

28 **ELECTION AGREEMENTS OR DIRECTED ELECTIONS:** [CHM 28](#) addresses election agreements and directed elections. This section provides general requirements for agreements, and offers guidance in drafting election agreements and direction when the parties refuse to sign agreements.

28.1 **Overview:** 5 U.S.C. 7111(a) of the Statute provides that “an agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in the appropriate unit who cast valid ballots in the election.”

A “secret ballot” is defined at § 2421.15:

Secret ballot means the expression by ballot, voting machine or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed, except in that instance in which any determinative challenged ballot is opened.

The representation process is the foundation for all bargaining relationships in the Federal sector. Presidential policies governing relationships between employee organizations and agency management in the executive branch were first established by Executive Order 10988 in January 1962. That Executive Order permitted agencies to “recognize” labor organizations as the exclusive bargaining representative for certain units of employees without an election. Executive Order 11491 abolished informal and formal recognition and required that exclusive recognition be determined by secret ballot election. Labor organizations were “certified” as the exclusive representative for purposes of collective bargaining following an election among eligible employees who cast valid ballots. The Statute continues the policies initiated under Executive Order 11491. (For additional background information, see the “Reports and Recommendations of the Federal Labor Relations Council,” 1971)

5 U.S.C. 7111(d) provides that:

[t]he Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose—

(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

There is no requirement that a specific percentage or number of eligible voters cast ballots in order for the election to be valid. See *U.S. Department of the Interior, Bureau of Indian Affairs, Rosebud, South Dakota*, 34 FLRA 67 (1989) and [CHM 47.1](#).

28.2 Election agreements: Section 2421.20 defines an election agreement as an agreement signed by all parties, and approved by the Regional Director, concerning the details and procedures of a representation election in an appropriate unit. Section 2422.16(a) encourages parties to enter into voluntary election agreements. When the parties are unable to agree to certain procedural matters, the Regional Director decides election procedures and issues a Direction of Election [§§ 2422.16(b) and (c)].

28.3 Priority: Efforts to assist the parties in obtaining an election agreement begin at the outset of the investigation. The opening letters to the parties encourage the parties to meet as soon as possible to discuss and resolve any issues. During the agent's first contacts with the parties, the agent reviews the election agreement procedures as part of the discussion of general representation procedures. It is usually during this discussion that the agent learns whether there may be problems in obtaining an agreement or whether there are issues for consideration by the Regional Director pursuant to §§ 2422.30(b) and (c). Representation petitions seeking elections are given priority as they raise questions concerning representation that, if left unresolved, may cause considerable disruption to the affected employees and agency operations ([CHM 64](#) discusses priority of representation cases).

28.4 Purpose of election agreements: All parties desiring to participate in an election conducted pursuant to §§ 2422.16 or 2422.30, including parties that have met the requirement for intervention pursuant to § 2422.8, must sign an agreement providing for an election on a form prescribed by the Authority.

28.5 Forms:

28.5.1 [FLRA Form 33](#) is used for petitions that seek:

- a. an election for exclusive recognition;
- b. an election to decertify an exclusive representative;
- c. an election resulting from a significant change in the character and scope of the unit and the Regional Director decides an election is appropriate to resolve questions relating to the representative status of the affected employees; or
- d. an election to determine whether the incumbent labor organization continues to represent a majority of the employees in the existing unit.

28.5.2 [FLRA Form 34](#) is used when an election is held to determine whether employees in existing units wish to be consolidated for the purposes of exclusive recognition. See [CHM 20.1.6](#) and [CHM 23.10](#) for discussions concerning when elections are conducted in petitions to consolidate existing units.

28.6 Responsibility and role of the Regional Office:

28.6.1 Role: The 1996 revisions to the regulations require Regional Offices to take a proactive role in facilitating early and appropriate resolutions of representation questions. The Regional Office's role in assisting the parties is explained by the agent during the initial contacts with the parties as having two purposes: (1) to facilitate an election agreement and ensure that it conforms with the policies and practices of the Authority and the requirements of the Statute; and (2) to assist the parties prepare for an election agreement meeting and the election.

28.6.2 Responsibility: Election agreements are required to: a) provide all eligible voters with an opportunity to cast a free and secret ballot during working hours; b) establish voting procedures that assure the individual voter of the

secrecy of his/her ballot; and c) protect the ballots and ballot box at all times. All employees and all parties must be satisfied that the true sentiments of the employees have been demonstrated at the election. It is not enough that the election was fair and honest. The arrangements, procedures, and safeguards must convince the parties and employees of this fact. Subject matters to discuss at election agreement conferences include:

- a. purpose of election ([CHM 28.1](#));
- b. description of the unit and the effect of the vote ([CHM 28.13](#) and [14](#)); the eligibility list and its potential binding effects ([CHM 28.18.3](#)); use of the challenged ballot procedure([CHM 28.11.3.3](#));
- c. use of manual, mail and/or absentee ballot procedure ([CHM 28.19](#));
- d. payroll period for eligibility ([CHM 28.18.3](#));
- e. date of election ([CHM 28.20](#) - manual ballot, [CHM 28.23](#) - mail ballot);
- f. hours of election ([CHM 28.20](#));
- g. place of election ([CHM 28.20](#));
- h. type, names and positions on the ballot ([CHM 28.18](#));
- i. requirements for voter identification ([CHM 28.22](#));
- j. service of the tally of ballots ([CHM 28.28](#));
- k. provision for observers ([CHM 37](#));
- l. notice of election and period for posting ([CHM 33](#));
- m. updating and checking of eligibility list ([CHM 35](#));
- n. custody of the ballots and ballot box ([CHM 40](#));
- o. electioneering ([CHM 46](#)); and the
- p. challenge ballot procedure ([CHM 44](#)).

NOTE: [Figure 28.6](#) is a checklist that may be used in conjunction with this CHM when preparing for and conducting an election agreement meeting. See also [CHM 28.18 through 28.31](#) which cover matters discussed at election agreement meetings.

28.7 Participating in and scheduling of election conference: An election conference is held with the parties as soon as possible after the region notifies the parties of the petition, allows sufficient time for their response or intervention, receives the information requested from the activity and completes the final check of the petitioner's and/or intervenor's showing of interest. It is not necessary to wait for the expiration of the posting period. The agent participates in the conference whether it is held onsite or via teleconference. The agent's duties include:

- a. establishing the purpose and goals of the meeting;
- b. preparing an agenda checklist prior to the meeting or teleconference to ensure all election procedures are discussed;
- c. providing instructions and information about election agreements, elections, and election procedures;
- d. offering suggestions to resolve any differences in procedural matters;
- e. discussing issues related to eligibility and unit disputes;
- f. narrowing and resolving all underlying representation issues; and, if possible
- g. consummating an election agreement.

