

## ADDENDUM TO THE INITIAL STATEMENT OF REASONS

Please Note: All double underlined text indicates additions to the text and all double ~~striketrough~~ indicates deleted material to the text of the initial statement of reasons that was subject to the 45-day notice period that closed on May 2, 2022.

### A. Adoption of New Sections

**Proposed Section 32008** defines terms applicable for cases filed under the JCEERA. This proposed section is necessary to promote clarity throughout PERB's regulations.

Proposed subdivision (a) references the JCEERA's definition of "employee organization" under Government Code section 3524.52, subdivision (c), and includes in the definition two or more employee organizations that join together in a representation petition as "joint petitioner" or to intervene in a representation election as "joint election intervenor." This proposed subdivision is necessary in order to provide clarity to parties that PERB regulations relating to an "employee organization", would also extend to two or more employee organizations that join together in a representation petition or representation election.

Proposed subdivision (b) defines the term "election intervenor," which is not defined under the JCEERA, to mean any employee organization that files an intervention to appear on the ballot for an election in an appropriate JCEERA unit. This definition 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 proposed Chapter 10, which governs proceedings specific to the JCEERA.

Proposed subdivision (c) defines the term "exclusive representative," which is not defined under the JCEERA, to mean an employee organization recognized or certified as the exclusive negotiating representative of employees of the Judicial Council. This definition is necessary to apply PERB regulations applicable to an "exclusive representative" to an "exclusive representative" under the JCEERA, and to maintain consistency with PERB's regulations that also define the term "exclusive representative" under other labor relations statutes that PERB administers.

**Proposed Section 95030** provides a procedure for employee organizations to petition to be certified as the exclusive representative of an appropriate bargaining unit of unrepresented employees.

Proposed subdivision (a) permits an employee organization to file a petition for certification if it wishes to become the exclusive representative of an appropriate unit consisting of employees who are not represented by an exclusive representative ~~and specifies information that must be contained in the petition.~~ Proposed subdivision (a) requires a petition for certification be filed with PERB, which is necessary to initiate the certification process with PERB. Proposed subdivision (a) also requires the petition

~~be filed signed by an authorized agent of the employee organization. This requirement is necessary to ensure that the petition is filed by an individual authorized by the employee organization to do so. Proposed subdivision (a) further requires the petition to include contact information of the employee organization filing the petition. This information is necessary to facilitate PERB's communication with the employee organization. Proposed subdivision (a) further requires the petition to include contact information of the employer. This information is necessary to facilitate PERB's communication with the employer. Proposed subdivision (a) requires the petition to identify the job titles or classifications of employees in the proposed unit. This information is necessary to apprise PERB and any interested parties of the scope of the employee organization's petition.~~

Proposed subdivision (a)(1) requires the petition for certification include the name, address, e-mail address, and telephone number of the employer, and the name, address, e-mail address, and telephone number of the employer's authorized agent to be contacted regarding the petition. This proposed subdivision is necessary to facilitate PERB's communication with the employer and the employer's authorized agent.

Proposed subdivision (a)(2) requires the petition include a description of the claimed appropriate unit listing the classifications and positions included in the unit and those excluded from the unit. This proposed subdivision is necessary to apprise PERB and the parties of the classifications and positions subject to the petition so they may take any appropriate action, and to allow the parties to address any issues regarding the appropriateness of the proposed unit. This proposed subdivision is also necessary to provide the employer with relevant information to prepare the employee list required under proposed Section 95050(a).

Proposed subdivision (a)(3) requires the petition for certification contain a statement that the petition is accompanied by proof of support of at least 30 percent of the employees in the unit claimed to be appropriate. This proposed subdivision is necessary to inform PERB of the type of petition being filed so that PERB can process the petition under the applicable procedures, and to ensure the petition meets the threshold standard of support of at least 30 percent to initiate the Board's process for certification. Proof of support is defined under Section 32700 of existing PERB regulations. Using the same standard for proof of support in certification petitions filed under the JCEERA as found in PERB regulations covering other labor relations statutes with similar statutory text that PERB administers is necessary to avoid confusion and to maintain consistency in PERB's procedures. (See e.g., Government Code section 3520.5, PERB Regulation 40200 (Dills Act); Government Code section 3524.74 (JCEERA).)

Proposed subdivision (a)(4) requires the petition include the approximate number of employees in the unit claimed to be appropriate. This proposed subdivision is necessary to allow PERB and the parties to investigate and resolve any discrepancies regarding the size of the proposed unit, which is used for determining proof of support.

Proposed subdivision (a)(5) requires the petition include the name, address, e-mail address, and telephone number of the employee organization, and the name, address, e-mail address, and telephone number of the employee organization's authorized agent to be contacted. This proposed subdivision is necessary to facilitate PERB's communication with the employee organization and the employee organization's authorized agent.

