

**NATIONAL CONSULTATION RIGHTS AND CONSULTATION RIGHTS
FOR GOVERNMENT-WIDE RULES AND REGULATIONS
CHM 57**

- 57. NATIONAL CONSULTATION RIGHTS AND CONSULTATION RIGHTS FOR GOVERNMENT-WIDE RULES AND REGULATIONS:**
- 57.1 Statutory basis:**
- 57.1.1 National Consultation Rights:** 5 U.S.C. 7113 provides that:
(a) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be accorded national consultation rights by the agency. ...
- 57.1.2 Consultation rights on Government-wide rules and regulations:** 5 U.S.C. 7117(d)(1) provides that:
A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by an agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. ...
- 57.2 Relevant regulations for processing NCR and CR petitions:** Petitions seeking national consultation rights (NCR) and consultation rights for government-wide rules and regulations (CR) are processed in accordance with Part 2426 of the Authority's regulations.
- 57.3 Standing to file:** Only labor organizations may file a petition for NCR or CR according to the requirements set forth in § 2426.1 (NCR) and § 2426.11 (CR).

57.4 Requirements for filing an NCR petition: Prior to filing a petition for determination of eligibility for NCR, a labor organization:

- a. Must hold exclusive recognition for either:
 - (i) Ten percent (10%) or more of the total number of civilian personnel employed by the agency or by the primary national subdivision and the nonappropriated fund Federal instrumentalities under its jurisdiction, excluding foreign nationals; or
 - (ii) 3,500 or more employees of the agency or the primary national subdivision.and
- b. Must have:
 - (i) Made such required showing of exclusive recognition to the agency or primary national subdivision; and, such request for NCR must have been rejected by the agency or primary national subdivision or, must not have been responded to within fifteen (15) days after being requested; or
 - (ii) Been notified that the agency or primary national subdivision intends to terminate existing NCR.

57.5 Requirements for filing CR petition: Prior to filing a petition for determination of eligibility for CR, a labor organization:

- a. Must hold exclusive recognition for 3,500 or more employees and
- b. Must have:
 - (i) Made such required showing of exclusive recognition to the agency; and such request for CR must have been rejected by the agency, or must not have been responded to within fifteen (15) days after being requested; or
 - (ii) Been notified by the agency that it intends to terminate

existing CR.

57.6 When to file: NCR and CR petitions shall be filed within thirty (30) days after the service of a written notice by the agency or primary national subdivision (NCR only) of either:

- a. Its refusal to accord NCR or CR pursuant to a request by a labor organization; or
- b. Its intent to terminate existing NCR or CR.

If the labor organization files an NCR or CR petition within thirty (30) days prior to the intended termination date, the termination is stayed until final disposition of the petition. If no petition is filed during this period, the agency or primary national subdivision (NCR only) may terminate NCR and CR.

If an agency or a primary national subdivision fails to respond in writing to a request for national consultation rights within fifteen (15) days after the date the request is served on the agency or primary national subdivision, an NCR or CR petition shall be filed within thirty (30) days after the expiration of such fifteen (15) day period.

57.7 What to file -- NCR petition: A petition for determination of eligibility for NCR is submitted on [FLRA Form 24](#) and sets forth the following information:

- a. Name and affiliation, if any, of the petitioner and its address and telephone number;
- b. A statement that the petitioner has submitted to the agency or the primary national subdivision and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;
- c. A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;
- d. The signature of the petitioner's representative, including such person's title and telephone number;

- e. The name, address, and telephone number of the agency or primary national subdivision in which the petitioner seeks to obtain or retain national consultation rights, and the persons to contact and their titles, if known;
- f. A showing that petitioner holds adequate exclusive recognition as required by § 2426.1; and
- g. A statement as appropriate:
 - (i) That such showing has been made to and rejected by the agency or primary national subdivision, together with a statement of the reasons for rejection offered by that agency or primary national subdivision;
 - (ii) That the agency or primary national subdivision has served notice of its intent to terminate existing national consultation rights, together with a statement of the reasons for termination; or
 - (iii) That the agency or primary national subdivision has failed to respond in writing to a request for national consultation rights made under § 2426.2(a) within fifteen (15) days after the date the request is served on the agency or primary national subdivision.

