

## Federal Labor Relations Authority

## § 2421.11

*employee, conditions of employment, professional employee, exclusive representative, firefighter, and United States*, as used in this subchapter shall have the meanings set forth in 5 U.S.C. 7103(a). The terms *covered employee, employee, employing office, and agency*, when used in connection with the Presidential and Executive Office Accountability Act, 3 U.S.C. 401 *et seq.*, shall have the meaning set out in 3 U.S.C. 401(b), and 431(b) and (d)(2). Employees who are employed in the eight offices listed in 3 U.S.C. 431(d)(2) shall be excluded from coverage if the Authority determines that such exclusion is required because of a conflict of interest, an appearance of a conflict of interest, or the President's or Vice President's constitutional responsibilities, in addition to the exemptions currently set forth in 5 U.S.C. 7103(a).

(b) The term *General Counsel* means the General Counsel of the Authority.

(c) The term *Assistant Secretary* means the Assistant Secretary of Labor for Labor-Management Relations.

[45 FR 3497, Jan. 17, 1980, as amended at 63 FR 46158, Aug. 31, 1998]

### § 2421.3 National consultation rights; consultation rights on Government-wide rules or regulations; exclusive recognition; unfair labor practices.

(a) *National consultation rights* has the meaning as set forth in 5 U.S.C. 7113;

(b) *Consultation rights on Government-wide rules or regulations* has the meaning as set forth in 5 U.S.C. 7117(d);

(c) *Exclusive recognition* has the meaning as set forth in 5 U.S.C. 7111; and

(d) *Unfair labor practices* has the meaning as set forth in 5 U.S.C. 7116.

### § 2421.4 Activity.

*Activity* means any facility, organizational entity, or geographical subdivision or combination thereof, of any agency.

### § 2421.5 Primary national subdivision.

*Primary national subdivision* of an agency means a first-level organizational segment which has functions national in scope that are implemented in field activities.

### § 2421.6 Regional Director.

*Regional Director* means the Director of a region of the Authority with geographical boundaries as fixed by the Authority.

### § 2421.7 Executive Director.

*Executive Director* means the Executive Director of the Authority.

### § 2421.8 Hearing Officer.

*Hearing Officer* means the individual designated to conduct a hearing involving a question concerning the appropriateness of a unit or such other matters as may be assigned.

### § 2421.9 Administrative Law Judge.

*Administrative Law Judge* means the Chief Administrative Law Judge or any Administrative Law Judge designated by the Chief Administrative Law Judge to conduct a hearing in cases under 5 U.S.C. 7116, and such other matters as may be assigned.

### § 2421.10 Chief Administrative Law Judge.

*Chief Administrative Law Judge* means the Chief Administrative Law Judge of the Authority.

### § 2421.11 Party.

*Party* means:

(a) Any labor organization, employing agency or activity or individual filing a charge, petition, or request;

(b) Any labor organization or agency or activity

(1) Named as

(i) A charged party in a charge,

(ii) A respondent in a complaint, or

(iii) An employing agency or activity or an incumbent labor organization in a petition;

(2) Whose intervention in a proceeding has been permitted or directed by the Authority; or

(3) Who participated as a party

(i) In a matter that was decided by an agency head under 5 U.S.C. 7117, or

(ii) In a matter where the award of an arbitrator was issued; and

(c) The General Counsel, or the General Counsel's designated representative, in appropriate proceedings.

[60 FR 67291, Dec. 29, 1995]

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### § 2421.12 Intervenor.

*Intervenor* means a party in a proceeding whose intervention has been permitted or directed by the Authority, its agents or representatives.

### § 2421.13 Certification.

*Certification* means the determination by the Authority, its agents or representatives, of the results of an election, or the results of a petition to consolidate existing exclusively recognized units.

### § 2421.14 Appropriate unit.

*Appropriate unit* means that grouping of employees found to be appropriate for purposes of exclusive recognition under 5 U.S.C. 7111, and for purposes of allotments to representatives under 5 U.S.C. 7115(c), and consistent with the provisions of 5 U.S.C. 7112. In determining an appropriate unit in a proceeding under part 2422 of this Chapter, for the eight offices listed in 3 U.S.C. 431(d)(2), employees shall be excluded from the unit if it is determined that such exclusion is required because of a conflict of interest or appearance of a conflict of interest or because of the President's or Vice President's constitutional responsibilities, in addition to the standards set out in 5 U.S.C. 7112.

[63 FR 46158, Aug. 31, 1998]

### § 2421.15 Secret ballot.

*Secret ballot* means the expression by ballot, voting machine or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed, except in that instance in which any determinative challenged ballot is opened.

### § 2421.16 Showing of interest.

*Showing of interest* means evidence of membership in a labor organization; employees' signed and dated authorization cards or petitions authorizing a labor organization to represent them for purposes of exclusive recognition; allotment of dues forms executed by an employee and the labor organization's authorized official; current dues

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records; an existing or recently expired agreement; current exclusive recognition or certification; employees' signed and dated petitions or cards indicating that they no longer desire to be represented for the purposes of exclusive recognition by the currently recognized or certified labor organization; employees' signed and dated petitions or cards indicating a desire that an election be held on a proposed consolidation of units; or other evidence approved by the Authority.

### § 2421.17 Regular and substantially equivalent employment.

*Regular and substantially equivalent employment* means employment that entails substantially the same amount of work, rate of pay, hours, working conditions, location of work, kind of work, and seniority rights, if any, of an employee prior to the cessation of employment in an agency because of any unfair labor practice under 5 U.S.C. 7116.

### § 2421.18 Petitioner.

*Petitioner* means the party filing a petition under part 2422 of this subchapter.

[60 FR 67291, Dec. 29, 1995]

### § 2421.19 Eligibility period.

*Eligibility period* means the payroll period during which an employee must be in an employment status with an agency or activity in order to be eligible to vote in a representation election under part 2422 of this subchapter.

[60 FR 67291, Dec. 29, 1995]

### § 2421.20 Election agreement.

*Election agreement* means an agreement under part 2422 of this subchapter signed by all the parties, and approved by the Regional Director, concerning the details and procedures of a representation election in an appropriate unit.

[60 FR 67291, Dec. 29, 1995]

### § 2421.21 Affected by issues raised.

The phrase *affected by issues raised*, as used in part 2422, should be construed broadly to include parties and other

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labor organizations, or agencies or activities that have a connection to employees affected by, or questions presented in, a proceeding.

[60 FR 67291, Dec. 29, 1995]

### § 2421.22 Determinative challenged ballots.

*Determinative challenged ballots* are challenges that are unresolved prior to the tally and sufficient in number after the tally to affect the results of the election.

[60 FR 67291, Dec. 29, 1995]

## PART 2422—REPRESENTATION PROCEEDINGS

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AUTHORITY: 3 U.S.C. 431; 5 U.S.C. 7134.

SOURCE: 77 FR 37752, June 25, 2012, unless otherwise noted.

### § 2422.1 What is your purpose for filing a petition?

You, the petitioner, may file a petition for the following purposes:

(a) *Elections or eligibility for dues allotment.* To request:

(1)(i) An election to determine whether employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, and/or

(ii) A determination of eligibility for dues allotment in an appropriate unit without an exclusive representative; or

(2) An election to determine whether employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative.

(3) Petitions under this subsection must be accompanied by an appropriate showing of interest.

(b) *Clarification or amendment.* To clarify, and/or amend:

(1) A recognition or certification then in effect; and/or

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(2) Any other matter relating to representation.

(c) *Consolidation.* To consolidate two or more units, with or without an election, in an agency where a labor organization is the exclusive representative.

### § 2422.2 Who may file a petition?

An individual; a labor organization; two or more labor organizations acting as a joint-petitioner; an individual acting on behalf of any employee(s); an agency or activity; or a combination of the above may file a representation petition. But,

(a) Only a labor organization may file a petition under § 2422.1(a)(1);

(b) Only an individual may file a petition under § 2422.1(a)(2); and

(c) Only an agency or a labor organization may file a petition under § 2422.1(b) or (c).

### § 2422.3 What information should you include in your petition?

(a) You must file a petition either in writing with your signature or electronically using the eFiling system on the FLRA's Web site at *www.flra.gov*. Your petition must provide the following information on a form designated by the Authority, or on a substantially similar form, or electronically using the eFiling system on the FLRA's Web site at *www.flra.gov*:

(1) The name and mailing address for each agency or activity affected by issues raised in the petition, including street number, city, state and zip code.

(2) The name, mailing address and work telephone number, fax number and email address (if known) of the contact person for each agency or activity affected by issues raised in the petition.

(3) The name and mailing address for each labor organization affected by issues raised in the petition, including street number, city, state and zip code. If a labor organization is affiliated with a national organization, the local designation and the national affiliation should both be included. If a labor organization is an exclusive representative of any of the employees affected by issues raised in the petition, the date of the recognition or certification and the date any collective bargaining

agreement covering the unit will expire or when the most recent agreement did expire should be included, if known.

(4) The name, mailing address and work telephone number, fax number and email address (if known) of the contact person for each labor organization affected by issues raised in the petition.

(5) Your name and mailing address, including street number, city, state and zip code, and fax number and email address. If you are a labor organization affiliated with a national organization, the local designation and the national affiliation should both be included.

(6) A description of the unit(s) affected by issues raised in the petition. The description should generally indicate the geographic locations and the classifications of the employees included (or sought to be included) in, and excluded (or sought to be excluded) from, the unit.

(7) The approximate number of employees in the unit(s) affected by issues raised in the petition.

(8) A clear and concise statement of the issues raised by the petition and the results the petitioner seeks.

(9) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that the contents of the petition are true and correct to the best of the person's knowledge and belief.

(10) The title, mailing address and telephone number of the person filing the petition.

(b) *Certification of compliance with 5 U.S.C. 7111(e).* A labor organization/petitioner complies with 5 U.S.C. 7111(e) by submitting to the agency or activity and to the Department of Labor a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives. By signing the petition form, the labor organization/petitioner certifies that it has submitted these documents to the activity or agency and to the Department of Labor.

(c) *Showing of interest supporting a representation petition (defined at 5 U.S.C. 2421.16).* When filing a petition requiring a showing of interest, you must:

(1) So indicate on the petition form;

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(2) Submit with the petition a showing of interest of not less than thirty percent (30%) of the employees in the unit involved in the petition; and

(3) Include an alphabetical list of the names constituting the showing of interest.

(d) *Petition seeking dues allotment.* When there is no exclusive representative, a petition seeking certification for dues allotment must be accompanied by a showing of membership in the petitioner of not less than ten percent (10%) of the employees in the unit claimed to be appropriate. An alphabetical list of names constituting the showing of membership must be submitted.

### **§ 2422.4 What service requirements must you meet when filing a petition?**

You must serve every petition, motion, brief, request, challenge, written objection, or application for review on all parties affected by issues raised in the filing. The service must include all supporting documentation, with the exceptions of a showing of interest, evidence supporting challenges to the validity of a showing of interest, and evidence supporting objections to an election. You must submit a statement of service to the Regional Director.

### **§ 2422.5 Where do you file petitions?**

(a) *Where to file.* You must file a petition with the Regional Director for the region in which the unit or employee(s) affected by issues raised in the petition are located. If the unit(s) or employees are located in two or more regions of the Authority, you must file the petitions with the Regional Director for the region where the headquarters of the agency or activity is located.

(b) *Method of filing.* You may file a petition with the Regional Director in person or by commercial delivery, first class mail, facsimile, certified mail, or electronically through use of the eFiling system on the FLRA's Web site at [www.flra.gov](http://www.flra.gov). If you file electronically or by facsimile transmission you are not required to file an original copy of the petition with the Region. You assume responsibility for the Regional Director's receipt of a petition.

(c) *Date of filing.* When a Regional Director receives a petition, it is deemed filed. A petition filed during business hours by facsimile or electronic means is deemed received on the business day on which it is received (either by the Regional Office fax machine or by the eFiling system), until midnight local time in the Region where it is filed. But when a Region receives a petition by any other method after the close of business day, it will be deemed received and docketed on the next business day. The business hours for each of the Regional Offices are set forth at <http://www.flra.gov>.

### **§ 2422.6 How are parties notified of the filing of a petition?**

(a) *Notification to parties.* After you file a petition the Regional Director will notify any labor organization, agency, or activity identified as being affected by issues raised by the petition, that a petition has been filed. The Regional Director will also make reasonable efforts to identify and notify any other party affected by the issues raised by the petition.

(b) *Contents of the notification.* The notification will inform the labor organization, agency, or activity of:

(1) Your name (the petitioner);

(2) The description of the unit(s) or employees affected by issues raised in the petition; and,

(3) A statement that all affected parties should advise the Regional Director in writing of their interest in the issues raised in the petition.

### **§ 2422.7 Will an activity or agency post a notice of filing of a petition?**

(a) *Posting notice of petition.* After you file a petition, when appropriate, the Regional Director will direct the agency or activity to post copies of a notice to all employees in places where notices are normally posted for the employees affected by issues raised in the petition and/or distribute copies of a notice in a manner by which notices are normally distributed.

(b) *Contents of notice.* The notice must advise affected employees about the petition.

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(c) *Duration of notice.* The notice must be conspicuously posted for a period of ten (10) days and must not be altered, defaced, or covered by other material.

### § 2422.8 What is required to file an intervention or cross-petition?

(a) *Cross-petitions.* A cross-petition is a petition that involves any employees in a unit covered by a pending representation petition. If you file a cross-petition, it must be filed under the requirements of this subpart.

(b) *Intervention requests and cross-petitions.* (1) You may file a request to intervene, along with any necessary showing of interest, with either the Regional Director or the Hearing Officer. This must be filed either in person, or by commercial delivery, first-class mail, certified mail or facsimile. You must file a request to intervene before the hearing opens, unless you show good cause for granting an extension. If no hearing is held, you must file a request to intervene before action is taken under § 2422.30.

(2) You may file a cross-petition, along with any necessary showing of interest, with either the Regional Director or the Hearing Officer. This must be filed electronically through the use of the eFiling system on the FLRA's Web site at *www.flra.gov* or, in person, by commercial delivery, first-class mail, certified mail or facsimile. Any cross-petition must be filed before the hearing opens, unless you show good cause for granting an extension. If no hearing is held, you must file a cross-petition before action is taken under § 2422.30.

(c) *Labor organization intervention requests.* Except for incumbent intervenors, a labor organization seeking to intervene must submit a statement that it has complied with 5 U.S.C. 7111(e) and one of the following:

(1) A showing of interest of ten percent (10%) or more of the employees in the unit covered by a petition seeking an election, with an alphabetical list of the names of the employees establishing the showing of interest; or

(2) A current or recently expired collective bargaining agreement covering any of the employees in the unit af-

ected by issues raised in the petition; or

(3) Evidence that it is or was, before a reorganization, the recognized or certified exclusive representative of any of the employees affected by issues raised in the petition.

(d) *Incumbent.* An incumbent exclusive representative, without regard to the requirements of paragraph (c) of this section, will be considered a party in any representation proceeding raising issues that affect employees the incumbent represents, unless it serves the Regional Director with a written disclaimer of any representation interest in the claimed unit.

(e) *Employing agency.* An agency or activity will be considered a party if any of its employees are affected by issues raised in the petition.

(f) *Agency or activity intervention.* An agency or activity seeking to intervene in any representation proceeding must submit evidence that one or more employees of the agency or activity may be affected by issues raised in the petition.

### § 2422.9 How is the adequacy of a showing of interest determined?

(a) *Adequacy.* Adequacy of a showing of interest refers to the percentage of employees in the unit involved as required by §§ 2422.3(c) and (d) and 2422.8(c)(1).

(b) *Regional Director investigation of showing of interest and Decision and Order.* The Regional Director will conduct an investigation if deemed appropriate. A Regional Director's determination that the showing of interest is adequate is final and binding and not subject to collateral attack at a representation hearing or on appeal to the Authority. If the Regional Director determines that a showing of interest is inadequate, the Regional Director will issue a Decision and Order dismissing the petition, or denying a request for intervention.

### § 2422.10 How do you challenge the validity of a showing of interest?

(a) *Validity.* Validity questions are raised by challenges to a showing of interest on grounds other than adequacy.

(b) *Validity challenge.* The Regional Director or any party may challenge the validity of a showing of interest.

(c) *When and where validity challenges may be filed.* Your challenges to the validity of a showing of interest must be in writing and filed with the Regional Director or the Hearing Officer before the hearing opens, unless you show good cause for granting an extension. If no hearing is held, you must file challenges to the validity of a showing of interest before action is taken under § 2422.30.

(d) *Contents of validity challenges.* Your challenges to the validity of a showing of interest must be supported with evidence.

(e) *Regional Director investigation and Decision and Order.* The Regional Director will conduct an investigation if deemed appropriate. The Regional Director's determination that a showing of interest is valid is final and binding and is not subject to collateral attack or appeal to the Authority. If the Regional Director finds that the showing of interest is not valid, the Regional Director will issue a Decision and Order dismissing the petition or denying the request to intervene.

**§ 2422.11 How do you challenge the status of a labor organization?**

(a) *Basis of challenge to labor organization status.* Non-compliance with 5 U.S.C. 7103(a)(4) is the only basis on which you may challenge the status of a labor organization.

(b) *Format and time for filing a challenge.* If you file a challenge to the status of a labor organization involved in the processing of a petition you must do so in writing to the Regional Director or the Hearing Officer before the hearing opens, unless you show good cause for granting an extension. If no hearing is held, you must file challenges before action is taken under § 2422.30.

**§ 2422.12 What circumstances does the Region consider to determine whether your petition is timely filed?**

(a) *Election bar.* Where there is no certified exclusive representative, a petition seeking an election will not be considered timely if filed within twelve

(12) months of a valid election involving the same unit or a subdivision of the same unit.

(b) *Certification bar.* Where there is a certified exclusive representative of employees, a petition seeking an election will not be considered timely if filed within twelve (12) months after the certification of the exclusive representative of the employees in an appropriate unit. If a collective bargaining agreement covering the claimed unit is pending agency head review under 5 U.S.C. 7114(c) or is in effect, paragraphs (c), (d), or (e) of this section apply.

(c) *Bar during 5 U.S.C. 7114(c) agency head review.* A petition seeking an election will not be considered timely if filed during the period of agency head review under 5 U.S.C. 7114(c). This bar expires upon either the passage of thirty (30) days absent agency head action, or upon the date of any timely agency head action.

(d) *Contract bar where the contract is for three (3) years or less.* Where a collective bargaining agreement is in effect covering the claimed unit and has a term of three (3) years or less from the date it became effective, a petition seeking an election will be considered timely if filed not more than one hundred and five (105) and not less than sixty (60) days before the expiration of the agreement.

(e) *Contract bar where the contract is for more than three (3) years.* Where a collective bargaining agreement is in effect covering the claimed unit and has a term of more than three (3) years from the date on which it became effective, a petition seeking an election will be considered timely if filed not more than one hundred and five (105) and not less than sixty (60) days before the expiration of the initial three (3) year period, and any time after the expiration of the initial three (3) year period.

(f) *Unusual circumstances.* A petition seeking an election or a determination relating to representation matters may be filed at any time when unusual circumstances exist that substantially affect the unit or majority representation.

(g) *Premature extension.* Where a collective bargaining agreement with a term of three (3) years or less has been

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extended before sixty (60) days before its expiration date, the extension will not serve as a basis for dismissal of a petition seeking an election filed in accordance with this section.

(h) *Contract requirements.* Collective bargaining agreements, including agreements that go into effect under 5 U.S.C. 7114(c) and those that automatically renew without further action by the parties, are not a bar to a petition seeking an election under this section unless a clear effective date, renewal date where applicable, duration, and termination date are ascertainable from the agreement and relevant accompanying documentation.

#### § 2422.13 How are issues raised by your petition resolved?

(a) *Meetings before filing a representation petition.* All parties affected by the representation issues that may be raised in a petition are encouraged to meet before the filing of the petition to discuss their interests and narrow and resolve the issues. If requested by all parties, a representative of the appropriate Regional Office will participate in these meetings.

(b) *Meetings to narrow and resolve the issues after the petition is filed.* The Regional Director may require all affected parties to meet to narrow and resolve the issues raised in the petition.

#### § 2422.14 What is the effect of your withdrawal or the Regional Director's dismissal of a petition?

(a) *Withdrawal/dismissal less than sixty (60) days before contract expiration.* (1) If you withdraw a timely filed petition seeking an election, or the Regional Director dismisses the petition less than sixty (60) days before the existing agreement between the incumbent exclusive representative and the agency or activity expires, or any time after the agreement expires, another petition that seeks an election will not be considered timely if filed within a ninety (90) day period beginning with either:

(i) The date on which the Regional Director approves the withdrawal; or

(ii) The date on which the Regional Director dismisses the petition when

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the Authority does not receive an application for review; or

(iii) The date on which the Authority rules on an application for review.

(2) Other pending petitions that have been timely filed under this part will continue to be processed.

(b) *Withdrawal by petitioner.* If you submit a withdrawal request for a petition seeking an election that the Regional Director receives after the notice of hearing issues or after approval of an election agreement, whichever occurs first, you will be barred from filing another petition seeking an election for the same unit or any subdivision of the unit for six (6) months from the date on which the Regional Director approves the withdrawal.

(c) *Withdrawal by incumbent.* When an election is not held because the incumbent disclaims any representation interest in a unit, an incumbent's petition seeking an election involving the same unit or a subdivision of the same unit will be considered untimely if filed within six (6) months of cancellation of the election.

#### § 2422.15 Do parties have a duty to provide information and cooperate after a petition is filed?

(a) *Relevant information.* After you file a petition, all parties must, upon request of the Regional Director, provide the Regional Director and serve all parties affected by issues raised in the petition with information concerning parties, issues, and agreements raised in or affected by the petition.

(b) *Inclusions and exclusions.* After you file a petition seeking an election, the Regional Director may direct the agency or activity to provide the Regional Director and all parties affected by issues raised in the petition with a current alphabetized list of employees and job classifications included in and/or excluded from the existing or claimed unit affected by issues raised in the petition.

(c) *Cooperation.* All parties are required to cooperate in every aspect of the representation process. This obligation includes cooperating fully with the Regional Director, submitting all required and requested information, and participating in prehearing conferences and hearings. The Regional

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Director may take appropriate action, including dismissal of the petition or denial of intervention, if parties fail to cooperate in the representation process.

### **§ 2422.16 May parties enter into election agreements, and if they do not will the Regional Director direct an election?**

(a) *Election agreements.* Parties are encouraged to enter into election agreements.

(b) *Regional Director directed election.* If the parties are unable to agree on procedural matters, specifically, the eligibility period, method of election, dates, hours, or locations of the election, the Regional Director will decide election procedures and issue a Direction of Election, without prejudice to the rights of a party to file objections to the procedural conduct of the election.

(c) *Opportunity for a hearing.* Before directing an election, the Regional Director must provide affected parties an opportunity for a hearing on non-procedural matters, and then may:

(1) Issue a Decision and Order; or

(2) If there are no questions regarding unit appropriateness, issue a Direction of Election without a Decision and Order.

(d) *Challenges or objections to a directed election.* A Direction of Election issued under this section will be issued without prejudice to the right of a party to file a challenge to the eligibility of any person participating in the election and/or objections to the election.

### **§ 2422.17 What are a notice of hearing and prehearing conference?**

(a) *Purpose of notice of a hearing.* The Regional Director may issue a notice of hearing involving any issues raised in the petition.

(b) *Contents.* The notice of hearing will advise affected parties about the hearing. The Regional Director will also notify affected parties of the issues raised in the petition and establish a date for the prehearing conference.

(c) *Prehearing conference.* A prehearing conference will be conducted by the Hearing Officer, either by meet-

ing or teleconference. All parties must participate in a prehearing conference and be prepared to fully discuss, narrow, and resolve the issues set forth in the notification of the prehearing conference.

(d) *No interlocutory appeal of hearing determination.* A party may not appeal to the Authority a Regional Director's determination of whether to issue a notice of hearing.

### **§ 2422.18 What is the purpose of a representation hearing and what procedures are followed?**

(a) *Purpose of a hearing.* Representation hearings are considered investigatory and not adversarial. The purpose of the hearing is to develop a full and complete record of relevant and material facts.

(b) *Conduct of hearing.* Hearings will be open to the public unless otherwise ordered by the Hearing Officer. There is no burden of proof, with the exception of proceedings on objections to elections under § 2422.27(b). Formal rules of evidence do not apply.

(c) *Hearing officer.* The Regional Director appoints a hearing officer to conduct a hearing. Another hearing officer may be substituted for the presiding Hearing Officer at any time.

(d) *Transcript.* An official reporter will make the official transcript of the hearing. Copies of the official transcript may be examined in the appropriate Regional Office during normal working hours. Parties should contact the official hearing reporter to purchase copies of the official transcript.

### **§ 2422.19 When is it appropriate for a party to file a motion at a representation hearing?**

(a) *Purpose of a motion.* After the Regional Director issues a Notice of Hearing in a representation proceeding, a party who seeks a ruling, an order, or relief must do so by filing or raising a motion stating the order or relief sought and the grounds in support. The Regional Director or Hearing Officer may treat challenges and other filings referenced in other sections of this subpart as a motion.

(b) *Prehearing motions.* Parties must file prehearing motions in writing with the Regional Director. Any response

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must be filed with the Regional Director within five (5) days after service of the motion. The Regional Director may rule on the motion or refer the motion to the Hearing Officer.

(c) *Motions made at the hearing.* During the hearing, parties may make oral motions on the record to the Hearing Officer unless required to be in writing. Responses may be oral on the record or in writing, but must be provided before the hearing closes, absent permission of the Hearing Officer. When appropriate, the Hearing Officer will rule on motions made at the hearing or referred to the Hearing Officer by the Regional Director.

(d) *Posthearing motions.* Parties must file motions made after the hearing closes in writing with the Regional Director. Any response to a posthearing motion must be filed with the Regional Director within five (5) days after service of the motion.

### § 2422.20 What rights do parties have at a hearing?

(a) *Rights.* A party at a hearing will have the right:

(1) To appear in person or by a representative;

(2) To examine and cross-examine witnesses; and

(3) To introduce into the record relevant evidence.

(b) *Documentary evidence and stipulations.* Parties must submit two (2) copies of documentary evidence to the Hearing Officer and copies to all other parties. Stipulations of fact between the parties may be introduced into evidence.

(c) *Oral argument.* Parties will have a reasonable period before the close of the hearing for oral argument. Presentation of a closing oral argument does not preclude a party from filing a brief under paragraph (d) of this section.

(d) *Briefs.* A party will be given an opportunity to file a brief with the Regional Director.

(1) A party must file an original and two (2) copies of a brief with the Regional Director within thirty (30) days from the close of the hearing.

(2) No later than five (5) days before the date the brief is due a party must file and the Regional Director must re-

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ceive a written request for an extension of time to file a brief.

(3) Absent the Regional Director's permission, parties may not file a reply brief.

### § 2422.21 What are the duties and powers of the Hearing Officer?

(a) *Duties of the Hearing Officer.* The Hearing Officer receives evidence and inquires fully into the relevant and material facts concerning the matters that are the subject of the hearing. The Hearing Officer may make recommendations on the record to the Regional Director.

(b) *Powers of the Hearing Officer.* After the Regional Director assigns a case to a Hearing Officer and before the close of the hearing, the Hearing Officer may take any action necessary to schedule, conduct, continue, control, and regulate the hearing, including ruling on motions when appropriate.

### § 2422.22 What are objections and exceptions concerning the conduct of the hearing?

(a) *Objections.* Objections are oral or written complaints concerning the conduct of a hearing.

(b) *Exceptions to rulings.* There are automatic exceptions to all adverse rulings.

### § 2422.23 What election procedures are followed?

(a) *Regional Director conducts or supervises election.* The Regional Director will decide to either conduct or supervise the election. In supervised elections, agencies will perform all acts as specified in the Election Agreement or Direction of Election.

(b) *Notice of election.* Before the election the activity posts a notice of election, prepared by the Regional Director. The notice is posted in places where notices to employees are customarily posted and/or distributed in a manner by which notices are normally distributed. The notice of election contains the details and procedures of the election, including the appropriate unit, the eligibility period, the date(s), hour(s) and location(s) of the election, a sample ballot, and the effect of the vote.

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(c) *Sample ballot.* The reproduction of any document that claims to be a copy of the official ballot and that suggests either directly or indirectly to employees that the Authority endorses a particular choice in the election may constitute grounds for setting aside an election if objections are filed under § 2422.26.

(d) *Secret ballot.* All elections are by secret ballot.

(e) *Intervenor withdraws from ballot.* When two or more labor organizations are included as choices in an election, an intervening labor organization may, before the approval of an election agreement or before the direction of an election, file a written request with the Regional Director to remove its name from the ballot. If the Regional Director does not receive the request before the approval of an election agreement or before the direction of an election, the intervening labor organization will remain on the ballot, unless the parties and the Regional Director agree otherwise. The Regional Director's decision on the request is final, and no party may file an application for review with the Authority.

(f) *Incumbent withdrawal from ballot in an election to decertify an incumbent representative.* When there is no intervening labor organization, an election to decertify an incumbent exclusive representative is not held if the incumbent provides the Regional Director with a written disclaimer of any representation interest in the unit. When there is an intervenor, an election is held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Regional Director.

(g) *Petitioner withdraws from ballot in an election.* When there is no intervening labor organization, an election is not held if the petitioner provides the Regional Director with a written request to withdraw the petition. When there is an intervenor, an election is held if the intervening labor organization presents a thirty percent (30%) showing of interest within the time period established by the Regional Director.

(h) *Observers.* Subject to the Regional Director's approval, all parties may se-

lect representatives to observe at the polling location(s).

(1) A party who wants to name observers must file a written request with specific names with the Regional Director. This must be filed at least fifteen (15) days before an election. The Regional Director may grant an extension of time to file a request for named observers for good cause where a party requests an extension or on the Regional Director's own motion. The request must name and identify the observers requested.

(2) An agency or activity may use as its observers any employees who are not eligible to vote in the election, except:

(i) Supervisors or management officials;

(ii) Employees who have any official connection with any of the labor organizations involved; or

(iii) Non-employees of the Federal government.

(3) A labor organization may use as its observers any employees eligible to vote in the election, except:

(i) Employees on leave without pay status who are working for the labor organization involved; or

(ii) Employees who hold an elected office in the union.

(4) Within five (5) days after service of the request for observers, any party that objects must file an objection with the Regional Director that states the reasons.

(5) The Regional Director's ruling on requests for and objections to observers is final and binding, and parties may not file an application for review with the Authority.

### § 2422.24 What are challenged ballots?

(a) *Filing challenges.* A party or the Regional Director may, for good cause, challenge the eligibility of any person to participate in the election.

(b) *Challenged ballot procedure.* An individual whose eligibility to vote is in dispute will be given the opportunity to vote a challenged ballot. If the parties and the Region are unable to resolve the challenged ballot(s) before the tally of ballots, the Region will impound and preserve the unresolved challenged ballot(s) until the Regional

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Director makes a determination, if necessary.

**§ 2422.25 When does the Region tally the ballots?**

(a) *Tallying the ballots.* When the election is concluded, the Regional Director will tally the ballots.

(b) *Service of the tally.* When the tally is completed, the Regional Director will serve the tally of ballots on the parties in accordance with the election agreement or direction of election.

(c) *Valid ballots cast.* Representation will be determined by the majority of the valid ballots cast.

**§ 2422.26 How are objections to the election processed?**

(a) *Filing objections to the election.* Any party may file objections to the procedural conduct of the election or to conduct that may have improperly affected the results of the election. A party must file an objection and the Regional Director must receive it within five (5) days after the tally of ballots has been served. Any objections must be timely regardless of whether the challenged ballots are sufficient in number to affect the results of the election. The objections must be supported by clear and concise reasons. A party must file an original and two (2) copies of the objections.

(b) *Supporting evidence.* The objecting party must file evidence, including signed statements, documents, and other materials supporting the objections, with the Regional Director within ten (10) days after the party files the objections.

**§ 2422.27 How does the Region address determinative challenged ballots and objections?**

(a) *Investigation.* The Regional Director investigates objections and/or determinative challenged ballots that are sufficient in number to affect the results of the election.

(b) *Burden of proof.* An objecting party bears the burden of proof on objections by a preponderance of the evidence. However, no party bears the burden of proof on challenged ballots.

(c) *Regional Director action.* After investigation, the Regional Director

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takes appropriate action consistent with § 2422.30.

(d) *Consolidated hearing on objections and/or determinative challenged ballots and an unfair labor practice hearing.* When appropriate, and under § 2422.33, a Regional Director may consolidate objections and/or determinative challenged ballots with an unfair labor practice hearing. An Administrative Law Judge conducts these consolidated hearings, except the following provisions do not apply:

(1) Sections 2423.18 and 2423.19(j) of this subchapter concerning the burden of proof and settlement conferences are not applicable;

(2) The Administrative Law Judge may not recommend remedial action to be taken or notices to be posted as provided by § 2423.26(a) of this subchapter.

(e) *Party exceptions filed with the Authority.* A party may file exceptions and related submissions with the Authority, and the Authority then issues a decision under part 2423 of this chapter.

**§ 2422.28 When is a runoff election required?**

(a) *When a runoff may be held.* A runoff election is required in an election involving at least three (3) choices, one of which is “no union” or “neither,” when no choice receives a majority of the valid ballots cast. However, a runoff may not be held until the Regional Director has ruled on objections to the election and determinative challenged ballots.

(b) *Eligibility.* Employees who were eligible to vote in the original election and who are also eligible on the date of the runoff election may vote in the runoff election.

(c) *Ballot.* The ballot in the runoff election will provide for a selection between the two choices receiving the highest and second highest number of votes in the election.

**§ 2422.29 How does the Region address an inconclusive election?**

(a) *Inconclusive elections.* An inconclusive election is one where challenged ballots are not sufficient to affect the outcome of the election and one of the following occurs:

(1) The ballot provides for at least three (3) choices, one of which is “no