

26 PREPARING AND PRESENTING A CASE FOR THE REGIONAL DIRECTOR'S CONSIDERATION AND DECISION: Each region will ensure that the quality standards set forth in [CHM 1.1](#) have been met before taking any dispositive action.

26.1 Checklist for determining whether a case is ready for decision: The agent reviews the actions it has taken to determine whether all procedural requirements, such as checking the showing of interest, ruling on challenges to the validity of the showing of interest, etc., have been completed. The following is a checklist to assist the agent in deciding whether s/he is prepared to present the case to the Regional Director. These guidelines also help the Regional Director consider whether a meeting as contemplated in § 2422.13(b) will assist the parties in narrowing and resolving any issues raised in the petition.

- a. Has the petition been amended and/or defect(s) corrected? *Before the Regional Director can take action pursuant to § 2422.30, the petition is cured of any defects (see [CHM 12, 13](#) and [20](#)). As noted in prior sections, some petitions cannot be opened without an amended petition. Agents review the file to ensure that there are no uncorrected filing procedural defects.*
- b. Has the agency or activity provided the payroll list in election cases and/or other pertinent material? *The agency/activity's information is critical to moving the case to decision. Frequently, the agency/activity responds with some of the information, but neglects to provide all of the necessary information.*
 - (i) *If the agency fails or refuses to furnish the eligibility list, the final showing of interest may be decided by the petitioner's estimate. See [CHM 18.13.2](#).*
 - (ii) *If the agency or activity is slow or dilatory in responding to the region's request for information, the agent explores options with the Regional Director such as requiring a meeting pursuant to § 2422.13(b), issuing an investigatory subpoena ([CHM 23.5.3](#)), preparing a notice of hearing and subpoenas as appropriate. See [CHM 15.8](#) (initial contact), [CHM 20](#) (preliminary investigation) and ([CHM 23](#) - issue identification and investigative techniques).*

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- c. Have all potential affected parties been identified and notified of the petition? Do amendments to the petition require a review and reconsideration of any additional parties that may be affected by new issues? [CHM 15](#) and [20](#).
- d. Have all requests for intervention, or any cross-petitions been acted on? If not, is there a substantive issue related to a request for intervention?
- (i) [CHM 17](#) discusses interventions and cross-petitions, the requirements and procedures for processing. *There are potentially four types of intervenors:*
- < *Cross-petitioners: A cross-petitioner is a party that files a petition which involves any employees in a unit covered by a pending representation petition [§ 2422.8(a)].*
 - < *Labor organizations and agencies or activities that are automatic parties because:*
 - *the labor organization is an incumbent [§ 2422.8(d)];*
 - *the agency or activity employs any employees who are affected by issues raised by the petition [§ 2422.8(e)];*
 - < *Labor organizations and agencies or activities that are required to file a request to intervene in order to participate in the case [§§ 2422.8(c) and (f)].*
 - < *Labor organizations and agencies or activities that are affected by issues raised pursuant to § 2421.21 but have no basis to intervene under § 2422.8. Such parties are considered "interested parties."*
- (ii) Ruling on requests to intervene: *Ruling on specific requests to intervene as required in § 2422.8(c) is discussed in [CHM 17](#). As a request is received, the Regional Director makes a specific finding regarding the intervenor's status. If the intervention is dependent on checking the showing of interest, the activity is contacted*

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to determine the status of the list - see [CHM 18.13.2](#). If the intervention is based on other evidence of interest, the agent decides whether the evidence supports the request to intervene. Note that the Authority requires a labor organization seeking to intervene in a representation proceeding to present all contentions and arguments concerning its request to the Regional Director. *BIA*, 34 FLRA 413 (1990). See also [CHM 17.7.4](#). Thus, a party desiring to intervene may amend its request to intervene and change the basis for the intervention if the intervention is otherwise timely filed [see § 2422.8(b)].

- (iii) Parties that are designated automatic parties: ***If a labor organization or agency/activity is considered an automatic party to the proceeding, the agent confirms the party's involvement.*** See § 2422.8(d) and (e). See [CHM 17.5](#) on limitations following initial notification. If the incumbent refuses to participate in the petition seeking an election, the agent requests a disclaimer of interest. If the incumbent refuses to provide the disclaimer, the Regional Director obtains case handling advice ([CHM 22](#) - cooperation, [CHM 58.3.4](#) - advice).
- (iv) Cross-petitions are discussed in [CHM 17.6](#): If the Regional Director decides a petition fulfills the filing requirements and designates the petition as a cross-petition, the parties to both cases are notified. Note that new issues may be raised. The cases may be consolidated prior to taking action pursuant to § 2422.30(c) or combined with the action taken pursuant to § 2422.30.
- (v) Notifying the parties: The Regional Director responds to all cross-petitions or parties' requests for intervention. The region is responsible for making the parties fully aware of the status and the identity of all parties participating in a representation proceeding.