Proposed subdivision (a)(6) requires the petition for certification include the name, address, e-mail address, and telephone number of any other employee organization, if any, known to have an interest in representing the employees covered by the unit. This proposed subdivision is necessary to allow PERB to coordinate with all interested employee organizations for administrative efficiency, and to investigate and resolve any representation issues.

Proposed subdivision (b) requires that the petition for certification include proof of at least 30 percent support of the employees in the ~~proposed~~ unit claimed to be appropriate. Proof of support is defined under Section 32700 of existing PERB regulations. Using the existing standard for determining the sufficiency of proof of support is necessary to avoid confusion and to maintain consistency in PERB's procedures for the labor relations statutes it administers. Proof of 30 percent support within the proposed bargaining unit is the standard threshold of employee support that an employee organization must make when filing a petition for certification. (See e.g., PERB Regulations 40170 (Dills Act), 51100 (Higher Education Employer-Employee Relations Act [HEERA; Government Code section 3560 et seq.]), 61210 (MMBA), 71100 (Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act [TEERA; Public Utilities Code section 99560 et seq.]), 81210 (Trial Court Act), and 91210 (Court Interpreter Act).) Using the same threshold for proof of support to initiate the Board's process for ~~in~~ petitions for certification filed under the JCEERA is necessary to avoid confusion and to maintain consistency in PERB's procedures for the labor relations statutes it administers.

Proposed subdivision (c) requires service and proof of service of the petition for certification pursuant to Section 32140 of existing PERB regulations. 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 proof of support is excluded from service on other parties because this information is confidential under Section 32700 of existing PERB regulations.

**Proposed Section 95040** provides for the posting of the notice of the petition for certification. Notice of the petition is necessary ~~to apprise employees of the petition so they may take any appropriate action~~ to make affected employees aware that a union has a desire to represent them in their employment relations with the employer.

Proposed subdivision (a) provides that the notice of the petition for certification, which is a form provided by the Board, will be posted no later than 15 days following service of the copy of the petition. This proposed subdivision is necessary to provide the employer Judicial Council with certainty as to when it must post the notice of the petition for certification, and to maintain consistency in PERB's notice posting procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40172 (Dills Act); Government Code section 3524.74 (JCEERA).) Having the Board generate the notice of the petition and provide it to the employer ensures accuracy and consistency in the form and content of the notices. This proposed subdivision also requires the notice only include the information requested in the enumerated subdivisions, which is necessary to ensure the employer does not publish irrelevant information on the notice.

Proposed subdivision (a)(1) requires the notice include the petition for certification's PERB-assigned case number. This proposed subdivision is necessary to apprise employees that the certification process has been initiated with PERB, and to provide employees with relevant information regarding the petition so they may take any appropriate action.

Proposed subdivision (a)(2) requires the notice contain the date the notice was posted by the employer. This proposed subdivision is necessary to enable PERB and the parties to effectively monitor the employer's obligation to post the notice within the specified time frame.

Proposed subdivision (a)(3) requires the notice contain the date the petition for certification was filed with PERB. This proposed subdivision is necessary to inform employees of the timing and relevancy of the petition so that employees can take any appropriate action.

Proposed subdivision (a)(4) requires the notice contain the contact information for the employee organization filing the petition for certification. This proposed subdivision is necessary to ensure that the petition was filed by an employee organization, and so that employees have the contact information for the employee organization to obtain any relevant information.

Proposed subdivision (a)(5) requires the notice contain a statement that the petition for certification is based on the claim that at least 30 percent of the employees in the unit claimed to be appropriate wish to be represented by the petitioning employee organization. This proposed subdivision is necessary to inform employees of the type of petition being filed and the petitioning employee organization's claim that it has met the 30 percent proof of employee support threshold that an employee organization must make when filing a petition so they may take any appropriate action. Proof of 30 percent support within the proposed bargaining unit is the standard threshold of employee support that an employee organization must make when filing a petition for certification. (See e.g., PERB Regulations 40170 (Dills Act), 51100 (Higher Education

Employer-Employee Relations Act [HEERA; Government Code section 3560 et seq.], 61210 (MMBA), 71100 (Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act [TEERA; Public Utilities Code section 99560 et seq.], 81210 (Trial Court Act), and 91210 (Court Interpreter Act).) Using the same threshold for proof of support in petitions for certification filed under the JCEERA is necessary to avoid confusion and to maintain consistency in PERB's procedures for the labor relations statutes it administers.

Proposed subdivision (a)(6) requires the notice include the contact information for the employer. This proposed subdivision is necessary so that employees have the contact information for the employer to obtain any relevant information.

Proposed subdivision (a)(7) requires the notice include the final date for posting the notice. This proposed subdivision is necessary to enable the Board and parties to effectively monitor the employer's obligation to post the notice.

Proposed subdivision (a)(8) requires the notice be signed by an authorized agent of the employer. This proposed subdivision is necessary to demonstrate that the notice has been approved by the employer for official posting.

