

RD Determination and Actions

- 27 REGIONAL DIRECTOR DETERMINATION AND ACTIONS:** This section describes the process of making a regional determination and provides an overview of the actions the Regional Director may take following investigation.
- 27.1 General policy:** Two purposes of the regulations are to: (1) streamline the representation regulations, and (2) make the rules more flexible in addressing the representational concerns of the parties. To achieve those objectives, Regional Directors act on representation cases quickly and consistently with the Statutory requirements for appropriate units and unit eligibility.
- 27.2 Responsibility fixed:** The agents engage in initial dealings and propose appropriate case disposition to the parties and the Regional Director, but the ultimate responsibility for any action taken is the Regional Director's.
- 27.3 General determinations:** The Regional Director may:
- a. Request additional information;
 - b. Approve a withdrawal request ([CHM 27.4.6](#));
 - c. Approve an election agreement or issue a Direction of Election ([CHM 28](#));
 - d. Contact the Office of the General Counsel to discuss a novel issue or obtain clearance on processing issues ([CHM 58.1](#) or [58.4](#) - provides examples and cross references to specific *CHM* sections);
 - e. Submit the case to the Office of the General Counsel for advice ([CHM 58.3](#) - provides examples and cross references to specific *CHM* sections);
 - f. Recommend that the case be held in abeyance pending action on a blocking ULP ([CHM 60](#)) or action by the AFL-CIO in a raiding case ([CHM 65](#));
 - g. Issue a letter denying a challenge to the validity of the showing of interest ([CHM 18.19](#));
 - h. Issue a Decision and Order to dismiss a petition, deny an intervention request, decide a challenge to the status of a labor organization or resolve any other representation matter ([CHM 53](#));

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- i. Issue an appropriate certification or revocation as appropriate ([CHM 56](#)); and/or
- j. Issue a notice of hearing ([CHM 29](#)).

27.4 Regional Director actions THAT DO NOT REQUIRE A NOTICE OF HEARING:

27.4.1 Approve:

- a. a request to intervene (see [CHM 17](#) and [20](#)) or grant conditional intervention;
- b. an election agreement if the unit meets the appropriate unit criteria set forth in 5 U.S.C. 7112(a)(1) (see [CHM 28](#));

27.4.2 Issue a certification, clarification, amendment or revocation:

- a. Section 2422.32(a) provides that the Regional Director will issue an appropriate certification when:
 - (1) after an election, runoff, or rerun,
 - (i) no objections are filed and/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. Section 2422.32(b) states that, 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:

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- (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.

Before issuing a Revocation of Recognition or Certification under this provision, the Regional Director will issue a Decision and Order ([CHM 27.4.5](#)). See also [CHM 56](#) for guidance on issuing certifications, clarifications, amendments and revocations.

27.4.3 Deny a challenge to the validity of a showing of interest: see [CHM 18.19](#).

27.4.4 Establish election procedures: 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 can 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 [§ 2422.16(b)]. See [CHM 28.11](#) and [28.12](#) for guidance.

27.4.5 Issue a Decision and Order: The Regional Director may issue a Decision and Order without a hearing *when there are no material issues of fact and/or there no unresolved questions regarding unit appropriateness*. Examples include a Decision and Order that:

- a. Dismisses a petition or denies a request for intervention based on inadequate showing of interest or other procedural defect; (see [CHM 27.4.6](#) - before the Regional Director dismisses a petition or denies an intervention request, the petitioner or intervenor is given the opportunity to withdraw.)
- b. Decides matters such as objections to an election, determinative challenged ballots, allegations of an agency's good faith doubt based on majority status; etc.;
- c. Resolves a challenge to the status of a labor organization;
- d. Clarifies or amends a recognition or a certification in effect if there

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is no question of unit appropriateness;

- e. Determines that a labor organization is eligible for dues allotment; existing units are appropriate for consolidation if there is no question of unit appropriateness; etc..

Note: See [CHM 53](#) for case handling guidance on issuing Regional Director Decisions and Orders.

27.4.6 Approve a request to withdraw the petition or intervention request:

27.4.6.1 Solicited withdrawal: If the Regional Director determines that the petition or intervention request does not warrant further processing, the petitioner or intervenor is given an opportunity to withdraw the petition voluntarily prior to dismissing the petition. If necessary, the petitioner or intervenor is advised in writing of the reasons for soliciting the withdrawal. The petitioner or intervenor is permitted to withdraw the petition verbally. If the party declines to withdraw verbally, the petitioner or intervenor is advised that the withdrawal request must be received promptly. Absent such a request, the Regional Director issues a Decision and Order stating the reasons for dismissal. A copy of the Decision and Order is served on all parties ([CHM 53.9](#)).

A copy of FLRA Form 43, Withdrawal Request, is enclosed with any letter soliciting withdrawal. Copies of this letter are not served on any other party. Any written expression, in addition to the FLRA Form 43, indicating an unqualified withdrawal of the petition is acceptable as a withdrawal request.

27.4.6.2 Unsolicited withdrawal: The petitioner may voluntarily request to withdraw the petition without being requested to do so by the Regional Director.

27.4.6.3 Notification to parties: If a withdrawal request is received pursuant to the Regional Office's solicitation, the other parties are not informed of the Regional Director's decision to dismiss the petition or deny the intervention request.

Following approval of a **solicited or unsolicited withdrawal request**, the Regional Director notifies all parties of the approved withdrawal request; however, no reasons for the withdrawal or approval are given in the notification. A letter as set forth in [Figure 27.4A](#) is sent to the petitioner. A copy of this letter is also served on all other parties and serves as their notification that the matter is closed. Regs. § 2422.14 and [CHM 27.4.6.4](#) discuss the effects of a withdrawal with prejudice.

