

**REGIONAL INVESTIGATIONS AND ACTIONS
CHM 20 through 28**

- 20. PRELIMINARY INVESTIGATION:** Section 2422.30(a) provides that the “Regional Director will make such investigation of the petition and any other matter as the Regional Director deems necessary.” A regional investigation is the nonadversarial process that occurs after the petition is opened.

This section offers guidance for reviewing petitions for sufficiency and initial processing procedures. [CHM 23](#) discusses issue identification and investigating techniques. [CHM 24](#) covers issue analysis.

- 20.1 Purpose:** The purpose of the preliminary investigation is to:

- a. determine whether the case can be opened;
- b. identify related cases;
- c. outline the purposes of the petition and obtain information concerning the results the petitioner is seeking;
- d. discuss the preliminary telephonic contact with the petitioner and other preliminary investigative procedures.

The preliminary investigation also helps the region:

- a. identify any party that may be affected by issues raised by the petition;
- b. discuss procedures for contacting potential parties prior to opening the case.

- 20.1.1 General checklist for determining sufficiency of a petition:** After a case is assigned, the agent reviews the petition and any accompanying papers. Use the checklist below and refer to [CHM 5.2](#) (*basic requirements for petitions regardless of their stated purpose*).

NOTE: [CHM 20.1.2 through 20.1.7](#) describe in detail requirements for filing and processing petitions having distinct purposes discussed in § 2422.1. [CHM 20.1.8](#) describes the requirements for filing a petition pursuant to 5 U.S.C. 7111(f)(1) that seeks to decertify the incumbent labor organization based on an allegation that the labor organization is

Primary Investigation

subject to corrupt influences or influences opposed to democratic principles. If required information is not attached to the petition when it is initially filed, the petition may be defective as discussed in [CHM 12](#). Other information may be obtained by the agent during the investigation. [CHM 20.2 through 20.9](#) discuss initial procedures after reviewing a petition for sufficiency.

- a. Was the petition filed on the proper form as required by § 2422.3(a)? ([CHM 5.1](#)) *If not, the region docket the petition, but cannot open it. The region contacts the petitioner immediately via telephone or fax followed by a confirming letter. An amended petition is required ([CHM 13](#)).*
- b. What is the stated purpose of the petition ([CHM 3](#))? Is the petitioner's statement of the issues raised by the petition and the results the petitioner seeks sufficient to warrant opening the case? *If the purpose of the petition appears to be inconsistent with the purposes of the Statute, the region contacts the petitioner at once. [CHM 20.2](#). The agent asks the petitioner what it is that the petitioner is seeking and why. The agent may assist the petitioner in clarifying the purpose of the petition (see [CHM 3](#)) and amending the petition as required in [CHM 13](#) (noted particularly in [CHM 13.7](#)). A confirming letter is sent as appropriate. If, after talking to the petitioner, the purpose of the petition still appears to be inconsistent with the Statute, the Regional Director issues an Order to Show Cause why the petition should be processed (see [Figure 20.1A](#)). Copies are served on all parties.*
- c. Who filed the petition? ([CHM 4](#)) Does the petitioner have standing to file the petition as set forth in [CHM 4](#)? *If the person does not appear to have standing to file the petition, the agent contacts the petitioner to discuss the petition and the petitioner's reasons for filing the petition. The agent suggests alternatives if necessary, and appropriate to do so ([CHM 13.7](#)). If, after discussing the petition, the petitioner clearly has no standing to file the petition, the agent discusses the matter with the Regional Director. Thereafter, the Regional Director issues an Order to Show Cause asking why the petition should be processed (see [Figure 20.1A](#)). The Regional Director serves copies of this Order on all parties who are otherwise notified of the petition. If it is not clear whether the petitioner has standing to file, the petition is opened and the Regional Director requests the parties' positions.*

Primary Investigation

If the issue does not appear to be the petitioner's standing to file the petition, but rather a question of its authorization to file the petition, the petitioner may need a designation of representative (see [CHM 4.7](#) - policy and examples). There may be a jurisdiction question and/or the petition may be defective and cannot be opened. The agent contacts the petitioner to confirm it has been designated to act on behalf of the parties to the certification. If the petitioner is unable to obtain the designation, the Regional Director contacts the certified exclusive representative to confirm the designation. Absent such confirmation, it may be necessary to dismiss the petition for lack of standing.

All conversations concerning the authorization to file are confirmed in writing to the petitioner.