Proposed subdivision (b) provides the manner in which the Judicial Council must provide notice to employees by posting the notice on all employee bulletin boards in each facility where employees of the unit claimed to be appropriate are employed. This proposed subdivision identifying the locations where the notice of the petition is to be posted is necessary as a means to apprise the greatest number of affected employees of the petition so they may take any appropriate action.

Proposed subdivision (c) requires the notice to remain posted for 20 days. This proposed subdivision is necessary to ensure that the notice will remain posted for an adequate period of time to reach affected employees, and to maintain consistency in PERB's procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40172 (Dills Act); Government Code section 3524.74 (JCEERA).)

Proposed subdivision (d) requires the notice of the petition be ~~completed by the employer prior to its posting, and that a copy of the petition for certification be included with the notice when posted~~ with a copy of the petition for certification. This proposed subdivision is necessary to enable the Board and the parties to effectively monitor ~~and enforce~~ the employer's obligation to post the notice and petition, and to provide affected employees with relevant information regarding the petition so they may take any appropriate action.

**Proposed Section 95050** provides a process for the Board to determine proof of employee support for certification petitions. 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 employer 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, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 33075 (EERA), 40174 (Dills Act), 51110 (HEERA), 61240 (MMBA), 71110 (TEERA), 81240 (Trial Court Act), and 91240 (Court Interpreter Act).) The list of employees is necessary used 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) provides that PERB will make the initial determination of the sufficiency of proof of support pursuant to Section 32700, and allows permits the petitioning organization, up to 10 days as determined by the Board, to perfect its proof of support if the initial determination of proof of support is insufficient. This proposed subdivision is necessary to apprise the parties that the Board will apply Section 32700 in determining whether proof of support is sufficient. This proposed subdivision is also 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, ~~and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 33075 (EERA), 40174 (Dills Act), 51110 (HEERA), 61240 (MMBA), 71110 (TEERA), 81240 (Trial Court Act), and 91240 (Court Interpreter Act).)~~

Proposed subdivision (c) provides a process by which the Board must inform the parties of its final determination of the sufficiency or lack 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 95060** allows an employee organization to withdraw a petition for certification prior to a final decision by the Board. This proposed section is necessary to permit parties to withdraw a petition that they no longer wish to pursue provided that the withdrawal occurs prior to the issuance of a final Board decision, because once the Board makes a final decision on the petition, it is binding on the parties. This proposed section also requires that the withdrawal of a petition for certification be filed with PERB, and service and proof of service of the withdrawal, which is necessary to ensure that PERB and all parties receive adequate notice of the withdrawal and can take any appropriate action.

**Proposed Section 95070** concerns amendments to a petition for certification.

Proposed subdivision (a) allows the petitioning employee organization to amend its petition to correct any technical errors or to add or delete job classifications from the proposed unit prior to the issuance of a notice of hearing, or notice of intent to conduct an 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 requirements that the amendment to the petition for certification be filed with PERB and include the information required in Section 95030(a), are necessary to inform the petitioning employee organization of the information that must be included in the amendment filed with PERB in order to apprise PERB and any interested parties of the scope of amendment to the employee organization's petition for certification and the parties' contact information. 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 proof of employee support that an employee organization must make when filing a petition for certification is maintained, as required under proposed ~~Section 95030, subdivision (b).~~

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, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 33100 (EERA), 40178 (Dills Act), 51120 (HEERA), 61260 (MMBA), 71120 (TEERA), 81260 (Trial Court Act), and 91260 (Court Interpreter Act).) Proposed subdivision (b)(2) further provides that the employer's response is to conform with the requirements for employer responses to petitions for certification set forth in proposed Section 95080(c), and this language is necessary for the reasons set forth in proposed Section 95080(c).

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 petition for certification provided that the amendment would not unduly impede the hearing, and to the requirement that sufficient proof of support is provided if needed as discussed above for proposed subdivision (b)(1), in order for the petitioning organization to maintain standing.

**Proposed Section 95080** 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 following service of the Board's determination finding sufficient proof of support. This proposed subdivision is necessary to create a reasonable time period in which the employer must respond to the petition, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 33190 (EERA), 40180 (Dills Act), 51130 (HEERA), 61250 (MMBA), 71130 (TEERA), 81250 (Trial Court Act), and 91250 (Court Interpreter Act).)

Proposed 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.

Proposed subdivision (c) provides the information the employer must include a specific format for the employer to use in drafting its response to the petition for certification. 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 and the employer's authorized agent's contact information. This subdivision is necessary to facilitate communication with the employer and the employer's authorized agent.

~~Proposed subdivision (c)(2) requires the response to attach a copy of the petition for certification. Attaching a copy of the petition is necessary to avoid confusion as to which document the employer is responding.~~



Proposed subdivision (c)(32) requires the employer to state its position regarding the petition. Specifically, proposed subdivision (c)(32)(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 subsection (c)(32)(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 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 subdivision (d) requires the employer to attach a copy of the petition for certification to the response. Attaching a copy of the petition is necessary to avoid confusion as to which document the employer is responding.

