

11 TIMELINESS OF PETITIONS:

11.1 General overview: Timeliness requirements for petitions are prescribed in the Statute at 5 U.S.C. 7111 and implemented at § 2422.12 of the regulations. The Statute's timeliness requirements apply **only** to petitions seeking an election, whether filed by labor organizations, by individuals seeking an election to decertify an exclusive representative or by agencies. Petitions filed for the following purposes are subject to the timeliness requirements set forth in § 2422.12:

- a. To request an election to determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative;
- b. To request 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;
- c. To clarify any matter relating to representation when a party raises issues relating to the majority status of the currently recognized or certified labor organization (see [CHM 3.3.2](#)).

This section contains an overview of timeliness requirements. **For a detailed discussion of substantive case law on the timeliness of election petitions, see RCL 12.** Exceptions to the timeliness requirements may be warranted in unusual circumstances [§ 2422.12(f) and [CHM 11.6](#)].

- < Certain timeliness requirements may apply to the filing of amended petitions (see [CHM 13.6](#) and *RCL 12*) and the adequacy of a petitioner's showing of interest.
- < Additional bars described in § 2422.14 apply to the filing of petitions seeking elections after the withdrawal or dismissal of a petition or after the filing of a disclaimer of interest by an exclusive representative (see [CHM 11.9](#)).
- < There are also bars related to the processing of election petitions during the pendency of unit consolidation petitions (see [CHM 11.10](#)).

11.2 Election Bar: 5 U.S.C. 7111(b) precludes conducting an election in "any appropriate unit or subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held" [§ 2422.12(a)].

The election bar rule is applicable to units where there is no incumbent exclusive representative. Thus, if a valid election is conducted, and no union

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is certified, no election may be held in that unit or a subdivision of that unit within twelve months of the date the election is held. In the private sector, the election is considered to have been held on the date the balloting is completed, rather than the date of issuance of the certification of results of election. See *Mallinckrodt Chemical Works*, 84 NLRB 291 (1949). The Authority has not had the opportunity to issue a decision on this point. The election bar rule does not apply to a petition seeking an election in a broader unit, which includes the unit in which the election was conducted. See *Federal Aviation Administration*, 2 A/SLMR 340 (1972). The election bar rule also does not apply to petitions to consolidate existing units filed under 5 U.S.C. 7112(d).

11.3 Certification Bar: 5 U.S.C. 7111(f) prohibits according exclusive recognition to a labor organization:

- (4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

The certification bar applies during the first year following the issuance of a certification of representative, so long as no collective bargaining agreement has been executed [§ 2422.12(b)]. This includes issuance of a certification of consolidation of units. Once an agreement is executed, the contract bar rule applies to the unit. An exclusive representative voluntarily waives the certification bar when it files a petition for a broader appropriate unit which includes the unit for which the certification was issued. See *U.S. Army Corps of Engineers, Mobile District*, 2 A/SLMR 486 (1972).

11.4 Contract Bars: 5 U.S.C. 7111(f) prohibits according exclusive recognition to a labor organization:

- (3) if there is then in effect a lawful written agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless --
 - (A) the collective bargaining agreement has been in effect for more than 3 years; or
 - (B) the petition for exclusive recognition is filed not more than 105 days and not less than

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60 days before the expiration date of the collective bargaining agreement. . .

Absent unusual circumstances, the Authority will dismiss an election petition filed for a bargaining unit at a time when the unit is covered by a lawful written collective bargaining agreement, unless the agreement has been in effect for more than three years or the petition is filed during the 45-day “window period” set out in 5 U.S.C. 7111(f)(3)(B).

There are two basic issues in contract bar cases: (1) whether the agreement asserted to bar a petition is a lawful written collective bargaining agreement and (2) whether the agreement is free from ambiguity regarding its effective date, so that it constitutes a bar to an election petition. **An in-depth discussion of these issues and other issues that arise in contract bar cases can be found in RCL 12.**

Thus, when a collective bargaining agreement covering a claimed unit has been signed and dated by the activity and the incumbent exclusive representative, a petition seeking an election or seeking to clarify a matter relating to representation based on a challenge to the recognized or certified labor organization’s majority status is considered timely when it is filed as follows:

- a. Not more than one hundred and five (105) days and not less than sixty (60) days prior to the expiration date of an agreement having a term of three (3) years or less from the date it became effective [§ 2422.12(d)];
- b. Not more than one hundred and five (105) days nor less than sixty (60) days prior to the expiration of the initial three (3) year period of an agreement having a term of more than three (3) years from the date it became effective [§ 2422.12(e)]; or
- c. Any time when unusual circumstances exist which substantially affect the unit or the majority representation [§ 2422.12(f) and also [CHM 11.6](#)].

See [Appendix B](#), Petition Timeliness Guide, for assistance in determining the timeliness of petitions filed during the open period of a contract.

NOTE: In Department of the Army, III Corps and Fort Hood, Fort Hood, Texas (Fort Hood), 51 FLRA 934, 941 (1996), the Authority decided that where a petition is filed on the same day that an agreement is executed, and all that remains is agency-head review pursuant to 5 U.S.C. 7114(c), the agreement does not act as a bar. The Authority established certain

requirements that must be met at the time of execution. The notice to the agency:

must be in writing and convey that the petitioning union has taken all steps necessary to file a petition with the Authority. The notice must be served on a person having authority over agency negotiations, which could extend to and include the head of the agency, and must be received on the same day that the petition is filed but prior to the point at which the collective bargaining agreement is executed. Receipt of the notice must be verifiable through documentary evidence. (footnotes omitted)

The region decides whether the petitioner followed these requirements. Once it has been established that the petition is timely and met the prima facie showing of interest requirements, it is given equivalent status. *U.S. Department of Defense Dependents School, Panama Region*, 44 FLRA 419 (1992).

