investigation and processing of the petition.

**Proposed Article 3** under Chapter 6, Subchapter 3, titled Employer Representation Petition, contains a proposed regulation relevant to representation petitions filed by employers pursuant to PUC transit district acts other than TEERA. This proposed article is necessary to distinguish an employer-filed representation petition from petitions filed by employees or employee organizations.

**Proposed section 72030** allows a PUC transit employer to file a petition for recognition when one or more employee organizations have presented it with a request to be recognized as the exclusive representative of a unit of employees.

Proposed subdivision (a) provides the circumstances under which an employer may file such a petition. Proposed subdivision (a)(1) allows the employer to file a representation petition when it reasonably doubts that the employee organization has majority support. Proposed subdivision (a)(2) allows the employer to file a representation petition when it reasonably doubts the appropriateness of the requested unit. Proposed subdivision (a)(3) allows the employer to file a representation petition when it has been presented with competing claims for representation or another employee organization challenges the appropriateness of the requested unit. Proposed subdivision (a)(4) allows the PUC transit employer to file a representation petition where there is an incumbent exclusive representative and the employer has a good faith uncertainty as to the exclusive representative's continuing majority status. The respective PUC transit district acts require the PUC transit employer to submit representation matters to SMCS when there is a question regarding majority representation or unit appropriateness. This proposed subdivision is necessary to clarify the circumstances under which the PUC transit employers can file representation petitions to SMCS.

Proposed subdivision (b) provides that an employer's petition must be signed by an authorized agent. This requirement is necessary to ensure that the petition is filed by an individual authorized by the employer to do so. The proposed subdivision further states the information that must be contained in the employer's representation petition. Proposed subdivision (b)(1) requires the petition to contain the employer's and its agent's contact information. Proposed subdivision (b)(2) requires the petition to contain the employee organizations' and their agents' contact information. This information is necessary to facilitate communication with the parties. Proposed subdivision (b)(3) requires the employer to explain the basis of its position supporting the petition. This information is necessary to put the parties on notice of the employer's position regarding the question of representation. Providing this information will also facilitate the Board's investigation and processing of the petition.

**Proposed Article 4** under Chapter 6, Subchapter 3, titled Petition for Decertification, contains proposed regulations concerning decertification petitions filed pursuant to PUC transit labor relations acts other than TEERA. Regulations regarding decertification petitions were previously located in Sections 93005, 93010, and 93015, along with regulations regarding other types of representation petitions. The proposed amendment separates regulations regarding decertification procedures into their own article. The proposed article is necessary to promote clarity within the Board's regulations.

**Proposed section 72035** describes the process for an employee, group of employees, or employee organization acting on those employees' behalf to file a petition to decertify an existing exclusive representative of employees pursuant to the PUC transit labor relations acts other than TEERA.

Proposed subdivision (a) allows an employee or group of employees within the bargaining unit, or an employee organization acting on their behalf, to file a petition to decertify an existing exclusive representative in an established unit. Allowing employees to file such a petition is necessary to protecting employees' right to representation by an organization of their choosing. This proposed subdivision is necessary to clarify who can file a decertification petition.

Proposed subdivision (a) also states that the petition shall be filed at the Sacramento Regional Office pursuant to Sections 32075, 32110, and 32115 of the Board's regulations, which govern PERB's location and electronic filing requirements. This is necessary to provide guidance on petition filing requirements and keep decertification filing requirements consistent with PERB's filing practices. Proposed subdivision (a) further states that decertification petitions are considered petitions for certification and should be filed pursuant to regulations governing petitions for certification. This is necessary to ensure clarity regarding and consistency between the different types of representation matters.

Proposed subdivision (b) requires that the decertification petition be signed by an authorized agent of the petitioner. This requirement is necessary to ensure that the petition is filed by an individual authorized by the petitioner to do so. Proposed subdivision (b) also states the information required to be included in the petition. Proposed subdivision (b)(1) requires the petition to include the contact information for the petitioner and the petitioner's agent. Proposed subdivision (b)(2) requires the contact information for the employee organization that has been certified or is currently recognized by the district employer as the exclusive representative, and the organization's agent. The contact information required by these two subdivisions is necessary to facilitate communication with the parties. Proposed subdivision (b)(3) requires a description of the existing unit. Proposed subdivision (b)(4) requires the approximate number of employees in the existing unit. Proposed subdivision (b)(5) requires the name and address of any other employee organization known to have an interest in representing the employees in the unit. And proposed subdivision (b)(6) requires a description of the contracts covering employees in the unit. These four proposed subdivisions are necessary to facilitate SMCS's investigation and processing of the petition.

Proposed subdivision (c) requires that the petition be accompanied by proof that at least 30 percent of the employees in the established unit no longer desire to be represented by the incumbent representative. Subdivision (c) directs to section 32700 of the Board's regulations for the definition of proof of support. Using the existing standard for determining the sufficiency of proof of support is necessary to avoid confusing and to maintain consistency in PERB's procedures for all the labor relations statutes it administers. Proof of 30 percent support is the standard threshold of employee support that an employee organization must make when filing a petition for certification. Using the same threshold in petitions for certification filed under PUC

transit district acts is necessary to avoid confusion and to maintain consistency in PERB's procedures for all of the labor relations statutes it administers.

Proposed subdivision (d) requires service and proof of service of the petition, excluding proof of employee support. Service and proof of service are necessary to ensure that all parties receive adequate notice of the petition for certification and can take any appropriate action. Proof of support is excluded from service because it is confidential.

**Proposed section 72040** describes the process for SMCS's determination of proof of support of a decertification petition filed pursuant to the PUC transit labor relations acts other than TEERA. Proof of support is defined under Section 32700 of existing PERB regulations. The purpose of proof of support is to demonstrate employee support for a particular employee organization or petition to warrant invoking Board processes to establish or change an employee unit or run an election.

Proposed subdivision (a) requires the PUC transit employer to file with SMCS within 20 days of service of the petition a list of employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Director of SMCS. This proposed subdivision is necessary to provide the employer with certainty as to when it must provide the list of employees, but allow flexibility at the Director's discretion. The list of employees is necessary for the Board to determine whether the petitioner has sufficiently demonstrated proof of support. The employer is required to provide this information because it is in possession of this information and best-suited to produce it. Limiting the list of employees to those who were on the payroll as of the date the petition was filed allows the Board to determine proof of support at the time the petition was filed.

Proposed subdivision (b) requires SMCS to inform parties in writing of the determination of proof of support. This proposed subdivision is necessary to provide clarity to the parties regarding the Board's obligations in proof of support determinations.

**Proposed Article 5** of Chapter 6, Subchapter 3, titled Petition for Clarification of Bargaining Unit, concerns the process for an exclusive representative or a PUC transit employer to file a petition for unit clarification. Regulations regarding unit clarification petitions were previously located in Sections 93005, 93010, and 93015, along with regulations regarding other types of representation petitions. The proposed amendment separates regulations regarding unit clarification procedures into their own article. The proposed article is necessary to promote clarity within the Board's regulations.

**Proposed section 72045** concerns the filing of unit clarification petitions by exclusive representatives of PUC transit employers to update or make certain changes to a unit.

Proposed subdivision (a) a petition for clarification of an existing bargaining unit to be initiated by an exclusive represented or a PUC transit employer when there is a certified or currently recognized bargaining unit. A bargaining unit may change over time depending on the circumstances of employment, and this proposed subdivision is necessary to allow parties to keep bargaining units updated for the most effective collective bargaining and representation.

This proposed subdivision lists the reasons for which a unit clarification petition can be filed. Proposed subdivision (a)(1) states that a petition can be filed to add to the unit unrepresented classifications or positions. Proposed subdivision (a)(2) states that a petition can be filed to delete classifications or positions which are prohibited from inclusion in the unit. Proposed subdivision (a)(3) states that a petition can be filed to make technical changes to clarify or update the unit description. Proposed subdivision (a)(4) states that a petition can be filed to resolve a dispute as to unit placement or designation of a new classification or position. These four proposed subdivisions are necessary to inform the parties of when a petition for clarification is appropriate.

Proposed subdivision (b) requires that the decertification petition be signed by an authorized agent of the petitioner. This requirement is necessary to ensure that the petition is filed by an individual authorized by the petitioner to do so. Proposed subdivision (b) also states the information required to be included in the petition. Proposed subdivision (b)(1) requires the petition to include the contact information for the PUC transit employer and the employer's agent. Proposed subdivision (b)(2) requires the contact information for the employee organization that has been certified or is currently recognized by the district employer as the exclusive representative, and the organization's agent. The contact information required by these two subdivisions is necessary to facilitate communication with the parties. Proposed subdivision (b)(3) requires a description of the contracts covering employees in the unit, if applicable. Proposed subdivision (b)(4) requires a description of the existing unit, including the classifications and positions included and excluded and the number of employees in the existing unit. Proposed subdivision (b)(5) requires a description of the proposed unit. Proposed subdivision (b)(6) requires the approximate number of employees in the proposed unit. Proposed subdivision (b)(7) requires the job classifications of employees as to whom the issue is raised, and the number of employees in each classification. These proposed subdivisions are necessary to facilitate SMCS's investigation and processing of the petition. And proposed subdivision (b)(8) requires a statement by petitioner setting forth reasons why petitioner desires clarification of the unit. This is necessary to put the other parties on notice as to the reasons the petitioner is filing this petition in order to formulate a response.

Proposed subdivision (c) provides that a petition to add classification or position to an established unit will be determined based on the criteria set forth in proposed Chapter 6, Subchapter 4, Article 10, which governs unit determinations in PUC transit labor relations act cases. This is necessary to inform the parties of the basis on which the petition will be evaluated and maintain consistency within the Board's processes. Proposed subdivision (c) also notes that while normally, no proof of support shall be required, if SMCS finds in favor of adding classifications or positions to the existing unit and the number is so great to affect the incumbent representative's majority support within the unit, then SMCS will determine whether to require proof of majority employee support or hold an election upon a showing of support from 30 percent of the persons to be added to the unit. This is necessary to protect employees' right to be represented by a representative of their choosing and ensure fair collective bargaining.

**Proposed section 72050** describes the requirements for filing a response to petition for unit clarification filed solely by an exclusive representative or an employer.

Proposed subdivision (a) allows a party or interested party to file a response to a petition for unit clarification filed solely by an exclusive representative or an employer, unless otherwise notified by SMCS. This is necessary to allow other parties to respond to a petition while still giving SMCS discretion on when to require responses. If a petition is filed jointly by the employer and the exclusive representative, there is no need for a response. Proposed subdivision (a) requires a response to be filed within 20 days following the date of service of the petition. This is necessary to create a reasonable time period in which a party must respond to the petition. Proposed subdivision (a) also requires service and proof of service. Service and proof of service are necessary to ensure that all parties receive adequate notice of the response to the petition and can take any appropriate action.

Proposed subdivision (b) requires that the response to the unit clarification petition be signed by an authorized agent of the responding party. This requirement is necessary to ensure that the response is filed by an individual authorized by the responding party to do so. Proposed subdivision (b) also lists the information required to be included in the petition. Proposed subdivision (b)(1) requires the petition to include the contact information for the petitioner and the petitioner's agent. Proposed subdivision (b)(2) requires the contact information for the responding party and its agent. The contact information required by these two subdivisions is necessary to facilitate communication with the parties. Proposed subdivision (b)(3) requires a statement confirming or refuting the information contained in the unit clarification petition about the unit. Proposed subdivision (b)(4) requires a concise statement of setting forth the reasons for support of or opposition to the unit clarification proposed by the petitioner. These two subdivisions are necessary to put the parties on notice of the responding party's position and aid SMCS's investigation of the petition. Proposed subdivision (b)(5) requires the SMCS unit clarification case number. This is necessary to identify which petition the responding party is responding to.

**Proposed section 72055** provides the process for SMCS's determination of proof of support of a unit clarification petition when required. Proof of support is defined under Section 32700 of existing PERB regulations. The purpose of proof of support is to demonstrate employee support for a particular employee organization or petition to warrant invoking SMCS processes to establish or change an employee unit or run an election.

Proposed subdivision (a) requires the PUC transit employer to file with SMCS within 20 days of the date the proof of support was filed a list of employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Director. This proposed subdivision is necessary to provide the employer with certainty as to when it must provide the list of employees. The list of employees is necessary for SMCS to determine whether the petitioner has sufficiently demonstrated proof of support. The employer is required to provide this information because it is in possession of this information and best-suited to produce it. Limiting the list of employees to those who were on

the payroll as of the date the petition was filed allows the Board to determine proof of support at the time the petition was filed. The subdivision also allows discretion by SMCS.

Proposed subdivision (b) states that the Director of SMCS may allow a petitioner 10 extra days to perfect insufficient proof of support if the initial determination of proof of support is insufficient. This proposed subdivision is necessary because it allows the petitioner to gather additional proof of employee support rather than requiring it to start the certification process from the beginning when the petitioner is faced with an initial determination of insufficient proof of support.