**Proposed Section 95100** provides for the filing of a severance petition.

Proposed subdivision (a) permits an employee organization to file a petition if it wishes to become the exclusive representative of an appropriate unit consisting of employees who are already members of a larger established unit represented by an incumbent exclusive representative, ~~and that the petition must be filed with PERB on forms provided by the Board. This proposed subdivision requires that the severance petition must be filed with PERB, be signed by an authorized agent of the employee organization, and include the information requested under the section's proposed subdivisions.~~ This proposed subdivision is necessary to initiate the Board's procedures for severance, and to ensure that the petition is filed by an individual authorized by the employee organization to do so. ~~The use of the Board's forms for severance is necessary to elicit all information necessary to facilitate PERB's communication with the petitioning employee organization, the incumbent exclusive representative, the Judicial Council, and any other interested parties, as well as to provide PERB and the parties with notice of the scope of the severance petition.~~

Proposed subdivision (a)(1) requires the petition include the name, address, e-mail address, and telephone number of the employer; and the name, address, e-mail address, and telephone number of the authorized agent to be contacted regarding the petition. This proposed subdivision is necessary to facilitate PERB's communication with the employer and the employer's authorized agent.

Proposed subdivision (a)(2) requires the petition include a description of the unit claimed to be appropriate, including the classifications and positions to be included and those to be excluded. This proposed subdivision is necessary to apprise PERB and the parties of the classifications and positions subject to the petition so they may take any appropriate action, and to allow the parties to address any issues regarding the appropriateness of the proposed unit. This proposed subdivision is also

necessary to provide the employer with relevant information to prepare the employee list that is required under proposed Section 95120(a).

Proposed subdivision (a)(3) requires the petition contain a statement that the severance petition is accompanied by proof of support of a majority of the employees in the unit claimed to be appropriate. This proposed subdivision is necessary to inform PERB of the type of petition being filed so that PERB can process the petition under the applicable procedures and to ensure the petition has the threshold standard of majority support to initiate the Board's procedures for severance. Proof of support is defined under Section 32700 of existing PERB regulations. Using the same standard for proof of support in severance petitions filed under JCEERA as found in PERB regulations covering other labor relations statutes with similar statutory text that PERB administers is necessary to avoid confusion and to maintain consistency in PERB's procedures. (See e.g., Government Code section 3520.5, PERB Regulation 40200 (Dills Act); Government Code section 3524.74 (JCEERA).)

Proposed subdivision (a)(4) requires the petition include the approximate number of employees in the unit claimed to be appropriate. This proposed subdivision is necessary to allow PERB and the parties to investigate and resolve any discrepancies regarding the size of the proposed unit, which is used for determining proof of support.

Proposed subdivision (a)(5) requires the petition include the effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit. Proposed subdivision (a)(6) requires the petition include the date on which the exclusive representative was certified. These proposed subdivisions are necessary to permit the parties and PERB to determine whether the petition is timely filed. Current Section 32754, which is subject to amendment through this rulemaking package to be applicable to representation petitions arising under the JCEERA, requires dismissal of a petition requiring a representation election where (1) the petition is filed outside of a designated "window period" for a current collective bargaining agreement between the employer and exclusive representative; or (2) a representation election result has been certified affecting the described unit or a portion thereof within 12 months immediately preceding the date of filing of the petition. The former is colloquially referred to as "the contract bar" and the latter as the "certification bar." The purpose of the contract bar is to balance the need for stability in collective bargaining relationships between the employer and exclusive representative during the life of a collective bargaining agreement with protecting the employees' right to free choice of their representative. The purpose of the certification bar 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.

Proposed subdivision (a)(7) requires the petition include the name, address, e-mail address, and telephone number of the exclusive representative of the established unit; and the name, address, e-mail address, and telephone number of the exclusive representative's authorized agent to be contacted. This proposed subdivision is

necessary to facilitate PERB's communication with the exclusive representative and the exclusive representative's authorized agent.

Proposed subdivision (a)(8) requires the petition include the name, address, e-mail address, and telephone number of the petitioning employee organization; and the name, address, e-mail address, and telephone number of the petitioning employee organization's authorized agent to be contacted. This proposed subdivision is necessary to facilitate PERB's communication with the petitioning employee organization and the petitioning employee organization's authorized agent.

Proposed subdivision (b) requires the severance petition to include proof of majority support of the employees in the unit claimed to be appropriate. Proof of support is defined under Section 32700 of existing PERB regulations. Using the same standard for proof of support to initiate the Board's process for ~~in~~ severance petitions filed under JCEERA as found in PERB regulations covering other labor relations statutes with similar statutory text that PERB administers is necessary to avoid confusion and to maintain consistency in PERB's procedures. (See e.g., Government Code section 3520.5, PERB Regulation 40200 (Dills Act); Government Code section 3524.74 (JCEERA).)

