

- 17 INTERVENTION AND CROSS-PETITIONS:** This section discusses the requirements for filing requests for cross-petitions and intervention. 5 U.S.C. 7111(c) provides that a labor organization may intervene in any petition filed pursuant to 5 U.S.C. 7111(b). The regulations provide procedures for requesting intervention by labor organizations and agencies or activities that are affected by issues raised by the petition (see § 2422.8). A party whose intervention has been permitted or directed by the Authority, its agents or representatives in a proceeding is called an intervenor (§ 2421.12).
- 17.1 Distinctions between cross-petitions and interventions:** There are two methods for a union and/or an agency to become a party to a case: filing a cross-petition and filing a request to participate in a pending case. The latter is called a request for intervention.
- 17.1.1 Cross-petitions:** A cross-petition is a petition that involves any employees in a unit covered by a pending representation petition [§ 2422.8(a)].
- 17.1.1.1 Procedures:** A cross-petition is docketed as a new case and is subject to the same standards for review and sufficiency as any petition. In all respects, a cross-petition is treated as any other petition and is processed in the same manner. The only difference is that in order for a petition to be treated as a cross-petition, it must: 1) involve employees covered by a pending representation petition and 2) be filed according to the timeliness requirements for filing requests to intervene. See [CHM 17.6](#) for a discussion concerning the requirements for filing a cross-petition.
- 17.1.1.2 Purpose:** A cross-petition 1) seeks to resolve a question of representation in a **different unit** involving any employees covered by the pending petition; **or** 2) concerns the same employees in the pending petition, but is filed for a **different purpose** than the initial petition.
- 17.1.2 Requests to intervene:** An intervention request is filed by a party seeking to participate in a pending case.
- 17.1.2.1 Procedures:** A party that is granted intervention has a different status than a cross-petitioner and is subject to different filing requirements. See [CHM 17.7](#) for a discussion concerning the requirements for filing intervention requests.
- 17.1.2.2 Purpose:** A labor organization request to intervene in a pending petition seeks to participate in an election for the proposed unit, claims to represent certain employees in the proposed bargaining unit, or claims to be affected by issues raised in the pending petition. The labor organization requesting intervention may seek a different result than that proposed by the petitioner.

An agency seeks to intervene in a petition if it believes that it is affected by issues raised in the petition.

17.1.3 Policy on filing cross-petitions versus requests to intervene: Cross-petitions and intervention requests are filed for different reasons.

- a. A labor organization may intervene in any representation proceeding if it claims to represent any employees in a unit covered by the pending representation petition. A labor organization may intervene pursuant to §§ 2422.8(c)(2) or (3) depending on the circumstances ([CHM 17.7](#)).
- b. A labor organization is an automatic intervenor if it is the incumbent labor organization pursuant to § 2422.8(d) ([CHM 17.7.3](#)).
- c. A labor organization may intervene in a petition seeking an election or seeking to resolve a matter of representation when it claims to represent the subject employees or seeks the same unit as proposed by the petitioner ([CHM 17.7](#)). A cross-petition is required when the labor organization does not claim to represent any of the subject employees and seeks to represent these employees in a different unit than that proposed by the petitioner ([CHM 17.6](#)).

Examples include:

- < A labor organization files a petition seeking an election to represent an unrepresented group of employees. Another labor organization seeks to represent the employees in a different unit. The second labor organization does not claim to represent any of the employees in the pending petition. The second labor organization files a cross-petition with a thirty percent showing of interest rather than intervene with a ten percent showing of interest. A cross-petition with a thirty (30) percent showing of interest in the proposed unit is required to establish that a genuine question of representation exists.
- < A labor organization files a petition seeking an election to represent an unrepresented group of employees. Another labor organization seeks to represent the employees in the same unit, but proposes to add these disputed employees to its consolidated unit. The second labor organization requests to intervene in the first petition and submits a ten (10) percent showing of interest. Both parties are seeking the same unit.
- < A labor organization files a petition seeking a determination that an

agency is a successor employer for certain employees who the agency acquired. A labor organization that has never represented the subject employees files a cross-petition with a thirty (30) percent showing of interest as it seeks an election to represent the employees who are the subject of the “successorship” petition.