Proposed subdivision (c) requires the Director to inform parties in writing of the determination of proof of support. This proposed subdivision is necessary to provide clarity to the parties regarding the Board's obligations in proof of support determinations.

**Proposed section 72060** concerns the resolution of unit clarification petitions. The proposed section requires SMCS to issue a new unit certification, if appropriate, upon approval of a unit clarification petition. This is necessary to clarify SMCS's obligations as well as provide the parties with a new record of the bargaining unit. The proposed section further states that this certification shall not be considered a new certification for the purpose of computing time limits for establishing a certification bar to the filing of representation petitions. Some representation petitions may not be filed within 12 months of unit certification, and this is necessary to clarify to the parties that this certification resulting from a unit clarification petition does not affect that calculation. The proposed section allows any determination made by SMCS regarding unit clarification petitions to be appealed to the Board itself in accordance with Chapter 1, Subchapter 4, Article 2 or 3 of the Board's regulations. Those regulations govern appeals to the Board itself and administrative appeals generally. This is necessary to inform the parties of the ability to appeal the petition resolution and keep the appeal process consistent with PERB's procedures.

**Proposed Article 6** of Chapter 6, Subchapter 3, titled Petition for Amendment of Certification, governs petitions to amend the certification of an existing bargaining unit where the certified exclusive representative has undergone a change or the employer's name or jurisdiction has changed. Regulations regarding certification amendment petitions were previously located in Sections 93005, 93010, and 93015, along with regulations regarding other types of representation petitions. The proposed amendment separates regulations regarding certification amendment procedures into their own article. The proposed article is necessary to promote clarity within the Board's regulations.

**Proposed section 72065** allows an exclusive representative or a PUC transit employer to file a petition for amendment of certification of an existing bargaining unit where the certified exclusive representative has undergone a change. Types of changes include a merger, affiliation, amalgamation or transfer of jurisdiction that changes the identity of the organization. A petition for amendment of certification may also be filed if the employer's name or jurisdiction changes. Because such changes may occur during the natural course of business, this proposed section is necessary to allow parties to petition amendments to accurately reflect the bargaining unit and ensure fair bargaining. The proposed section requires the petition for amendment of certification

to be filed pursuant to procedures governing petitions for certification. This is necessary to inform the parties of the proper form for filing and maintain consistency within the Board's procedures. The proposed section further lists the additional information required for a petition for amendment of certification.

Proposed subdivision (a) requires contact information for the employee organization and its agent. Proposed subdivision (b) requires the contact information for the employer and its agent. The contact information required by these two subdivisions is necessary to facilitate communication with the parties.

Proposed subdivision (c) requires the identification and description of the established unit and existing certification. This is necessary to identify which unit the petitioner is seeking to amend.

Proposed subdivision (d) requires a statement of the desired amendment and reasons for the amendment. This is necessary to put the parties on notice of the desired change and assist in SMCS's investigation of the petition.

**Proposed section 72070** allows a party or interested party to respond to a petition for amendment of certification of an existing bargaining unit filed solely by an exclusive representative or an employer, unless otherwise notified by SMCS. This is necessary to allow other parties to respond to a petition while still giving SMCS discretion on when to require responses. If a petition is filed jointly by the employer and the exclusive representative, there is no need for a response. The proposed section also requires a response to be filed within 20 days following the date of service of the petition. This is necessary to create a reasonable time period in which a party must respond to the petition. The proposed section requires service and proof of service. Service and proof of service are necessary to ensure that all parties receive adequate notice of the response to the petition and can take any appropriate action.

**Proposed section 72075** requires SMCS to issue a certification reflecting the new identity of the exclusive representative or employer upon approval of the petition for amendment of certification. This is necessary to clarify SMCS's obligations as well as provide the parties with a new record of the certification. The proposed section further states that this certification shall not be considered a new certification for the purpose of computing time limits for establishing a certification bar to the filing of representation petitions. Some representation petitions may not be filed within 12 months of unit certification, and this is necessary to clarify to the parties that this certification resulting from a unit clarification petition does not affect that calculation in the event of other representation petitions. The proposed section allows any determination made by SMCS regarding amendment of certification petitions to be appealed to the Board itself in accordance with Chapter 1, Subchapter 4, Article 2 or 3 of the Board's regulations. Those regulations govern appeals to the Board itself and administrative appeals generally. This is necessary to inform the parties of the ability to appeal the petition resolution and keep the appeal process consistent with PERB's procedures.

**Proposed Article 7** of Chapter 6, Subchapter 3, titled Investigation of Certification and Decertification and Unit Clarification and Amendment Petitions by SMCS, governs the investigation of petitions. Section 93025 of the Board's regulations, which is proposed to be



repealed, governed SMCS investigations of petitions. The proposed article distinguishes investigations from the filing of petitions as governed by proposed Articles 2 through 6. The proposed article is necessary to promote clarity within the Board's regulations.

**Proposed section 72080** provides for SMCS's investigation of petitions for certification, decertification, unit clarification, or certification amendment.

Proposed subdivision (a) provides that SMCS shall investigate the petition and has broad authority to decide questions raised by the petition by means of conducting a hearing, representation election, or other action that SMCS deems necessary. This proposed subdivision is necessary to permit SMCS to investigate petitions in order for SMCS to discharge its duties. SMCS's broad authority for resolving questions raised by the petition is necessary to provide SMCS with flexibility in the handling of petitions because the various types of issue that may arise for any given representation petition cannot be anticipated. This proposed subdivision gives SMCS appropriate discretion to investigate petitions on a case-by-case basis.

Proposed subdivision (b) enumerates the circumstances under which SMCS will dismiss a certification or decertification petition, or an employer representation petition. This proposed subdivision is necessary to provide guidelines and notice to the parties regarding the bases in which SMCS will determine that a petition or parts therein are deficient or not authorized by statutory or regulatory authority.

Proposed subdivision (b)(1) provides that the petition shall be dismissed if the petition is found to be improperly or not timely filed. The proposed subdivision is necessary to prevent petitioners from not complying with the Board's regulations and to create a reasonable expectation of how and when petitions will be filed for responding parties.

Proposed subdivision (b)(2) provides that the petition shall be dismissed if the petitioner has no standing to petition for the action requested. This proposed subdivision is necessary to ensure that an employee organization has a legally protected interest to petition for the action requested under the statutes and regulatory scheme that PERB has the responsibility to administer and enforce.

Proposed subdivision (b)(3) provides that the petition shall be dismissed if proof of support submitted falls short of the required level of support, if any. This is necessary to ensure that SMCS does not process and investigate a petition for a change that is not actually supported by the employees in the unit.

Proposed subdivision (b)(5) provides that the petition shall be dismissed if a memorandum of understanding between the employer and employee organization covering any of the employees subject to the petition is currently in effect, unless it is filed during the "window period" defined by proposed section 72000. The requirement that the petition be filed within the "window period" is necessary to support the policy furthered by the "contract bar," the purpose of which is to balance the need for stability during the term of a memorandum of understanding with the employees' right to free choice of their representative. The "window period" creates this balance by providing a designated period of time in which a representation petition may be properly filed

during the term of a memorandum of understanding. Proposed subdivision (b)(5) also provides that there is no time restriction for filing a petition when a memorandum of understanding has been in effect for three years or more as the duration of the contract bar is limited by statute and existing PERB regulations to three years. This proposed subdivision is necessary to avoid confusion and to maintain consistency in PERB's procedures for all the labor relations statutes it administers.

Proposed subdivision (b)(6) provides that the petition shall be dismissed if the employer has lawfully recognized an employee organization as the exclusive representative of any employees included in the unit described in the petition, or a valid election result which covers any employees described in the petition is certified, within the last 12 months immediately preceding the date of filing the petition. This proposed subdivision describes what is colloquially known as the "certification bar," the purpose of which is to provide an insulating period of 12 months to permit the employee organization to represent its unit and negotiate with the employer without interference with its representational rights. This proposed subdivision is necessary to protect employee organizations' representational rights.

Proposed subdivision (c) allows the Director of SMCS to approve withdrawal of a petition. The proposed subdivision is necessary to permit parties to withdraw a petition that they no longer wish to pursue.

Proposed subdivision (d) allows any determination made by the Director pursuant to Article 7 to be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 2 or 3 of the Board's regulations. Those regulations govern appeals to the Board itself and administrative appeals generally. This is necessary to inform the parties of the ability to appeal the petition resolution and keep the appeal process consistent with PERB's procedures.

**Proposed Article 8** of Chapter 6, Subchapter 3, titled Procedures in Resolving Petitions, governs hearing procedures when resolving representation petitions. Regulations regarding hearing procedures were previously located in Sections 93030 through 93065. These sections are proposed to be repealed as part of this rulemaking package, and replaced with the sections located in proposed Article 8. The proposed amendment separates regulations regarding hearing procedures into their own article. The proposed article is necessary to promote clarity within the Board's regulations.

**Proposed section 72085** allows SMCS to determine the appropriate procedures for resolving a petition, which may include mediations, issuing an Order to Show Cause followed by an administrative determination without holding a hearing, holding a hearing and issuing a proposed decision, or simply issuing an administrative determination without issuing an Order to Show Cause or holding a hearing. Dismissing without holding a hearing is provided for in the current regulations at Section 93025, subdivision (c). If SMCS determines that any type of petition does not provide reasonable cause to believe that there is a question concerning representation (QCR), or if the petition is not filed in accordance with the regulations, SMCS may dismiss the petition without a hearing or approve the withdrawal of the petition. (8 Cal. Code Reg. § 93025(c); *San Diego Metropolitan Transit System* (2018) PERB Order No. Ad-460-M, pp. 4–5.) Examples of situations where a petition may be dismissed after an investigation but without a hearing are set

out in proposed Regulation 72080, e.g., petition improperly or not timely filed, petitioner has no standing, proof of support is insufficient, no reasonable cause to believe a QCR exists, contract bar, certification bar, etc. Representation matters can be unpredictable and must be handled on a case-by-case basis. This proposed section is necessary to allow SMCS the discretion to determine the most effective way to carry out its duties in resolving representation petitions.

**Proposed section 72090** allows SMCS to hold a pre-hearing for the purposes of clarifying the issues and exploring settlement of the case. Representation matters can be complex. The proposed section is necessary to clarify exactly which issues need to be resolved before SMCS and also encourage potential settlement avenues to avoid a hearing altogether.

**Proposed section 72095** regards SMCS's notice of hearing in representation cases. The proposed section requires that if SMCS determines a hearing is necessary, it shall serve a notice on all interested parties pursuant to Section 32140 of the Board's regulations, which governs service generally. Service of notice is necessary so that all interested parties are aware that a hearing will be held in the representation matter and can prepare accordingly. The proposed section requires that the notice include the date, time and place of hearing. This is necessary so that parties will know when and where the hearing will be held so that they may attend. The proposed section further requires that the notice include information regarding how an employee organization may become a party to the hearing. Different employee organizations may have an interest in representing employees in the unit at issue in the representation matter, or may have another interest in the matter, and this information is necessary so that those employee organizations are aware of how they can become a formal party to the hearing. The proposed section further allows that any notice of hearing may be amended or withdrawn by the Director at any time prior to the commencement of hearing and by the hearing officer after commencement and prior to the close of hearing. Before or during the course of a hearing, the hearing may need to be rescheduled, paused, or canceled. This proposed section is necessary to allow SMCS the ability to account for these potential changes. The proposed section further allows the Director to, on their own motion or the motion of any of the parties, to consolidate petitions for the purpose of hearing and decision. Multiple petitions may be filed with SMCS that regard the same group of employees or raise common issues, and the Director's ability to consolidate cases is necessary for improving judicial efficiency.

**Proposed section 72100** concerns the conduct of representation hearings. Hearings are necessary to hear evidence regarding representation petitions that cannot otherwise be settled so that SMCS can make an informed decision in resolving petitions.

Subdivision (a) requires that hearings be conducted by a hearing officer designated by the Director, except that the Director themselves may act as a hearing officer. This is necessary to ensure that SMCS has the ability to choose the hearing officer available and best equipped to hold a hearing. Subdivision (a) also allows the hearing officer to be substituted at any time during the proceeding at the discretion of the Director. Because hearing officers' availability may change over the course of hearing, this is necessary to allow the Director to substitute a different hearing officer to allow the hearing to proceed most efficiently.

Subdivision (b) states that hearings shall be conducted pursuant to the procedures set forth in Chapter 1, Subchapter 3, of the Board's regulations, which governs PERB's hearing procedures. This is necessary to provide guidance to the parties on how the hearing will be conducted and promote consistency within PERB's procedures.