The agent explains the requirements in § 2422.16 if the parties fail to reach agreement and the procedures for resolving such disputes (see [CHM 28.11](#)).

28.8 Decision to supervise or conduct the election: In 1981, the Authority issued a memorandum to the General Counsel stating its views on conducting multi-union elections:

.... on the matter of multi-union elections, we believe that it will best effectuate the purposes and policies of the

Statute to modify in certain respects the existing procedures in such elections. More specifically, it is our view that in multi-union situations, Authority-conducted rather than agency-conducted elections, and manual rather than mail ballots, would provide the most effective means for assuring the sanctity of the ballot; for obtaining the fullest participation of eligible voters; and for generally fostering the democratic processes whereby employees have the opportunity to select their bargaining representatives.

The nominal costs involved of conducting these elections by Authority personnel under the foregoing procedures will be offset by the benefits to be gained and will be in conformance with our current austerity program.

Therefore, effective immediately, all multi-union elections should, to the extent possible, be conducted by Authority personnel and shall provide for the casting of ballots on a manual basis, unless the parties agree to a mail ballot procedure and the Regional Director approves such agreement.

In our judgement, these changes in our election procedures will constitute a substantial experimental step which will enable us to evaluate the entire spectrum of election processes. Based on this experience, and depending on the circumstances then existing, it may be advisable and feasible to extend these procedures to other representation elections conducted by the Authority.

Federal Register, Volume 46, Number 27, page 11655 (February 10, 1981).

The 1996 revisions to the regulations stating in § 2422.16(b) that the Regional Director can decide procedural matters, including the method of election, do not supersede this policy regarding conducting versus supervising elections. It is still the policy of the Office of the General Counsel that, unless there are unusual circumstances, regions shall **conduct rather than supervise all representation elections** irrespective of the number of labor organizations on the ballot. Regions are required to obtain clearance from the Office of the General Counsel for approval to supervise, rather than conduct, any election [§ 2422.23(a) - describes the difference between conducting and supervising an election].

The decision to supervise or conduct the election is made prior to the election agreement conference so that the parties know before the meeting who will conduct the election and secure the ballots.

NOTE: See also [CHM 28.19](#), *policy considerations for conducting manual ballot elections*.

28.9 Preparation for the meeting: Prior to any meeting, and irrespective of the parties' agreement on the unit, the agent requests that the activity and/or the petitioner prepare the essential facts regarding the activity's organizational structure, functions and operations, personnel policies and practices, etc. and make them available to the agent and the parties prior to the meeting. This information provides the basis upon which the Regional Director can evaluate the appropriateness of the unit when considering whether to approve the Election Agreement. The information also helps expedite the meeting or teleconference call. At a minimum, the activity must furnish information relating to, and be prepared to discuss the following:

28.9.1 Appropriate unit considerations: *RCL 1* discusses appropriate unit factors, including:

- a. activity/agency mission and organization;
- b. the proposed unit structure as compared to the overall activity structure; explore whether there is a community of interest separate and distinct from other employees at the activity;
- c. working conditions of the employees and other information involving the employees' day to day operations; and
- d. geographic location of the employees in the unit claimed to be appropriate; explore whether the employees are geographically distinct from other similarly situated employees; *Defense Logistics Agency, Defense Contract Management Command, Defense Contract Management District, North Central, Defense Plant Representative Office-Thiokol, Brigham City, Utah, 41 FLRA 316 (1991)*.

28.9.2 Eligibility matters: The agent asks the activity to provide an updated proposed eligibility list of the employees in the unit claimed to be appropriate. If the activity is unable to provide an updated list before the meeting, the list submitted to check the showing of interest is used. The parties will review the

list at the meeting and discuss any eligibility issues. The agent is prepared to discuss the effect of the parties' agreement on the list and cite appropriate case law. If the agent knows in advance that there are significant eligibility issues, the agent prepares the parties to discuss the disputed positions in accordance with [CHM 28.11](#). (see also [CHM 28.18.3](#) - *eligibility matters*; [CHM 35.1](#)- *discussion of eligibility list at pre-election conference*).

The agent also asks questions about the overall employee complement of the activity. For instance, if the petitioner seeks a unit of all employees, does the activity employ temporary employees and did the parties consider this category of employees. Do not assume that the petitioned-for unit covers all employees at the activity that are eligible for the unit. See [Figure 28.6](#) for assistance.

28.9.3 Work schedules of employees: The activity is also required to provide information regarding the work schedules of the employees in the unit claimed to be appropriate so that the agent can be prepared to discuss election details: manual versus mail ballot, absentee ballot etc. Information includes:

- a. whether the employees work a seven day, multiple shift operation;
- b. whether employees go on travel status (regularly or infrequently, and the purpose of the travel); if employees travel, can the dates of the travel be anticipated or is the travel required on short notice?
- c. information concerning where the employees work; what is the proximity of the voters to one another? Are the employees scattered over an activity or large geographic area, thus making multiple polling sites necessary? Can the election be scheduled on one day; if not, is a mail or mixed mail/manual ballot preferable and/or appropriate? If it appears that the election will include a manual ballot with multiple polls, the agent asks the activity prepare in advance of the election agreement meeting, a list of buildings where employees are assigned, showing the number of eligible employees at each location, breakdown of hours and days of work and potential room designations for each polling site. From this information, the agent/parties are prepared to discuss polling sites and polling hours. ([CHM 28.21](#)).

28.9.4 Service of information: Prior to the meeting, the activity is required to serve copies of any information furnished to the agent on the other parties. The agent confirms that the parties received the information, ascertains whether there are any issues to discuss, and explores the parties' interests relating

to the election procedures.

28.10 Refusal by a party to participate in the election agreement conference: If a party does not participate in an election agreement meeting, the region contacts the Office of the General Counsel for advice ([CHM 58.3.4](#)).

28.11 Section 2422.16 requirements: To prepare for the election agreement meeting, the agent reviews § 2422.16. The agent is responsible for explaining how it is applied. While § 2422.16(a) encourages the parties to enter into election agreements, §§ 2422.16(b) and (c) provide procedures that apply when the parties are unable to agree voluntarily to certain matters contained in an election agreement or when the Regional Director is unable to approve an election agreement because of questions relating to unit appropriateness.

This subsection gives an overview of §§ 2422.16(b) and (c). [CHM 28.12](#) discusses drafting Directions of Election when the parties are unable to enter into an election agreement pursuant to §§ 2422.16(b) and (c).