- < If the incumbent in a decertification election petition or a petition filed by a labor organization to “raid” the incumbent and thereafter contests the appropriateness of the unit for which it holds the certification, it must file a cross-petition with a thirty (30) percent showing of interest for the unit it claims is appropriate.
- d. A party (labor organization or agency) claiming to represent or employ employees who are affected by a pending petition may properly intervene or cross-petition. In the following scenarios, the party claims to represent the subject employees currently or claims it represented the subject employees prior to the reorganization. This party, as an intervenor or cross-petitioner, may seek a different result than the petitioner.
 - < A labor organization files a petition seeking an election to represent an unrepresented group of employees. Another labor organization claims that due to a reorganization it already represents the employees at the agency and that the agency is a successor employer for the unit. The second labor organization may request to intervene pursuant to § 2422.8(c)(3). That labor organization could also claim to be an automatic party as an incumbent based on its prior representation of “all of the employees in the unit sought by a petition” pursuant to § 2422.8(d) (see [CHM 17.7.2](#) or [17.7.3](#) and cases cited therein). The “incumbent” could also file a cross-petition.
 - < A labor organization files a petition to represent certain employees at an agency or activity. The purpose of the petition could be to seek an election or claim successorship due to a reorganization. A second labor organization claims that the subject employees accreted to its unit. The second labor organization did not previously represent the subject employees. The second labor organization could file a cross-petition or a request to intervene, based on § 2422.8(c)(3).
 - < A labor organization files a petition to represent certain employees at a newly established agency or activity. The petitioner claims successorship due to a reorganization. Another agency requests to

intervene claiming that the employees who are the subject of the petition are still employed by its agency and have not yet transferred to the new agency. The investigation focuses on whether the second agency that claims to continue to employ the employees is an automatic party pursuant to § 2422.8(e) or an intervenor pursuant to § 2422.8(f).

- < An agency files a petition seeking to clarify a matter relating to the representation of employees pursuant to § 2422.1(b)(2). The agency claims that it has a good faith doubt that the incumbent labor organization continues to represent a majority of the employees in the unit. (See *RCL 4*). A second labor organization may file a ten (10) percent showing of interest to intervene in this petition.

Questions relating to the application of this policy are referred to the Office of the General Counsel. See also [CHM 17.6.1](#), [17.7.1](#) and [17.10](#).

- 17.2 Who may file: Only a labor organization, agency or activity may intervene in a representation proceeding [§ 2421.11(b)(2)].** An employing agency or activity or an incumbent labor organization are considered automatic parties to the proceeding [§2421.11(b)(1)(iii)]. In unit consolidation petitions, the parties to the certifications are considered incumbents even though the national union or agency is filing the petition at the national level. See [CHM 15.8.1b](#) at the “Note” and [CHM 20.1.6](#).

The regions contact the Office of the General Counsel whenever questions arise concerning a party’s status.

- 17.3 What and when to file:** Section 2422.8(b) states that a request to intervene or a cross-petition, accompanied by any necessary showing of interest, must be submitted in writing and filed with either the Regional Director or the Hearing Officer before the hearing opens, unless good cause is shown for granting an extension. If no hearing is held, a request to intervene and a cross-petition must be filed prior to action being taken pursuant to § 2422.30. Section 2422.30(c) states that:

After investigation and/or hearing, when a hearing has been ordered, the Regional Director will resolve the matter in dispute and, when appropriate, direct an election or approve an election agreement, or issue a Decision and Order.

Thus, any labor organization or agency may intervene or cross-petition prior to the opening of a hearing, or absent a hearing, prior to a direction of election

or approval of an election agreement or issuance of a Decision and Order, unless good cause is shown for granting an extension.

17.3.1 Application of the phrase “unless good cause is shown for granting an extension”: Regional Directors may exercise discretion in accepting an otherwise untimely intervention or cross-petition only in rare and exceptional cases.

17.3.1.1 Considerations:

- a. whether the region or the petitioner identified the party as being affected by issues raised and properly notified the party of the petition;
- b. whether the region knew of a party’s existence but did not identify it as being affected by issues raised;
- c. whether the party requesting intervention or filing a cross-petition knew, should have known or could have known about the petition;
- d. whether there were intervening circumstances that precluded proper identification and notification of the party (such as a last minute amendment or a reorganization occurred that changed the scope of the petition); or
- e. other unusual circumstances. See e.g., *U.S. Department of the Interior, National Park Service, Washington, DC*, 55 FLRA 466 (1999).