**Proposed section 72105** allows an employee organization to intervene and participate fully in a representation hearing. Employee organizations other than those who may have been included in the initial petition may have a representational interest in the unit at issue in the petition, and allowing those organizations to participate in the representation hearing is necessary to protect their bargaining rights. The proposed section states that an employee organization shall be allowed to participate fully in a representation hearing provided it has filed a written application with the hearing officer not less than 10 days prior to the commencement of the hearing. The written application is necessary so that the hearing officer is aware that the employee organization wishes to participate in the hearing, and the 10-day period gives the hearing officer enough time to accommodate the additional party. The proposed section further provides that no employee organization which is a party to a contract covering employee in the unit and no employee organization which makes a showing of interest of at least 10 percent of the employees in the petitioned-for unit shall be denied the right to intervene as a party in the proceedings. These two types of employee organizations have already demonstrated a representational interest in the employees at issue, and any denial of their right to intervene would interfere with those employees' right to be represented by an employee organization of their own choosing. The proposed section also states that any employee organization desiring to intervene for the purpose of seeking an election in a unit different from the petitioned-for unit shall be required to make a showing of interest of at least 30 percent of the employee in the unit claimed to be appropriate by that employee organization. Proof of 30 percent support is the standard threshold of employee support that an employee organization must make when filing a petition for certification. Using the same threshold in petitions for certification filed under PUC transit district acts is necessary to avoid confusion and to maintain consistency in PERB's procedures for all of the labor relations statutes it administers. Proof of support is necessary to prevent intervention by an employee organization for which employees have expressed sufficient support. Lastly, the proposed section states that the PUC transit employer shall be deemed a party to each proceeding without the necessity of intervening. Regardless of the employee organization parties, the employer will always have a bargaining relationship with the employees at issue in the unit and will need to be a party to the representational proceedings. This language is necessary to prevent the employer from filing unnecessary intervention applications.

**Proposed section 72110** concerns withdrawal or settlement of a representation petition. The proposed section allows the petitioner to withdraw any petition with service and proof of service as required pursuant to Section 32140 of the Board's regulations, which governs service. This is necessary to permit parties to withdraw a petition they no longer wish to pursue. Service and proof of service of the withdrawal is necessary to ensure that SMCS and all parties receive adequate notice and a copy of the withdrawal and can take any appropriate action. The proposed section also allows parties to reach a voluntary agreement as to some or all disputed issues. This is necessary to encourage settlement between parties and promote judicial efficiency by not

litigating disputes parties have reached agreement on. The proposed section states that if SMCS has already issued a decision on a matter, parties seeking to effect a withdrawal or settlement must request leave from SMCS or the Board itself. This is necessary because once a SMCS has made a decision regarding the proper resolution of the petition to comply with statute and PERB's regulations, SMCS or the Board must approve a withdrawal or settlement that may differ from the hearing officer's decision.

**Proposed section 72115** states that subpoenas may be issued pursuant to procedures set forth in PERB Regulations 32149 and 32150, which govern PERB's general procedures regarding subpoenas. Subpoenas are necessary to ensure that all relevant evidence necessary for the hearing officer to make a decision regarding a petition is available at the hearing. The reference to the Board's regulations is necessary to provide guidance to the parties on the procedures to follow regarding subpoenas and maintain consistency within the Board's procedures.

**Proposed section 72120** outlines the duties of a hearing officer following a representation hearing. The proposed section states that upon the close of a hearing, the hearing officer shall as expeditiously as possible prepare a proposed decision and order, which will be forwarded to the Director for approval. This is necessary so that the parties can quickly receive a decision that may affect the representational relationship and act accordingly. The proposed section further states that if the hearing officer determines that an election is to be held, the hearing officer shall set forth the appropriate units within which the election will be held and the categories of the employees eligible to vote. This is necessary so that the parties have enough information regarding the parameters of the election and can act accordingly. The proposed section states that the hearing officer's decision, as approved by the Director, shall be final unless appealed as set forth in Chapter 1, Subchapter 4, of the Board's regulations, which regards decisions of the Board itself. This is necessary to provide guidance to the parties on how the decision can be appealed in a manner consistent with the Board's procedures, or provide certainty regarding the decision if no appeal is made. The proposed section requires service of the proposed decision and order on each of the parties. Service is necessary so that all parties are aware of the decision and order and can act accordingly.

**Proposed section 72125** concerns exceptions to a hearing officer's proposed decision in a representation hearing.

Proposed subdivision (a) states that within 20 days from the date of service of the proposed decision and order, any party may file with the Board itself exceptions to the decision in accordance with Section 32300. Exceptions are necessary to provide the parties an avenue of appeal if they believe that the hearing officer's proposed decision was made in error. The 20-day requirement is to ensure that exceptions are timely filed and provide certainty to the parties regarding the finality of a proposed decision. The reference to Section 32300, which governs PERB's procedures regarding exceptions to a Board agent's decision, is necessary to provide guidance to the parties on how they may file exceptions and to ensure consistency with the Board's procedures.

Proposed subdivision (b) states that Sections 32300 through 32320, and Sections 32400 and 32410, shall be applicable to disputes arising under Chapter 6. Section 32300 through 32320 provide the procedures regarding the appeal of a Board agent's decision to the Board itself. Sections 32400 and 32410 regard requests for reconsideration of the Board's decision. This is necessary to provide guidance to the parties on the procedures for filing exceptions and requests for reconsideration in decisions made in representation matters. The proposed section states that if the Board determines an election is to be held, the Board shall order such an election within such units as have been found to appropriate and shall determine the categories of employees who shall be eligible to vote. This is necessary to provide guidance to the parties of the Board's obligation to determine the parameters of the election after exceptions and requests for reconsideration. The proposed decision requires service of the Board's decision and order on the parties. Service is necessary so that all parties are aware of the decision and order.

**Proposed Article 9** of Chapter 6, Subchapter 3, titled Representation Elections, governs elections held in representation matters. Regulations regarding election procedures were previously located in Sections 93020, 93070, and 93075. These sections are proposed to be repealed as part of this rulemaking package, and replaced with the sections located in proposed Article 9. The proposed amendment separates regulations regarding election procedures into their own article. The proposed article is necessary to promote clarity within the Board's regulations.

**Proposed section 72130** allows a PUC transit employer to voluntarily recognize an employee organization as the representative of an appropriate unit without an election if it is the only organization to appear on the ballot and the organization has demonstrated proof of majority support. This is necessary to avoid lengthy election procedures if the employees in a unit have already demonstrated their support for the organization and the organization has no competition.

**Proposed section 72135** concerns consent election agreements between the parties regarding the conduct of a consent election agreement. The proposed section allows SMCS to approve such an agreement between the parties. This is necessary to allow the parties to mutually agree on election practices that work for all parties. SMCS's approval is necessary to ensure that the agreement is fair and compliant with statutory and regulatory requirements. The proposed section requires that the agreement include a description of the unit, the time and place of the election, and the payroll period to be used in determining employee eligibility to vote. This is necessary so that all parties are aware of and agreeable to who will be voting and when and where the election will take place. The proposed section states that unless otherwise directed by the Director, the applicable payroll period is the payroll period immediately preceding the date the petition was filed. This is necessary to give certainty to the parties regarding the cutoff date for determining which employees will be eligible to vote, while giving the Director discretion to adjust this date if necessary. The proposed section further states that a consent election will be conducted under the direction and supervision of SMCS in accordance with proposed this Article, which governs election procedures. This is necessary to ensure that the election complies with statutory and regulatory requirements. The proposed section states that SMCS shall issue to the parties a certification of the results of the election, including a certification of

the representative where appropriate. This is necessary for the parties to know the results of the election and the clarify the elected representative, if appropriate, for future bargaining purposes.

**Proposed section 72140** concerns the use of secret ballots in representation elections.

Proposed subdivision (a) requires all elections to be conducted by secret ballot under the supervision of SMCS. This is necessary to ensure fairness and protect the confidentiality of voters' choices. Proposed subdivision (a) also requires SMCS to determine the date, time, place and manner of the election absent an approved agreement between the parties. This is necessary for parties to know when, where, and how the election will be held and can act accordingly.

Proposed subdivision (b) states that ballots will be prepared under the supervision of SMCS. This is necessary to ensure fairness and that ballots are prepared to comply with statutory and regulatory requirements. Proposed subdivision (b) also states that the order of voting choices and wording of each ballot shall be determined by SMCS absent an approved agreement of the parties. This is also to ensure that the ballot is worded fairly.

Proposed subdivision (c) states that except in a runoff election, the ballot entry of "No Representation" shall appear on each ballot. This is to allow voters to choose to not be represented by any of the participating employee organizations. If a runoff election results in a tie between two employee organizations and a second election is necessary to resolve the tie, a "No Representation" option is not required because voters will only be voting between the two employee organizations.

Proposed subdivision (d) states that at any time prior to the issuance of the notice of election, pursuant to Section 72145 which governs notices of election, an employee organization may request to have its name removed from the ballot. This is necessary to allow an employee organization who is no longer interested in representing the unit to withdraw its participation in the election. The requirement that the request come before the issuance of the notice of election is necessary to avoid having the withdrawing organization's name included on any notices. This proposed subdivision further requires that the request disclaim any interest in representing the employees in the described unit. This is necessary to clarify to all parties that the withdrawing organization no longer seeks to represent employees in the unit and will not seek further representational rights of those employees during these proceedings. The proposed subdivision also requires the request to be served on all parties and SMCS pursuant to Section 32140 of the Board's regulations, which governs service. Service is necessary so that all parties are aware of the request and can act accordingly.

**Proposed section 72145** concerns Directed Election Orders or Consent Election Agreements and notices of election.

Proposed subdivision (a) requires that once SMCS determines an election is required, it serves the employer and the parties a Directed Election Order maintaining specific instructions regarding the conduct of the election. This is necessary for parties to be aware of the conduct of the election as soon as possible and act accordingly. Proposed subdivision (a) also allows SMCS to approve a Consent Election Agreement of the parties regarding the conduct of an election.

This is necessary to allow the parties to agree to the conduct of the election, with SMCS's approval to ensure compliance with statutory and regulatory requirements.

Proposed subdivision (b) provides that after the parties are served with a Directed Election Order or SMCS approves a Consent Election Agreement, SMCS shall serve a notice of election on the parties. The notice of election is necessary so that all parties and eligible voters are aware of the upcoming election. Proposed subdivision (b) requires the notice to contain a sample ballot, a description of the voting unit, and information regarding the balloting process. This information is necessary so that the parties and voters will be familiar with the voting process.

Proposed subdivision (b)(1) requires the employer to post the notice conspicuously on all employee bulletin boards in each facility of the employer in which members of the unit are employed. The employee bulletin boards are one of the ways employers and employee organization communicate about employment matters with employees. This posting is necessary so that all employees in the bargaining unit have an opportunity to see the notice of election during work.

Proposed subdivision (b)(2) requires SMCS to supply the employer with sufficient copies of the notice for posting. This is necessary to inform the parties of SMCS's obligations. SMCS's furnishing of the copies further ensures that the employer will have enough copies of the notice for all bulletin boards and that the notices are fair and compliant with statutory and regulatory requirements. Proposed subdivision (b)(1) requires that the employer post the notices by the date specified in the Consent Election Agreement or the Directed Election Order. This is necessary to make sure that the notice is posted with enough time for eligible voters to become aware of the election. Proposed subdivision (b)(2) further requires the notice to remain posted through the final day for casting ballots. This is necessary so that employees may reference the election information throughout the entire voting period.

**Proposed section 72150** concerns the list of eligible voters in an election.

Proposed subdivision (a) requires the employer to file with SMCS a list of names of all employees included in the voting unit as of the cutoff date for voter eligibility, by a date established by SMCS. The names of eligible voters are necessary for SMCS to prepare and mail the voting ballots to all eligible voters, as well as to use during the process of receiving and issuing duplicate or challenge ballots during the voting period. The deadline is necessary so that SMCS has enough time to prepare and mail the ballots. Proposed subdivision (a) also states that the cutoff date for voter eligibility is established by the payroll period immediately preceding the date the petition was filed, unless otherwise ordered by the Director. This is necessary to provide certainty to the parties regarding which employees in the unit will be eligible voters, while providing the Director discretion to adjust this date as needed. Proposed subdivision (a) requires the voter list for an on-site election to be in alphabetical order by assigned polling site and shall include the job title or classification, work location and home address of each eligible voter, unless otherwise directed by SMCS. This information is necessary for SMCS to verify the identity of voters during an on-site election. It is also SMCS to have discretion to require more information as necessary depending on the unique circumstances of the election. Proposed



subdivision (a) requires the voter list for a mailed ballot election to be in alphabetical order and include the job title and home address for each eligible voter and shall be accompanied by two sets of name and home address labels for each voter, unless otherwise directed by SMCS. The information in the list is necessary for SMCS to verify the identity of voters as ballots are returned to SMCS or as eligible voters request duplicate or challenge ballots. The labels are necessary for SMCS to be able to prepare and mail the ballots and return envelopes to the homes of eligible voters. SMCS needs discretion to be able to require more information as necessary for the election. Proposed subdivision (a) states that the election supervisor may require the voter list be submitted in electronic format. Electronic format is necessary for efficiently printing and preparing ballot envelopes.