28.11.1 Section 2422.16(b): This section states that “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 will 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.”

This provision applies to disagreements over the date, time, place, hours, eligibility period, and method of election (mail versus manual ballots) that are set forth in Items #9, #10, and #13 of the election agreement form, FLRA Form 33 and Items #7, #8, and #11 of the unit consolidation election agreement form, FLRA Form 34.

If the agent is unable to obtain an election agreement because the parties cannot agree on procedural matters, the agent has the parties initial the sections of the agreement on which they agree. These include the appropriate unit section, eligibility issues, and other non-procedural matters. If the conference is not onsite, but conducted via teleconference, the agreement is faxed to all parties. The parties also note the disputed procedural issues on the agreement form. The parties sign the agreement before returning it.

Following or during the meeting or teleconference, the agent sends a letter to or confirms with the parties the issues about which the parties disagree. In the letter or during the meeting, the agent requests the parties to state their position in writing on each unresolved matter, and asks for reasons to support their position. The agent also asks the parties for acceptable alternative procedures and whether there are any other unresolved issues. The letter or the agent verbally sets a deadline for the parties' submissions. After the parties' positions are received, the agent assesses the responses to see whether there is any common ground. If it appears that there is "common ground," i.e., the parties could agree on alternative procedures, the agent discusses with the Regional Director rescheduling the meeting or teleconference.

If the parties are unable to agree to alternative election procedures, the Regional Director considers the following criteria when issuing a Direction of Election on procedural matters pursuant to § 2422.16(b):

- a. the best interests of the employees affected by the election; for example,
 - < the parties involved in a representation petition seeking an election are opposed to a mail ballot election. They want a manual ballot election even though a significant number of employees are on travel status at any given time. The parties are willing to waive filing objections over not providing a voting procedure for these employees. The Regional Director decides that a significant number of employees would be disenfranchised and, irrespective of the parties' agreement and waiver, it would not effectuate the purposes and policies of the Statute to deny these eligible employees the right to vote. Absent the parties' agreement, the Regional Director directs a mail ballot election for all of the employees, or a manual ballot with an absentee ballot or mail ballot procedure for the employees on travel status. See [CHM 28.19](#) for policy guidance on conducting manual versus mail ballot elections.
- b. positions of the parties; for example,
 - < a petition is filed seeking to represent a unit of seasonal employees who work on tugboats. Most of the employees have no permanent address which makes a mail ballot election difficult, but since the tugboats are usually at sea, there is little opportunity to conduct a manual ballot election all at one time. The activity proposes that the election be conducted at the docks over a period of several

days so that the agent can meet the tugboats when they dock. This is costly and time consuming for the region, but the region acquiesces acknowledging that the manual procedure will ensure that all eligible voters have an opportunity to receive a ballot. The parties enter into an election agreement.

- c. resources of the region; for example,
 - < the petition seeks an election among firefighters who work in the Yellowstone National Park. These employees are on multiple shifts and based in stations throughout the park. There are thirty eligible voters. The parties want a manual ballot election. The region directs a mail ballot because of the costs and time associated with requiring one agent to run a multiple site election over a period of several days, particularly, when a fire could call all voters away from the station for an indefinite period of time.
- d. policy considerations: There may be policy considerations when directing procedures in a significant election that warrant considering a novel approach to conducting the election; for example,
 - < in a worldwide mail ballot election involving employees who have temporary addresses, it may be appropriate to mail the ballot to the employee's place of employment.

See [CHM 28.12.2](#) for guidance on drafting Directions of Elections on § 2422.16(b) matters.

28.11.2 Section 2422.16(c): This section states: “before directing an election, the Regional Director shall provide affected parties an opportunity for a hearing on other than procedural matters, and thereafter may:

- (1) Issue a Decision and Order; or
- (2) If there are no questions regarding unit appropriateness, issue a Direction of Election without a Decision and Order.”

This section is applicable when the parties are unable to enter into an election agreement or the Regional Director will not approve the agreement because s/he has reasonable cause to believe a question of representation exists ([CHM 27.5.3](#)). Section 2422.16(c) raises two issues:

- a. when a hearing is required; and
- b. when a Decision and Order is required.

The phrase, “on other than procedural matters” pertains to appropriate unit questions, eligibility questions, timeliness issues, challenges to the status of a labor organization ([CHM 19.6](#)) and any other matter not considered “procedural.” It does not include challenges to the validity of the showing of interest which are resolved prior to any action taken on a case ([CHM 18.19.5](#) and [28.34.2](#)).

28.11.2.1 Where there are **questions regarding unit appropriateness, the Regional Director “shall provide the parties with an opportunity for a hearing” and thereafter, issue a Decision and Order.** § 2422.16(c)(1). A party may file an application for review of the Regional Director’s Decision and Order (§ 2422.31). See [CHM 28.29](#) and [CHM 55](#) for guidance on processing cases while the appeal is pending before the Authority.

In cases involving questions regarding unit appropriateness, the agent terminates the election agreement conference and continues to process the case according to [CHM 26 and 27](#). If the Regional Director issues a notice of hearing, the agent processes the case according to [CHM 29](#).

28.11.2.2 Where there are **no questions regarding unit appropriateness and absent an election agreement, the Regional Director shall provide the parties with an opportunity for a hearing on other than procedural matters.**

- a. “Other than procedural matters” in this context applies to situations where the parties are unable to agree on voter eligibility, timeliness of the petition, challenges to the status of the labor organization or other nonprocedural or non-unit related matters. This section of the regulation does not pertain to situations where the parties refuse or fail to cooperate in the election agreement proceedings (See [CHM 22](#), [28.10](#) and [58.3.4](#)).
- b. Before concluding the election agreement meeting and prior to issuing a notice of hearing pursuant to § 2422.16(c), the agent has the parties complete and initial those portions of the agreement on which they agree. If conducted by teleconference, the agreement is faxed to all parties. These items include the unit description, effect of the vote and the procedural matters. If the parties refuse to complete those portions of the agreement, the agent asks the parties for their objections

and proceeds according to [CHM 28.11.1](#) or [CHM 28.11.2.1](#).