- d. *Is all information provided as required by § 2422.3? ([CHM 5](#)) If not, the agent, with the concurrence of the Regional Director, decides if the petition is defective and defines the requirements for correcting the defect. See [CHM 12](#) and [13](#) for guidance on identifying defective petitions and amending petitions.*
- e. *Was the petition served? ([CHM 6](#)) The statement of service on the petition form is sufficient evidence that the petitioner served the petition on all parties named on the form. If any of the parties contact the region to advise that they did not receive the petition, the region sends a letter to the petitioner advising it to serve copies of the petition on all parties. (Modify [Figure 12.4](#)).*
- f. *Make a list of the party(ies) that the petitioner identifies as affected by issues raised by the petition and note why the petitioner lists them. Check for related or current cases to identify commonality of parties and issues, and for related cases to identify parties that may be affected by issues raised by the petition. [CHM 15.5](#) provides guidance and a checklist for identifying affected parties.*
- g. *Was the petition filed in the proper office? If the petition involves a nationwide unit or a portion of an agency-level consolidated unit, see [CHM 8](#) for guidance. If necessary, the Regional Director will obtain clearance from the Office of the General Counsel to process such cases.*
- h. *Copies of the petition are forwarded to other Regional Offices when they:*

Primary Investigation

- (i) involve nationwide or agency-level consolidated units and appear to involve matters having national impact ([CHM 8](#)); or
- (ii) request to consolidate existing units that extend beyond the region's jurisdiction to other Regional Offices

Regional Directors notify other Regional Directors of the petition by sending them an e-mail. See [CHM 8](#) and [63](#) for general policies regarding transfer, service, consolidation and severance. Cases may be pending in the other regions that could affect processing the petitions and vice versa. It is imperative that all Regional Directors respond to e-mails requesting information about related cases. For example:

- < *a reorganization of an SSA Branch Office in El Paso could be part of a nationwide reorganization; the Regional Director e-mails information about the petition to other Regional Directors to ensure consistent processing of the case and to determine whether to consolidate the cases for processing (see [CHM 8](#));*
- < *a petition to consolidate existing units is filed in the Washington Region; shortly thereafter, another petition seeking an election in one of the units covered by the pending petition is filed in another region. The representation petition is blocked pending processing the consolidation petition ([CHM 11.11.2](#)). However, the second region has no way of knowing about the consolidation petition if it is not been notified of the petition pending in the Washington Region.*
- i. How many copies of the petition were filed? *The petitioner is required to file an original and two copies of the petition and accompanying material with the Regional Office ([CHM 9](#)). Failure to serve the prerequisite copies is not a defect that requires any written notification. This type of "defect" does not normally become an issue. The Regional Office simply contacts the petitioner, reviews the filing requirements and cautions the petitioner about filing the appropriate number in the future.*
- j. Is the petition timely filed? *See [CHM 11](#) and RCL 12 for guidance on identifying timeliness issues. If timeliness appears to be an issue, the agent discusses this during his/her initial contact with the petitioner. If necessary, an Order to Show Cause is sent to the*

Primary Investigation

petitioner and copies are served on all known parties (see [Figure 20.1B](#)). A timeliness issue could become an issue for a hearing.

20.1.2 Supplemental checklist for petitions seeking a representation election: Petitions filed by a labor organization, or labor organizations acting as joint petitioners, for an election to determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative require additional information (see also [CHM 5.3](#)):

- a. Is the petition accompanied by a showing of interest and an alphabetized list? *Failure to submit a showing of interest is a defect that prevents the petition from being opened and could also affect the timeliness of the petition. An amended petition is required. Failure to submit an alphabetized list of the names constituting the showing of interest is also a defect, but may not prevent the petition from being opened. [CHM 12, 13](#) and [18.9](#). In a situation where the agency's operations are expanding or fluctuating due to the seasonal nature of the work, the showing of interest is required only among employees employed at the time the petition is filed. See [Coast Guard, 34 FLRA 946, 950 \(1990\)](#) and [CHM 18.4.b](#).*
- b. Does the petition state that the petition is accompanied by a showing of interest of not less than thirty (30) percent of the employees in the unit claimed to be appropriate and estimate the number of employees in the unit specified on the petition? *If the information is not provided, the petition is defective and cannot be opened ([CHM 12.3](#)). It must be amended if the petitioner fails to estimate the number of employees in the unit in Item #3 of the form. [CHM 18.4](#) and [18.9.5](#).*
- c. Does the petition describe a unit claimed to be appropriate for the purposes of exclusive recognition? Does the unit reflect generally the geographic locations and the classifications sought to be included and those to be excluded? *If the petitioner does not describe the unit claimed to be appropriate, the petition cannot be opened. The agent contacts the petitioner immediately to discuss the defect. The agent may assist the petitioner in describing the unit, clarifying the purpose of the petition (see [CHM 3](#)) and amending the petition as required in [CHM 13.7](#). A confirming letter is sent. Suggested unit language is discussed in [CHM 28.13](#).*
- d. Is the prima facie showing of interest adequate? See [CHM 18.10](#) for instructions.

Primary Investigation

- e. Identify potential substantive, procedural or eligibility issues. See [CHM 23](#).