Proposed subdivision (b) requires that the employer to serve on the other parties to the election a list of eligible voters as described in subdivision (a) but contains mailing addresses instead of home addresses. This separate list served on the other parties is necessary to protect the confidentiality of the home addresses of the employees. Proposed subdivision (b) requires that proof of service of this list be filed with SMCS. Proof of service is necessary for SMCS to know that the other parties were served with a copy of this list in compliance with this subdivision. Proposed subdivision (b) defines mailing address to mean the home address of each eligible voter, except in the case where the release of the home address of the employee is prohibited by law, or if SMCS determines that the release of the home address is likely to be harmful to the employee. This is necessary to provide clarity to the parties regarding what constitutes a mailing address and provides further protection for employees' privacy as necessary.

Proposed subdivision (c) requires that any party who receives the mailing addresses of eligible voters keep those addresses confidential and shall not distribute them or utilize them for any other purpose. This is necessary to protect employees' privacy.

**Proposed section 72155** describes which employees will be eligible to vote in a representation election. The proposed section states that in order to be eligible, employees must be employed in the voting unit as of the cutoff date for eligibility, and still employed on the date they cast their ballots in the election, unless otherwise directed by SMCS. This is necessary to provide certainty to the parties regarding which employees will be eligible to vote in the election. The proposed section states that the cutoff date for eligibility is established by the payroll period immediately preceding the date the petition was filed, unless otherwise ordered by the Director. This is also necessary to provide certainty regarding which employees will be eligible to vote. SMCS's discretion is necessary to ensure that SMCS can adjust these parameters as needed for the unique circumstances of the election. The proposed section further states that employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote. This is necessary to protect those employees' rights to choose their representative, even if they are not currently reporting to work. The proposed section allows the use of mailed ballots to maximize the opportunity of such voters to cast their ballots. This is also necessary to protect those voters' right to participate in the election.

**Proposed section 72160** allows each party to an on-site representation election to station one or more authorized observers selected from the non-management, nonsupervisory employees at each polling place to assist in the conduct of the election and to challenge the eligibility of voters. This is necessary to ensure fairness of the election. The proposed section further allows the parties to designate supervisors as observers if the unit consists of supervisory employees. This is necessary to ensure from representation from the unit as appropriate.

**Proposed section 72165** allows parties to challenge the eligibility of voters in a representation election. Challenges are necessary to ensure the fairness of an election by preventing ineligible voters from voting.

Subdivision (a) provides that in an on-site election, SMCS or an authorized observer may challenge the eligibility of a voter for good cause. This is necessary for SMCS or one of the parties' authorized observers to challenge whether a voter is eligible to participate in the election. Proposed subdivision (a) allows the challenged voter to cast a challenged ballot. This is necessary to protect that voter's right to vote if the challenged ballot is resolved in the voter's favor.

Proposed subdivision (b) states that in a mailed ballot election, SMCS or an authorized agent of any party to the election may challenge the eligibility of a voter for good cause. This is necessary for SMCS or the parties to challenge whether a voter is eligible to participate in the election. Proposed subdivision (b) states that such a challenge shall be made prior to the tally of the ballots. This is necessary to ensure fairness of the election, so that challenged ballots can be kept separately from the eligible ballots and not affect the outcome unless necessary.

Proposed subdivision (c) provides that when there are a sufficient number of challenge ballots to affect the outcome of the election, unresolved challenges shall be resolved by SMCS pursuant to Section 72175, which concerns the resolution of challenges. This is necessary to ensure fairness of the election. Challenged ballots will only be considered if they would affect the outcome of the election; if the ballots will not affect the outcome, there is no need to consider any ballot from a voter a party believes may be ineligible. SMCS as the neutral party hosting the election will determine their eligibility.

**Proposed section 72170** provides the process for tallying the ballots in a representation election. This is necessary to ensure that the tallying process is fair to all parties.

Proposed subdivision (a) allows each party to station one or more authorized agents at the ballot count to verify the tally of ballots. This is necessary to ensure fairness and allow each party to observe the tally to make sure there are no errors in the process.

Proposed subdivision (b) requires that after the conclusion of the counting of ballots, SMCS serve a tally of the ballots on each party. This is necessary to make the parties aware of SMCS's obligations. Service of the tally is necessary to provide the parties with a copy of the result of the tally.

Proposed subdivision (c) states that unless otherwise authorized by statute, a majority of the valid votes cast shall determine the outcome of the election. This is necessary to provide clarity to the parties regarding the standard that will be used to determine the winner of an election.

**Proposed section 72175** states that if the number of challenged ballots would affect the outcome of a representation election, SMCS shall conduct an investigation and, where appropriate, conduct a hearing or take any other action necessary to determine the eligibility of challenged voters, unless otherwise provided by a consent election agreement. This is necessary to fairly determine the eligibility of the challenged ballots so that a winner can be determined in the election. SMCS's discretion in determining appropriate action to take is necessary for SMCS to determine the best course of action in elections which can be unique and unpredictable. This is also necessary to give the parties the ability to agree to challenge resolution procedures in their consent election agreement that may work better for the parties' unique situation. The proposed section further provides that any determination made by a hearing officer pursuant to this section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 2 or 3 of the Board's regulations, which govern appeals of Board agent decisions to the Board itself and administrative appeals, respectively. This is necessary to allow the parties an avenue for appealing the decision regarding the challenged ballots if they feel the decision was made in error. The reference to Chapter 1, Subchapter 4, Articles 2 and 3 of the Board's regulations is necessary to provide clarity to the parties regarding the procedures for appeal and maintaining consistency within the Board's regulations.

**Proposed section 72180** requires that SMCS direct a runoff election when a valid representation election results in none of the choices receiving a majority of the valid votes cast. A runoff election is necessary to fairly determine the outcome of the election without completely restarting the entire election process from the beginning. The proposed section requires that the runoff election ballot provide for a selection between the two ballot entries receiving the largest and second largest number of valid votes cast in the election. This is necessary to narrow the ballot choices to the two most popular choices such that the runoff election has a higher chance of resulting in one choice receiving a majority of votes. The proposed section also states that the election procedures of this Article shall apply to runoff elections. This is necessary to provide guidance to the parties on the conduct of runoff elections and maintain consistency within the Board's regulations.

**Proposed section 72185** describes the process for objecting to the conduct of a representation election.

Proposed subdivision (a) allows any party to the election to file with SMCS objections to the conduct of the election. Allowing the parties to object to the process of the election is necessary for ensuring that the election is conducted in a fair manner. Proposed subdivision (a) requires that the objection be made within 10 days following the service of the tally of ballots, regardless of whether or not a runoff election is necessary or challenged ballots are sufficient in number to affect the results of the election. This is necessary to ensure that objections are timely and fairly filed and that parties do not wait until after learning the results of a runoff election or challenged ballots to object to conduct.

Proposed subdivision (b) requires service and proof of service of the objections pursuant to Section 32140 of the Board's regulations, which governs service requirements. Service and proof of service are necessary to ensure that all parties receive copies of the objection and can act accordingly.

Proposed subdivision (c) lists the grounds on which SMCS may entertain an objection. Proposed subdivision (c)(1) allows SMCS to entertain objections if the conduct complained of interfered with employees' right to freely choose a representative. This is necessary to protect employees' right to vote and be represented by an employee organization of their own choosing. Proposed subdivision (c)(2) allows SMCS to entertain an objection if there is serious irregularity in the conduct of the election. This is necessary to ensure that any irregular conduct still results in a fair election. Limiting objections to these two grounds is necessary for clarifying to the parties objectionable conduct and preventing parties from interfering with an otherwise fair election.

Proposed subdivision (d) requires that the statement of objections contain specific facts which, if true, would establish that the election result should be set aside and also describe with specificity how the alleged facts constitute objectionable conduct within the meaning of proposed subdivision (c). This is necessary so that all parties are aware of the reason for the grounds for the objection and can act accordingly.

Proposed subdivision (e) prohibits a party from alleging its own conduct or the conduct of its agents as grounds for setting aside an election. This is necessary for discouraging parties to interfere with an election themselves and for ensuring a fair election.

**Proposed section 72190** gives SMCS the power to take various actions in resolving objections and challenges in a representation election. The proposed section allows SMCS to schedule a hearing when substantial and material factual disputes exist. This is necessary for SMCS to be able to gather all relevant evidence in determining a factual dispute. The requirement that a substantial and material factual dispute exist before SMCS to conduct a hearing is necessary for preserving judicial efficiency and preventing delay in the election. The proposed section further lists other actions that SMCS can take with or without a hearing. It is necessary for SMCS to be able to take a variety of different actions depending on what will be most successful at obtaining information in the unique circumstances of each election.

Proposed subdivision (a) allows SMCS to direct any party to submit evidence through declarations signed under penalty of perjury or through other documents. This is necessary for SMCS to solicit information from the parties. Signature under penalty of perjury is necessary to ensure that the information is accurate.

Proposed subdivision (b) allows SMCS to subpoena records. This is necessary for SMCS to obtain all relevant information.

Proposed subdivision (c) allows SMCS to direct any party to submit an offer of proof. This is necessary for SMCS to obtain all relevant information.

Proposed subdivision (d) allows SMCS to conduct investigatory conferences with the parties to explore and resolve factual or legal issues. This is necessary for SMCS to obtain all relevant information.

Proposed subdivision (e) allows SMCS to dismiss any objections or challenges. This is necessary for resolving any unfounded objections or challenges.

Proposed subdivision (f) allows SMCS to order a new election. This is necessary to preserve employees' right to fair election if SMCS determined that an election was subject to objectionable conduct. Proposed subdivision (f) states that if egregious conduct prevents a fair rerun election, SMCS may issue a bargaining order, but such order must be following a hearing. This is necessary to preserve the bargaining relationship between the parties and ensure that the employees in the unit are represented in bargaining. A hearing is necessary for SMCS to have all the relevant information in making the bargaining order and allow the parties to make their cases.

**Proposed section 72195** states that when holding hearings to resolve objections and challenges to representation elections, SMCS will follow the hearing procedures in Chapter 1, Subchapter 3 of PERB's regulations, which governs PERB's general hearing procedures. This is necessary to provide clarity to the parties regarding hearing procedures and maintain consistency within the Board's regulations.

**Proposed section 72200** allows an aggrieved party to appeal an administrative determination without a hearing, or except to proposed decisions after a hearing, on objections or challenges to a representation hearing, in accordance with Chapter 1, Subchapter 4 of the Board's regulations, which regards decisions of the Board itself. This is necessary to give parties an avenue to appeal decisions regarding objections and challenges that they believe were made in error. The reference to Chapter 1, Subchapter 4 of the Board's regulations is necessary to provide clarity to the parties on procedures for making appeals or exceptions and maintain consistency within the Board's processes.

**Proposed section 72205** requires that, if ballots must be voided or opened and counted, SMCS shall serve a revised tally of ballots on each party. Service is necessary for the parties to know the result of the tally and can act accordingly. The proposed section also allows each party to station an authorized agent at the ballot count to verify the tally. This is necessary to ensure fairness of the tally.

**Proposed section 72210** concerns objections to the revised tally of ballots in a representation election.

Proposed subdivision (a) allows any party to file with SMCS objections to the revised tally within 10 days following service of the revised tally. Allowing the parties to object to the revised tally is necessary for ensuring that the tally is conducted in a fair manner. Proposed subdivision (a) requires that the objection be made within 10 days following the service of the revised tally of ballots. This is necessary to ensure that objections are timely filed and provides a certain date for the parties when the tally and election results become final.

Proposed subdivision (b) requires service and proof of service of the objections pursuant to Section 32140 of the Board's regulations, which governs service procedures. Service and proof of service are necessary to ensure that all parties receive copies of the objection and can act accordingly.

Proposed subdivision (c) provides that objections to a revised tally shall only be entertained by SMCS on the grounds of serious irregularity in the conduct of the challenged ballot count or issuance of the revised tally. Allowing objections for serious irregularity is necessary to ensure that even though elections may be conducted in an irregular manner depending on the unique and unpredictable circumstances surrounding an election, the challenged ballot count is still conducted in a fair manner. Allowing objections based on the issuance of the revised tally is necessary to ensure that the revised tally is appropriately served on the parties. Limiting objections to these two grounds is necessary for clarifying to the parties objectionable conduct and preventing parties from interfering with an otherwise fair tally.

**Proposed section 72215** states that SMCS shall certify an exclusive representative if warranted. This is necessary to finalize the results of an election and clarify to the parties the appropriate bargaining representative for the unit of employees at issue.

**Proposed Article 10** of Chapter 6, Subchapter 3 of the Board's regulations, entitled Unit Determination, regards the criteria for determining the appropriateness of a bargaining unit of employees. The proposed article is necessary for providing parties information regarding what factors are considered in unit appropriateness determinations, which is relevant to other representation procedures under this Subchapter.

**Proposed section 72220** describes the criteria SMCS shall consider when determining whether a bargaining unit of PUC transit district employees is appropriate. Because a unit of employees is represented by a single employee organization, and any agreements entered into between the unit and employer affect the entire unit, it is necessary for the unit to consist of employees that share the same interests. Thus, it is necessary for SMCS to have a set of criteria for determining whether the parameters of a unit are appropriate for best representing the interest of all employees in the unit, and for parties to be aware of these criteria.