- c. Section 2422.16(c) provides that the Regional Director shall provide an opportunity for a hearing. Following the hearing, however, the Regional Director **has discretion to issue a Direction of Election rather than a Decision and Order when there are no unit appropriateness issues**. While there is no appeal of a Direction of Election; the Direction of Election provides that the election is directed without prejudice to the right of a party to file a challenge to the eligibility of any person participating in the election and/or objections to the election [see § 2422.16(d) and [CHM 28.12.4](#)].
- d. Hearings on “other than procedural matters” are conducted as soon as possible after the parties’ refusal to enter into an election agreement. Thereafter, the Direction of Election are issued timely and consistent with strategic plan goals. See [CHM 28.12](#) for guidance on issuing Directions of Election and [CHM 29](#) for guidance on scheduling hearing conducted pursuant to § 2422.16(c)(2).

28.11.3 Policy on providing an opportunity for a hearing: Notices of hearing are issued according to the guidelines set forth in [CHM 27](#) and [29](#). When a Direction of Election is contemplated, **the Hearing Officer does not make recommendations on the record**. The Regional Director has the discretion to issue the notice of hearing immediately or explore alternatives to the hearing, as discussed below. **The regulations provide an opportunity for a hearing, they do not require a hearing.**

28.11.3.1 Stipulations in lieu of hearings: Stipulations in lieu of hearing are encouraged and permissible. (see [CHM 27.7](#)):

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).

The parties may also 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. The region is still required to issue a Decision and Order in such cases.

Stipulations on other than unit issues are also encouraged. See [HOG 26](#) for a discussion about stipulations. They are particularly useful in deciding employee eligibility issues. Any stipulations that are obtained in lieu of a hearing pursuant to § 2422.16(c) include a waiver of the parties' right to a hearing ([CHM 27.7.2](#)).

28.11.3.2 Waiving a hearing in order to proceed to an election: The region may not accept a “partial” waiver from the parties. A “partial” waiver is one in which the parties disagree on a matter within § 2422.16(c) but want to proceed to an election. As a result, they ask the region to approve a waiver of their right to a hearing, but intend to raise the matter again posthearing as an objection or challenge. The parties may not waive their right to a hearing in order to proceed to an election and bypass the § 2422.16(c) procedures. In other words, the parties can only waive a hearing on a § 2422.16(c) matter by: 1) entering into a stipulation that addresses all § 2422.16(c) issues and includes a waiver of the parties' right to a hearing, or 2) signing an election agreement. **An exception is discussed in [CHM 28.11.3.3](#) below.**

28.11.3.3 Procedures for resolving eligibility issues without hearing: The Regional Director has discretion in applying § 2422.16(c)(2) to situations where the parties dispute the eligibility of certain employees, normally comprising **not more than** fifteen percent (15%) of the unit that the parties agree is appropriate. Before discussing this option with the parties, the agent reviews the eligibility list with the parties in accordance with the guidance set forth in CHM 28.18.3 and discusses the impact of the parties' agreement on any inclusions and exclusions.

a. Rule:

Eligibility issues fall within the “other than procedural issues” that are covered by § 2422.16(c). Thus, the parties are provided with an opportunity for a hearing if the parties cannot agree on the eligibility of certain employees in the bargaining unit. The Regional Director has discretion, however, to issue a Direction of Election instead of a Decision and Order pursuant to § 2422.16(c)(2), if the number of eligible employees in dispute is not significant and does not raise

issues concerning the appropriateness (identity, scope or size) of the bargaining unit.

The Office of the General Counsel has established an alternative for the parties to consider when there are eligibility issues and the parties do not seek to delay the election.

b. Option:

As an alternative to a hearing to resolve eligibility issues, the agent discusses the use of the challenged ballot procedure and/or the filing of a petition to clarify the unit after the election. This option is only available if the number of employees whose eligibility is in dispute does not comprise more than fifteen percent of the proposed unit. If the parties agree to use this option, the parties “agree to disagree” on the disputed positions and agree that the voter's eligibility will be challenged at the election. If the voter whose eligibility is being challenged: 1) fails to vote; or 2) votes a challenged ballot that is not resolved but is not determinative of the outcome of the election, the parties can file a petition to clarify the status of the disputed employees after the election. **Any agreement to use the challenged ballot procedure for employees whose eligibility is in dispute and who comprise not more than fifteen percent of the unit is memorialized in an attachment/appendix to the Election Agreement. See [Figure 28.11](#) for a sample memorandum.**

The attachment:

- (1) **gives an introduction of the regulatory basis for the agreement;** (i.e., “in accordance with § 2422.16(c), the parties agree to the following”)
- (2) **spells out exactly what the parties agree to and what the Regional Director is approving;**
- (3) **includes the following information:**
 - (i) describes the unit and includes a statement that the eligibility issues do not affect the appropriateness of the unit (see part “c” below);

- (ii) includes the parties' waiver of a right to a hearing; and
 - (iii) lists the names of the employees and their positions about which the parties dispute the eligibility; since employee names are included, the parties must agree not to disclose or publish the agreement.
- (4) spells out the procedures for dealing with the challenges as follows:**
- (i) regardless of the type of election, the ballots of employees who are in the 15% group and named in the appendix will be challenged automatically by the Regional Agent, if not challenged by one of the parties.
 - (ii) in a manual ballot election, the parties agree to specific procedures in the Appendix for annotating the eligibility lists as described in the options in **section "c"** of this part. The voter's eligibility becomes an issue if the voter appears to vote and one of the observers or the agent challenges the voter's ballot before the employee votes.
 - (iii) in mail ballot elections, the parties agree to specific procedures in the Appendix for annotating the eligibility lists as described in the options in **section "c"** of this part. The region mails the voter a ballot, annotates the list with a "c," but the issue is resolved only if the ballot is returned. The ballot is automatically challenged if it is returned. See also [CHM 35.1](#) concerning the eligibility list.

When discussing this option with the parties, the agent stresses that the delay inherent in resolving issues involving a small number of employees by hearing automatically denies a larger number of employees the opportunity to express their wish at the ballot box for an extended period of time. **The agent also reminds the parties that they may not discuss, publish or reveal the names of the positions or employees whose eligibility is in dispute.**

c. Application of the option:

Where the number of employees in dispute is less than fifteen percent and the parties agree to utilize the challenged ballot procedure, the voting unit is carefully set forth in the Election Agreement. The unit description is silent as to the inclusion or exclusion of the classification(s) in dispute. For example, if the classification of shop chief is in dispute, the description does not contain an express inclusion or exclusion of this classification. In this regard, irrespective of any understanding between the parties regarding employees in this classification being subject to challenge, if the parties expressly include or exclude this classification in the unit description, it becomes binding on the parties. See *Federal Trade Commission (FTC I)*, 15 FLRA 247 (1984) and *Federal Trade Commission (FTC II)*, 35 FLRA 576 (1990) where the parties agreed to exclude a number of employees and later attempted to file a clarification of unit petition.