20.1.3 Supplemental checklist for petitions seeking a determination of eligibility for dues allotment: Dues allotment petitions are reviewed in much the same manner as election petitions. Their requirements are described in [CHM 5.4](#).

- a. Does the information requested on the petition form describe the unit claimed to be appropriate? Does the unit description reflect generally the geographic locations and the classifications sought to be included and those to be excluded?
- b. Does the petition reflect that the petition is accompanied by evidence of membership of not less than ten (10) percent of the employees in the unit claimed to be appropriate and provide an estimate of the number of employees in the unit claimed to be appropriate?
- c. Are the evidence of membership and alphabetical list attached to the petition?
- d. Is the prima facie showing of membership adequate? See [CHM 18.12](#).
- e. Identify potential substantive, procedural or eligibility issues. See [CHM 23](#).

Follow the guidelines set forth in [CHM 20.1.2](#) if the supplementary information described above is not submitted with the petition.

20.1.4 Supplemental checklist for petitions seeking 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: See [CHM 5.5](#) for requirements.

- a. Does the petition describe the current unit?
- b. Does the petition reflect that the petition is accompanied by a showing of interest of not less than thirty (30) percent of the employees in the unit stating that the employees no longer desire to be represented for the purposes of exclusive recognition by the currently recognized or certified labor organization? Is the

Primary Investigation

- petitioner's estimate of the number of employees specified on the petition form?
- c. Are the showing of interest and alphabetical list attached to the petition?
 - d. Is the prima facie showing of interest adequate? See [CHM 18.10](#).
 - e. Identify any potential substantive, procedural or eligibility issues. See [CHM 23](#).

Follow the guidelines set forth in [CHM 20.1.2](#) if the supplementary information described above is not submitted with the petition.

- 20.1.5 Supplemental checklist for petitions to clarify and/or amend (1) a certification in effect; and/or (2) any matter relating to representation:** As noted in [CHM 3.3](#), such petitions serve a variety of purposes and the requirements may appear at first somewhat unclear (see [CHM 5.6](#)) or are guided by case law. The agent assists the petitioner within the guidelines of [CHM 1, 2 and 13.7](#). These cases are also a good example of when it may be helpful to provide case citations to the petitioner to assist the petitioner in gathering information and complying with the filing requirements.

If the information discussed in [CHM 5.6](#) is not included with the petition, use the outline below as a guide in conversations with the petitioner(s) or when preparing a letter requesting additional information. It may also help identify issues and the results the petitioner(s) seeks and provide guidance when amending the petition. Failure to submit the information in [CHM 20.1.5](#) may delay opening and/or processing the petition, but see [CHM 12](#) for guidance in identifying defects and [CHM 13.7](#) for guidance on assisting the parties when amending the petition. The agent confirms any conversation with the petitioner(s) in writing. This letter assists the petitioner(s) in compiling the information, confirms the agent's and the petitioner(s)' understanding of the requirements, and ultimately expedites processing the case.

- a. Does the petition describe the unit(s) affected by issues raised by the petition? *The regulations require the petitioner to describe the unit affected by issues raised in the petition. This may be interpreted two ways, by: 1) describing the currently certified or recognized unit; or 2) describing the proposed unit. As long as the unit description complies with § 2422.3(a)(6), the petition may be processed. The region may assist the parties when describing the proposed unit ([CHM 2](#)) and obtain copies of the certification or*

Primary Investigation

recognition during the investigation ([CHM 15](#)). If the parties are unable to agree on a proposed unit description, it becomes an issue that the Regional Director decides as part of his/her decision.

- b. Does the petition identify parties affected by issues raised by the petition, including all parties to any exclusive bargaining relationships affected by the petition identified by the petitioner(s)?
- c. Does the petition include a clear and concise statement of the issues raised by the petition and the results the petitioner(s) seeks? *Typical information includes, but is not restricted to, the following noted below.*
 - (1) *Petitions requesting a clarification of the bargaining unit status of certain employees/positions describe the present unit and the date of recognition or certification; the proposed clarification; the title(s) of the position(s) to be clarified, and the name of the incumbent(s) currently occupying the positions. The petition explains the reasons supporting the request. There are certain exceptions to the rule that only positions which are occupied can be clarified. For additional information, see RCL 15 and [HOG 51](#).*
 - (2) *Petitions to amend a recognition or certification in effect also describes the present unit and the date of recognition or certification; the proposed amendment; and a statement of reasons in support of the proposed amendment. As noted, some of the requirements in these cases are not specifically spelled out in the regulations, but rather described in case law. When necessary, refer to the substantive sections of the HOG for assistance. Examples include technical name changes in the agency or activity, union designation, reaffiliations or mergers (Montrose RCL 7B and [HOG 43](#)) and certain successorship situations where the entire unit is transferred to a gaining employer (RCL 3B and [HOG 39](#)).*
 - (3) *Petitions requesting clarification of or an amendment to a matter relating to representation include:*
 - (i) *a description(s) of the present unit(s) for which the petitioner(s) seeks clarification; **NOTE: the region is responsible for obtaining copies of***

Primary Investigation

appropriate certifications, amendments and clarifications from its files if the parties do not furnish them with the petition;

- (ii) a detailed explanation of the reasons to support the question relating to the continued appropriateness of an existing unit(s);
- (iii) a statement outlining the issues raised, if known;
- (iv) the proposed results if known; if the petition is filed jointly, the petitioners may not agree on the proposed results and the petition must reflect the petitioners' various positions.