NOTE: Provisions in [CHM 17.13](#) for parties that request interested party status pursuant to § 2421.21.

- e. Can any procedural issues be resolved without hearing? For example, issues relating to proper service of the petition. A meeting

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held pursuant to § 2422.13(b) may expedite resolution of these or other issues. Other procedural issues in election cases may be resolved pursuant to § 2422.16(c). See [CHM 28.11.2](#).

- f. In petitions seeking an election, has the showing of interest been checked for adequacy (prima facie showing requires a full check and the final check is dependent on the size of the unit)? *If the showing of interest is inadequate, describe the reasons for the inadequacy and outline any outstanding issues to resolve ([CHM 18.14](#)).*
- g. Has any party filed a challenge to the validity of the showing of interest or filed a challenge to the status of a labor organization? If so, what is the status?

In accordance with the procedures set forth in [CHM 18.19](#), the region investigates all validity challenges and takes appropriate action as soon as possible. Validity challenges raise threshold issues that are resolved before the Regional Director takes action on a petition. If the challenges are received too late for the region to process prior to the opening of the hearing, the challenge is forwarded to the Regional Director for investigation. A decision on a challenge to the validity of a showing of interest is made before any other issue can be decided. If the hearing involves complicated issues, the Regional Director has discretion to postpone it depending on the seriousness and supporting evidence to the challenges and in consideration of the best use of the Region's resources. Otherwise, the hearing can proceed simultaneously with the investigation of challenge to the validity of the showing of interest. In such cases, the validity challenge is decided first. See [CHM 18.19.4](#) for processing validity challenges received too late for the region to process prior to the opening of the hearing, or immediately prior to or after the opening of a hearing (also [HOG 17.3](#) and [HOG 33.2](#)).

Status challenges require an investigation and may be considered as a threshold issue in a hearing. See [CHM 19.5](#) for processing challenges to the status of a labor organization received immediately prior to or after the opening of a hearing (also [HOG 17.3](#) and [HOG 33.3](#)). Section 2422.16(c) provides for special procedures when status challenges are raised as an issue at election agreement meetings ([CHM 19.6](#) and [CHM 28.11](#)).

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- h. Are the issues defined; have any subsequent amendments changed the purpose or any issues of the petition? If so, was a new posting required and completed? Do the parties understand the purpose of the petition?
- i. Did the parties' submissions identify other issues not previously considered by the agent or the Regional Director? Has the Regional Director identified any issues not raised by the parties, but are defined by the facts and circumstances of the case?
- j. Has the agent prepared an outline of the issues presented by the petition?
- k. Has the agent considered the merits of directing a meeting pursuant to § 2422.13(b)?
- l. If a meeting was conducted, did it assist in identifying, narrowing and resolving the issues? How? Would additional meetings be advantageous?
- m. Did the region obtain the best possible relevant evidence necessary for a determination? (See [CHM 1.1](#) - policy and [CHM 23.4](#) - investigative techniques)

26.2 Case file documentation: Proper case file documentation is a quality standard. See [CHM 1.1.2d](#).

26.2.1 Minimum requirements for case files: The case file contains all relevant documentary evidence discovered and submitted during the investigation; i.e., sufficient documentation to permit the Regional Director to make a well-reasoned decision.

The file reflects the Region's decisional process. The case file is organized in a manner that reflects an understanding of the purpose of the petition, issues and standards/factors required for decision. The file reflects the region's decisional process including:

- a. identifying novel or precedential decisions requiring advice or clearance;
- b. explaining the Director's decision and rationale at each milestone, including precedent for it; and
- c. noting action to be taken.

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26.2.2 Specific requirements: Files are organized so that specific material may be easily found. The originals of all correspondence are maintained in the file, including all related pre-petition correspondence, all other documents received or obtained during the investigation and copies of all correspondence and documents issued by the region. The original set of formal papers used in a hearing are also maintained in the case file ([HOG 4.1](#)).

In addition to formal papers and the relevant documentary evidence obtained from the parties, each case file contains at least the following items:

- a. A case log recording the essential elements of each substantive discussion about the case between anyone in the region and any of the parties and/or their representatives. The case log lists, in chronological order, the dates of all substantive contacts, the name of each person contacted, and either a brief description of each discussion or a reference to a separate file memorandum. (Evidence or substantive information bearing on the petition does not appear in the case log, but is documented elsewhere in the file.) The case log also contains notations on any case processing decisions made by the region during the processing of the case; such as references to documentation supporting the region's efforts to identify parties affected by issues raised by the petition ([CHM 15.5.3](#)).
- b. Sufficient documentation to provide a history of the case and any other relevant documentary evidence to assist the Regional Director in making a proper decision. Testimonial evidence is required in cases not proceeding solely on documentary evidence or those that require a hearing. Examples include petitions involving eligibility issues, or a challenge to the validity of the showing of interest. In cases where the region conducts an investigation rather than a hearing, the agent often obtains evidence in the form of affidavits. In addition, if objections or challenges are filed with sufficient evidence to warrant a regional investigation, the region may require the objecting party to provide an affidavit or answer an interrogatory. If the file does not contain a signed statement, affidavit or interrogatory from a party when one is called for, it contains an explanation of the region's decision to proceed without one (see also [CHM 23.4 and 23.5](#)). The file also documents steps the region has taken to obtain evidence or information from the parties. This is particularly significant when information appears to be missing from

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the file.