57.8 What to file -- CR petition: A petition for determination of eligibility for CR is submitted on [FLRA Form 26](#) and sets forth the following information:

- a. Name and affiliation, if any, of the petitioner and its address and telephone number;
- b. A statement that the petitioner submitted to the agency and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;
- c. A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person*s knowledge and belief;
- d. The signature of the petitioner*s representative, including such person*s title and telephone number;

- e. The name, address, and telephone number of the agency in which the petitioner seeks to obtain or retain consultation rights on Government-wide rules or regulations, and the persons to contact and their titles, if known;
- f. A showing that petitioner meets the criteria as required by §2426.11; and
- g. A statement, as appropriate:
 - (i) That such showing has been made to and rejected by the agency together with a statement of the reasons for rejection offered by that agency;
 - (ii) That the agency has served notice of its intent to terminate existing consultation rights on Government-wide rules or regulations, together with a statement of the reasons for termination; or
 - (iii) That the agency has failed to respond in writing to a request for consultation rights on Government-wide rules or regulations made under § 2426.12(a) within fifteen (15) days after the date the request is served on the agency.

57.9 Material to accompany petition: An original and four copies of an NCR and CR petition are accompanied by:

- a. An original and four copies of a statement of any relevant facts not contained in the petition and of all correspondence relating to the matter of NCR or CR; and
- b. A written statement of service of a copy of the petition and any accompanying material upon all known interested parties. [§§ 2426.2(b)(3)(ii) and (iii) and 2426.12(b)(3)(ii) and (iii)].

57.10 Where to file: NCR and CR petitions are filed with the Regional Director for the region in which the headquarters of the agency or primary national subdivision (refers to NCR petitions only) is located. [§§ 2426.2(b)(3)(i) and 2426.12(b)(3)(i)].

57.11 Service of petition: With the filing of NCR and CR petitions, a copy of the petition, together with any accompanying material, are served on all known

interested parties.

57.12 Docketing NCR petition: When an NCR petition is docketed, the name of the case is based upon the organizational level for which the petitioner seeks NCR; i.e., agency or primary national subdivision. This is ascertained from Item #1 of the petition which reflects either the agency or the primary national subdivision of the agency. Because this entry is very important to the processing of the petition, if Item #1 of the petition is not checked, an amended petition is required (see also [CHM 63](#) for docketing procedures).

57.13 Adequacy of Showing:

57.13.1 Basis upon which NCR claimed: After ascertaining the level of NCR covered by the petition; i.e., agency or primary national subdivision, Item #4 of the petition is examined to determine whether the petitioner claims to hold exclusive recognition for:

- a. Ten percent (10%) or more of the total number of civilian personnel employed by the level covered by the petition and the nonappropriated fund Federal instrumentalities under its jurisdiction, excluding foreign nationals; or
- b. 3,500 or more employees of the level covered by the petition.

In determining whether a labor organization meets the exclusive recognition requirements for NCR, the following will not be counted:

- a. At the agency level, employees represented by the labor organization under nationwide exclusive recognition granted at the agency level.
- b. At the primary national subdivision level, employees represented by the labor organization under nationwide exclusive recognition granted at the agency level or at that primary national subdivision level.

57.13.2 Basis upon which a CR petition is claimed: A CR petition can only be based on the exclusive recognition of 3,500 or more employees and not on a percentage of total civilian employment.

57.13.3 Adequacy of showing of exclusive recognition: Unlike a petition filed under Part 2422, no list of employees constituting a showing of interest is

required to be submitted when an NCR or CR petition is filed. Rather, the petitioning labor organization is required only to indicate in Items #4A and #3A of Forms 24 and 26 respectively whether it meets the criteria established by the Authority and the date on which it made its adequate showing to the agency or primary national subdivision (NCR only).

57.14 Material accompanying petition: In the absence of any required submission of showing, the Regional Office looks to the material accompanying the petition as the initial source of information regarding the adequacy of showing of exclusive recognition by the petitioner. For example, this information may be found in the exchange or correspondence between the parties relating to a request for NCR or CR. In this correspondence, the labor organization describes the unit(s) for which it holds exclusive recognition, the number of employees in such unit(s) and whether such employees constitute ten percent (10%) or more of the employment of the agency or primary national subdivision (NCR only) or totals 3,500 or more employees. On the other hand, the response by the agency or primary national subdivision (NCR only) giving reasons for denying the request for NCR or CR will likely show the basis upon which it concluded that the criteria for NCR or CR have been met.

Similarly, where a petition has been filed because of notice to terminate existing NCR or CR, the statement of reasons by the agency or primary national subdivision (NCR only) is expected to give relevant details as to why the labor organization no longer qualifies for NCR or CR.

57.15 Notifying the parties:

- a. Initial contact with agency (NCR or CR petitions) or primary national subdivision (NCR only): If the material accompanying the petition is insufficient, particularly with respect to the adequacy of showing of exclusive recognition, the Regional Office contacts either the labor organization or agency or primary national subdivision (NCR only) by telephone as soon as possible. The regulations require that the agency or primary national subdivision (NCR only) shall respond within fifteen (15) days of receipt of a copy of the petition, raising any matter relevant to the petition. The Regional Office immediately contacts the agency or primary national subdivision to assist it in responding within the fifteen (15) day period. Examples of opening letters to the parties are set forth in [Figures 57.A](#) and [57.B](#).