Examples of these kinds of petitions includes resolving issues related to the effect of a reorganization on an existing unit (RCL 3) or when the agency asserts a good faith doubt of continued majority status based on the extent of the union activity and representation (RCL 4). If the purpose of the petition is unclear, a meeting with all potential parties pursuant to § 2422.13(b) may be instructive. In such situations, the standard opening and notification procedures may be modified or delayed (see [CHM 25.7](#)).

- d. Identify potential substantive, procedural or eligibility issues. See [CHM 23](#).

20.1.6 Supplemental checklist for petitions to consolidate two or more units in an agency and for which a labor organization is the exclusive representative: See [CHM 5.7](#).

- a. Does the petition to consolidate existing units contain a description of the proposed consolidated unit claimed to be appropriate for the purpose of exclusive representation?
- b. Are copies of the original recognitions or certifications attached?

If so, are the descriptions changed in some manner from the original certifications?

Do the descriptions reflect generally the geographic locations and the classifications of employees sought to be included and those

Primary Investigation

sought to be excluded and the approximate number of employees in the consolidated unit claimed to be appropriate for the purpose of exclusive recognition?

- c. Do the attachments include the name(s) and address(es) of the exclusively recognized labor organization(s) involved in each unit sought to be consolidated, the name and address of the activity representative and the approximate number and types of employees in each unit sought to be included? *Each of the parties to the certifications are affected by issues raised in the petition and are automatic parties to the petition [CHM 17.2](#). They receive a letter described in [CHM 15.8.1](#).*

The agent also requests the information outlined below and explains that it will expedite case processing:

- d. Do the attachments contain a statement, as appropriate:
- (1) that the labor organization(s), activity(ies) or agency was contacted prior to the filing of the petition and agrees to consolidate existing exclusively recognized units;
 - (2) that the labor organization(s), activity(ies) or agency was not contacted prior to the filing of the petition?
- e. If a certification were issued, are the name(s) of the labor organization(s), activity(ies) and agency as they are to appear on the certification on consolidation of units reflected in an attachment?
- f. Identify potential substantive, or procedural issues. See [CHM 23](#).

Failure to submit this information with the petition does not delay opening the petition, but the agent is responsible for obtaining this information prior to the Regional Director taking action pursuant to § 2422.30.

Note: As noted in [CHM 23.10](#), the regulations do not include a provision that permits an agency or a labor organization to request an election to decide the consolidation issue. If, after the Regional Director issues a Decision and Order, either the agency or labor organization requests an election, contact the Office of the General Counsel. See [CHM 28.17](#) for election procedures involving unit consolidations.

Primary Investigation

20.1.7 Supplemental requirements for petitions that seek to disclaim interest: These petitions normally include the following information:

- a. A description of the unit(s) for which the labor organization holds exclusive recognition and seeks to disclaim interest. The description reflects the name of the activity or agency affected, the geographic locations and classifications of the employees included in the current certification. A copy of the recognition or Certification of Representative is attached if available.
- b. There is no special form for a disclaimer. In general, a letter is attached to the petition stating that the disclaiming union “waives and disclaims any right to represent ... (*describe unit of employees*)” or “employees for which (*name of union*) was certified as the exclusive representative in Case No.” See [CHM 20.9](#) for specific processing guidelines and information about disclaimers.
- c. The name and mailing address for each activity or agency for which the labor organization holds exclusive recognition and seeks to disclaim interest, including street number, city, state and zip code.
- d. The name and mailing address of the labor organization which holds exclusive recognition, including street number, city, state, and zip code.
- e. The name, mailing address and work telephone number of the contact person for the labor organization which is recognized or certified for the unit being disclaimed, if other than the party filing the request to disclaim.
- f. The signature, title, mailing address and telephone number of the person filing the letter of disclaimer. See also [CHM 20.9](#) for processing guidelines.

20.1.8 Supplemental checklist for petitions filed pursuant to 5 U.S.C. 7111 (f)(1) seeking to decertify an incumbent labor organizations based on allegations that the labor organization is subject to corrupt influences or influences opposed to democratic principles:

- a. Does the petition describe the unit(s) affected by issues raised by the petition? *The regulations require the petitioner to describe the unit affected by issues raised in the petition. The current unit description is described in petitions claiming that the incumbent*

Primary Investigation

labor organization should be decertified based on allegations that the labor organization is subject to corrupt practices or influences opposed to democratic principles. The region may assist the petitioner in obtaining a copy(ies) of the certification or recognition during the investigation (CHM 15).

