

**HEARING ON ELECTION OBJECTIONS**  
**HOG 36**

**36      *Hearings on election objections:***

**36.1      *General:*** To the extent they are adaptable, the procedures discussed previously also apply to hearings on objections to the procedural conduct of the election or to conduct which may have improperly affected the outcome of the election. However, there are substantial distinctions between hearings on objections and hearings on other representation matters.

**36.2      *When hearings on election objections are appropriate:*** Hearings are conducted in election objections cases which involve material issues of fact which may have affected the results of the election or when the Regional Director determines that a hearing is a more expeditious and cost effective method to gather evidence on the objections rather than a field investigation. See also *CHM 50 and 51*.

**36.3      *Nature and objective:*** A hearing on objections is a formal proceeding designed to elicit information based on which the Regional Director makes a decision on the merits of the objections. While the objecting party bears the burden of proof pursuant to § 2422.27(b) of the regulations, the proceeding is considered investigatory and not adversary.

**36.4      *Participating Authority personnel:*** In cases where the objections involve the conduct of Authority personnel, the Regional Director has the discretion to assign an attorney, designated as Counsel for the Regional Office, to appear at the hearing.

**36.5      *Hearing Officer:*** The Hearing Officer is usually an Authority agent from the Region in which the hearing is held, except:

- a)          when an issue involves the conduct of an Authority agent and a hearing is directed by the Regional Director or the Authority;
- b)          when the hearing is directed by the Authority concerning credibility findings by the Regional Director.

There may be unusual circumstances that, in the Regional Director's judgment, warrant further exceptions to this procedure. In any event, all requests and arrangements for the procurement of a Hearing Officer from

outside the region are cleared and made through the Office of the General Counsel.

**36.6** ***Functions and duties of the Hearing Officer:*** The Hearing Officer's duties and responsibilities are similar to those in other representation proceedings with two significant exceptions:

- a) a Regional Director has discretion only to allow the Hearing Officer to make recommendations on credibility issues, not the objections themselves.
- b) The second exception has to do with the scope of the hearing. The scope of the hearing is normally limited to the objections raised in the objecting party's initial filing with the region. An exception is when evidence is presented by a party which appears to demonstrate procedural election misconduct that was not raised by any party as an objection. See CHM 50.10 for other exceptions.

Initial evidence to establish a prima facie case for each objection is obtained through witnesses and documentation provided by the objecting party. Thereafter, if the Hearing Officer determines that additional testimony and/or documentation regarding any objection is necessary, the Hearing Officer obtains that additional evidence.

**36.7** ***Counsel for the Regional Office, functions and duties:*** The primary function of Counsel, if one is utilized, is to see that evidence adduced by the region's investigation becomes part of the record.

Counsel may:

- a) voice objections,
- b) cross-examine,
- c) call and question witnesses, and
- d) call for and introduce appropriate documents.

If the information in the Counsel's possession warrants it, s/he is permitted to seek to impeach the testimony of witnesses called by others.

Counsel for the Regional Office does not offer new material until it is certain that the material will not be offered by one of the parties. It is important that

Counsel exercises self-restraint and displays the appearance of impartiality.

**36.8** ***Credibility issues in election objections cases:*** This section concerns making recommendations on the record about credibility issues that may be dispositive of objections to an election. A Hearing Officer is required to make credibility recommendations on the record to give the parties an opportunity to except to the Hearing Officer's recommendation to the Regional Director. The Hearing Officer follows the outline described in *HOG 32.17* and the *HOG script 35.13* when making a recommendation.

This procedure provides the Regional Director with a complete record prior to making a decision on the merits: the evidence on the objections, the parties' positions, the Hearing Officer's recommendation on any credibility issue and the parties' responses to the credibility findings.

**36.8.1** ***When the Regional Director determines prior to a hearing that a credibility determination is dispositive of an objection:*** When the Regional Director determines prior to issuing a notice of hearing that a credibility determination is a prerequisite for making a decision on the objection, the Regional Director issues a notice of hearing pursuant to § 2422.17 of the regulations which includes:

**36.8.1.1** the particular credibility issue which is dispositive of the objection; and

**36.8.1.2** a direction to the Hearing Officer to make recommendations on the record regarding the resolution of the credibility issue with supporting reasons.

The Notice of Hearing puts the parties on notice that a credibility issue is dispositive of one or more of the objections and also informs the parties that they may except to the ruling in their briefs to the Regional Director.

**36.8.2** ***When the Regional Director is unsure that there is a credibility issue:***

**36.8.2.1** The Notice of Hearing includes a statement that in the event a credibility issue surfaces that is dispositive of one or more of the objections, the Hearing Officer will make a recommendation on the record regarding the credibility issue(s). The Notice also informs the parties of their right to except to the Hearing Officer's recommendations in their briefs to the Regional Director. This notifies the parties of how credibility issues will be handled in the event they become an issue at the hearing.

**36.8.2.2** The Regional Director has two options when preparing the Hearing Officer for a hearing involving objections to an election and is not aware that there is a credibility issue:

- a. The Regional Director may require the Hearing Officer to contact him/her if the Hearing Officer decides during a hearing that a credibility determination is dispositive of an objection. The Hearing Officer does not discuss the merits of the credibility issue with the Director.
- b. Prior to the hearing, the Regional Director may instruct the Hearing Officer to make recommendation on credibility issues that surface during the hearing and are dispositive of the objection(s) without contacting him/her first.