17.3.1.2 Procedures: If a region receives an intervention request or cross-petition that is filed after a hearing is opened, or after approval of an Election Agreement or issuance of a Direction of Election or Decision and Order, the Regional Director acknowledges receipt of the request or cross-petition and informs the filer that the request appears untimely. The Regional Director thereafter issues an Order to Show Cause to the party and requests an explanation why the intervention request or cross-petition should be accepted. The region serves copies of this Order on all parties. The party is given no more than ten days to respond. See [Figure 17.3](#) for a sample Show Cause Order. [CHM 59.2](#) also discusses Orders issued by the Regional Director.

At the conclusion of the time period given for the parties’ positions, the Regional Director considers the positions of the parties and the reasons supporting the labor organization, agency or activity’s untimely request to intervene or cross-petition. If the Regional Director determines to grant the intervention request, the letter in [Figure 17.11](#) is sent. The Director’s decision to grant the

intervention request does not preclude other parties from challenging the intervention at a subsequent hearing or election agreement meeting ([CHM 28.11.2.2](#)).

If the Director decides to deny the request after receiving the response to the Order to Show Cause, the region follows the procedures in [CHM 17.12](#) and solicits withdrawal of the request to intervene. If the party refuses to withdraw its intervention request, the region follows the procedures outlined in [CHM 17.14](#). In situations where the cross-petition is received untimely with respect to the lead petition, there may be circumstances where the cross-petition may be processed separately from the lead petition if it is otherwise considered timely filed. In these situations, the cross-petition is not dismissed until the Regional Director decides that the lead petition is valid and the cross-petition does not raise any issue that can be processed separately from the first petition (see [CHM 17.6.2](#)).

17.3.1.3 Cross-petitions raising claims pursuant to section 7111(f)(1) of the Statute: petitions raising claims pursuant to section 7111(f)(1) of the Statute allege that a labor organization that is participating in the other petition (as a petitioner or intervenor) is subject to corrupt influences or influences opposed to democratic principles and may be filed at any time. See [CHM 20.1.8](#) and *RCL 10B* for processing guidelines.

17.3.2 Interventions and cross-petitions received too late for the region to process prior to the opening of the hearing:

- a. A motion to intervene or cross petition filed immediately prior to opening the hearing is reviewed by the Hearing Officer to determine whether it complies with § 2422.8. If necessary, the Hearing Officer delays opening the hearing to review the request to intervene. The intervention request or cross-petition must be accompanied by evidence of interest as described in § 2422.8(c) unless the intervenor claims to be the incumbent [§ 2422.8(d)]. When the petition seeks to clarify or amend a matter relating to representation, a party is required to proffer other appropriate evidence of interest to support its intervention request. If no evidence is submitted to support the intervention request, the request is referred to the Regional Director for action. The party requesting intervention is not permitted to participate in the hearing. See also *HOG 17.4.2 through 17.4.4* for processing procedures and exceptions.
- b. If an intervention request is complicated or there is an issue of timeliness, the Regional Director may give permission to the Hearing

Officer to grant “conditional intervention” under the limited circumstances discussed in [HOG 17.4](#). Alternatively, the Regional Director may instruct the Hearing Officer to refer the intervention request to him/her for consideration. If the Regional Director grants the party “conditional” intervention, the Hearing Officer announces the Regional Director’s decision and follows the procedures in [HOG 17.4.4](#).

17.3.2.1 Interventions and cross-petitions received after the hearing opens: A motion to intervene made during the hearing is untimely. The Hearing Officer asks the party requesting intervention for the grounds for the request and the reasons for the delay in filing. The Hearing Officer then goes off the record and contacts the Regional Director to discuss the intervention request. *HOG 18.4*. A cross-petition received during the hearing is referred to the Regional Director for action. *HOG 23.3*.

17.3.3 Interventions and cross-petitions filed at the election agreement meeting or prior to the Regional Director’s approval of the Election Agreement or Direction of Election: An intervention request or cross-petition filed at the election agreement meeting or prior to the Regional Director’s approval of the Election Agreement or Direction of Election is a threshold issue that is resolved before the Regional Director can approve the Election Agreement or issue the Direction of Election. If the requests are made during the election agreement meeting and cannot be decided quickly, the meeting is adjourned.

The procedures outlined in this section are followed in processing intervention requests or cross-petitions. If the intervention is granted or the cross-petition is consolidated with the petition pending action, the election agreement meeting is reconvened with the intervenor or cross-petitioner as a party to the proceeding (see [CHM 28](#) for a discussion on election agreements or directed elections).