- b. Does the petition identify parties affected by issues raised by the petition, including all parties to any exclusive bargaining relationships affected by the petition identified by the petitioner(s)?
- c. Does the petition include a clear and concise statement of the issues raised by the petition and the results the petitioner(s) seeks? *Typical information normally includes, but is not restricted to, the following noted below.*

- (1) *If there has been, or is currently pending, a proceeding before a third party that is based on the same or substantially similar allegations that support the section 7111(f)(1) claim, the petition should include all documents filed with the third party, evidence submitted and any decisions rendered in that proceeding.*

The party must establish why the allegations in that proceeding are the same or substantially similar to the allegations that support the section 7111(f) claim. The party must further establish that a finding of a violation in that proceeding requires a determination under the Statute that the challenged labor organization is subject to corrupt or anti-democratic influences.

- (2) *The petition should reflect the third party's decision if it found no violation based on the same or substantially similar conduct, and provide evidence why the challenge or petition should not be dismissed, absent withdrawal.*

The petition should include all documents filed, evidence submitted and decisions rendered in that proceeding.

- (3) *The petition should reflect if a third party has found a violation based on the same or substantially similar conduct and include an explanation why that violation establishes under the Statute that a labor organization is subject to corrupt or anti-democratic influences requiring*

Primary Investigation

the denial or revocation of certification.

The petition should include all documents filed, evidence submitted and decisions rendered in that proceeding.

- (4) *The petition should reflect whether a third party proceeding is pending and provide a rationale, assuming the allegations before the third party are true, why they establish under the Statute that a labor organization is subject to corrupt or anti-democratic influences requiring the denial or revocation of certification.*

The petition should include all documents filed, evidence submitted and ruling issued in that proceeding.

- (5) *If the petitioner has not filed a proceeding before a third party and none is pending at the time the petition is filed, the petitioner should include an explanation why the challenge or petition should not be dismissed, absent withdrawal. The petition should include all evidence to support the challenge.*

If necessary, the Regional Director issues an *Order to Show Cause* ordering the petitioner to establish why that evidence requires a determination under the Statute that the challenged labor organization is subject to corrupt or anti-democratic influences.

- d. If any of the information discussed above is missing, the Regional Director issues an *Order to Show Cause* when a Challenge or Petition is filed. See [CHM 23.9.3.2](#).
- e. See [CHM 23.9.3](#) for investigation requirements, when stays are appropriate and obtaining clearance when processing these cases. See also [CHM 19](#).

20.2 Preliminary contact with petitioner in all cases: After the petition is reviewed for sufficiency, the agent contacts the petitioner(s) via telephone to discuss the case, any defects in the petition, and explains processing procedures as noted below. A telephone contact usually sets the tone for processing the case and provides useful information to both parties: the agent and the petitioner. If the agent is unable to contact the petitioner by telephone and the petition is defective, a letter setting forth the defect is sent

Primary Investigation

immediately ([CHM 12.3](#)). If the petition alleges that the incumbent labor organization is subject to corrupt influences or influences opposed to democratic principles pursuant to section 7111(f)(1) and does not include the information required in [CHM 20.1.8](#), the petitioner is not sent a letter described in [CHM 12.3](#). Rather the petitioner is sent an *Order to Show Cause* as discussed in [CHM 15.8](#) and [CHM 23.9.3.2](#).

The agent makes the first telephone calls regarding the petition as soon as possible after the petition is filed. Remember any delay by the Regional Office could adversely affect the petitioner or other parties.(see [CHM 18](#)).

- a. The agent advises the petitioner of the regulations and basic case processing procedures. Next, the agent reviews the petition and confirms the contents of the petition, its purpose and the results the petitioner seeks.
- b. The agent also confirms the names of the parties listed on the petition form and asks if there are any parties not listed.
- c. The agent is prepared to discuss any issues gleaned from the preliminary examination of the petition with the petitioner.
- d. The agent also advises the petitioner(s) of any defects and their effect on case processing. If an amendment is required to cure the defect or to clarify the petition, the agent provides necessary assistance as appropriate ([CHM 13.7](#)).

[CHM 15.4](#) discusses notifying the petitioner of the receipt of the petition and procedures when the petition is defective, and provides sample letters.

20.3 Identifying parties that may be affected by issues raised by the petition: The guidelines and checklists set forth in [CHM 15.5](#) are followed to ensure the Regional Director complies with § 2422.6.