Proposed subdivision (c) requires service and proof of service of the severance petition. Service and proof of service are necessary to ensure that all parties receive adequate notice of the severance petition and can take any appropriate action. The proof of support is excluded from service on other parties because those documents are confidential under Section 32700 of existing PERB regulations.

**Proposed Section 95110** provides for the posting of the notice of the severance petition. Notice of the petition is necessary to make affected employees aware that a union has a desire to represent them in their employment relations with the employer. ~~apprise employees of the petition so they may take any appropriate action.~~

Proposed subdivision (a) provides that the notice of the severance petition will be posted no later than 15 days following service of the copy of the petition. This proposed subdivision is necessary to provide the employer with certainty as to when it must post the notice of the severance petition, and to maintain consistency in PERB's notice posting procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40210 (Dills Act); Government Code section 3524.74 (JCEERA).) This proposed subdivision also requires the notice only include the information requested in the enumerated subdivisions, which is necessary to ensure the employer does not publish irrelevant information on the notice.

Proposed subdivision (a)(1) requires the notice include the petition's PERB-assigned case number to the severance petition. This proposed subdivision is necessary to apprise employees that the severance process has been initiated with PERB, and to

provide employees with relevant information regarding the petition so they may take any appropriate action.

Proposed subdivision (a)(2) requires the notice contain the date the notice was posted by the employer. This proposed subdivision is necessary to enable PERB and the parties to effectively monitor the employer's obligation to post the notice within the specified time frame.

Proposed subdivision (a)(3) requires the notice contain the date the severance petition was filed with PERB. This proposed subdivision is necessary to inform employees of the timing and relevancy of the petition so that employees can take any appropriate action.

Proposed subdivision (a)(4) requires the notice contain the contact information for the employee organization filing the severance petition. This proposed subdivision is necessary to ensure that the petition was filed by an employee organization, and so that employees have the contact information for the petitioning employee organization to obtain any relevant information.

Proposed subdivision (a)(5) requires the notice contain a statement that the severance petition is based on the claim of proof of support of a majority of the employees in the unit claimed to be appropriate wish to be represented by the petitioning employee organization. This proposed subdivision is necessary to inform employees of the type of petition being filed and the petitioning employee organization's claim that it has met the threshold standard of majority support to initiate the Board's procedures for severance. Proof of majority support of employees within the proposed bargaining unit is the standard threshold of employee support that an employee organization must make when filing a petition for certification. Using the same standard for proof of support in severance petitions filed under JCEERA as found in PERB regulations covering other labor relations statutes with similar statutory text that PERB administers is necessary to avoid confusion and to maintain consistency in PERB's procedures. (See e.g., Government Code section 3520.5, PERB Regulation 40200 (Dills Act); Government Code section 3524.74 (JCEERA).)

Proposed subdivision (a)(6) requires the notice include the contact information for the employer and the incumbent employee organization. This proposed subdivision is necessary so that employees have the contact information for the employer and the incumbent employee organization to obtain any relevant information.

Proposed subdivision (a)(7) requires the notice include the final date for posting the notice. This proposed subdivision is necessary to enable the Board and parties to effectively monitor the employer's obligation to post the notice.

Proposed subdivision (a)(8) requires the notice be signed by an authorized agent of the employer. This proposed subdivision is necessary to demonstrate that the notice has been approved by the employer for official posting.

Proposed subdivision (b) provides the manner in which the Judicial Council must provide notice to employees by posting the notice on all employee bulletin boards in each facility where employees of the unit claimed to be appropriate are employed. This proposed subdivision identifying the locations where the notice of the petition is to be posted is necessary as a means to apprise the greatest number of affected employees of the petition so they may take any appropriate action.

Proposed subdivision (c) requires the notice to remain posted for 20 days. This proposed subdivision is necessary to ensure that the notice will remain posted for an adequate period of time to reach affected employees, and to maintain consistency in PERB's procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40210 (Dills Act); Government Code section 3524.74 (JCEERA).)

Proposed subdivision (d) requires the notice of the petition be ~~completed by the Judicial Council prior to its posting, and that a copy of the severance petition be included with the notice when posted~~ with a copy of the severance petition. This proposed subdivision is necessary to enable the Board and the parties to effectively monitor ~~and enforce~~ the employer's obligation to post the notice and petition, and to provide affected employees with relevant information regarding the petition so they may take any appropriate action.

**Proposed Section 95120** provides a process for the Board to determine proof of employee support for severance petitions. Proof of support is defined under Section 32700 of existing PERB regulations.