17.4 Correlation between “notification” and “intervention”: It is important to distinguish between labor organizations and agencies/activities that are automatically entitled to participate in representation proceedings from labor organizations or agencies/activities who are required to intervene to participate. Any labor organization or agency/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 or agency/activity notified pursuant to § 2422.6 by the Regional Director that it may be affected by issues raised by the petition is automatically entitled to participate in the petition. A cross-petitioner, employing agency/activity and/or incumbent labor organization are

automatically parties to a representation proceeding and are designated as such in the initial letter notifying them of the petition (see [Figure 15.8A](#) or [15.9](#)). Any other agency/activity or labor organization that may be affected by issues raised by the petition is required to request to intervene or cross-petition according to the requirements set forth in § 2422.8 and § 2421.21 in order to participate in the petition (see [Figure 15.8B](#)).

- 17.5 Limitations on Regional Director's duty to notify:** The regulations were revised to streamline the representation process and make the rules more flexible. To achieve these objectives, Regional Directors take a proactive role in identifying and notifying parties that may be affected by issues raised by the petition and to ensure that cases are processed expeditiously. This provision does not require the region to routinely confirm a party's participation in a petition. To do so could delay processing the case and places a burden on the Regional Director that exceeds the intent of the regulation. [CHM 20.4](#) requires the agent assigned to handle the petition to telephonically contact parties that may be affected by issues raised in a petition as soon as possible, usually prior to sending the opening letters.

Any labor organization, agency or activity notified by the Regional Director that it may be affected by issues raised by a petition is permitted a reasonable opportunity to become a party to the case. For example:

- a. If a labor organization, agency or activity has been identified and notified of a petition and contacts the Regional Office for information, the region advises it of the status of the case. If the labor organization, agency or activity states it intends to intervene pursuant to § 2422.8 or § 2421.21, the agent reviews the requirements for intervention with the party.
- b. If a labor organization, agency or activity has been identified as an incumbent or the employing agency, the party is automatically a party to the case. In such instances, the Regional Director confirms whether or not the party will participate in the case before taking action pursuant to § 2422.30.
- c. If, during processing of the case, the Regional Director identifies a substantive issue that affects parties who have not been previously identified as potential parties or that changes the status of a party identified, the Regional Director notifies these parties of the changes in the issues before him/her. See *U.S. Department of the Interior, National Park Service*, 55 FLRA 466 (1999).

Thus, before taking action pursuant to § 2422.30, the Regional Director has discretion to, and in some cases is required, to follow up with any labor organization, agency or activity that may be affected by issues raised in the petition.

See [CHM 15.12 and 20.8](#).

If there is a substantial change in the unit or petition that requires an amendment, the Regional Director follows the procedures in [CHM 15](#) to identify any other affected labor organization or agency or activity. The region notifies any potential parties in accordance with [CHM 15.11](#) that an amended petition has been filed.

- 17.6 Processing cross-petitions:** A cross-petition is a petition which involves any employees in a unit covered by a pending representation petition [§ 2422.8(a)].
- 17.6.1 Filing requirements:** A cross-petition must be filed on a FLRA Form 21 and in accordance with the requirements set forth in [CHM 4 through 10](#), concerning procedures for filing. A cross-petition is filed whenever a party seeks a different unit involving any employees in the unit covered by the pending representation petition [§ 2422.8(a)].
- 17.6.2 Timeliness:** Section 2422.8(b) requires that a cross-petition must be filed before a hearing opens, or absent a hearing, prior to action being taken pursuant to § 2422.30. A cross-petition is not subject to the timeliness requirements set forth in § 2422.12; it is dependent on the lead petition. If the lead petition is withdrawn or dismissed, the cross-petition is also be withdrawn or dismissed, unless the cross-petition is otherwise filed timely. It is important to understand the phrase: “otherwise filed timely.” A cross-petition that is filed timely in accordance with § 2422.12 and § 2422.8 is not subject to dismissal or withdrawal if the lead petition is dismissed or withdrawn. Examples include:
- < A petition is filed during the open-period of a contract. A cross-petition seeking an election in a unit different from the one petitioned-for does not have to be filed during the open period of a contract, but has to be filed before a hearing opens, or, if no hearing is held, prior to action being taken pursuant to § 2422.30. If the lead petition is withdrawn or dismissed so is the cross-petition as it is nothing more than an intervention for a different unit.