20.4 Preliminary contact with potential parties prior to opening the case: Potential parties are contacted and notified in writing as soon as possible after the region docket the case, i.e., checks the petition for sufficiency, obtains any required amendments and identifies affected parties ([CHM 15](#)). **The Regional Office also contacts all potential parties telephonically prior to opening the case (sending written notification of the petition) with the exception of parties to local certifications when a national union is seeking to consolidate all of its units nationwide.** While it may not be

Primary Investigation

possible to contact all potential parties prior to sending written notification of the petition, every potential party is normally contacted telephonically in the early stages of case processing. This section suggests guidelines to follow during the initial telephone call with the parties.

- 20.4.1 Preliminary contact when the case cannot be opened:** If the petition is defective and cannot be opened until the petition is amended but the Regional Director believes the defects will be cured, the Regional Director **has discretion** to begin exploring issues with the parties. S/he may send a letter to the parties named by the petitioner to inform them that a petition has been filed. Ultimately, the Regional Director has discretion to open the case.
- 20.4.2 Preliminary contact with the employing activity/agency, if other than the petitioner, when the case can be opened:** If possible, a non-petitioning activity or agency is contacted first and by telephone if possible. Contact by telephone to discuss the petition and preliminary issues may save time and identify any procedural issues that could be resolved without resort to formal procedures. Discussion with the activity representative includes:
- a. The agent introduces him/herself and states the reason for the call. The agent confirms that the name and position of the person is the appropriate activity/agency contact.
 - b. The agent describes the petition and asks if the activity/agency has received a copy of it.
 - c. The agent describes general case processing procedures, the apparent purpose of the petition as filed, and the parties involved. The agent also asks if the activity has any knowledge of any other party that may be affected by issues raised. If the petition involves a reorganization, the agent asks about the reorganization: how it came about, who was affected, etc.
 - d. The agent informs the activity that the Regional Director will send a letter asking for specific information related to the case and requesting the activity to post a notice to employees informing them of the petition. The agent also outlines the basic procedures and requirements for processing the particular petition that has been filed and answers any questions about case processing procedures.

- 20.4.3 Preliminary contact with labor organizations, agencies and activities that may be affected by issues raised by the petition:** The agent contacts other labor organizations, agencies or activities named by the petitioner or determined by the Regional Director to be affected by issues raised by the petition. Often, such contact sets the tone for the proceedings and defines and resolves issues in the preliminary stages of handling the petitions. Contact with these potential parties includes:
- a. The agent introduces him/herself and states the reason for the call. The agent states that a petition has been filed, describes its purpose and that the labor organization, agency or activity, as appropriate, may be affected by issues raised by the petition.
 - b. The agent explains applicable representation case handling procedures including procedures for and timeliness of intervention/cross-petition.
 - c. The agent explains whether the labor organization, agency or activity is automatically entitled to participate in the case pursuant to §§ 2422.8(d) or (e), or whether it is entitled to request intervention pursuant to §§ 2422.8(c)(1),(2)(3) or (f), or § 2421.21.
 - d. The agent confirms the name, address and telephone number of the potential party and its representative. The agent states that the Regional Director will notify it of the petition via letter in accordance with § 2422.6 ([CHM 15.8](#)).

- 20.5 Written notification of potential and automatic parties after preliminary review of petition:** All telephone conversations with potential parties prior to opening the case are confirmed by letter(s) described in [CHM 15.8](#) and [15.9](#). The letters in Figures 15.8A, 15.8B and 15.9 are modified if necessary (see [CHM 15.8.2](#) and [CHM 20.5](#)).

Regardless of any telephone contacts, the Regional Director is required to make reasonable efforts to notify any labor organization, agency or activity identified by the parties or the Regional Director as being affected by issues raised by the petition (§ 2422.6). The guidelines set forth in [CHM 15](#) are used for identifying and contacting any parties that may be affected by issues raised by the petition. If appropriate, the Notice to Employees accompanies the letter to the employing activity/agency as set forth in [CHM 16](#).

Primary Investigation

20.5.1 Automatic parties: Parties that qualify as automatic parties pursuant to §§ 2422.8(d) and (e) receive either [Figure 15.8A](#) or [15.9](#), depending on the purpose of the petition.

Note that in petitions seeking to consolidate existing units, the parties to the certifications are automatic parties to the proceeding even though the national union may have filed the petition on the local's behalf. The local parties to the certification are served with the appropriate letters. See [CHM 15.8.1](#).

20.5.2 Potential parties: Parties that may be affected by issues raised by the petition are notified of the petition and given an opportunity to request intervention. These parties are described in §§ 2422.8(c) and (f) and receive [Figure 15.8B](#), regardless of the purpose of the petition. **Note that these preliminary actions take place simultaneously and within days of receipt of the petition in the Regional Office.** There are some exceptions to this practice including notifying "interested parties" - parties that may not qualify as intervenors, but claim they are affected by issues raised by the petition pursuant to § 2421.21. These parties are not invited to intervene and may not be copied with opening letters to the employing agency. See [CHM 15.10](#) and [CHM 17.13](#) for case processing guidelines.