Proposed subdivision (a) requires the employer 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, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 40220 (Dills Act); 33075, 33700 (EERA); 51110, 51680 (HEERA); 61240, 61400 (MMBA); 71110, 71680 (TEERA); 81240, 81400 (Trial Court Act); and 91240, 91400 (Court Interpreter Act).) The list of employees is ~~necessary~~ used for the Board to determine whether the petitioner has sufficiently demonstrated proof of support. The employer must 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) provides that PERB will make the initial determination of the sufficiency of proof of support pursuant to Section 32700, and allows ~~permits~~ the petitioning organization, up to 10 days as determined by the Board, or until the last

day of the window period as defined by proposed Section 95000, whichever occurs first, to perfect its proof of support if the initial determination of proof of support is insufficient. This proposed subdivision is necessary to apprise the parties that the Board will apply Section 32700 in determining whether proof of support is sufficient.

This proposed subdivision is also necessary because it allows the petitioning employee organization to gather additional proof of employee support rather than requiring it to start the severance process from the beginning when the employee organization is faced with an initial determination of insufficient proof of support, ~~and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 40220 (Dills Act); 33075, 33700 (EERA); 51110, 51680 (HEERA); 61240, 61400 (MMBA); 71110, 71680 (TEERA); 81240, 81400 (Trial Court Act); and 91240, 91400 (Court Interpreter Act).)~~ The requirement that the time to perfect proof of support must not extend past the last day of the "window period" as defined by proposed Section 95000 is necessary to support the policy furthered by the contract bar, the purpose of which is to balance the need for stability in collective bargaining relationships between the employer and exclusive representative during the term of a memorandum of understanding with protecting 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 (c) provides a process by which the Board must inform the parties of its final determination of the sufficiency or lack 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 95130** concerns the employer's and the exclusive representative of the established unit's response to a severance petition.

Proposed subdivision (a) provides that the employer or exclusive representative of the established unit may file a response supporting or opposing a severance petition within 20 days following the date of service of the petition. This proposed subdivision is necessary to create a reasonable time period in which the employer or exclusive representative may respond to the severance petition, to put the parties on notice of the employer's or exclusive representative's support or opposition to the petition in the event any exist, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 33710 (EERA), 40230 (Dills Act), 51685 (HEERA), 61410 (MMBA), 71685 (TEERA), 81410 (Trial Court Act), and 91410 (Court Interpreter Act.)) Providing this information will also facilitate the Board's investigation and processing of the petition. This proposed subdivision also requires service and proof of service of the employer's or exclusive representative's response to the severance petition, which is necessary to ensure that all parties receive adequate notice of the response(s) and can take any appropriate action.

Proposed subdivision (b) requires the response by the employer or exclusive representative of the established unit be in writing and signed by an authorized agent of the responding party, and enumerates information that must be contained in the response. This proposed subdivision is necessary to ensure that the employer or exclusive representative's response contains all relevant information to facilitate the Board's investigation and processing of the petition, and to put the parties on notice of the employer's or exclusive representative's support or opposition to the petition in the event any exist.

~~Proposed subdivision (b)(1) provides that a copy of the severance petition must be included with the response. Attaching a copy of the petition is necessary to avoid confusion as to which document the employer or the exclusive representative is responding.~~

Proposed subdivision (b)(~~2~~1) requires the response to contain the ~~respondent's~~ responding party's and the authorized agent's contact information. This proposed subdivision is necessary to facilitate communication with the employer or the exclusive representative and their authorized agents.

Proposed subdivision (b)(~~3~~2) requires the response to contain a statement confirming or refuting the information contained in the severance petition regarding the date the incumbent exclusive representative was recognized, and the effective date and the expiration date of any current agreement covering employees in the established unit. This proposed subdivision is necessary to permit the parties and PERB to determine whether the petition is appropriately filed. Current Section 32754, which is subject to amendment through this rulemaking package to be applicable to representation petitions arising under the JCEERA, requires dismissal of a petition requiring a representation election where (1) the petition is filed outside of a designated "window period" for a current collective bargaining agreement between the employer and exclusive representative; or (2) a representation election result has been certified affecting the described unit or a portion thereof within 12 months immediately preceding the date of filing of the petition. The former is colloquially referred to as "the contract bar" and the latter as the "certification bar." The purpose of the contract bar is to balance the need for stability in collective bargaining relationships between the employer and exclusive representative during the life of a collective bargaining agreement with protecting the employees' right to free choice of their representative. The purpose of the certification bar 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.

Proposed subdivision (b)(~~4~~3) requires the employer and exclusive representative to state its support of or opposition to the unit proposed by the severance petition. This proposed subdivision is necessary to put the parties on notice of the employer's or exclusive representative's support or opposition to the petition in the event any exist. Providing this information will also facilitate the Board's investigation and processing of the petition.

Proposed subdivision (c) requires the responding party to attach a copy of the severance petition to the response. Attaching a copy of the petition is necessary to avoid confusion as to which document the employer or the exclusive representative is responding.