The regions have the following options for annotating the eligibility lists with the names of the disputed employees:

- (1) names of the disputed employees remain on the eligibility list (included or excluded) where the agency put them. Each name on the appendix is marked on these lists with a "c" for challenge.
- (2) names of the disputed employees are all placed either on the included or excluded list as agreed by the parties. Each name on the appendix is marked on the list with a "c" for challenge.
- (3) the parties may agree to delete the disputed names from the included or excluded lists and use the appendix list as the list for challenges.

There may be other acceptable variations on the options listed above; **the objective** is to ensure that employees whose eligibility is in dispute are afforded the same opportunity to vote in manual or mail ballot elections. The parties' agreement on how the eligibility list will be annotated should be included in the appendix. This is also true when there are no disputes as to eligibility.

d. To determine whether the total number of challenged

ballots are not more than fifteen percent (15%) of the unit agreed to, for the purpose of resolving eligibility issues by the challenge ballot procedure, the following ratio is used:

$$\frac{\text{Total number of employees subject to challenge}}{\text{Total number of employees agreed to plus number of employees subject to challenge}}$$

Example 1: the petitioner claims that the unit consists of 100 employees, whereas the activity contends that classification X, involving 50 employees, are also eligible for the unit. Here, the ratio is 50/150, or approximately 33 percent.

Example 2: the petitioner claims that the unit consists of 95 employees, but the activity asserts that the unit consists of 100 employees. The ratio is therefore 5/100, or 5 percent.

In example #1, an election agreement may not be approved since a significant question exists concerning employee eligibility affecting the scope of the unit. The region issues a notice of hearing, and holds the hearing, absent a stipulation. A Decision and Order is required rather than a Direction of Election because the number of challenges exceeds fifteen percent and therefore affects the scope of the unit.

In example #2, the number of challenged ballots is less than fifteen (15) percent. The parties may either elect to use the challenge ballot procedure or exercise their right to a hearing. (If the parties elect to use the challenged ballot procedure, the agent prepares an agreement to attach to the Election Agreement as discussed in part "b" above). If a hearing is held, § 2422.16(c)(2) allows the region the option of issuing a Direction of Election ([CHM 28.12](#)). The record obtained by the region at the hearing may be used as evidence if challenged ballots are sufficient in number to affect the results of the election.

NOTE: if the total number of employees whose eligibility is in dispute exceeds 15% of the total number of employees agreed to plus the number of employees subject to challenge, or if parties are unwilling to execute an Election Agreement because of eligibility issues, the region shall issue a notice of hearing. The region cannot impose the 15% rule in lieu of a hearing. The parties are not precluded from challenging other voters after executing this Appendix to the Election

Agreement. However, if the region learns that other employees will be challenged, the region checks the math to determine whether the number of potential challenged ballots remains under 15%.

28.12 Direction of Election: There are essentially three types of Directions of Election.

28.12.1 Unit found appropriate by the Regional Director: Following a hearing on questions relating to unit appropriateness, the Regional Director is required to issue a Decision and Order (see [CHM 53 - guidance on issuing Decisions and Orders](#)). If the Regional Director finds that an election is appropriate, s/he issues a **Decision and Order and Direction of Election**. Thereafter, the parties meet to work out the details of an election agreement. The description of the unit and the effect of the vote is described in the Agreement **precisely** as found in the Decision and Order and is binding on the parties unless the Regional Director modifies it in a Supplemental Decision and Order or it is modified by the Authority. This requirement applies irrespective of any changed circumstances occurring subsequent to the close of the hearing and not considered by the Regional Director. Any party seeking to alter the unit description after issuance by the Regional Director of a Decision and Order and Direction of Election, files a written request with the Regional Director with supporting reasons. Normally, execution of the Election Agreement is not delayed pending the filing or disposition of such request.

28.12.2 Direction of Election on § 2422.16(b) procedural matters: When the parties are unable to agree on procedural matters, the Regional Director issues a **Direction of Election** and decides the disputed details of the election. See [CHM 28.11.1](#). The Direction of Election will state the purpose of the directed election (such as “the parties were unable to agree on the following ...”). The Direction of Election incorporates the Election Agreement that contains the provisions upon which the parties agreed and initialed. The Regional Director signs the Agreement noting the details decided in the Direction of Election. Item #14 on FLRA Form 33 and Item #12 on FLRA Form 34, reflects the election details that the Regional Director decided. The Regional Director does not state the reasons for his/her ruling, but references § 2422.16(d) (see [CHM 28.12.4](#)). See [Figure 28.12A](#) for a sample Direction of Election.

28.12.3 Direction of Election on § 2422.16(c)(2): other than procedural matters: When there are no questions regarding unit appropriateness, the Regional Director shall provide the parties with an opportunity for a hearing. Following the hearing, however, the Regional Director may issue a **Direction of**

Election, without a Decision and Order. A Direction of Election is issued as soon as possible after the close of the hearing and within time targets that are consistent with strategic plan goals ([CHM 29.7](#)). Note that the Regional Director has the **option** to issue a Direction of Election, rather than a Decision and Order. If the eligibility issues or other nonprocedural issues appear to affect unit appropriateness, the Regional Director is required to issue a Decision and Order.

A Direction of Election issued under this subsection reflects the nature of the dispute, the issues presented at the hearing and a statement that the issues raised do not interfere with conducting the election. The Direction of Election incorporates the Election Agreement that contains the provisions upon which the parties agreed and initialed. The Regional Director signs the Agreement noting the details s/he decided. Item #14 on FLRA Form 33 and Item #12 on FLRA Form 34, reflect the election details that the Regional Director decided. In the Direction of Election, the Regional Director is not required to decide the procedural issues such as eligibility issues or status issues. Rather, the Regional Director states in the Direction of Election that “these matters (or state issues) will not be resolved at this time.” Section 2422.16(d) is also set forth in the Direction of Election. See [Figure 28.12B](#), [CHM 19.6](#) and [CHM 28.34.3](#) for a Direction of Election involving a challenge to the status of a labor organization.

- NOTE:**
1. ***If a challenge to the status of a labor organization is filed pursuant to section 7103(a)(4) or pursuant to section 7111(f)(1) of the Statute alleging that the labor organization is subject to corrupt influences or influences opposed to democratic principles, the region investigates the challenge prior to executing the election agreement.*** See [CHM 19](#) for investigating challenges filed pursuant section 7103(a)(4). See [CHM 20.1.8](#) and [CHM 23.9.3](#) for investigating challenges based on 7111(f)(1).
 2. ***Remember that a challenge to the validity of the showing of interest is not considered an “other than a procedural matter” under § 2422.16(c) and is investigated and resolved prior to the election agreement meeting.*** See [CHM 18.19.5](#), [CHM 28.11.2](#) and [CHM 28.34.2](#).