- b. If the correspondence accompanying the petition establishes that the agency or primary national subdivision (NCR only) does not dispute the assertion that the petitioners satisfied the NCR or CR criteria, there is no need for the Regional Office to require any further substantiation by requesting a list of employees in the unit(s). A request for further information is limited to the actual challenge to the fulfillment of the NCR or CR criteria.

57.16 Posting requirements: The regulations do not require the posting of a notice to employees of the filing of an NCR or CR petition. As compared to petitions filed under Part 2422 of the regulations, an NCR and CR petition covers an agency or primary national subdivision (NCR only) level and are wholly unrelated to any question concerning representation, determination of appropriate unit, clarification of unit, amendment of certification or recognition, dues allotment determination or consolidation of units.

57.17 Notifying labor organizations where the unit(s) is (are) in dispute: Where a dispute arises between the petitioner and the agency or the primary national subdivision (NCR only) as to whether certain job classifications or employees are included in the unit(s) represented by the petitioner or by another labor organization, the latter organization is notified by the Regional Office of the filing of the NCR or CR petition. For example, the activity might contend that certain employees whom the petitioner asserts are in the unit for which it holds exclusive recognition are in a different unit represented by another labor organization. According to the activity, these employees could not be counted in computing the petitioner's showing for eligibility under the criteria of the Authority. In a dispute of this nature, the position of the other labor organization is solicited in a letter as set forth in [Figure 57.C](#).

In the event that the Regional Director determines that a hearing is necessary to resolve issues, the other labor organization is served with a copy of the notice of hearing.

57.18 Final investigative report: See also [CHM 26](#).

57.18.1 No burden of proof: NCR and CR petition investigations are conducted as nonadversary proceedings, similar to other types of representation cases. Thus, the petitioner does not have the burden of proving that it holds adequate exclusive recognition required by the Authority's NCR and CR criteria. Similarly, in giving notice of intent to terminate NCR or CR, or in rejecting a request for NCR or CR, the agency or primary national subdivision (NCR only) has no burden of proving that the labor organization

does not have an adequate showing of exclusive recognition.

57.18.2 Final investigative report: Upon completion of the investigation, a written final investigative report (FIR) or draft Decision and Order is submitted to the Regional Director. The FIR is clear, concise and comprehensive. The facts are specifically identified in the FIR and are supported by evidence in the case file. The FIR is a self-contained document - in that it is not necessary to refer to file documents for a thorough understanding of the facts and issues in the case. 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.

The FIR includes, but not necessarily limited to:

- a. Compliance with filing requirements;
- b. Level of NCR sought to be (obtained) (retained);
- c. Positions of the parties regarding (refusal to accord) (intent to terminate) NCR or CR;
- d. Adequacy of showing of exclusive recognition; and
- e. Recommendations for determination of eligibility for NCR or CR.

57.18.3 Decision and Order by Regional Director: The regulations provide that the Regional Director issues and serves on the parties a Decision and Order with respect to the determination on eligibility for NCR or CR. There are essentially two types of Decisions and Orders: 1) those where the parties are in dispute as to the facts; and 2) those based upon a stipulation of facts, in which the Regional Director adopts the stipulation and makes an eligibility determination. See [CHM 53](#) for guidance in drafting Decisions and Orders.

57.18.3.1 Hearing on substantial issue of fact: If the Regional Director determines that a substantial issue of fact exists, a notice of hearing is issued accompanied by a letter setting forth the issue(s) which are the subject of the hearing. See [CHM 27](#) for guidance in preparing the notice of hearing. FLRA Form 46 is not used as it is not applicable to NCR or CR hearings.

57.18.3.2 No application for review of issuance of notice of hearing: The regulations do not provide for an application for review of a

determination by the Regional Director to issue a notice of hearing involving a substantial issue of fact.

- 57.18.3.3** **Hearings before Hearing Officers:** Hearings are conducted by a Hearing Officer in accordance with section 2422.17 through 2422.21 of the 1996 regulations. The procedures outlined in the *HOG* are applicable to hearings held in NCR and CR petitions. After the close of the hearing, a Decision and Order is issued by the Regional Director in accordance with section 2422.30 (see [CHM 53](#) for guidance). ***NOTE: Part 2426 of the 1996 regulations did not update the references in Part 2422 regarding conducting hearings. Sections 2426.2(b)(3)(vii) and 2426.12(b)(3)(vii) mistakenly cite to the previous regulations.***
- 57.19** **Order Granting National Consultation Rights and Consultation Rights on Government-wide Rules and Regulations:** The Regional Director issues an Order Granting NCR or CR after determining a labor organization is eligible for NCR or CR. There are no preprinted FLRA Forms to formally grant NCR or CR.