Proposed subdivision (a) lists the criteria that SMCS shall take into consideration when determining the appropriateness of a unit where the appropriateness is an issue. Proposed subdivision (a)(1) considers the internal and occupational community of interest among the employees, including but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which the employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision. Collective bargaining agreements entered into regarding the unit may include terms that affect working conditions, job duties, training, and various other employment matters. It is necessary for employees within a unit to have similar interests and bargaining goals so that the representative can advocate can successfully represent the entire unit and any contract entered

into reflects the interests of the unit as a whole. Proposed subdivision (a)(2) considers any other traditional community of interest factors. Units and employees can have unique histories and circumstances, and this proposed subdivision is necessary to allow SMCS to consider all relevant community of interest factors. Proposed subdivision (a)(3) considers the effect of the proposed unit on employees' right to effective representation. The purpose of the bargaining unit is to group employees who have similar bargaining interests for effective representation, so it is necessary for SMCS to consider whether a unit will affect employees' right to effective representation. Proposed subdivision (a)(4) considers the effect of the proposed unit on the efficient operation of the transit district and on the meet and confer relationships, including the impact of unnecessary fragmentation of employee groups or unwarranted proliferation of units, as well as any material effect on the employer's ability to deal effectively with an employee organization representing the unit. Employees' right to representation must be balanced against the employer's ability to provide its services to the public as well as be able to effectively bargain with the unit. It is necessary for SMCS to consider the employer's needs as well in order to fairly determine appropriateness.

Proposed subdivision (b) provides that in cases where the petitioner seeks to add classifications or positions to an existing bargaining unit, in addition to the criteria in subdivision (a), SMCS shall weigh whether the group to be accreted would itself constitute an appropriate unit. This is necessary because if the group itself would not constitute an appropriate unit, adding those employees may interfere with the bargaining interests of the existing unit. Proposed subdivision (b) also states that if the petitioning party has not provided proof of support from a majority of the employees to be accreted, SMCS shall also take into consideration the size of the group to be accreted relative to the size of the existing unit. This is necessary because relative size may affect the unit's majority support of the bargaining representative.

**Proposed Article 11** of Chapter 6, Subchapter 3 of the Board's regulations, entitled Relevant Federal Law, regards the federal law relevant to resolving questions of representation. Section 93080 concerns relevant federal law, which is proposed to be repealed as part of this rulemaking package. This proposed article is necessary to provide that information to the parties as well as provide clearer organization to the Board's regulations.

**Proposed section 72225** regards the relevant federal law and administrative practices to be applied in resolving questions of representation. This is necessary because several of the PUC transit district labor relations acts require SMCS to be guided by relevant federal law and administrative practice when making representation determinations and establishing rules and regulations regarding representation matters.

Proposed subdivision (a) states that in resolving questions of representation, to the extent required by the PUC transit employer's enabling act, SMCS and the Board shall apply, as appropriate, or be guided by relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended. This proposed subdivision is necessary to reflect those particular statutory requirements that SMCS and the Board consider such federal law.

Proposed subdivision (b) states that for the purposes of this regulation, federal law on the question of representation is relevant unless (1) the question presented is governed by an explicit provision of the applicable transit district statute or (2) considerations unique to public sector labor relations require a deviation from federal law. These exceptions are necessary so that SMCS and the Board can apply the most applicable and relevant law to representation cases regarding the representation of public employees in public transit districts.

## **B. Amendments to the Text of Existing Sections**

**Section 32018** defines terms applicable for cases filed under TEERA. The amendment removes subdivision (d), which defines “requester,” “intervenor,” “petitioner,” and “election intervenor.” These definitions will now be included in section 71010. This proposed change provides clarity to the Board’s regulations by placing all relevant TEERA definitions in one regulation.

**Section 32100** identifies the regulations contained in Chapter 1 that apply to PERB proceedings conducted under the several labor relations statutes administered by PERB. Chapter 1 contains eight subchapters: (1) Internal Procedure; (2) Definitions and General Provisions; (3) Hearings; (4) Decisions of the Board Itself; (5) Unfair Practice Proceedings; (6) Representation Proceedings; (7) Compliance; and (9) State Mediation and Conciliation Service. The vast majority of Chapter 1 contains provisions that apply to all PERB proceedings. For example, requirements for filing documents with PERB or the manner in which final Board orders are enforced. Where Chapter 1 does not apply to a given PERB proceeding, Section 32100 so states.

The amendment adds a reference in subdivision (c) to Subchapter 2 of Chapter 6 of the Board’s regulations, which governs representation procedures under TEERA. These proposed changes in their totality restructure Chapter 6 of the Board’s regulations such that Chapter 6, which previously discussed only proceedings under TEERA, is now divided into three subchapters. Subchapter 2 specifically provides for proceedings under TEERA. This amendment is necessary to provide clarity regarding which of the subchapters in Chapter 6 is subject to the regulations contained in Chapter 1.

The amendment adds subdivision (h), which states that as set forth in section 72001, the regulations in Chapter 1, Subchapter 2, apply to filings with the State Mediation and Conciliation Service (SMCS). Because proposed section 72001 is a new section proposed in this package, this proposed subdivision is necessary to provide clarity to parties regarding the application of Chapter 1 to new regulations.

The amendment also adds subdivision (i), which provides that all Chapter 1 rules and regulations apply to proceedings under the OCTDA, SFBART Act, and Sacramento RTD Act, except for Subchapter 6. Instead, representation proceedings under the OCTDA, SFBART ACT, and Sacramento RTD Act are governed by proposed Chapter 6, Subchapter 3, of PERB’s regulations, which governs the representation proceedings under Public Utilities Code Transit Labor Relations Acts other than TEERA. This proposed subdivision is necessary to provide clarity to the parties regarding which regulations apply to the OCTDA, SFBART Act, and Sacramento RTD Act.



The proposed changes also update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the PUC transit district acts.

The amendment also removes a reference to Public Utilities Code section 100306. That section has since been repealed, and the proposed amendment is necessary to reflect the current status of the regulations.

**Section 32110** sets forth the requirements that govern the way parties electronically file documents with PERB through e-PERB, as that term is defined by section 32090. The proposed change edits the references to "ePERB" in subdivision (a) to "e-PERB." This is necessary to promote consistency within PERB's regulations, which references "e-PERB" throughout.

The proposed changes also update the authority and reference citations to include the PUC transit district acts. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the PUC transit district acts.

**Section 32111** authorizes the Board to direct parties to use electronic means to post and thereby notify remote workers that a representation petition has been filed. The proposed changes update the reference to Chapter 10 in subdivision (a) to Chapter 8. The proposed changes also update the authority and reference citations to include the PUC transit district acts. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the PUC transit district acts.

**Section 32115** specifies the locations for filing documents with PERB in representation matters that are not filed electronically. The proposed amendment changes subdivision (f) to state that documents filed with SMCS in PUC transit representation matters should be filed with PERB's Sacramento Regional Office. This is necessary to inform parties of the appropriate location for filing documents in such matters. The proposed amendment takes the language previously in subdivision (f) and moves it to proposed subdivision (g), and removes the language limiting the subdivision to just PUC transit representation documents. This is necessary to inform the parties that e-PERB filings will be considered filed in the appropriate location, as electronic filings will not be filed in a physical location. Because the proposed amendment to subdivision (f) includes substantive information regarding the filing of documents with SMCS, the proposed amendment includes the addition of subdivision (f) in subdivision (a). This is necessary to promote consistency within the regulation. The proposed changes also update the authority and reference to include the PUC transit district acts. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the PUC transit district acts.

**Section 32120** provides for the filing of written agreements or memorandums of understanding with the Board. The proposed amendment to Section 32120 extends its application to agreements entered into under the OCTDA, SFBART Act, and Sacramento RTD Act. PERB must at times review the terms and conditions of an agreement in carrying out its duties. PERB needs the authority to demand that an employer provide a written agreement or memorandum of understanding up on request because there are times when the employer will not provide the

information voluntarily. It is incumbent upon the employer to bear the responsibility of production because it is in a better position than employee organizations or individual employees to maintain and reproduce records, such as written agreements or memorandums of understanding. This proposed amendment is necessary to facilitate the resolution of unfair practice charges and representation proceedings arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and to provide notice to the parties that agreements made pursuant to these acts may be requested by the Board.

**Section 32140** concerns service requirements. The amendment adds proposed subdivision (d)(3)(I), which states that when a document is served, the proper recipient shall be, in the case of a PUC transit district employer as defined in the OCTDA, SFBART Act, and Sacramento RTD Act, any person authorized to act on behalf of the employer. Service of filed documents is necessary so that the District will be aware of filings made in cases in which it is a party. The proposed subdivision is necessary to clarify the proper person to serve when serving a PUC transit district employer. The proposed changes also update the authority and reference to include the PUC transit district acts. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the PUC transit district acts.

**Section 32500** concerns procedures for requesting judicial review of a decision in a representation case. The amendment adds that decisions rendered pursuant to Subchapter 3 of Chapter 6 of the Board's regulations, which governs representation cases under transit district acts other than TEERA, are excluded from the right to request the Board seek judicial review. These acts are excluded as the legislature did not specifically grant a right of judicial review in representation matters under these acts. With the addition of proposed Subchapter 3, this proposed amendment is necessary to provide clarity regarding the limitations of judicial review in representation cases under transit district acts. The proposed changes also update the authority and reference to include the transit district acts other than TEERA.

**Section 32602** provides for the processing of unfair practice charges. Subdivision (a) provides that alleged violations of statutes within PERB's jurisdiction will be processed as unfair practice charges. The proposed amendment to subdivision (a) provides that alleged violations of the OCTDA, SFBART Act, and Sacramento RTD Act, and violations of local rules adopted pursuant to the OCTDA, will also be processed as unfair practice charges. Public Utilities Code sections 28849(b) and 28860(b) provide PERB with jurisdiction over the SFBART Act, and the authority to process alleged violations of the SFBART Act as unfair practice charges. Public Utilities Code section 40122.1 similarly provides PERB with jurisdiction over the OCTDA, and the authority to process alleged violations of the OCTDA as unfair practice charges. Public Utilities Code section 102399(b) similarly provides PERB with jurisdiction over the Sacramento RTD Act, and the authority to process alleged violations of the Sacramento RTD Act as unfair practice charges. This proposed amendment to subdivision (a) is necessary to clarify that PERB will exercise its jurisdiction over alleged violations of the OCTDA, SFBART Act, and Sacramento RTD Act by processing such allegations as unfair practice charges, and to apprise parties as to

the proper means of seeking redress with PERB for alleged violations of the OCTDA, SFBART Act, and Sacramento RTD Act.

Subdivision (b) states that except as provided in subsections (c), (d), and (e), unfair practice charges may be filed by an employee, employee organization, or employer. Because the proposed amendment removes subdivision (e) of this regulation, the amendment removes subdivision (b)'s reference to subdivision (e). This amendment is necessary to provide clarity of the Board's regulations.

Subdivision (e) allows charges alleging the exclusive representative has failed to comply with Government Code sections 3502.5(f), 71632.5(f), or 71814(f) to be filed only by employers or affected employees. These sections concern a recognized employee organization's duty keep itemized financial records involving agency shop financial arrangements and provide those records to the employer and employees who are members of the organization. The proposed amendment removes this subdivision because agency shop arrangements, the payment of fair share fees, were made unlawful by the United States Supreme Court under *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31* (2018) 138 S.Ct. 2448.

**Section 32615** concerns the information required to be included in an unfair practice charge. The proposed change to subdivision (b) adds that charges filed under the OCTDA alleging a violation of local rules must also contain a copy of the applicable rules. Because Public Utilities Code section 40122.1, subdivision (b), states that the violation local rules adopted by the Orange County Transit Authority may form the basis of an unfair practice charge, a copy of the applicable rules is necessary for a Board agent to investigate whether the rules have been violated. The proposed change also clarifies the requirements for any party who files a charge alleging a violation of local rules adopted by the Orange County Transit Authority.

**Section 32620** concerns the processing of unfair practice charges.

Subdivision (b)(5), in part, prohibits the issuance of a complaint where the conduct alleged to violate the applicable Act is based upon conduct occurring more than six months prior to the filing of the charge. The proposed amendment to subdivision (b)(5) adds references to Public Utilities Code sections 28860(b), 40122.1, and 102408(b)(2), which provides the Board the authority to make the initial determination as to whether an unfair practice charge is justified under the SFBART Act, OCTDA, and Sacramento RTD Act, respectively.

Subdivision (b)(6) allows a Board agent to place an unfair practice charge in abeyance if the dispute arises under the MMBA, HEERA, TEERA, Trial Court Act, or Court Interpreter Act and is subject to deferral to final and binding arbitration, and allows the Board agent to dismiss the charge at the conclusion of the arbitration process unless the resolution is repugnant to the purposes of those Acts. The proposed amendment to subdivision (b)(6) adds references to the OCTDA, SFBART Act and Sacramento RTD Act.