- < A petition is filed seeking an election for a unit of employees during the open period of a contract. A cross-petition is filed alleging that certain employees in the lead petition have been transferred to another unit. The cross-petitioner is not seeking an election, but rather a determination of the status of the transferred employees. The cross-petition is timely filed until such time as a determination is made that the affected employees have or have not been transferred from the unit. If the employees have not been transferred from the unit, the petition is dismissed as untimely. If the employees have been transferred from the unit, the petition is timely and decided on its merits.
- < A petition is filed seeking an election for a unit of employees. There is no contract. A cross-petition is filed seeking an election for a different unit that includes employees from the lead petition. The lead petition is withdrawn. The cross-petition is still valid since it was filed timely, irrespective of the lead case.

17.6.3 Procedures for processing: A cross-petition is processed with a lead petition until such time as the Regional Director decides the cross-petition does not involve any employees in the unit covered by the lead petition. If the cases are related, they are consolidated for action pursuant to § 2422.30. If they are not related, the Regional Director notifies the parties that the petitions will be processed separately.

17.6.4 Notification of cross-petition: Any party to the lead petition and parties that may be affected by issues raised by the cross-petition are notified of the cross-petition in accordance with [CHM 15](#) and given an opportunity to intervene.

17.6.5 Status of parties: Questions may arise concerning the status of the various parties in cross-petitions. If the cross-petition is filed timely, the cross-petitioner is an automatic *party* in the lead petition. The lead petitioner and the employing agency/activity are automatically *party(ies) to the cross-petition* ([CHM 17.4](#)) and are notified of their status in a letter opening the cross-petition. A letter is sent to other parties affected by issues raised in the cross-petition, regardless of their status in the lead case, and given the opportunity to intervene ([CHM 15.8](#)).

See [CHM 17.3.2](#) and [HOG 23](#) for processing cross-petitions received in the region too late to process prior to the opening of the hearing. See [CHM 17.3.3](#) and [CHM 28.34](#) for processing cross-petitions received at the election agreement meeting or prior to the Regional Director's

approval of the Election Agreement or Direction of Election.

17.7 Processing intervention requests: A party requests to participate in a representation proceeding by filing a request to *intervene*.

17.7.1 Filing requirements: A request to intervene must be in writing and accompanied by evidence of interest to support its request (§ 2422.8). An intervention request may be filed when a party believes it is affected by the issues raised by the petition. For policy guidance on the difference between filing an intervention request or a cross-petition, see [CHM 17.1.3](#). Specific requirements for intervention are repeated in the following sections.

Note: *A labor organization seeking to intervene must present all contentions and arguments to the Regional Director. This was confirmed by the Authority in several cases: “[a] labor organization seeking to intervene must present all contentions and arguments concerning its request, not to the Authority in an application for review.” United States Department of the Interior, Bureau of Indian Affairs, Navajo Area Office, Gallup, New Mexico (BIA), 34 FLRA 413 (1990) and cited in National Park Service, Golden Gate National Recreation Area, San Francisco, CA, 41 FLRA 791 (1991) and U.S. Department of Transportation, U.S. Coast Guard Finance Center, Chesapeake, Virginia (Coast Guard), 34 FLRA 946 (1990).*

17.7.2 Labor organization intervention requests: Except for incumbent intervenors, § 2422.8(c) provides that a labor organization seeking to intervene shall submit a statement that it has complied with 5 U.S.C. 7111(e) and one of the following:

- a. a showing of interest of ten percent (10%) or more of the employees in the unit covered by a petition seeking an election, with an alphabetical list of the names of the employees constituting the showing of interest [§ 2422.8(c)(1)]; or
- b. a current or recently expired collective bargaining agreement covering any of the employees in the unit affected by issues raised in the petition [§ 2422.8(c)(2)]; or
- c. evidence that it is or was, prior to a reorganization, the recognized or certified exclusive representative of any of the employees affected by issues raised in the petition [§ 2422.8(c)(3)].

- 17.7.3 Incumbent:** An incumbent exclusive representative, without regard to the requirements of § 2422.8(c) is considered a party in any representation proceeding raising issues that affect employees the incumbent represents, unless it serves the Regional Director with a written disclaimer of any representation interest in the claimed unit [§ 2422.8(d)].

The Authority has stated that a labor organization may not qualify as an “incumbent” based on representation of some of the petitioned-for employees. Rather, “a union qualifies as an ‘incumbent’ only when it is the exclusive representative of all the employees in the unit sought by a petition, either in the unit covered by the petition or as part of a larger unit, only a portion of which is involved in the proceeding.” *Defense Commissary Agency, Defense Commissary Store, Fort Drum, New York (Fort Drum)*, 50 FLRA 249 (1995). When the labor organization formerly represented only some of the employees in the petitioned-for unit, that labor organization must intervene in accordance with § 2422.8(c) of the regulations. See [CHM 17.7.2](#).