**Proposed Section 95140** concerns amendments to a severance petition.

Proposed subdivision (a) allows the petitioning employee organization to amend its petition to correct any technical errors or to delete job classifications or positions from the proposed unit prior to the issuance of a PERB notice of representation hearing or, where no hearing is held, prior to the issuance of a Directed Election Order or approval of a Consent Election Agreement. This proposed subdivision is necessary to provide the petitioner with flexibility to correct mistakes that are generally non-substantive in nature rather than requiring the employee organization to start the severance process from the beginning. 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, or before the issuance of a Directed Election Order or approval of a Consent Election Agreement. The terms "Directed Election Order" and "Consent Election Agreement" are defined under existing PERB Section 32724, which is subject to amendment through this rulemaking package to be applicable to representation elections arising under the JCEERA. This proposed subdivision also requires that the amendment must be filed with PERB ~~on forms provided by the Board~~ and include the information required in Proposed Section 95100(a), which is necessary to elicit all information necessary to facilitate PERB's communication with the petitioning employee organization, the incumbent exclusive representative, the Judicial Council, and any other interested parties, as well as to provide PERB and the parties with notice of the scope of the amendment. This proposed subdivision also requires service and proof of service of the amendment to the severance petition, which is necessary to ensure that all parties receive adequate notice and a copy of the amended petition and can take any appropriate action.

Proposed subdivision (b) enumerates additional requirements set forth in proposed subdivisions (b)(1) and (b)(2) for amendments to a severance petition when a petitioning organization seeks to add job classifications or positions to the proposed unit.

Proposed subdivision (b)(1) requires an amendment to add job classifications or positions to a proposed unit may be filed prior to the issuance of a PERB notice of representation hearing or, where no hearing is held, prior to the issuance of a Directed Election Order or approval of a Consent Election Agreement, except if there exists a memorandum of understanding between the employer and the exclusive representative covering any of the employees to be added to the proposed unit, the amendment must be filed during the "window period" defined by proposed Section 95000. This proposed subdivision also requires an amendment to a severance



petition to add job classifications or positions to a proposed unit be filed under the procedures provided under existing PERB section 32110 for filing documents with PERB, which is subject to amendment through this rulemaking package to be applicable to representation elections arising under JCEERA. This proposed subdivision is necessary to provide a petitioning employee organization with flexibility to add job classifications or positions to a proposed unit rather than requiring it to start the severance process from the beginning. Allowing an amendment to add job classifications or positions to a proposed unit will most likely not affect the parties' rights, especially if the Board has yet to determine that a hearing is necessary regarding the petition, or before the issuance of a Directed Election Order or approval of a Consent Election Agreement. The requirement that the amendment 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 in collective bargaining relationships between the employer and exclusive representative during the term of a memorandum of understanding with protecting 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. This proposed subdivision is also necessary to ensure a petitioning employee organization complies with PERB's filing requirements when filing an amendment with PERB.

Proposed subdivision (b)(2) requires that the petitioning employee organization file an amendment with PERB that includes the information required in Proposed Section 95100(a) on forms provided by the Board, service and proof of service of the amendment, and the filing of additional proof of service if needed for the petitioner to maintain standing. The requirement that an amendment be filed with PERB ~~on forms provided by the Board~~ and include the information required in Proposed Section 95100(a), is necessary to elicit all information necessary to facilitate PERB's communication with the petitioning employee organization, the incumbent exclusive representative, the Judicial Council, and any other interested parties, as well as to provide PERB and the parties with notice of the scope of the amendment. The requirement of service and proof of service of the amendment is necessary to ensure that all parties receive adequate notice and a copy of the amended petition and can take any appropriate action. The proof of support is excluded from service on other parties because those documents are confidential under Section 32700 of existing PERB regulations. This proposed subdivision requiring that the petitioner provide additional proof of support if needed, is necessary to ensure that by adding classifications or positions to the proposed unit the petitioner maintains proof of majority support of the employees in the unit claimed to be appropriate, which is the required threshold for a severance petition under proposed Section 95100, subdivision (b).

Proposed subdivision (b)(3) concerns the posting of the notice of the amendment to the severance petition by the employer, which must conform ~~with~~ to the requirements ~~of posting the original petition~~ for posting a notice of severance provided in Proposed Section 95110, be posted within 15 days following service of the amendment, and

remain posted for 20 days. This proposed subdivision is necessary to provide consistency in posting materials regarding severance petitions under PERB's regulations, to provide the employer with certainty as to when it must post the amendment, and to ensure that the notice will remain posted for an adequate period of time to reach affected employees and to apprise employees of the amendment so they may take any appropriate action. (See e.g., PERB Regulation 40240 (Dills Act); see also PERB Regulations 33100 (EERA), and 51070 (HEERA).)

Proposed subdivision (b)(4) provides that any party may file a response to the amended petition with PERB within 15 days following the service of the Board's determination regarding the adequacy of proof of support unless otherwise directed by the Board. The proposed subdivision further provides that the response must conform with the requirements of proposed Section 95130, which governs responses to severance petitions. This proposed subdivision is necessary to create a reasonable time period in which any party must respond to the amendment but does provide the Board with discretion to adjust the time period as circumstances warrant, and to maintain consistency in PERB's procedures. (See e.g., PERB Regulations 40240 (Dills Act); 33100 (EERA), 51120 (HEERA), 61260 (MMBA), 71120 (TEERA), 81260 (Trial Court Act), and 91260 (Court Interpreter Act).) Providing this information will also facilitate the Board's investigation and processing of the petition. The requirement under this subdivision that any response conform with the requirements of proposed ~~§~~Section 95130 is necessary for the reasons set forth in proposed ~~§~~Section 95130, and to provide consistency under PERB regulations for severance petitions.