28.12.4 Challenges or objections to a directed election: Section 2422.16(d) provides that a Direction of Election issued pursuant to § 2422.16 will be issued without prejudice to the right of a party to file a challenge to the eligibility of any person participating in the election and/or objections to the election. **This statement appears in every Direction of Election.** Section 2422.16(d) does not pertain to challenges or objections based on a Decision

and Order which may be appealed pursuant to § 2422.31.

28.13 Basic requirements for unit descriptions in election agreements: Every unit approved by the Regional Director in an Election Agreement constitutes “an appropriate unit” under the criteria contained in 5 U.S.C. 7112 of the Statute and excludes, as appropriate, the categories of employees as set forth in 5 U.S.C. 7112(b)(1) through (7). The unit and the effect of the vote are the **first substantive matters** discussed in an election agreement conference. Item # 11 on FLRA Form 33 and Item # 9 on FLRA Form 34 describes the appropriate unit. **This section also includes a statement regarding the effect of the vote.**

28.13.1 Appropriate unit criteria: An appropriate unit as defined in 5 U.S.C. 7112(a)(1) is one which will ensure a clear and identifiable community of interest among the concerned employees and will promote effective dealings with, and efficiency of the operations of, the agency involved. The Authority has applied these criteria in a wide range of decisions involving unit determinations. These criteria are applied when establishing any unit in any election agreement; i.e., by the parties in formulating and agreeing upon the unit, by the agent in seeking out the relevant information and by the Regional Director in determining the appropriateness of the unit for the purpose of approving an election agreement [see *RCL 1, appropriate unit determinations*]. [CHM 28.15 - self-determination elections](#) - covers situations where the affected employees determine their own unit; and *RCL 2 - scope of unit issues* - discusses unusual circumstances when elections may be held in units that do not comply with the appropriate unit criteria (residual units)].

28.13.2 Required exclusions: 5 U.S.C. 7112(b) requires that certain categories or classifications of employees be specifically excluded from all units, namely:

- a. 5 U.S.C. 7112(b)(1): Supervisors as defined in 5 U.S.C. 7103(a)(10) [unless covered by 5 U.S.C. 7135(a)(2)]; *RCL 26 and 14*.
- b. 5 U.S.C. 7112(b)(1): Management officials as defined in 5 U.S.C. 7103(a)(11) [unless covered by 5 U.S.C. 7135(a)(2)]; *RCL 22*.
- c. 5 U.S.C. 7112(b)(2): Confidential employees as defined in 5 U.S.C. 7103 (a) (13) ; *RCL 19*.
- d. 5 U.S.C. 7112(b)(3): Employees engaged in personnel work in other than a purely clerical capacity; *RCL 20*.

- e. 5 U.S.C. 7112(b)(4): Employees engaged in administering the provisions of the Statute; *RCL 18*.
- f. 5 U.S.C. 7112(b)(5): Professional employees from a unit of nonprofessional employees - unless a majority of the professional employees vote for inclusion in a unit of nonprofessional employees; *RCL 23*.
- g. 5 U.S.C. 7112(b)(6): Any employee engaged in intelligence, counter-intelligence, investigative, or security work which directly affects national security; *RCL 25* or
- h. 5 U.S.C. 7112(b)(7): Any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity. *RCL 17*.

Irrespective of any agreement among the parties, the Regional Director may not approve an election agreement in which s/he knowingly includes in the unit description, any employees that are required to be excluded under the Statute.

28.13.3 Formats for stating the inclusions and standard statutory exclusions: The following format is **used** in any election agreement approved by Regional Directors or in any Decision and Order which directs an election or finds a unit appropriate for purposes of collective bargaining:

- a. Nonprofessional unit:

Included: All

Excluded: All professional employees; management officials; supervisors; and employees described in 5 U.S.C. 7112 (b)(2), (3), (4), (6) and (7).

- b. Professional unit:

Included: All professional

Excluded: All nonprofessional employees; management officials; supervisors; and employees described in 5 U.S.C. 7112(b)(2), (3),

(4), (6) and (7).

c. Mixed unit:

Included: All professional and nonprofessional
or
All employees of

Excluded: Management officials; supervisors; and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

28.14 Describing the unit: The description of the appropriate unit expresses the intent of the parties, both as to the level of recognition, the inclusions and the nonmandatory exclusions. Carefully defining the scope and composition of the unit minimizes:

1. Problems between the parties after a certification is issued regarding the level of recognition; and
2. Eligibility issues.

28.14.1 Differences in the caption and the unit description on the certification: When a Certification is issued that reflects the results of an election by either certifying a labor organization as the exclusive representative of an appropriate unit of employees or certifying the results of the election if the employees vote against representation, the caption on the case lists the parties one way - for record keeping purposes - and the unit may reflect the unit approved by the Regional Director another way.

- a. **The caption reflects the executive agency first, followed by the activity, and location.**
- b. **The unit description reflects the level at which recognition is granted. Unless the unit is nationwide in scope, the activity is listed first, and the agency is listed second, if at all.**

28.14.2 Level of recognition: The level of recognition establishes the level at which bargaining must take place. The level of recognition at the agency/activity is a consideration when determining the appropriateness of any proposed unit or when assessing the effects of a reorganization on an existing unit. The level of recognition for the union, i.e., whether the national or local union holds the certification has no bearing on the appropriateness

of the unit.

28.14.2.1 Agent's responsibility: It is the agent's responsibility to review the level of recognition proposed by the petitioner to ensure that it is appropriate given other facts and criteria used to determine the appropriateness of any unit. The agent ensures that the parties understand and consider the level of recognition. **As a policy matter, it is not the agent's role to dictate to the parties where the level of recognition lies. However, the Authority agent makes the parties aware of potential issues and urges the parties to draft the unit description carefully to avoid any confusion. If the proposed level of recognition raises questions as to the appropriateness of the unit, the agent reports the issue to the Regional Director. A hearing on the issue may be appropriate.** See *VA Medical Center, Brooklyn, NY*, 8 FLRA 289 (1982); *Headquarters, 1947th Administrative Support Group, U.S. Air Force, Washington, DC*, 14 FLRA 220, 221 (1884).