- 11.5 Bar during 5 U.S.C. 7114(c) review:** A petition seeking an election is not 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 [§ 2422.12(c)].

The Statute at 5 U.S.C. 7114(c) provides for agency head approval of collective bargaining agreements. If the agency head does not approve or disapprove the agreement within 30 days of the date it was executed, the agreement takes effect and is binding on the parties. Section 2422.12(d) imposes a bar on the filing of an election petition during the agency-head review period. *See also Federal Aviation Administration*, 2 A/SLMR 340 (1972); *Federal Aviation Administration*, Case No. 22-3711(RO), 1 Rulings on Requests for Review 258 (1973).

- 11.6 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 [§ 2422.12(f)].

Petitions seeking resolution of matters related to representation (e.g., petitions that question the appropriateness of an established unit due to a substantial change in the character and scope of the unit) are usually filed at the time of the organizational changes. These events do not necessarily coincide with

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contractual window periods. The filing of such a petition during the term of a contract is taken as an assertion that unusual circumstances exist, whether or not the petitioner actually uses this term of art. See *Department of State, Bureau of Consular Affairs, Passport Services*, 35 FLRA 1163 (1990); *U.S. Department of the Interior, Indian Health Service, Gallup Indian Health Center, Gallup, New Mexico*, 48 FLRA 890 (1993).

For detailed discussion of specific situations involving unusual circumstances, see *RCL 12, Timeliness*.

- 11.7 Premature extension:** Where a collective bargaining agreement with a term of three (3) years or less has been extended and signed more than 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 [§ 2422.12(g)].

An agreement executed by the parties more than sixty days before the expiration of the current agreement is considered premature for contract bar purposes. Such agreements modify or extinguish the 45-day “window period” established by 5 U.S.C. 7111(f)(3)(B). Accordingly, the Authority will not recognize a premature extension of an agreement as a bar to an election petition. See *Department of Health and Human Services, Boston Regional Office, Region 1*, 12 FLRA 475 (1983) (DHHS). The premature extension analysis applies solely to the extension of agreements having a term of three years or less. If an agreement has a term of more than three years, it serves as a bar to an election petition only during its initial three year period [§ 2422.12(e) and [CHM 11.4](#)].

- 11.8 Contract requirements:** Section 2422.12(h) describes 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.

This provision tracks existing case law and places in one section all requirements concerning a contract as a bar to a petition seeking an election. See *U.S. Department of the Interior, Redwood National Park, Crescent City, California*, 48 FLRA 666 (1993); *U.S. Department of Health and Human*

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Services, Social Security Administration, 44 FLRA 230 (1992); *Florida (Air) National Guard, St. Augustine, Florida*, 43 FLRA 1475 (1992); *U.S. Department of Housing and Urban Development, Newark Office, Newark, New Jersey*, 37 FLRA 1122 (1990); *Department of the Army, U.S. Army Concord District Recruiting Command, Concord, New Hampshire*, 14 FLRA 73 (1984).

11.9 Withdrawal or dismissal of petition: Section 2422.14 describes the consequences of a withdrawal or dismissal of a petition seeking an election.

11.9.1 Withdrawal/dismissal less than sixty (60) days before contract expiration or anytime after the expiration of the agreement: When a timely filed petition seeking an election is withdrawn or dismissed by the Regional Director less than 60 days before the expiration of a contract covering the employees affected, or anytime after the expiration of the agreement, another petition seeking an election is not considered timely if filed within a ninety (90) day period from either:

- a. the date the withdrawal is approved; or
- b. the date the petition is dismissed by the Regional Director when no application for review is filed with the Authority; or
- c. the date the Authority rules on an application for review.

The section applies to all contracts, not just those having a term of 3 years or less. Other pending petitions that have been timely filed concerning any portion of the incumbent's unit, will continue to be processed [see § 2422.14(a)].

11.9.2 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, is 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 [§ 2422.14(b)].

11.9.3 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 is not considered timely if filed within six (6) months of cancellation of the election.[§ 2422.14(c)].

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- 11.10 Timeliness of petitions while other petitions requesting to consolidate existing units are pending:** Petitions affected by the filing of a petition seeking to consolidate existing units are processed as follows:
- 11.10.1 Prior petitions seeking an election or resolution of a matter relating to representation due to changes in the character and scope of the unit:** If a petition seeking an election or seeking to resolve a matter relating to representation due to changes in the character and scope of the unit is filed prior to the filing of a related petition to consolidate units, this petition is resolved before the affected unit may be included in the proposed consolidated unit. See *Department of Transportation, Federal Aviation Administration*, 4 FLRA 722 (1980), that provides background information on these provisions.
- 11.10.2 Subsequent petitions seeking an election:** Any petition that seeks an election in any existing exclusively recognized unit covered by a pending petition to consolidate existing exclusively recognized units is required to be filed in a timely manner and satisfy the election, certification and agreement bars. Petitions filed after the related unit consolidation petition (is filed) are held in abeyance pending the processing of the petition to consolidate. Upon the issuance of a certification on consolidation of units, the petitioner is given thirty (30) days from the issuance of the certification to submit a sufficient showing of interest in the consolidated unit. If the petitioner obtains a sufficient showing of interest, the petition is processed and an appropriate certification is issued.

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