27.4.6.4 Withdrawal with prejudice: [CHM 11.9](#) discusses the effects of withdrawing a petition for an election less than sixty (60) days before a contract expires or anytime after the expiration of the agreement [§ 2422.14(a)]; or after notice of hearing is issued in a petition seeking an election or approval of an election agreement [§ 2422.14(b)]. [Figures 27.4B](#) and [C](#) are sample letters approving withdrawal of petitions in such cases.

27.5 NOTICE OF HEARING:

27.5.1 Section 2422.16(c) requirement: When discussing arrangements for an election, if the parties are unable to agree on “other than procedural matters,” the Regional Director “shall provide an opportunity for a hearing” [§ 2422.16(c) and [CHM 28.11.2 - guidance in applying this section of the regulations](#)].

27.5.2 Section 2422.30(b) requirement: Section 2422.30(b) requires that a “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.”

27.5.3 Background: 5 U.S.C. 7111(b)(2) requires that the Authority “shall” provide an opportunity for a hearing whenever it has reasonable cause to believe that a question of representation exists. As interpreted in the regulations, the Regional Director provides for a hearing:

- a. when the parties fail to agree on other than procedural matters at an election agreement meeting [§ 2422.16(c)];
- b. any time there is a question regarding unit appropriateness [§ 2422.30(b)];
- c. whenever there is a material issue of fact [§ 2422.30(b)].

NOTE: Before providing the parties with an opportunity for a hearing, the Regional Director makes a determination that:

- 1) ***s/he has a reasonable cause to believe that a question of representation exists;*** See, e.g., *Office of Hearings and Appeals, Social Security Administration*, 16 FLRA 1175 (1984), a case in which the petitioner sought to sever a unit of attorneys who were part of an existing

consolidated bargaining unit. In that case, the Authority stated that the petitioner failed to establish that the existing unit was no longer appropriate, thus giving rise to a question of representation. The Authority found that the petitioner failed to establish a reasonable cause to believe that a question of representation existed to warrant a notice of hearing. Questions concerning the application of the regulations to similar cases are referred to the Office of the General Counsel.

- 2) **or that a material issue of fact exists that warrants a hearing.** See *Federal Mediation and Conciliation Service*, 52 FLRA 1509 (1997). *Federal Deposit Insurance Corporation, Washington, D.C.*, 38 FLRA 952, 963-64 (1990). The Authority stated that a hearing is not required in all cases in which questions of fact are raised. Rather, the Regional Director may determine, on the basis of the investigation or by stipulation of the parties, that "there are sufficient facts not in dispute to form the basis for a decision or that, even where some facts are in dispute, the record contains sufficient evidence on which to base a decision." *U.S. Department of Agriculture, Forest Service, Apache-Sitgreaves National Forest, Springerville, Arizona*, 47 FLRA 945, 952 (1993). See also *Federal Deposit Insurance Corporation*, 40 FLRA 775 (1991), *enfd sub nom. FLRA v. Federal Deposit Insurance Corporation*, No. 91-1207 (D.C. Cir. Sept. 1, 1992).

- 27.6 Policy considerations that may warrant a hearing:** Some petitions present novel or unique issues for which there is no Authority precedent. While the Statute or the regulations may not require a hearing as the petition does not raise a question of representation, the issues are such that guidance is necessary to process the case. Normally, such cases are submitted for case handling advice before the notice of hearing is issued (see [CHM 58](#) for a discussion of matters to be submitted for case handling advice).
- 27.7 STIPULATIONS IN LIEU OF HEARINGS:** Stipulations in lieu of hearings are permissible and encouraged in most representation matters. Section 2422.30(b) states that when the Regional Director has reasonable cause to believe a question exists regarding unit appropriateness, the Regional Director "will issue a notice of hearing." This section does not preclude the parties from entering into a stipulation in appropriate circumstances. See also [HOG 26.1](#).
- 27.7.1 Waiving hearings by entering into election agreements:** In accordance with 5 U.S.C. 7111(g), the parties may waive a hearing by entering into a stipulation for the purpose of a consent election, i.e., enter into an election

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agreement. However, 5 U.S.C. 7111(g) is balanced against 5 U.S.C. 7112(a)(1) which requires that the Authority determine the appropriateness of any unit.

Thus, in cases involving questions regarding unit appropriateness, a hearing may be waived by the parties upon their agreement to an election; however, the Regional Director may approve such agreement only if the unit meets the appropriate unit criteria set forth in 5 U.S.C.

7112(a)(1). See *United States Army Safeguard Logistics, Command, Huntsville, Alabama*, 2 A/SLMR 582 (1972); *Department of Transportation, National Highway Traffic Safety Administration*, 2 A/SLMR 433 (1972); citing *Army and Air Force Exchange Service, White Sands Missile Range Exchange White Sands Missile Range, New Mexico*, 1 A/SLMR 147 (1971).

27.7.2 Waiving hearings by entering into a stipulation of facts: It is the policy of the OGC that the parties may enter into a stipulation addressing all appropriate unit issues in lieu of a hearing if the stipulation includes a waiver of the parties' right to a hearing. See also [HOG 9](#) and [CHM 28.11.3.1](#). An example of a stipulation that was attached to a Decision and Order can be found in *USA DARCOM Materiel Readiness Support Activity (MRSA), Lexington, Kentucky*, 1 FLRA 430 (1979).

NOTE: See [CHM 29](#), *Issuing the Notice of Hearing*, [CHM 30](#) and the HOG for guidance in conducting hearings.

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