If an incumbent labor organization declines to participate in a representation proceeding, it must submit a disclaimer of interest (see [CHM 28.10](#)).

- 17.7.4 Unusual situations where a labor organization claims status as an incumbent and an intervenor:** In unusual situations, a labor organization may claim status as both an incumbent [§ 2422.8(d)] and a qualified intervenor [§ 2422.8(c)]. The labor organization must submit evidence in support of its alternative claims at the time it files its requests. Thereafter, the region offers guidance in the form of advising the party of the applicable case law, the regulations and its options. If the labor organization does not elect its status, its status becomes an issue for the Regional Director to decide in a Decision and Order. In such cases, the labor organization must be prepared to present all evidence and arguments to support its alternative theories. See *United States Department of the Interior, Bureau of Indian Affairs, Navajo Area Office, Gallup, New Mexico (BIA)*, 34 FLRA 413 (1990).

This situation occurs most often in cases involving the effects of a reorganization on an existing unit where the labor organization claims status as an incumbent and an intervenor under § 2422.8(c)(3) and there is a question of successorship.

- 17.7.5 Employing agency:** An agency or activity is considered an automatic party if any of its employees are affected by issues raised in the petition [§ 2422.8(e)].

This provision accords automatic status to an agency or activity that employs any employees who are affected by issues raised in the petition. An employing agency cannot decline to participate in the proceedings (see § 2422.15 and [CHM 21](#)).

- 17.7.6 Agency or activity intervention:** An agency or activity seeking to intervene in any representation proceeding must submit evidence that one or more employees of the agency or activity may be affected by issues raised in the petition [§ 2422.8(f)]. An agency entitled to intervene pursuant to § 2422.8(f) is usually one that is affected by a reorganization.
- 17.8 Failure by a labor organization to submit evidence in support of a request to intervene or cross-petition:** If the request for intervention does not include:
- a. a statement of service as required in § 2422.4; and
 - b. a statement of compliance with 5 U.S.C. 7111(e); and
 - c. evidence of interest, either
 - (i) a showing of interest of ten (10) percent or more of the employees in the unit covered by the petition, with an alphabetical list of employees of the names constituting the showing of interest as required in § 2422.8(c)(1); or
 - (ii) copy of the current or recently expired collective bargaining agreement as required in § 2422.8(c)(2); or
 - (iii) other supporting evidence § 2422.8(c)(3),

the Regional Director is required to send a letter immediately that notifies the party of its failure to comply with the filing requirements ([Figure 17.8](#)). The Regional Director cannot take action on requests for intervention without ensuring the party requesting intervention has complied with the regulations. Cross-petitions submitted without appropriate documentation are processed according to the guidelines outlined in [CHM 12 and 13](#).

- 17.9 Failure to submit showing of interest:** Any showing of interest as defined in § 2421.16 to support an intervention request or cross-petition filed in a petition is submitted when the request to intervene is made. The Regional Director has discretion to grant an additional three working days to submit

additional showing of interest in an election case if in the Director's view, the additional time will not delay the proceedings and the showing of interest is otherwise timely filed. See [CHM 18.9](#) for processing.

NOTE: The terms "showing of interest" and "evidence of interest" are interchangeable. The "common usage" of "showing of interest" refers to authorization cards or petitions to support an election petition; other types of interest are usually referred to as "evidence of interest." See [CHM 18.6.1](#).

In any petition, an intervenor or cross-petitioner are reminded that if it fails to submit an adequate showing or other evidence of interest, it may always withdraw its request and refile prior to the opening of the hearing or, if no hearing is held, prior to action being taken pursuant to § 2422.30. As long as the request and showing are otherwise timely filed, an intervenor or cross-petitioner may withdraw and refile.

17.9.1 Exception: A request to intervene or cross-petition that is submitted immediately prior to the opening of a hearing or at an election agreement conference must be accompanied by an adequate showing of interest or other acceptable evidence of interest. The party attempting to intervene or cross-petition is not given additional time to obtain a sufficient showing of interest. If the party requesting to intervene or cross-petition fails to submit an adequate showing of interest immediately prior to the opening of a hearing or at an election agreement conference, the party may not participate in either proceeding.

< Hearings: If a party fails to submit a showing of interest with a cross-petition or intervention request filed immediately prior to the opening of a hearing, the party is not permitted to participate in the hearing, and the petition and request for intervention is processed separately.

< Election agreement conference: If the party requesting to intervene or cross-petition fails to submit an adequate showing of interest at an election agreement conference, it may resubmit its request to cross-petition or intervene with supporting evidence of interest prior to the Regional Director's approval of the agreement.

See [CHM 18.13.7](#) for guidance on checking the showing of interest accompanying interventions/cross-petitions received too late for the region to process prior to opening the hearing; [HOG 17.4](#) for a discussion relating to processing an intervention request prior to or at the hearing; and [CHM 28.34](#)

that discusses processing a request for intervention/cross-petition and checking the showing of interest at election agreement meetings.

- 17.9.2 Determining adequacy of showing of interest:** Where the request for intervention is supported by evidence of interest among the employees in the unit; i.e., signed authorization cards, etc. the determination that the showing of interest is adequate is based upon the activity's payroll list that was used to check the petitioner's showing of interest, unless good cause is shown for using a different list.

The procedures for determining the intervenor's prima facie showing of interest and for making the final check against the payroll list are the same as for determining the showing of interest for a petitioner (see [CHM 18](#)). A report of the intervenor's showing of interest is completed on [FLRA Form 52](#). See [CHM 18.15](#).

- 17.10 Investigating requests to intervene:** The purpose of a petition may not be readily apparent and thus the requirements for intervention may also vary. Because of the generic nature of a petition, Regional Office personnel review all requests for intervention carefully to ensure that the requests are consistent with the purpose of the petition. Issues that arise in intervention requests may become issues in the case ([CHM 17.1.3](#)). As a result, the region may find it necessary to direct the parties to meet to discuss and narrow the issues before the Regional Director can rule upon a request to intervene or cross-petition (see [CHM 25](#)).

- 17.10.1 Request supported by a collective bargaining agreement:** If a request for intervention is supported by a current or recently expired agreement as described in § 2422.8(c)(2), Regional Office personnel decide whether the agreement covers any of the employees in the unit involved in the petition. This determination is usually based on the description of the bargaining unit which sets forth the categories or classifications of employees represented. If the agreement is ambiguous or silent as to the scope of the unit, the region requests the intervenor and the activity to submit their positions and supporting documentary material regarding the composition of the bargaining unit represented by the intervenor. The certification database is also a resource for checking unit descriptions.

- 17.10.2 Request supported by evidence that a labor organization represents or an agency employs affected employees:** A request for intervention that is based on a statement that, prior to a reorganization, a labor organization was the recognized or certified exclusive representative of any employees affected

by issues raised by the petition, must be supported by evidence of the labor organization's previous status [§ 2422.8(c)(3)]. An agency/activity's request for intervention based on a statement that an agency has employees that may be affected by issues raised by the petition must also be supported by evidence. Examples include a copy of the certification or recognition showing the employees' recognized or certified exclusive representative, orders transferring affected bargaining unit employees to the new employer etc..

- 17.11 Actions on request for intervention:** When the Regional Director determines that the requirements for intervention have been met, the Director sends a written confirmation to the parties involved. See [Figure 17.11](#). If possible, the Regional Director informs all parties simultaneously that s/he is granting one or more request(s) for intervention in a given case. When granting an intervention, Regional Office personnel ensure that the party and the party's designated representative are named properly. Copies of the letter(s) granting intervention are served on all other parties (see [CHM 14](#)).
- 17.12 Soliciting withdrawal of a request for intervention:** If the Regional Director determines that intervention is not appropriate, the Director solicits withdrawal of the request for intervention in accordance with [CHM 27.4.6](#) (discussing withdrawal of intervention requests and petitions). If the requesting party does not agree to withdraw its request for intervention over the phone, the Regional Director sends the letter shown in [Figure 17.12](#). The letter includes a modified version of FLRA Form 43. The phrase "intervention in," is inserted after the word "of" so as to read, "This is to request withdrawal of intervention in the above-named case." Copies of the withdrawal solicitation are not served on the other parties.
- 17.13 Unusual requests to intervene that are based on § 2421.21:** As discussed at CHM 15.5.2, the phrase "affected by issues raised," as used in Part 2422, should be construed broadly to include labor organizations, agencies, or activities having a connection to employees affected by, or questions presented in, a proceeding." Certain parties that fit this definition are an incumbent labor organization or an employing agency or activity who are considered automatic parties. A second type of party that may be affected by issues raised is a labor organization or activity that requests to intervene pursuant to §§ 2422.8(c) and (f). A third type of party is one that may have a "connection" to employees affected by, or questions presented in, a proceeding, but are not incumbents, employers or parties that can qualify as intervenors pursuant to § 2422.8. These parties are known as "interested parties."

17.13.1 Examples:

- a. National unions in Montrose cases: Regional Offices notify the national union initially when a petition is filed by a local union that seeks reaffiliation (see [CHM 15.5.2](#)). Although the case law on trusteeships and Montrose issues continues to be unsettled, a national labor organization that does not have exclusive recognition at the level of recognition involved in the petition is considered to be affected by the issues raised in the petition (see [CHM 15.6](#) and [15.7](#)). Regions grant national unions “interested party” status in Montrose cases whether or not the local has been placed in trusteeship. See *New Mexico Army and Air National Guard*, 56 FLRA 145 (2000) at n. 10.
- b. Labor organizations that have participated in Montrose proceedings: The Authority’s decision in *U.S. Army Reserve Command, 88th Regional Support Command, Fort Snelling, Minnesota (Fort Snelling)*, 53 FLRA 1174 (1998), stated that only the certified exclusive representative may file a petition to amend its certification following a Montrose vote to change its affiliation. Therefore, the gaining union in a Montrose proceeding or any other union that participated in the election, does not meet the requirements to intervene in these petitions. However, these parties may be permitted to participate as an “interested party” since they were affected by issues raised in the proceeding. See [CHM 17.13.2](#) and [CHM 4.3.1](#).

17.13.2 Policy on handling requests to intervene based on § 2421.21: In *Utah Army National Guard, U.S. Department of the Army, Draper, Utah (Utah ARNG)*, an unnumbered decision dated April 16, 1999, the Authority denied an application for review that was filed by a third party on the Montrose ballot, and the Authority in a footnote, noted that the Regional Director granted both parties on the ballot, LIUNA and ACT “interested party” status. Neither the regulations nor the Statute provide for “interested party” status and the Authority did not differentiate between “interested parties” and intervenors in the footnote.

Until the Authority provides further clarification on the application of §2421.21, the regions construe § 2421.21 broadly and grant parties that request to intervene on the basis that they believe they are affected by issues raised, but cannot qualify as intervenors or incumbents under § 2422.8, “conditional intervenor” status and process the request pursuant to [CHM 15.8.1](#) and

15.8.2. Thereafter, the Regional Directors will decide whether or not the party qualifies as an intervenor, or an interested party in the Decision and Order. See also *Long Beach Veterans Administration Medical Center, Long Beach, California*, 7 FLRA 434 (1981). See also [CHM 15.10](#) and [20.5.2](#).

- 17.14 Decision and Order denying request for intervention:** If a party fails or refuses to withdraw its request for intervention, the Regional Director issues a Decision and Order. ([CHM 53](#) discusses Regional Director Decisions and Orders). As indicated in [Figure 53.A](#), supporting reasons are given for the decision, as appropriate. For example, a statement that the intervention was not supported by an adequate showing of interest is self-explanatory and sufficient. A statement that the intervention was not timely filed requires an explanation.
- 17.15 Granting of application of review:** In the event that a timely application of review is filed with the Authority, the Regional Office may not transmit the case file, or any other documents, to the Authority unless specifically requested by the Authority, as discussed in [CHM 54](#).
- 17.16 Action pending review of a Decision and Order denying intervention:** The Decision and Order denying intervention, and/or the filing or granting an application for review will not stay processing of the petition unless specifically ordered by the Regional Director or the Authority (see [CHM 55](#) for guidance on actions following the Regional Director's Decision and Order). The Regional Director is required to receive clearance from the Office of the General Counsel before deferring a petition pending an appeal of a Decision and Order denying intervention ([CHM 58](#)).
- 17.17 Action upon remand:** A party whose request to intervene or cross-petition is denied by the Regional Director may appeal to have its status reversed. If, pursuant to an application for review, the Authority undertakes review and remands a case based on a finding that the Regional Director improperly denied a party status as an intervenor or cross-petitioner, the party may be entitled to participate fully in the petition. If applicable, the procedures set forth in [CHM 29.11](#) discuss procedures for reopening hearings upon remand of a case by the Authority. [CHM 55.1.3](#) discusses the effects of a reversal in an election proceeding.