28.14.2.2 Ramifications: The level of recognition is important because it:

- a. establishes the level at which bargaining must take place;
- b. may be a factor in a reorganization;
- c. reflects who controls decision-making and governance of the unit;
- d. affects who has standing to file certain petitions, and
- e. from the union perspective, controls who may file for reaffiliation and merger.

28.14.2.3 Rule: If the Agency is named first, that is an indication that the level of bargaining is at the agency level. If the Activity is named first, the level of recognition is at the activity level. Regions are consistent when drafting unit descriptions and follow this protocol.

For example, if a unit description is written: "All employees of the U.S. Department of the Navy, XXX Naval Shipyard," the level of recognition is at the Department of Navy. If the description is written: "All employees of the XXX Naval Shipyard, U.S. Department of the Navy," the level of recognition is at the Shipyard.

Authority agents explain to the parties that the level of recognition, if not clear to the parties at the time of the election agreement

meeting, may become an issue between the parties later on. See also [CHM 56](#) which distinguishes between captions on cases where the agency is always named first and the unit description.

28.14.3 Carefully drawn unit descriptions greatly facilitate the investigation of any future petition(s) to amend or clarify a certified unit. At a minimum the unit description includes:

- a. Geographic locations of the affected employees;
- b. Classifications of the employees sought to be included (if the unit proposes to include all employees of an activity or agency, the description is described “as all employees of ...”); and
- c. The name of the agency and activity, if applicable that employs the employees sought to be included in the unit.

A unit description that is clear states: “All ... employees [use ‘employed by’ or ‘of’]” **The description is drafted as follows:**

“Included: ...”

“Excluded:”

NOTE: *To ensure consistency among the regions the “one paragraph” unit description, such as “All employees of Agency X excluding” is avoided.*

28.14.4 Use of current classifications and effect of drafting unit description too broadly or narrowly: The scope and composition of any unit is based upon current classifications or categories of employees at the time of approval of the consent agreement for election. A nonexistent classification is not included in the unit even though the activity contemplates establishing such classification in the near future. Similarly, a nonexistent classification is not specifically excluded for the purpose of showing that if or when such a classification were to be established, the parties agree that these employees would be excluded from the unit. In either of these instances, the proper vehicle to resolve the issue is a petition to clarify the unit when the particular classification is established and employees are hired. Normally, if the unit description is written “broadly,” i.e., “all employees of” and a classification is added to the unit, it is automatically included in the unit unless it’s exclusion is statutorily based. “New employees are automatically included in an

existing bargaining unit where their positions fall within the express terms of a bargaining certificate and where their inclusion does not render the bargaining unit inappropriate.” *Department of the Army, Headquarters, Fort Dix, Fort Dix, New Jersey*, 53 FLRA 287 (1997). See also *U.S. Department of the Air Force, Carswell Air Force Base, Texas*, 40 FLRA 221, 229-30 (1991) (*Carswell Air Force Base*); *U.S. Army Air Defense Artillery Center and Fort Bliss*, 31 FLRA 938 (1988); *U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Northeast Region*, 24 FLRA 922, 926 (1986) (NOAA).

Conversely, if a unit description is too narrowly defined, it may result in many requests to clarify units or additional elections to add-on more employees. **The point is that the parties, with the assistance of the Authority agent, define the unit description to minimize future questions about inclusions and exclusions and the scope of the unit.**

- 28.14.5 Use of names of employees:** Names of employees are **never** used to denote inclusion or exclusion from the unit. A unit is defined only in terms of the one or more classifications or categories of which it is composed, as well as the exclusions. The scope and composition of the unit must be clear and identifiable if the unit is subsequently certified.
- 28.14.6 Use of vague or unclear phrases:** Phrases such as “serviced by” or “located at” to describe a unit are not permitted. Unit descriptions include the name of the employing agency/activity and the employees eligible for inclusion in the unit. Experience has shown that a unit described by the servicing administrative or personnel office or the location of the employees that does not include the name of the employer causes a variety of representation issues, particularly if the unit is subject to a reorganization or realignment of operations. For example a unit described as: “All employees serviced by the Civilian Personnel Office located in Fort XXX” does not identify the employing agency. It is impossible to distinguish employees in this unit from a similarly described unit covering different employees.
- 28.15 Details on special voting procedures for self-determination elections:** There are certain situations where the eligible voters select the unit as well as their representative. For instance, as required in 5 U.S.C. 7112(a)(5), professional employees determine their unit as well as their exclusive representative. These elections are commonly called self-determination elections because the final determination of the unit is contingent upon the outcome of the election. As noted in [CHM 28.13](#), election agreements describe the appropriate unit and discuss the effect of the vote. This is

particularly important in self-determination elections. In self-determination elections, election agreements: 1) describe the purpose of the election and the voting groups; 2) discuss the effect of the vote; and 3) provide a description(s) of the potential appropriate units.

Because of the extensive details involved, the required information is set forth in an Appendix to the Agreement, with the following statement inserted in paragraph 11, "The Appropriate Unit" of FLRA Form 33, or paragraph 9 in FLRA Form 34: "See Appendix attached to and made a part of this... ." **In addition, all such information contained in the Appendix is set forth, verbatim, in the Notice of Election and cannot be changed without clearance from the OGC.** For sample ballots used in the special elections discussed below, see [CHM 34.4](#) and [Appendix E](#).

NOTE: if the self-determination election results from findings raised as a result of a reorganization, contact the OGC for case handling advice. See e.g., *Defense Logistics Agency, Defense Supply Center Columbus, Columbus, Ohio*, 53 FLRA 1114 (1998).

28.15.1 Considerations when establishing units involving professional employees: Professional employees have the right of unit self-determination under 5 U.S.C. 7112(b)(5). This provision of the Statute provides that a unit of both professional and nonprofessional employees may not be established unless a majority of the professional employees vote for inclusion in the same unit as the nonprofessional employees. Professionals vote on whether the bargaining unit will consist solely of professional employees or be a combined professional/nonprofessional unit and on whether they wish to be represented by a union in a bargaining unit. For a discussion on the definition of a professional employee, see 5 U.S.C. 7103(a)(15) and *RCL 23*.

a. **Detailing special voting procedures:** 5 U.S.C. 7112(b)(5) requires that the Election Agreement set forth details concerning the election, including a description of the unit and the effect of the vote and the following:

- (i) A description of the **voting groups** involved;
- (ii) An explanation of the choices to be voted on by each of the groups; and
- (iii) An explanation of the alternative effect upon the determination of the appropriate unit(s) in the event that a

majority of the professional employees vote in favor of, or against, inclusion in the same unit of nonprofessional employees.