Proposed subdivision (c) provides that any amendments to the severance petition to correct technical errors or to add or delete job classifications or positions from a proposed unit following the issuance of the notice of hearing are at the discretion of ~~the~~PERB's 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 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. Similarly, giving the hearing officer discretion to determine whether amendments must be posted allows the hearing officer to balance the benefit of posting notice of the amendment against any impediment caused by the posting. This proposed subdivision also subjects the hearing officer's discretion to approve an amendment to add job classifications to the severance petition provided that the amendment would not unduly impede the hearing, and to the requirement that sufficient proof of support is provided as needed, as discussed above under proposed subdivision (b)(2), in order for the petitioning organization to maintain standing.

**Proposed Section 95210** provides a procedure for employee organizations to file an intervention to appear on the ballot for a representation election.

Proposed subdivision (a) permits an employee organization to file an intervention to appear on a ballot within 20 days following the issuance by the Board of a notice of intent to conduct an election pursuant to proposed Section 95200. The requirement that an intervention be filed within 20 days following the issuance by the Board of a notice of intent to conduct an election 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, and to maintain consistency in PERB's procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40310 (Dills Act); Government Code section 3524.74 (JCEERA).) This proposed subdivision further requires that the intervention be filed with PERB, ~~on forms provided by the Board~~ include the information required in Proposed Section 95030(a), and that the intervention be accompanied by proof of support, which is defined under existing Section 32700, of at least 30 percent of the employees in the appropriate unit. The requirement that the ~~employee organization use the forms provided by the Board for~~ intervention include the information required in Proposed Section 95030(a) is necessary to elicit all information necessary to facilitate PERB's communication with the intervening employee organization and all other parties. 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 for proof of support for interventions filed under the JCEERA as found in PERB regulations covering other labor relations statutes with similar statutory text that PERB administers is necessary to avoid confusion and to maintain consistency in PERB's procedures. (See e.g., Government Code section 3520.5 (Dills Act); PERB Regulation 40310; Government Code section 3524.74 (JCEERA); see also PERB Regulations 33070 (EERA), 61210 (MMBA), 81210 (Trial Court Act), and 91210 (Court Interpreter Act).)

Proposed subdivision (b) requires service, ~~exclusive of~~ excluding the proof of support, and proof of service of the intervention. Service and proof of service are necessary to ensure that all parties receive adequate notice of the intervention and can take any appropriate action. The proof of support is excluded from service on other parties because those documents are confidential under Section 32700 of existing PERB regulations.

**Proposed Section 95220** provides a process for the Board to determine proof of employee support for representation elections and intervention. Proof of support is defined under Section 32700 of existing PERB regulations.

Proposed subdivision (a) requires the employer file with PERB within 20 days of issuance by PERB of a notice of intent to conduct an election a list of employees employed in the appropriate unit as of the last date of the payroll period immediately preceding the date of issuance of the notice of intent to conduct election. This proposed subdivision is necessary to provide the employer with certainty as to when it must provide the list of employees, and to maintain consistency in PERB's procedures

applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40320 (Dills Act); Government Code section 3524.74 (JCEERA); see also PERB Regulations 33085 (EERA), 51320 (HEERA), and 71320 (TEERA).) The list of employees is necessary used for the Board to determine whether the petitioner has sufficiently demonstrated proof of support. The Judicial Council must 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 notice of intent to conduct an election was issued.

Proposed subdivision (b) provides that PERB will make the initial determination of the sufficiency of proof of support pursuant to Section 32700 under existing PERB regulations, and allows ~~permits~~ the intervening employee organization, up to 10 days as determined by the Board, to perfect its proof of support if the initial determination of proof of support is insufficient. This proposed subdivision is necessary to apprise the parties that the Board will apply Section 32700 in determining whether proof of support is sufficient. This proposed subdivision is also necessary because it allows the intervening employee organization to gather additional proof of employee support rather than requiring it to start the intervention process from the beginning when the employee organization is faced with an initial determination of insufficient proof of support, ~~and to maintain consistency in PERB's procedures applicable to labor relations statutes with similar statutory text that PERB administers. (See e.g., Government Code section 3520.5, PERB Regulation 40320 (Dills Act); Government Code section 3524.74 (JCEERA); see also PERB Regulations 33085 (EERA), 51320 (HEERA), and 71320 (TEERA).)~~

Proposed subdivision (c) provides a process by which the Board must inform the parties of its final determination of the sufficiency or lack 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.