20.6 Action after notification letters are sent: After sending the initial notification letters, the agent continues to process the petition. As set forth in [CHM 15.12](#), Regional Director's are not generally required to confirm a party's participation in a proceeding after notification of the petition has been sent. However, see [CHM 20.8](#), [15.12](#) and [17.5](#) for policy guidance.

20.6.1 Outlining issues raised by the petition: After the region forwards the notification letters to the parties, the agent assigned to the case continues to develop and outline the issues raised by the petition. This section summarizes the preliminary procedures that the agent takes while waiting to hear from the parties and as information is received. [CHM 23](#) - *issue identification and investigative techniques* - discusses specific investigative procedures for each petition.

- a. Define the issues and outline the facts needed to resolve the issues.
- b. Review information as it is received to: (i) assess whether there are new issues and/or additional information is required; (ii) ensure that all potential parties have been identified. [CHM 15.5.3](#).

Primary Investigation

- c. After the region receives the activity's payroll list in an election petition, complete the final check of the showing of interest. [CHM 18.13](#).
- d. After the activity's payroll list is received in a petition seeking a determination of eligibility for dues allotment, confirm that the names on the petitioner's certified showing of membership are actually employees of the activity. [CHM 18.13](#).
- e. If the petition requests clarification of or an amendment of a recognition or certification or to a matter relating to representation, compile information/evidence to support the petition. Specific information is discussed in [CHM 23 generally and 23.5 and 23.8](#).
- f. Check on related cases in the Regional Office and if appropriate, pending in other Regional Offices (see [CHM 20.1.1](#)).

20.6.2 Investigating the petition: The agent is also expected to obtain evidentiary information relevant to the issues raised by the petition in a manner that minimizes disruption to the affected parties and expedites the processing of the case. Such evidence may be in the form of affidavits, documentation, position statements and legal arguments. The region may obtain this evidence by an investigation or a fact-finding hearing (see [CHM 23.4](#) for investigative techniques and [CHM 30](#) and the *HOG* for guidance in conducting a hearing). The region informs the parties of the investigative process and its appropriateness.

20.7 Follow-up with petitioner: The agent ensures that the petitioner complies with any request to submit an amended petition or secures additional information to correct defects.

20.8 Regional Director's responsibility after notification: This subsection is taken from [CHM 15.12](#) and [17.5](#) that discuss the Regional Director's responsibilities after sending affected parties the notification letter. Note also the discussion in [CHM 17.4](#) discussing the correlation between notification and intervention. Generally, keep in mind that:

- a. Any labor organization, agency or activity that may be affected by issues raised by a petition is notified of the filing of a petition (§ 2422.6). But, not every labor organization, agency or activity that is notified by Regional Directors pursuant to § 2422.6 that it may be affected by issues raised by the petition is automatically entitled to

Primary Investigation

participate in the petition. A cross-petitioner, employing agency/activity and/or incumbent labor organization are automatic parties in a representation proceeding and are designated as such in the initial letter notifying them of the petition (see [Figures 15.8A](#) or [15.9](#)). Any other agency/activity or labor organization that may be affected by issues raised by the petition must request to intervene or cross-petition according to the requirements set forth in § 2422.8 in order to participate in the petition (see [Figure 15.8B](#)). [CHM 17.4](#).

- b. After the potential parties are notified of the petition by letter, the Regional Director is not required to follow up and confirm a labor organization, agency or activity's participation in a proceeding. However, the region balances its responsibility to notify potential parties that may be affected by issues raised by the petition with the right of any affected labor organization, agency or activity to have a reasonable opportunity to intervene in the proceeding. [CHM 15.12](#).
- c. The time limits for intervention, cross-petitions and challenges are not dependent on the posting of the notice to employees (which has a fixed duration) but rather on actions being taken according to § 2422.30. Any labor organization, agency or activity notified that it may be affected by issues raised by a petition has a reasonable opportunity to participate in the case. For instance, if a potential party has been identified and notified of a petition and contacts the Regional Office for information, it is advised of the status of the case. If the labor organization, agency or activity states it intends to intervene pursuant to § 2422.8, the agent reminds it of the requirements for intervention. Before taking action pursuant to § 2422.30, the Regional Director has discretion to, and is required (where a labor organization incumbent or employing agency are automatic parties) to follow up with any labor organization, agency or activity that has telephonically inquired about a case.

20.9 Disclaimer of interest: Any labor organization holding exclusive recognition for a unit of employees may disclaim any representational interest in those employees at any time. Disclaimers of interest may be filed by the recognized or certified exclusive representative in the following situations:

- a. as a "petitioner," a labor organization may file a petition seeking to disclaim any representational interest in a unit for which it is the exclusive representative ([CHM 5.9](#)).