- b. **Significance of self-determination by professional employees:** As previously noted, a self-determination election, such as one involving professional and nonprofessional employees, is fundamentally different from other elections in that the final determination of the unit is contingent upon the outcome of the election. Thus, the election may result in an appropriate unit consisting of both professional and nonprofessional employees or it may result in separate units of professional and nonprofessional employees, depending upon whether a majority of the professional employees vote in favor of, or against, inclusion in the same unit as nonprofessional employees.
- c. **Description of voting groups:** Paragraph 11 of the Appendix of the Agreement is entitled, "Voting Groups" and not "Appropriate Unit." As set forth in [Figure 28.15A](#), the professional employees are designated as voting group (a) and the nonprofessional employees as voting group (b). Nonprofessional employees are expressly excluded from voting group (a) and professional employees are expressly excluded from voting group (b).
- d. **Explanation of choices on respective ballots:** After setting forth the description of the two (2) voting groups, the third and fourth paragraphs of the Appendix are devoted to an explanation of the choices upon which the professional and nonprofessional employees will vote in casting their respective ballots. Thus, in the example shown, the nonprofessional employees are informed that they ". . . will be polled whether or not they desire to be represented by the (Union)." Similarly, professional employees are informed that they will be asked two (2) questions, namely:
 - (i) Do you desire the professional employees to be included with the (description of the nonprofessional unit) for the purpose of exclusive recognition?; and
 - (ii) Do you desire to be represented for the purpose of exclusive recognition by the (Union)?
- e. **Explanation of appropriate units:** The remaining portion of the

Appendix explains the alternative unit determinations based upon whether or not a majority of the professional employees vote for inclusion in the same unit as nonprofessional employees and the issuance of an appropriate certification by the Regional Director. See [Figure 28.15A](#). For tallying procedures, see [CHM 47.11](#).

28.15.1.1

Unique situations involving professional employees in petitions: Self-determination elections involving established units consisting of professionals and nonprofessionals may be inappropriate in certain circumstances.

- a. Petitions in which a labor organization raids an existing mixed professional and nonprofessional unit or in which an employee petitions to decertify the exclusive representative in a mixed unit: The Authority has not had the opportunity to consider whether professional employees should have another opportunity to vote to be in a mixed unit once they have voted to be included in units with nonprofessional employees (mixed units). However, the case law under the Assistant Secretary requires that the professionals be given another opportunity to decide whether they wish to be included with the nonprofessional employees. See *Indian Health Service Area Office, Window Rock, Arizona and Public Health Service Indian Hospital, Fort Defiance, Arizona, Department of Health, Education and Welfare*, 7 A/SLMR 36 (1977) (a raid petition in which the A/SLMR stated that the privilege accorded by Section 10(b)(4) to the professional employees is not necessarily limited to a single expression of their wishes and separate balloting for the professionals involved herein should not be affected because they have already enjoyed the opportunity of such expression in the first election held in 1970). See also *U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Central Region*, 7 A/SLMR 854 (1977) (three decertification petitions in which the A/SLMR ordered that the professionals be given the opportunity to vote for a separate unit). Contact the Office of the General Counsel if this issue arises.
- b. Add-on: Until the Authority rules differently, when petitions

are filed to add a unit of professional employees to a consolidated unit of professionals and nonprofessionals, the professionals have the opportunity to decide whether or not they wish to be included with the nonprofessionals. In add-on elections, the proposed unit, in this case the unrepresented professionals, constitute an appropriate unit and thus the section 7112 (b)(5) right to self-determination applies.

- c. Clarify matters relating to representation: Unique situations involving professional employees may arise in petitions seeking to clarify matters relating to the representation of employees following a reorganization or realignment. It may be appropriate to accrete, combine or find a successorship among professional employees who are not in mixed units, but who will become part of a unit that already includes professional and nonprofessional employees without an election. A finding of successorship or accretion does not raise a question concerning representation and, thus, no election is required. Contact the Office of the General Counsel if this issue arises.

[CHM 58.3.6](#) - *advice issues* and [CHM 28.17.4](#) - *consolidated units*.

28.15.2 Inclusion of unrepresented professional employees in an existing unit of nonprofessional employees: Where a labor organization currently represents a unit of nonprofessional employees, a unit of unrepresented professional employees may be included in the same unit of nonprofessional employees by a self-determination election. If an incumbent labor organization files a petition to represent professional employees and requests that the professional employees be included in the existing represented nonprofessional unit, the professional employees are given the opportunity to decide whether they wish to be included in the nonprofessional unit.

In drafting the Appendix to the agreement as set forth in [Figure 28.15B](#), paragraph 11 of the Appendix is designated as "Appropriate Unit" since there is only one group of employees voting in this type of self-determination election. Moreover, in the event the professionals vote to be included in the nonprofessional unit, a Certification of Representative is not issued to the petitioner. Instead, a Certification of Inclusion in Existing Unit, [FLRA Form 192](#), is issued, as discussed in [CHM 56](#), in which case the ballots cast for the

second question are not counted.

In the event that the professional employees vote against inclusion on the first question, the second question on the ballot is tallied and if a majority is cast for the petitioner as the exclusive representative, a Certification of Representative, [FLRA Form 28](#), is issued in behalf of the petitioner for a separate unit. If a majority is cast against exclusive recognition, a Certification of Results, [FLRA Form 27](#), is issued. See [CHM 47.13](#) for tallying procedures.

If a petitioner does not seek to include a unit of professional employees in the represented unit of nonprofessional employees, no Appendix to the Election Agreement is prepared since no self-determination election is involved. In this situation, the union seeks to represent the professional employees in a separate unit. No special voting procedures are required and the employees are asked only if they wish to be represented for the purposes of exclusive recognition by the labor organization(s) involved.

28.15.3 Inclusion of residual nonprofessional employees in an existing unit: If a labor organization that currently represents a unit of nonprofessional employees files a petition seeking to represent a unit of unrepresented residual employees of the same activity, the incumbent, as the petitioner, has an option of seeking to represent these employees in the currently represented unit or as a separate unit. A **residual unit** is a unit of all unrepresented employees of the type covered by the petition (or, in some descriptions) who are not already covered in existing units. *General Services Administration, Las Vegas Fleet Management Center, Sparks Field Office, Sparks, Nevada*, 49 FLRA 1258, 1261 (1993). If a proposed unit is a residual unit, strict application of the appropriateness criteria is not applied (see *RCL 2*).

The Regional Office elicits the petitioner's position so that the Appendix to the Agreement is worded accordingly ([Figure 28.15C](#) for wording when the petitioner seeks to include the residual unit in its existing unit). