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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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### § 2422.1 Purposes of a petition.

A petition may be filed for the following purposes:

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

(1)(i) An election to determine if 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 if 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

(2) Any other matter relating to representation.

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

### § 2422.2 Standing to file a petition.

A representation petition may be filed by: 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: *Provided, however,* that

(a) Only a labor organization has standing to file a petition pursuant to section 2422.1(a)(1);

(b) Only an individual has standing to file a petition pursuant to section 2422.1(a)(2); and

(c) Only an agency or a labor organization may file a petition pursuant to section 2422.1(b) or (c).

**§ 2422.3 Contents of a petition.**

(a) *What to file.* A petition must be filed on a form prescribed by the Authority and contain the following information:

(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 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 of the contact person for each labor organization affected by issues raised in the petition.

(5) The name and mailing address for the petitioner, including street number, city, state and zip code. If a labor organization petitioner is 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 signature, title, mailing address and telephone number of the person filing the petition.

(b) *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 bylaws, 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.* When filing a petition requiring a showing of interest, the petitioner must:

(1) So indicate on the petition form;

(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 shall 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 Service requirements.**

Every petition, motion, brief, request, challenge, written objection, or application for review shall be served on all parties affected by issues raised in the filing. The service shall include all documentation in support thereof, with the exception of a showing of interest, evidence supporting challenges to the validity of a showing of interest, and evidence supporting objections to an election. The filer must submit a written statement of service to the Regional Director.

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### § 2422.5 Filing petitions.

(a) *Where to file.* Petitions must be filed 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, the petitions must be filed with the Regional Director for the region in which the headquarters of the agency or activity is located.

(b) *Number of copies.* An original and two (2) copies of the petition and the accompanying material must be filed with the Regional Director.

(c) *Date of filing.* A petition is filed when it is received by the appropriate Regional Director.

### § 2422.6 Notification of filing.

(a) *Notification to parties.* After a petition is filed, the Regional Director will notify any labor organization, agency or activity that the parties have identified as being affected by issues raised by the petition, that a petition has been filed with the Regional Director. 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) The name of 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 Posting notice of filing of a petition.

(a) *Posting notice of petition.* When appropriate, the Regional Director, after the filing of a representation petition, 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 shall advise affected employees about the petition.

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

### § 2422.8 Intervention and cross-petitions.

(a) *Cross-petitions.* A cross-petition is a petition which involves any employees in a unit covered by a pending representation petition. Cross-petitions must be filed in accordance with this subpart.

(b) *Intervention requests and cross-petitions.* A request to intervene and a cross-petition, accompanied by any necessary showing of interest, must be submitted in writing and filed with either the Regional Director or the Hearing Officer before the hearing opens, unless good cause is shown for granting an extension. If no hearing is held, a request to intervene and a cross-petition must be filed prior to action being taken pursuant to § 2422.30.

(c) *Labor organization intervention requests.* Except for incumbent intervenors, a labor organization seeking to intervene shall 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 constituting the showing of interest; or
- (2) A current or recently expired collective bargaining agreement covering any of the employees in the unit affected by issues raised in the petition; or
- (3) Evidence that it is or was, prior to 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.

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(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 Adequacy of showing of interest.

(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 and Decision and Order.* The Regional Director will conduct such investigation as 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 Validity of 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.* Party 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 good cause is shown for granting an extension. If no hearing is held, challenges to the validity of a showing of interest must be filed prior to action being taken pursuant to § 2422.30.

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

(e) *Regional Director investigation and Decision and Order.* The Regional Direc-

tor will conduct such investigation as 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 Challenge to the status of a labor organization.

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

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

### § 2422.12 Timeliness of petitions seeking an election.

(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

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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 prior to 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 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 prior to 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 extended prior to 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, do not constitute a bar to a petition seeking an election under this section unless a clear and unambiguous effective date, renewal date where applicable, duration, and termination date are ascertainable from the agreement and relevant accompanying documentation.

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**§ 2422.13 Resolution of issues raised by a petition.**

(a) *Meetings prior to filing a representation petition.* All parties affected by the representation issues that may be raised in a petition are encouraged to meet prior to 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.* After a 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 Effect of withdrawal/dismissal.**

(a) *Withdrawal/dismissal less than sixty (60) days before contract expiration.* When a petition seeking an election that has been timely filed is withdrawn by the petitioner or dismissed by the Regional Director less than sixty (60) days prior to the expiration of an existing agreement between the incumbent exclusive representative and the agency or activity or any time after the expiration of the agreement, another petition seeking an election will not be considered timely if filed within a ninety (90) day period from either:

(1) The date the withdrawal is approved; or

(2) The date the petition is dismissed by the Regional Director when no application for review is filed with the Authority; or

(3) The date the Authority rules on an application for review. Other pending petitions that have been timely filed under this Part will continue to be processed.

(b) *Withdrawal by petitioner.* A petitioner who submits a withdrawal request for a petition seeking an election that is received by the Regional Director after the notice of hearing issues or after approval of an election agreement, whichever occurs first, 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 of the approval of the withdrawal by the Regional Director.

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

### § 2422.15 Duty to furnish information and cooperate.

(a) *Relevant information.* After a petition is filed, all parties must, upon request of the Regional Director, furnish 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 a petition seeking an election is filed, the Regional Director may direct the agency or activity to furnish 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 failure to cooperate in the representation process may result in the Regional Director taking appropriate action, including dismissal of the petition or denial of intervention.

### § 2422.16 Election agreements or directed elections.

(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 shall provide affected parties an opportunity for a hearing on other than procedural matters, and thereafter 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 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 meeting 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 Regional Director's determination of whether to issue a notice of hearing is not appealable to the Authority.

### § 2422.18 Hearing procedures.

(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

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ordered by the Hearing Officer. There is no burden of proof, with the exception of proceedings on objections to elections as provided for in § 2422.27(b). Formal rules of evidence do not apply.

(c) *Hearing officer.* Hearings will be conducted by a Hearing Officer appointed by the Regional Director. 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. Requests by parties to purchase copies of the official transcript should be made to the official hearing reporter.

### § 2422.19 Motions.

(a) *Purpose of a motion.* Subsequent to the issuance of a Notice of Hearing in a representation proceeding, a party seeking a ruling, an order, or relief must do so by filing or raising a motion stating the order or relief sought and the grounds therefor. Challenges and other filings referenced in other sections of this subpart may, in the discretion of the Regional Director or Hearing Officer, be treated as a motion.

(b) *Prehearing motions.* Prehearing motions must be filed in writing with the Regional Director. Any response 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, motions will be made to the Hearing Officer and may be oral on the record, unless otherwise required in this subpart to be in writing. Responses may be oral on the record or in writing, but, absent permission of the Hearing Officer, must be provided before the hearing closes. 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.* Motions made after the hearing closes must be filed in writing with the Regional Director. Any response to a posthearing motion must be filed with the Regional Direc-

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tor within five (5) days after service of the motion.

### § 2422.20 Rights of parties 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/among the parties may be introduced into evidence.

(c) *Oral argument.* Parties will be entitled to a reasonable period prior to 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 afforded an opportunity to file a brief with the Regional Director.

(1) An original and two (2) copies of a brief must be filed with the Regional Director within thirty (30) days from the close of the hearing.

(2) A written request for an extension of time to file a brief must be filed with and received by the Regional Director no later than five (5) days before the date the brief is due.

(3) No reply brief may be filed without permission of the Regional Director.

### § 2422.21 Duties and powers of the Hearing Officer.

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

(b) *Powers of the Hearing Officer.* During the period a case is assigned to a Hearing Officer by the Regional Director and prior to the close of the hearing, the Hearing Officer may take any action necessary to schedule, conduct, continue, control, and regulate the

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hearing, including ruling on motions when appropriate.

### § 2422.22 Objections to 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 Election procedures.

(a) *Regional Director conducts or supervises election.* The Regional Director will decide to 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.* Prior to the election a notice of election, prepared by the Regional Director, will be posted by the activity 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 will contain 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.

(c) *Sample ballot.* The reproduction of any document purporting to be a copy of the official ballot 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 will be by secret ballot.

(e) *Intervenor withdrawal from ballot.* When two or more labor organizations are included as choices in an election, an intervening labor organization may, prior to 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 request is not received prior to the approval of an election agreement or before the direction of an election, unless the parties and the Regional Director agree otherwise, the intervening labor organization will remain on the ballot. The Regional Di-

rector's decision on the request is final and not subject to the filing of 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 will not be 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 will be 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 will not be held if the petitioner provides the Regional Director with a written request to withdraw the petition. When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Regional Director.

(h) *Observers.* All parties are entitled to representation at the polling location(s) by observers of their own selection subject to the Regional Director's approval.

(1) Parties desiring to name observers must file in writing with the Regional Director a request for specifically named observers at least fifteen (15) days prior to an election. The Regional Director may grant an extension of time for filing a request for specifically named observers for good cause where a party requests such 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.

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(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) Objections to a request for specific observers must be filed with the Regional Director stating the reasons in support within five (5) days after service of the request.

(5) The Regional Director's ruling on requests for and objections to observers is final and binding and is not subject to the filing of an application for review with the Authority.

**§ 2422.24 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 prior to the employee voting.

(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) prior to the tally of ballots, the unresolved challenged ballot(s) will be impounded and preserved until a determination can be made, if necessary, by the Regional Director.

**§ 2422.25 Tally of 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 Objections to the election.**

(a) *Filing objections to the election.* Objections to the procedural conduct of the election or to conduct that may have improperly affected the results of the election may be filed by any party. Objections must be filed and received by the Regional Director within five (5) days after the tally of ballots has been

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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. An original and two (2) copies of the objections must be received by the Regional Director.

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

**§ 2422.27 Determinative challenged ballots and objections.**

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

(b) *Burden of proof.* A party filing objections to the election bears the burden of proof by a preponderance of the evidence concerning those objections. However, no party bears the burden of proof on challenged ballots.

(c) *Regional Director Action.* After investigation, the Regional Director will take 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 in accordance with § 2422.33, objections and/or determinative challenged ballots may be consolidated with an unfair labor practice hearing. Such consolidated hearings will be conducted by an Administrative Law Judge. Exceptions and related submissions must be filed with the Authority and the Authority will issue a decision in accordance with part 2423 of this chapter, except for the following:

(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; and,

(3) References to "charge" and "complaint" in § 2423.26(b) of this chapter will be omitted.

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### § 2422.28 Runoff elections.

(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 largest and second largest number of votes in the election.

### § 2422.29 Inconclusive elections.

(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 union” or “neither” and the votes are equally divided; or

(2) The ballot provides for at least three (3) choices, the choice receiving the highest number of votes does not receive a majority, and at least two other choices receive the next highest and same number of votes; or

(3) When a runoff ballot provides for a choice between two labor organizations and results in the votes being equally divided; or

(4) When the Regional Director determines that there have been significant procedural irregularities.

(b) *Eligibility to vote in a rerun election.* A current payroll period will be used to determine eligibility to vote in a rerun election.

(c) *Ballot.* If the Regional Director determines that the election is inconclusive, the election will be rerun with all the choices that appeared on the original ballot.

(d) *Number of reruns.* There will be only one rerun of an inconclusive election. If the rerun results in another inconclusive election, the tally of ballots will indicate a majority of valid ballots

has not been cast for any choice and a certification of results will be issued. If necessary, a runoff may be held when an original election is rerun.

### § 2422.30 Regional Director investigations, notices of hearings, actions, and Decisions and Orders.

(a) *Regional Director investigation.* The Regional Director will make such investigation of the petition and any other matter as the Regional Director deems necessary.

(b) *Regional Director notice of hearing.* The Regional Director will issue a notice of hearing to inquire into any matter about which a material issue of fact exists, and any time there is reasonable cause to believe a question exists regarding unit appropriateness.

(c) *Regional Director action and Decision and Order.* After investigation and/or hearing, when a hearing has been ordered, the Regional Director will resolve the matter in dispute and, when appropriate, direct an election or approve an election agreement, or issue a Decision and Order.

(d) *Appeal of Regional Director Decision and Order.* A party may file with the Authority an application for review of a Regional Director Decision and Order.

(e) *Contents of the Record.* When no hearing has been conducted all material submitted to and considered by the Regional Director during the investigation becomes a part of the record. When a hearing has been conducted, the transcript and all material entered into evidence, including any posthearing briefs, become a part of the record.

### § 2422.31 Application for review of a Regional Director Decision and Order.

(a) *Filing an application for review.* A party must file an application for review with the Authority within sixty (60) days of the Regional Director’s Decision and Order. The sixty (60) day time limit provided for in 5 U.S.C. 7105(f) may not be extended or waived.

(b) *Contents.* An application for review must be sufficient to enable the Authority to rule on the application

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without recourse to the record; however, the Authority may, in its discretion, examine the record in evaluating the application. An application must specify the matters and rulings to which exception(s) is taken, include a summary of evidence relating to any issue raised in the application, and make specific reference to page citations in the transcript if a hearing was held. An application may not raise any issue or rely on any facts not timely presented to the Hearing Officer or Regional Director.

(c) *Review.* The Authority may grant an application for review only when the application demonstrates that review is warranted on one or more of the following grounds:

- (1) The decision raises an issue for which there is an absence of precedent;
- (2) Established law or policy warrants reconsideration; or,
- (3) There is a genuine issue over whether the Regional Director has:
  - (i) Failed to apply established law;
  - (ii) Committed a prejudicial procedural error;
  - (iii) Committed a clear and prejudicial error concerning a substantial factual matter.

(d) *Opposition.* A party may file with the Authority an opposition to an application for review within ten (10) days after the party is served with the application. A copy must be served on the Regional Director and all other parties and a statement of service must be filed with the Authority.

(e) *Regional Director Decision and Order becomes the Authority's action.* A Decision and Order of a Regional Director becomes the action of the Authority when:

- (1) No application for review is filed with the Authority within sixty (60) days after the date of the Regional Director's Decision and Order; or
- (2) A timely application for review is filed with the Authority and the Authority does not undertake to grant review of the Regional Director's Decision and Order within sixty (60) days of the filing of the application; or
- (3) The Authority denies an application for review of the Regional Director's Decision and Order.

(f) *Authority grant of review and stay.* The Authority may rule on the issue(s)

in an application for review in its order granting the application for review. Neither filing nor granting an application for review shall stay any action ordered by the Regional Director unless specifically ordered by the Authority.

(g) *Briefs if review is granted.* If the Authority does not rule on the issue(s) in the application for review in its order granting review, the Authority may, in its discretion, afford the parties an opportunity to file briefs. The briefs will be limited to the issue(s) referenced in the Authority's order granting review.

§ 2422.32 **Certifications and revocations.**

(a) *Certifications.* The Regional Director will issue an appropriate certification when:

- (1) After an election, runoff, or rerun,
  - (i) No objections are filed or challenged ballots are not determinative, or
  - (ii) Objections and determinative challenged ballots are decided and resolved; or

(2) The Regional Director issues a Decision and Order requiring a certification and the Decision and Order becomes the action of the Authority under § 2422.31(e) or the Authority otherwise directs the issuance of a certification.

(b) *Revocations.* Without prejudice to any rights and obligations which may exist under the Statute, the Regional Director will revoke a recognition or certification, as appropriate, and provide a written statement of reasons when:

- (1) An incumbent exclusive representative files, during a representation proceeding, a disclaimer of any representational interest in the unit; or
- (2) Due to a substantial change in the character and scope of the unit, the unit is no longer appropriate and an election is not warranted.

§ 2422.33 **Relief obtainable under part 2423.**

Remedial relief that was or could have been obtained as a result of a motion, objection, or challenge filed or raised under this subpart, may not be

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the basis for similar relief if filed or raised as an unfair labor practice under part 2423 of this chapter: *Provided, however*, that related matters may be consolidated for hearing as noted in § 2422.27(d) of this subpart.

### § 2422.34 Rights and obligations during the pendency of representation proceedings.

(a) *Existing recognitions, agreements, and obligations under the Statute.* During the pendency of any representation proceeding, parties are obligated to maintain existing recognitions, adhere to the terms and conditions of existing collective bargaining agreements, and fulfill all other representational and bargaining responsibilities under the Statute.

(b) *Unit status of individual employees.* Notwithstanding paragraph (a) of this section and except as otherwise prohibited by law, a party may take action based on its position regarding the bargaining unit status of individual employees, pursuant to 3 U.S.C. 431(d)(2), 5 U.S.C. 7103(a)(2), and 7112(b) and (c): *Provided, however*, that its actions may be challenged, reviewed, and remedied where appropriate.

[60 FR 67291, Dec. 29, 1995, as amended at 63 FR 46158, Aug. 31, 1998]

## PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

Sec.

2423.0 Applicability of this part.

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2423.40 Exceptions; oppositions and cross-exceptions; oppositions to cross-exceptions; waiver.

2423.41 Action by the Authority; compliance with Authority decisions and orders.

2423.42 Backpay proceedings.

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

SOURCE: 62 FR 40916, July 31, 1997, unless otherwise noted.

### § 2423.0 Applicability of this part

This part is applicable to any charge of alleged unfair labor practices pending or filed with the Authority on or after January 1, 1999, and any complaint filed on or after October 1, 1997.

[63 FR 65642, Nov. 30, 1998]

### Subpart A—Filing, Investigating, Resolving, and Acting on Charges

SOURCE: 63 FR 65642, Nov. 30, 1998, unless otherwise noted.