- c. Except in cases whose disposition (usually on technical grounds) is unmistakable, a written predecisional investigative report by the agent and/or a written postdecisional report (or agenda minute) for every action taken by the Regional Director pursuant to § 2422.30(c). Either report, whether it precedes or follows the region's decision, addresses procedural and substantive issues raised by the filing of the petition (see [CHM 26.3](#) for sample information). If the Regional Director's decision differs from the agent's predecisional recommendation and/or following a hearing, an agenda minute is also required. ([CHM 26.4](#)).

These items are the minimum requirements for each case file. The regions include in their case files any other internal documents they consider material to the disposition of the case.

- 26.3 Predecisional investigative report:** [CHM 26.2.2c](#) states that the Regional Director has discretion to require either a predecisional (FIR) or a postdecisional report (agenda minute). Any written report and analysis in representation cases is brief, but pointed. A predecisional report (FIR) is submitted in any representation case where the Regional Director's decision is based on an investigation, rather than a hearing. Often, such reports take the form of draft Decisions and Orders. The facts as set forth in the FIR are supported by evidence in the case file that is specifically identified and referenced in the FIR. The FIR is a self-contained document to the extent that it is not necessary to refer to file documents for a thorough understanding of the facts, issues and analysis. Opinions or conclusions of the parties are not facts and are not reported as such in the FIR. Conflicting statements and disputed facts are noted.

A FIR is an intra-agency document and is not discloseable to any party. It generally includes, but is not limited to:

- a. Compliance with filing requirements;
- b. Petitioner's purpose of the petition;
- c. Evidence to support the petition;
- d. In election or dues allotment cases, a report on the showing of interest (attach the FLRA Form 52);

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- e. A list of all parties named by the petitioner as affected by issues raised by the petition and a list of any other parties identified by the Regional Director as affected by issues raised by the petition;
- f. A summary of efforts to identify parties affected by the petition;
- g. A status report of any requests to intervene, etc.
- h. A discussion of the unit, including the petitioner's and any affected parties' positions on the petition;
- i. Related cases;
- j. Pertinent facts surrounding the representation question (such as the agency/activity's mission, organization, etc., see *HOG* outlines);
- k. Bargaining history;
- l. Issues presented by the petition and those that surfaced during the investigation (see [CHM 23](#));
- m. A discussion of efforts to narrow and resolve issues, including whether a meeting was conducted pursuant to § 2422.13(b) and the results obtained from those meetings; if a meeting was not conducted, a recommendation on the viability of such a meeting;
- n. A discussion of the applicable case law or absence thereof;
- o. An analysis of the facts as applied to the issues and standards for deciding the representation matters (see *RCL* for guidance on analyzing the issues);
- p. A recommendation concerning the status of any labor organization, agency or activity whose intervention has not been approved; and
- q. A recommendation on the issues. As necessary, note statutory and regulatory requirements concerning when it is appropriate to provide an opportunity for a hearing versus when it is appropriate to issue a notice of hearing § 2422.30(b) and [CHM 27](#).

See [CHM 53.4](#) for a basic outline for draft Decisions and Orders.

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26.4 Requirements for agenda meeting: An agenda meeting is held when:

- a. the Regional Director disagrees with the agent's predecisional recommendation;
- b. a predecisional report is not submitted;
- c. after a hearing; or
- d. the Regional Director decides to require such a meeting.

26.4.1 Requirements for agenda minutes: An agenda minute is required to record the Regional Director's decision whenever there is an agenda meeting. Its purpose is to confirm that the Regional Director understood the purpose of the petition, the facts, issues and the file documentation. If no agenda meeting is held, an agenda minute is required if the Regional Director's decision and the decisional process is not otherwise clear from the file.

26.4.2 Contents of an agenda minute: The agenda minute summarizes the Regional Director's decision on issues raised by the filing of the petition. Every agenda minute documents the Regional Director's decision, and, if the Director decides to issue a notice of hearing, the agenda minute includes an outline of the issues the Director establishes for the hearing. If an agenda meeting is held in lieu of an FIR, the agenda minute confirms that the Regional Director was fully informed of the facts, issues and results of the investigation. It identifies and analyzes the issues presented to the Regional Director for decision and fully documents the briefing. If an FIR is prepared, the agenda minute can be less detailed as long as it documents the Regional Director's decision.

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