The proposed amendments are necessary to extend the regulations application to matters arising under the OCTDA, SFBART Act, and Sacramento RTD Act and to maintain consistency in the

processing of unfair practice charges across all of the statutory schemes over which the Board maintains jurisdiction.

**Section 32661** concerns the filing of repugnancy claims for unfair practice charge cases that were deferred to arbitration because the dispute was covered by the parties' written agreement.

Subdivision (a) provides that an unfair practice charge may be filed based on a claim that a settlement or arbitration award resulting from a deferred unfair practice charge is repugnant to the applicable Act. The amendment to subdivision (a) adds references to Government Code section 3505.8 of the MMBA and Education Code section 8439.5(b)(1)(B) of the Building a Better Early Care and Education System Act, all of which specifically allow repugnancy claims before PERB. The amendment also adds references to the OCTDA, SFBART Act, and Sacramento RTD Act. With the addition of Government Code section 3505.8, the amendment also removes a now redundant reference to cases concerning conduct subject to final and binding arbitration pursuant to a collective bargaining agreement for parties governed by the MMBA. The amendment is necessary to extend the section's application to matters arising under these Acts and to maintain consistency in the processing of unfair practice charges across all of the statutory schemes over which the Board maintains jurisdiction.

**Section 32720** concerns when an election will be conducted in representation matters under EERA, the Dills Act, HEERA, and TEERA.

The amendment adds reference to Chapter 6, Subchapter 2, of the Board's regulations. The proposed amendments add a Subchapter 3 to Chapter 6. This amendment is necessary to reflect the updated structure of the Board's regulations and clarify that this section only applies to the original Subchapter 1 of Chapter 6, which concerns cases filed under TEERA.

The amendment also changes references to Chapter 9 of the Board's regulations to Chapter 6, Subchapter 3, to incorporate the changes made in this regulation package, which replaces Chapter 9 with Chapter 6, Subchapter 3. The amendment is necessary to clarify the limits of the section's application, as other Board regulations govern elections under those Acts.

**Section 71010** defines terms under TEERA. The amendment removes the previous definition for "parties," which was the sole definition in this section.

The amendment adds proposed subdivision (a), which defines "TEERA" as the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act. The Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act is referred to as "TEERA," and the definition in this proposed section reflects the common usage of this term. This proposed subdivision is necessary to promote clarity throughout the Board's regulations.

Proposed subdivision (b) provides that the definition for "employer" or "transit district employer" can be found at PUC section 99560.1(g), and clarifies that the Los Angeles County Metropolitan Transportation Authority is the only employer covered by TEERA. This proposed subdivision is necessary to provide clarity that these regulations pertaining to TEERA only apply

to the Los Angeles County metropolitan Transportation Authority, as compared to other employers covered by other acts as discussed in Subchapter 3.

Proposed subdivision (c) provides that the definition for “employee” or “transit district employee” can be found at PUC section 99560.1(e), and clarifies that non-confidential, supervisory employees of the Los Angeles County Metropolitan Transportation Authority are the only employees covered by TEERA with regards to these regulations. This proposed subdivision is necessary to provide clarity regarding which TEERA employees are covered by the Board’s regulations and to differentiate the use of these terms in this subchapter from other sections of the Board’s regulations.

Proposed subdivision (d) defines “employee organization” as any organization of any kind in which non-confidential, supervisory employees of the Los Angeles County Metropolitan Transportation Authority participate and that exists for the purpose of dealing with transit district employers concerning terms and conditions of employment. The proposed subdivision is necessary to provide clarity regarding which kinds of organizations constitute an employee organization under this subchapter of the Board’s regulations, as compared to other subchapters.

Proposed subdivision (e) defines “supervisory employee” as any non-confidential, supervisory employee of the Los Angeles County Metropolitan Transportation Authority. The proposed subdivision is necessary to provide clarity regarding which employees constitute supervisory employees for the purposes of this subchapter of the Board’s regulations as compared to other subchapters.

Proposed subdivision (f) defines “parties” as the Los Angeles County Metropolitan Transportation Authority and any employee organization that is the exclusive representative of or any employee organization interested in representing any supervisory employees under TEERA, as well as any other parties that may be placed under TEERA in the future. This proposed subdivision is necessary to provide clarity regarding which entities are being referenced when the term “parties” is used frequently throughout this subchapter of the Board’s regulations as compared to other subchapters.

Proposed subdivision (g)(1) defines “requester” as an employee organization which has filed a TEERA request for recognition. This proposed subdivision is necessary to provide clarity that in this subchapter of the Board’s regulations, requester refers specifically to organizations who file recognition requests under TEERA, as compared to those organizations who may file requests under other labor relations acts pursuant to other part of the Board’s regulations.

Proposed subdivision (g)(2) defines “intervenor” as an employee organization filing a competing claim of representation or a challenge to the appropriateness of the unit pursuant to TEERA. This proposed subdivision is necessary to provide clarity that in this subchapter of the Board’s regulations, intervenor refers specifically to organizations who intervene pursuant to TEERA, as compared to those organizations who may intervene under other labor relations acts pursuant to other part of the Board’s regulations.

Proposed subdivision (g)(3) defines “petitioner” as an employee organization which has filed a TEERA representation petition. This proposed subdivision is necessary to provide clarity that in this subchapter of the Board’s regulations, petitioner refers specifically to organizations who file petitions under TEERA, as compared to those organizations who may file requests under other labor relations acts pursuant to other part of the Board’s regulations.

Proposed subdivision (g)(4) defines “election intervenor” as an employee organization which files an intervention to appear on the ballot for an election in an appropriate unit pursuant to TEERA. This proposed subdivision is necessary to provide clarity to the parties in identifying employee organizations that file an intervention to appear on a ballot in a representation election as found in this subchapter, which governs proceedings under TEERA only.

Proposed subdivision (h) defines “window period” as the 31-day period established by PUC sections 99564.1(c) and 99564.4(b)(1). The “window period” is necessary to support the policy furthered by what is colloquially referred to as the “contract bar.” The purpose of the contract bar is to balance the need for stability during the term of a memorandum of understanding with the employees’ right to free choice of their representative. The window period creates this balance by providing a designated period of time in which a representation may be properly filed during the term of a memorandum of understanding. Accordingly this proposed section is necessary to provide clarity to the parties regarding when a representation proceeding may be initiated under TEERA during the term of a memorandum of understanding. Further, “window period” was previously defined in Section 71026, which is proposed to be removed in its entirety.

**Section 71026** defines “window period.” The proposed change would delete the entire section because “window period” is now defined in section 71010. The amendment is necessary to reduce redundancies in the Board’s regulations.

**Section 71027** requires a transit district employer to release a mailing of employee addresses to an exclusive representative. The proposed changes would delete the entire section because Government Code section 3558, enacted in 2018, requires transit districts to provide employee contact information to the employee organizations, making section 71027 redundant.

**Section 71030** describes the filing requirements for a request for recognition filed with the employer by an employee organization seeking to become an exclusive representative under TEERA.

Subdivision (a) requires an employee organization seeking to become the exclusive representative of an appropriate unit of employees to file a request for recognition with the employer. The proposed amendment removes the requirement that the request be concurrently filed with the regional PERB office, as well as the requirement that the request be signed and contain various contact and descriptive information. Public Utilities Code section 99564 allows an employee organization to become an exclusive representative under TEERA by filing a request with the employer. Removing the requirement that the request also be filed with PERB allows the Board’s regulations to align more with the statutory requirement. This amendment is necessary because the proposed amendment so subdivision (b) allows the parties to agree that a

third party other than PERB may determine the outcome of a request for recognition. The redaction clarifies the employee organization's legal obligations when completing a request.

Subdivision (b) requires proof of majority support of employees in the unit to be filed with the regional PERB office or with a mutually agreed upon third party. The proposed amendment strikes this language and instead allows the parties to agree that PERB or a third party shall determine the outcome of a request for recognition based upon proof of support as defined in section 32700 of the Board's regulations, which generally governs proof of support. The proposed amendment to subdivision (b) is necessary to clarify the methods through which parties may resolve a request for recognition.

Subdivision (c) requires the employee organization to concurrently serve a copy of the request, excluding proof of support, on the parties. The proposed amendment strikes this language and instead requires that, if majority support is to be determined, the employee organization file proof of support be filed with the regional PERB office or with a mutually agreed upon third party. The amendment adds that determination of proof of majority support, if determined by PERB, shall be in accordance with Board regulations 71110 and 71120, which govern the determination of proof of support and the amendment of petitions for certification, respectively. This proposed amendment is necessary to clarify the requirements for filing proof of support since the proposed amendment to subdivision (b) now longer requires that petitions be determined by PERB.

Subdivision (d) provides specific requirements for petitions to represent employees who are already members of an established unit by referencing other regulations. The proposed amendment removes this subdivision in its entirety because this information is redundant when the referenced information contains the relevant information. The amendment is necessary to streamline the Board's regulations.

**Section 71035** provides the requirements for an employer's posting of notice an employee organization's request for recognition.

Subdivision (a) requires the employer to post a notice of the request for recognition as soon as possible. The proposed amendment adds that the employer shall prepare as well as post the notice. The proposed amendment is necessary because, as proposed in the amendment to Section 71030, requests for recognition no longer need to be initially filed with PERB. PERB initially provided notice along with the request form, but the employer will now need to prepare its own notice.

Subdivision (d) describes the information that shall be contained in the notice, including the PERB case number. The proposed amendment removes the requirement that the PERB case number be included because section 71030 no longer requires that the request be filed with PERB, and thus the request may not have a PERB case number.

Subdivision (e) requires that the employer serve a copy of the notice on the PERB regional office and the parties. The proposed amendment changes this requirement so that service on the PERB regional office is no longer necessary, as requests for recognition may no longer be determined

by PERB pursuant to the parties' agreement under the proposed amendment to Section 71030, subdivision (b).

The proposed amendments are necessary to reflect the changes to section 71030 and clarify the employer's legal obligations regarding notice of the request for recognition.

**Section 71040** allows an employee organization to file an intervention challenging another employee organization's request for recognition.

Subdivision (a) describes the requirements for filing an intervention, including that the intervention must be filed with the regional PERB office and contain contact and descriptive information. The proposed amendment removes this language in its entirety and replaces it with a new subdivision (a), which states that an employee organization may file with the employer an intervention within 15 days of the notice of request for recognition, and such filing may trigger a competing employee organization of employer to file a Petition for Board Investigation. The 15-day requirement is necessary to provide the intervening employee organization and other parties with certainty as to when an intervention to appear on the ballot in a representation election must be filed. The amendment is also necessary to clarify the filing requirements because section 71030 of the Board's regulations no longer require requests for recognition to be processed through PERB.

Subdivision (c) requires that a copy of the filing employee organization serve a copy of the intervention on the parties. The proposed amendment removes this language entirely, and replaces it with a new subdivision (c), which states that determination of proof of support shall be in accordance with sections 71110 and 71120, which govern the determination of proof of support and the amendment of petitions for certification, respectively, and their service requirements. The proposed amendment is necessary because the Board no longer requires concurrent service of the intervention on all parties, as the intervention is already filed with the employer. The amendment is necessary to provide clarity to the parties regarding how proof of support in intervention cases will be determined.

**Section 71050** provides the process for the Board's determination of proof of support of a request for recognition or intervention. The proposed change would delete the entire section because the proof of support determination process is being consolidated into section 71110. The amendment is necessary to reduce redundancies in the Board's regulations.

**Section 71055** provides the process for the parties agreeing to a third party determining proof of support. The proposed change would delete the entire section because this process is now located in section 71030. The amendment is necessary to reduce redundancies in the Board's regulations.

**Section 71060** allows an employee organization to withdraw its request for recognition or intervention. The proposed change would delete the entire section because the withdrawal requirements for petitions are consolidated in section 71230. The amendment is necessary to reduce redundancies in the Board's regulations.



**Section 71070** describes the process for amending a request for recognition or intervention. The proposed change would delete the entire section because, pursuant to the proposed changes to section 71030, requests for recognition and interventions are no longer required to be filed, and therefore amended, with PERB. The amendment is necessary to clarify the filing procedures.

**Section 71080** requires an employer's response to the Board's determination of adequate proof of support for a request for recognition and any interventions. The proposed change would delete the entire section because these requirements are consolidated in section 71090. The amendment is necessary to reduce redundancies in the Board's regulations.

**Section 71090** allows a party to file a petition for investigation after notice of a request for recognition has been posted, and describes the process for filing such a petition.

Subdivision (a) allows a party to file a petition for Board investigation and describes the requirements for the petition. The proposed amendment changes the deadline for filing a petition from 30 days following an employer's response to 30 days following the posting of notice of request for recognition. This is because the employer's response is no longer required before a petition for Board investigation can be filed; the information that would previously have been included in such a response to the request is now included in the response to the petition for Board investigation or in the employer's own petition, as described in subdivisions (e) and (f) below. This change is necessary to clarify the timeline for when a petition can be filed.