Primary Investigation

- b. as an incumbent union named in a petition that requests an election or seeks to clarify a matter relating to representation;
- c. as an intervenor in a petition that seeks to clarify a matter related to the representation of employees it represented prior to a reorganization or realignment of agency operations.

To be effective, a disclaimer must be made in good faith, be clear and unequivocal, and leave no doubt that a matter relating to the incumbent's representation does not exist with respect to the bargaining unit. *Department of Defense, Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire*, 14 FLRA 76 (1984). A union's bare statement is not sufficient to establish that it has abandoned its claim to representation if the surrounding circumstances justify an inference to the contrary. Its conduct, judged in its entirety, must not be inconsistent with its alleged disclaimer. A disclaimer filed under questionable circumstances is submitted for case handling advice.

20.9.1 Processing petitions where a labor organization files a disclaimer: When the region receives a petition from a labor organization that seeks to disclaim representational interest, or as part of processing a petition, receives a letter from the incumbent seeking to disclaim representational interest, the region:

- a. confirms that the party filing the disclaimer is the recognized or certified exclusive representative of the employees in the unit. A significant requirement is the letter of recognition or the Certification of Representative. If the union seeking to disclaim does not submit a copy of the recognition or certification, the region obtains a copy from the certification database, the activity or if possible, the international union;

and
- b. confirms that the only purpose of the petition or letter is to disclaim representational interest in the unit.

If the certification was issued to a local union and the international attempts to challenge the disclaimer, the region contact the Office of the General Counsel.

Primary Investigation

If an incumbent files a petition to disclaim representational interest and the disclaimer appears to have been properly filed, the region issues a Decision and Order approving the disclaimer. The region also tries to obtain from the petitioner a waiver of its right to appeal the Decision and Order. However, if no waiver is submitted, when the Decision and Order becomes the final action of the Authority under § 2422.31(e), the Regional Director issues a Revocation of Recognition or Certification (see [CHM 56.6.1 - revocation issued upon a disclaimer by an incumbent exclusive representative](#)).

If an incumbent files a disclaimer in a petition filed by another party, the region takes appropriate action consistent with the purpose of the petition.

- a. In a base closure situation, the incumbent may agree that the base closure resulted in the termination of the unit and file a disclaimer.
- b. In a petition filed by an employing agency that contends that it has a good faith doubt that the incumbent represents a majority of the employees in the unit, the disclaimer obviates the need for a determination on the merits, i.e., whether or not the incumbent continues to represent a majority of employees in the unit. In such cases, the Regional Director issues a Decision and Order stating his/her intent to issue a Revocation of Recognition or Certification.
- c. In a raiding situation, a disclaimer by the incumbent results in the election without the incumbent on the ballot [note however, § 2422.14(c)].
- d. In a decertification proceeding, a disclaimer by the incumbent obviates the need for an election unless there is an intervenor. See § 2422.23(f) and [CHM 28.37](#).

20.9.2 Effect of disclaimer on petitions seeking an election in a unit currently represented by an incumbent:

- a. If a labor organization properly disclaims interest in the unit for which another labor organization has filed a timely petition seeking an election, the incumbent is not regarded as a party.
- b. If a labor organization properly disclaims interest in the unit which is the subject of a decertification petition, the election is not held [unless another labor organization has intervened - § 2422.23(f) and [CHM 28.37](#)]. In cases where there is no intervenor, the Regional

Primary Investigation

Director dismisses the petition on the basis of the disclaimer, stating that no question of representation exists (absent a withdrawal), and issues a Revocation of Recognition or Certification at the time the petitioner's withdrawal is approved or the case is dismissed (see [CHM 53](#) for Decisions and Orders).

When an election is not held because the incumbent has filed a disclaimer of interest, § 2422.14(c) imposes a six month bar on the incumbent from filing a petition seeking an election involving the same unit or a subdivision thereof. See also [CHM 11.10](#).

- 20.9.3 Effect of disclaimer on petitions that seek to clarify or amend a matter relating to representation:** A disclaimer by a labor organization named as an incumbent or an intervenor in a representation petition based on its current or prior representation of employees affected by a reorganization may affect the issues raised by the petition. In this situation, the region is not required to issue a separate Decision and Order as a result of the incumbent's disclaimer. During the processing of the petition, the incumbent labor organization is simply not a party and the affected employees are not represented. If, however, the issues reflect that the unit remains appropriate, the Regional Director goes back to the incumbent to confirm in writing that it still seeks to disclaim interest. If the incumbent continues to disclaim, the Regional Director issues a Decision and Order that includes a statement that the incumbent disclaimed interest in representing the employees in the unit and states his/her intent in issuing a Revocation of Recognition or Certification. Thereafter, the Regional Director issues a Revocation of Recognition or Certification to reflect that the exclusive representative has disclaimed interest for an appropriate unit of employees (see [CHM 56.6.1](#) - *revocation issued upon a disclaimer by an incumbent exclusive representative*).