The proposed amendment to subdivision (a) also adds references to Public Utilities Code sections 99564.1 and 99564.2, which allow for the filing of challenges and investigation requests to the Board, and section 71140 of the Board's regulations, which concerns Board investigation of representation matters filed under TEERA. This proposed amendment is necessary to provide statutory and regulatory guidance on such petitions and investigations.

Subdivision (a)(2) allows an employee organization alleging that it has filed an intervention to petition for Board investigation. The amendment adds an "or" and the end of the clause due to the addition of proposed subdivisions (a)(3) and (a)(4).

Proposed subdivision (a)(3) allows an employer to file a petition for Board investigation if it reasonably doubts the employee organization has majority support or reasonably doubts the appropriateness of the requested unit. This proposed subdivision is necessary to reflect that Public Utilities Code section 99564.1, subdivision (a), allows an employer to challenge that a petitioning employee organization has majority support or doubt that a unit is appropriate.

Proposed subdivision (a)(4) allows an employer to file a petition for Board investigation if an employee organization has filed with it a challenge to the appropriateness of the unit or a competing claim of representation. The proposed subdivision is necessary to reflect that Public Utilities Code section 99564.1, subdivision (b), allows a petition for investigation to be filed when an intervening organization has challenged the appropriateness of the unit to the employer or filed a competing claim of representation.

Subdivision (c) requires a petition for Board investigation be served pursuant to Board regulation 32140, and that the petition be filed with the regional PERB office. The proposed amendment

removes the requirement that the petition be filed with the PERB regional office because all documents are to be filed through e-PERB pursuant to section 71015.

Subdivision (d) describes the requirements for filing a petition for Board investigation. The proposed change specifies that this subdivision covers the requirements for employee organizations, because the requirements for employers are described in proposed subdivisions (e) and (f). The proposed amendment also requires that the petition contain relevant e-mail addresses, to reflect updated electronic communication practices. This amendment is necessary to provide clarity to which petition requirements apply to which parties.

Proposed subdivision (e) describes the requirements for an employer's response to an employee organization's petition for Board investigation or for an employer's own petition for Board investigation if the employer has granted voluntary recognition. Subdivision (e)(1) requires a statement that the employer has voluntarily recognized the organization as the exclusive representative. Subdivision (e)(2) requires the employer's name, address, e-mail address, and telephone number. Subdivision (e)(3) requires the requesting employee organization's name, address, e-mail address, and telephone number. Subdivision (e)(4) requires a description of the grouping of employment classes to be included in the unit. Subdivision (e)(5) requires the number of employees in the unit. And subdivision (e)(6) requires the date of recognition. This proposed subdivision is necessary to clarify the employer's requirements for responding to or filing its own petition for Board investigation.

Proposed subdivision (f) describes the requirements for an employer's response to or its own petition for Board investigation if the employer has not granted voluntary recognition. Subdivision (f)(1) requires the employer to provide the name, address, and telephone number of the employer and the name, address, e-mail address, and telephone number of the employer agent to be contacted. Subdivision (f)(2) provides a series of prompts for the employer to answer regarding the reasons for its denial of recognition. These are the same as those found in section 71080, which is proposed to be removed in its entirety. This proposed subdivision is necessary to clarify the employer's requirements and provide information no longer provided in section 71080 of the Board's regulations. The information required from the employer in proposed subdivisions (e) and (f) are necessary for Board agent investigating the representation matter to make a thorough evaluation of the unit at issue.

**Section 71095** states that if no petition for Board investigation is timely filed, the request for recognition and any interventions will be invalid. The proposed changes adds that the request and interventions will be invalid if no petition was timely filed *and* the employer has not granted voluntary recognition. This amendment is necessary to clarify under when a request for recognition or intervention will be invalidated because both conditions are required to invalidate the request for recognition or intervention; the request will not be invalidated if the employer does voluntarily recognize the employee organization. The amendment also removes the citation to section 71080, because that section is proposed to be repealed, and adds "of these regulations." This amendment is necessary to add clarity to the Board's regulations.

**Section 71100** describes the requirements for an employee organization's petition for certification under TEERA.

Subdivision (a) provides the filing process of the petition and lists the information that must be included in the petition. The proposed change removes the requirement that petition be filed with a PERB regional office, as the Board's regulations now allow parties to file documents through e-PERB. Relatedly, the amendment also allows the petition to be electronically signed. The amendment is necessary to clarify the filing requirements.

Subdivisions (a)(1) requires the employee organization's contact information. Subdivision (a)(2) requires the employer's contact information. And subdivision (a)(5) requires the contact information of any other employee organization interested in representing the unit. The amendment requires the e-mail addresses be provided for all of these contacts. The amendment is necessary to clarify the petition filing and content requirements.

**Section 71110** provides the Board's process for determining proof of support of a petition for certification. Subdivision (a) describes the filing process. The proposed change removes the requirement that the employer file a list of employees with a PERB regional office because PERB's regulations now require parties to file through e-PERB. The proposed change is necessary to reflect PERB's updated filing requirements.

**Section 71115** allows an employee organization to withdraw its petition for certification. The proposed change would delete the entire section because the withdrawal requirements for all representation proceedings are consolidated in section 71230. The amendment is necessary to reduce redundancies in the Board's regulations.

**Section 71120** describes the process for amending a petition for certification. Subdivision (a) describes the filing requirements. The proposed change removes the requirement that the amendment be filed with a regional office, because proposed section 71015 now requires electronic filing through e-PERB. The proposed change is necessary to reflect PERB's updated filing requirements.

**Section 71130** provides the requirements for an employer's response to a petition for certification. The proposed change to subdivision (a) removes the requirement that the response be filed with the regional PERB office, as proposed section 71015 now requires electronic filing through e-PERB. Subdivision (c)(1) requires the employer to include in its response the contact information for the agent to be contacted. The amendment requires the employer to provide an e-mail address. The amendment is necessary to reflect PERB's updated filing requirements and to allow for electronic communication.

**Section 71140** states that the Board shall investigate whenever a petition regarding a representation matter is filed. Subdivision (b)(2) states that a petition shall be dismissed if the employer and another representative of any employees in the unit are currently party to a memorandum of understanding unless the petition is filed during the appropriate window period. The proposed changes broaden the language of the section to refer to a "petition regarding a representation matter" generally instead of just a "request for recognition." This amendment is

necessary because Public Utilities Code sections 99564.1 and 99564.2 allow parties to file petitions in representation matters other than just requests for recognition. The proposed changes also replace a reference to section 71025, which is not a current regulation, to the updated section 71010(h), which provides the definition for “window period.” This amendment is necessary to provide consistency to the Board’s regulations.

**Section 71210** requires the Board to serve notice of a representation hearing on all interested parties. The proposed change removes a reference to section 71020, which is not a current PERB regulation. The amendment is necessary to promote consistency in the Board’s regulations.

**Section 71230** allows a petitioner to withdraw their representation petition at any time prior to a final Board decision. The proposed change removes the original text. The new text allows a petitioner to withdraw any petition filed under Subchapter 2 or states that the parties may reach a voluntary agreement regarding some or all disputed issues. The specification that this section applies to petitions filed under this subchapter is necessary because the proposed amendments add multiple subchapters to Chapter 6 of the Board’s regulations, and this section regarding withdrawals or settlements applies only to representation matters filed pursuant to TEERA. The proposed change also clarifies that withdrawal must be accompanied by proof of service. This amendment is necessary to clarify the filing requirements. The amendment also adds that if a decision has already been issued, a party seeking to effect a withdrawal or settlement must request leave from the Board agent or the Board itself. This amendment is necessary to clarify the procedures regarding how a party may withdraw or settle a petition after a decision has already issued. The proposed amendment also adds “or Settlement” to the title of this section. This amendment is necessary to describe the contents of the section more accurately.

**Section 71235** requires the Board to serve notice of a decision in a representation matter on all interested parties. The proposed change removes a reference to section 71020, which is no longer a current PERB regulation. The amendment is necessary to promote consistency in the Board’s regulations.

**Section 71300** requires the Board to issue notice of an intent to conduct a representation election on all interested parties. The proposed change removes a reference to section 71020, which is not a current PERB regulation. The amendment is necessary to promote consistency in the Board’s regulations.

**Section 71310** allows an employee organization to file an intervention to appear on an election ballot. Subdivision (a) provides the process for filing. The proposed change removes the requirement that the employee organization file its intervention with a PERB regional office, because PERB regulation 71015 now requires parties to file documents through e-PERB. Subdivision (a)(1) requires the filer to include its agent’s contact information as well as the employer’s agent’s contact information. The proposed change requires the filer to provide these agents’ e-mail addresses. The amendment is necessary to reflect updated electronic communication practices.

**Section 71320** describes the process for the Board’s determination of proof of support to conduct an election. Subdivision (a) requires the employer to file a list of employees with the regional PERB office. The proposed change removes this requirement because proposed section 71015 now requires all documents to be filed through e-PERB. The amendment is necessary to reflect updated filing requirements.

**Section 71680** describes the process for an employee organization to file a severance petition to become the exclusive representative of a group of already-represented employees.

Subdivision (a) provides the process for filing the petition. The amendment adds that a petition can be filed to become the exclusive representative of a group of employees “(but less than all the employees)” who are already represented in a unit. This clarification is necessary to distinguish a severance petition—which seeks representation of a subdivision of unit employees—with a general request for recognition—which seeks representation of the entire unit. This amendment provides clarity within the Board’s regulations.

The proposed amendment to subdivision (a) also removes the option to file a severance petition by filing a request for recognition, leaving the petitioner with only the option of filing a petition for certification. This amendment is necessary to streamline the severance petition process by ensuring that all petitioners use the same form, and further provides clarity within the Board’s regulations by distinguishing the severance process from the request for recognition process.

Subdivision (b) requires that a severance petition be filed during the “window period.” The amendment changes the reference to section 71026, which is proposed to be repealed, to section 71010(h), which will define the term “window period.” The amendment is necessary to promote consistency within the Board’s regulations.

**Section 71685** describes the process for an employer and exclusive representative to respond to an employee organization’s severance petition.

Subdivision (b) requires that the response be signed. The proposed amendment allows the response to be electronically signed. This amendment is necessary to reflect the updated electronic filing requirements pursuant to proposed section 71015.

Subdivision (b)(1) requires the response to include the respondent’s agent’s contact information. The amendment requires the respondent to also provide an e-mail address. This amendment is necessary to reflect updated electronic communication practices.

**Section 93000** defines terms under TEERA. The proposed change would remove this section in its entirety and replace it with proposed section 72000. This is necessary to reduce redundancies in the Board’s regulations.

**Section 93005** defines and allows for the filing of petitions for certification, decertification, clarification of an existing bargaining unit, and amendment of certification. The proposed change would remove this section in its entirety and replace it with proposed sections 72005, 72035, 72045, and 72065. This is necessary to reduce redundancies in the Board’s regulations.

**Section 93010** describes the requirements for petitions filed in representation matters. The proposed change would remove this section in its entirety and replace it with proposed sections 72005, 72030, 72035, 72045, and 72065. This is necessary to reduce redundancies in the Board's regulations.

**Section 93015** requires that in order to demonstrate a question of representation exists, a petitioning labor organization must demonstrate support from at least 30 percent of the employees in the proposed bargaining unit. The proposed change would remove this section in its entirety and replace it with proposed sections 72005, 72035, and 72045. This is necessary to reduce redundancies in the Board's regulations.

**Section 93020** allows a transit district and any individuals or labor organizations to enter into a consent election agreement regarding the conduct of an election. The proposed change would remove this section in its entirety and replace it with proposed section 72135. This is necessary to reduce redundancies in the Board's regulations.

**Section 93025** describes the process for SMCS's investigation of a representation petition. The proposed change would remove this section in its entirety and replace it with proposed sections 72080, 72085, 72090, and 72095. This is necessary to reduce redundancies in the Board's regulations.

**Section 93030** describes how SMCS hearing officers shall conduct representation hearings. The proposed change would remove this section in its entirety and replace it with proposed section 72100. This is necessary to reduce redundancies in the Board's regulations.

**Section 93035** provides the process for a labor organization or person to intervene in a representation hearing. The proposed change would remove this section in its entirety and replace it with proposed section 72105. This is necessary to reduce redundancies in the Board's regulations.

**Section 93040** describes the rights and duties of parties at petition hearings. The proposed change would remove this section in its entirety and replace it with proposed section 72100. This is necessary to reduce redundancies in the Board's regulations.

**Section 93045** describes the procedures regarding subpoenas. The proposed change would remove this section in its entirety and replace it with proposed section 72115. This is necessary to reduce redundancies in the Board's regulations.

**Section 93050** allows parties to request to file post-hearing briefs. The proposed change would remove this section in its entirety and replace it with proposed section 72100. This is necessary to reduce redundancies in the Board's regulations.

**Section 93055** describes the hearing officer's duties following a representation hearing. The proposed change would remove this section in its entirety and replace it with proposed section 72120. This is necessary to reduce redundancies in the Board's regulations.

**Section 93060** allows any party to file exceptions to a hearing officer's proposed decision to the Board itself. The proposed change would remove this section in its entirety and replace it with proposed section 72125. This is necessary to reduce redundancies in the Board's regulations.

**Section 93065** regards the Board's ordering of elections. The proposed change would remove this section in its entirety and replace it with proposed section 72125. This is necessary to reduce redundancies in the Board's regulations.

**Section 93070** describes the election procedures. The proposed change would remove this section in its entirety and replace it with proposed sections 72140, 72145, 72150, 72155, 72160, 72165, 72170, 72175, 72185, 72190, 72195, 72200, 72205, 72210, and 72215. This is necessary to reduce redundancies in the Board's regulations.

**Section 93075** requires SMCS to conduct a runoff election when no choice in an election receives a majority of the valid ballots cast and describes the relevant procedures. The proposed change would remove this section in its entirety and replace it with proposed section 72180. This is necessary to reduce redundancies in the Board's regulations.

**Section 93080** requires the Board to apply relevant federal law when resolving questions of representation. The proposed change would remove this section in its entirety and replace it with proposed section 72225. This is necessary to reduce redundancies in the Board's regulations.

### **C. Amendments Only to the Authority and Reference Citations of Existing Regulations**

**Section 31001** provides for meetings of the Public Employment Relations Board. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32020** provides a definition for the term "Board." The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32030** provides a definition for the term "Board itself." The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32040** provides a definition for the term "Executive Director." The proposed changes do not make any changes to the text of this section, but only update the authority citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32050** provides a definition for the term “General Counsel.” The proposed changes do not make any changes to the text of this section, but only update the authority citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32055** provides a definition for the term “Chief Administrative Law Judge.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32060** provides a definition for the term “headquarters office.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32075** provides a definition for the term “regional office.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32080** provides a definition for the term “day.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32090** provides a definition for the term “e-PERB.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32091** provides a definition for the term “electronic filing.” The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32092** provides a definition for the term “electronic signature” and when documents are determined to be electronically signed. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include



jurisdiction over matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32093** provides a definition for the term “electronic service” where authorized or required by statute or within PERB’s regulations. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32094** provides a definition for the term “filed” as the term is used for the formal submission of documents with PERB. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32105** provides for the severability of PERB’s regulations. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32125** describes the filing requirements for documents with confidential information. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB regulation 72001.

**Section 32130** addresses the computation of time for filings with PERB. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB regulation 72001.

**Section 32132** concerns the requirements for an extension of time in which to file documents with the Board. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB regulation 72001.

**Section 32135** concerns filing requirements for non-electronic filings. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature’s extension of the Board’s responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB regulation 72001.

**Section 32136** concerns late filing requirements. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB regulation 72001.

**Section 32143** concerns the placement of PERB cases in abeyance. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32145** concerns the waiver of time period requirements to expedite a matter. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32147** provides for expediting matters before the Board. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32149** concerns the issuance of investigative subpoenas. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32150** concerns the issuance of subpoenas. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32155** concerns the circumstances under which a Board agent or Board member will be recused a case. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over matters arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32162** concerns the confidentiality of Board investigations. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32164** concerns an application for joinder of parties. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72001.

**Section 32165** concerns an application to join a representation hearing as a limited party. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32166** concerns an application to join a representation hearing as a full party. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32168** concerns the conduct of hearings. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32169** concerns the taking of depositions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32170** concerns the authority of a Board agent conducting a hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32175** regards the rules of evidence in representation cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32176** concerns the rules of evidence in unfair practice cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32178** concerns the burden of proof in unfair practice cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32180** concerns the rights of parties in PERB hearings. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32185** concerns ex parte communications with Board agents. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32190** concerns filing and rulings on motions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32200** concerns the appeal of rulings on motions and other interlocutory matters. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32205** concerns requests to continue a formal hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32206** concerns the production of statements of witnesses after testimony. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32207** concerns stipulation of facts for purposes of hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32209** addresses the procedure for correction of hearing transcripts. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32210** concerns the filing of informational briefs and oral argument. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32212** concerns briefs and oral argument. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32215** concerns issuance of proposed decisions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and

Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32220** concerns contemptuous conduct by a party or a party's agent. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32230** concerns the refusal of a witness to testify. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to PERB Regulation 72100.

**Section 32295** concerns ex parte communications with members of the Board itself or legal advisers to Board members. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to proposed Chapter 6, Subchapter 4, of PERB's Regulations.

**Section 32300** concerns the filing of exceptions to Board agent decisions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32305** provides that proposed decisions become final if no timely exceptions are filed. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to proposed Chapter 6, Subchapter 4, of PERB's Regulations.

**Section 32310** provides for the filing of responses to exceptions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32312** provides the requirements for reply briefs to exceptions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32315** provides for oral argument on exceptions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32320** concerns issuance of decisions by the Board itself. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to proposed Chapter 6, Subchapter 4, of PERB's Regulations.

**Section 32325** concerns the remedial powers of the Board. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32350** provides a definition of administrative decisions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32360** concerns requirements for appeals of administrative decisions. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32370** concerns requests for a stay following an appeal. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32375** provides for responses to administrative appeals. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's

responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32380** provides for administrative decisions that are not appealable. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32400** provides that a motion for reconsideration is not required in order to exhaust administrative remedies. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act, and representation matters arising under the PUC transit district acts pursuant to proposed Chapter 6, Subchapter 4, of PERB's Regulations.

**Section 32410** provides for the filing of requests for reconsideration. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32450** concerns the filing of requests for injunctive relief. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32455** concerns the investigation of requests for injunctive relief. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32460** provides for recommendations by the General Counsel concerning requests for injunctive relief. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32465** provides for decisions by the Board itself concerning requests for injunctive relief. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.



**Section 32470** concerns the authority of the General Counsel regarding requests for injunctive relief where a quorum of the Board itself is unavailable. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32612** specifies in which regional office unfair practice charge filings should be made. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32621** concerns the amending of unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32625** concerns the withdrawal of unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32630** concerns the dismissal of unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32635** provides for the appeal of dismissals of unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32640** concerns the issuance of complaints in unfair practice charge cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32644** provides for the filing of an answer in unfair practice charges where a complaint issues. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's

extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32645** concerns non-prejudicial errors in unfair practice charges and related documents. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32647** concerns amendments to complaints in unfair practice charge cases before hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32648** concerns amendments to complaints in unfair practice charge cases during a hearing. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32649** concerns the filing of answers to amendments to complaints in unfair practice charge cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32650** concerns the conduct of settlement conferences in unfair practice charge cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32680** concerns the conduct of hearings on unfair practice charges. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32690** concerns notice of hearing in unfair practice charge cases. The proposed changes do not make any changes to the text of this section, but only update the authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32980** concerns enforcement of compliance with final decisions of the Board. The proposed changes do not make any changes to the text of this section, but only update the

authority and reference citations. This update is necessary to reflect the Legislature's extension of the Board's responsibilities to include jurisdiction over unfair practice charges arising under the OCTDA, SFBART Act, and Sacramento RTD Act.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON**

PERB did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these regulations.

### **ECONOMIC IMPACT ASSESSMENT (Government Code section 11346.3(b))**

As a result of the enactment of Assembly Bill 355 (Stats. 2019, Ch. 713), effective January 1, 2020, PERB acquired responsibility for the administration and enforcement of labor relations in the OCTDA, which are codified at Division 10, Part 4, Chapter 4 of the Public Utilities Code, sections 40122.1 and 40122.2, covering employees of the Orange County Transit District. As a result of the enactment of Assembly Bill 2850 (Stats. 2020, Ch. 293), effective January 1, 2021, PERB acquired responsibility for the administration and enforcement of labor provisions in the SFBART Act, which is codified at Division 10, Part 2, Chapter 4 of the Public Utilities Code, section 28848 et seq., covering employees of the San Francisco Bay Area Rapid Transit District. As a result of the enactment of Senate Bill 598 (Stats. 2021, Ch. 492), effective January 1, 2022, PERB acquired responsibility for the administration and enforcement of the labor provisions of the Sacramento RTD Act if elected to do so by a bargaining unit's representative, which is codified at Division 10, Part 14, Chapter 6 of the Public Utilities Code, which is codified at section 102398 et seq. The proposed regulations and amendments implement procedures for PERB's administration and enforcement of the OCTDA, SFBART Act and Sacramento RTD, thereby protecting the procedural and substantive rights of certain employees of these transit districts, employee organizations, and the transit district employers, as set forth by these acts. The proposed regulations regarding representation matters under TEERA and other specified transit district acts and laws will only impact procedures applicable to public employers, employee organizations, and public employees in representation matters.

In accordance with Government Code section 11346.3, subdivision (b), PERB has made the following assessments regarding the proposed regulations:

#### **Creation or Elimination of Jobs Within the State of California**

The OCTDA, SFBART Act, and Sacramento RTD confer collective bargaining rights for certain public sector employees of the Orange County Transportation Authority, the San Francisco Bay Area Rapid Transit District, and the Sacramento Regional Transit District, respectively, which are public sector employers. The proposed and amended regulations are designed to provide procedures for the filing, processing, and determination of unfair practice charges alleging violations of the OCTDA, SFBART Act, and Sacramento RTD, that are necessary for PERB's administration and enforcement of these acts. The proposed and amended regulations regarding transit district representation matters are designed to clarify parties' rights and PERB's

procedures regarding employee representation matters. PERB has determined that the proposed regulations will have no impact on the creation or elimination of jobs in the State of California.

#### Creation of New Business or Elimination of Existing Businesses Within the State of California

The OCTDA, SFBART Act, and Sacramento RTD confer collective bargaining rights for certain public sector employees of the Orange County Transportation Authority, the San Francisco Bay Area Rapid Transit District, and the Sacramento Regional Transit District, respectively, which are public sector employers. The proposed and amended regulations are designed to provide procedures for the filing, processing, and determination of unfair practice charges alleging violations of the OCTDA, SFBART Act, and Sacramento RTD, that are necessary for PERB's administration and enforcement of these acts. The proposed and amended regulations regarding transit district representation matters are designed to clarify parties' rights and PERB's procedures regarding employee representation matters. PERB has determined that the proposed regulations will not create new businesses or eliminate existing businesses within the State of California.

#### Expansion of Businesses Within the State of California

The OCTDA, SFBART Act, and Sacramento RTD confer collective bargaining rights for certain public sector employees of the Orange County Transportation Authority, the San Francisco Bay Area Rapid Transit District, and the Sacramento Regional Transit District, respectively, which are public sector employers. The proposed and amended regulations are designed to provide procedures for the filing, processing, and determination of unfair practice charges alleging violations of the OCTDA, SFBART Act, and Sacramento RTD, that are necessary for PERB's administration and enforcement of these acts. The proposed and amended regulations regarding transit district representation matters are designed to clarify parties' rights and PERB's procedures regarding employee representation matters. PERB has determined that the proposed regulations will not lead to the expansion or elimination of existing businesses within the State of California.

#### Benefits of the Regulations to Health and Welfare of California Residents, Worker Safety, and the State's Environment

The OCTDA, SFBART Act, and Sacramento RTD confer collective bargaining rights for certain public sector employees of the Orange County Transportation Authority, the San Francisco Bay Area Rapid Transit District, and the Sacramento Regional Transit District, respectively, which are public sector employers. The proposed and amended regulations are designed to provide procedures for the filing, processing, and determination of unfair practice charges alleging violations of the OCTDA, SFBART Act, and Sacramento RTD, that are necessary for PERB's administration and enforcement of these acts. The proposed and amended regulations regarding transit district representation matters are designed to clarify parties' rights and PERB's procedures regarding employee representation matters. 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 OCTDA, SFBART Act, and Sacramento RTD, and other transit district acts by providing processes to

expediently resolve alleged violations of the acts and representation matters under the acts. California residents' general welfare will be benefitted by stable collective bargaining and dispute resolution, which translates to continuous delivery of the essential services that the transit district employers and its employees provide to California's communities.

#### **INFORMATION RELIED UPON TO SUPPORT PERB'S INITIAL DETERMINATION THAT THE PROPOSED REGULATORY ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS**

The OCTDA, SFBART Act, and Sacramento RTD, along with other public sector labor relations statutes that PERB is charged with administering and enforcing, set forth the rights and obligations of entities and individuals operating in the public sector. Because the scope of the OCTDA, SFBART Act, and Sacramento RTD, and other public sector labor relations statutes that PERB is charged with administering and enforcing is limited to the public sector, PERB has initially determined that the proposed regulatory actions will not have a significant adverse economic impact on business.

#### **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

PERB has not identified any adverse impact on small businesses as a result of these proposed regulations, and has not identified any alternatives that would lessen any adverse impact on small business. Thus, no such alternative has been proposed.

#### **MANDATED USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT**

PERB's proposed regulations do not mandate the use of any specific technologies or equipment.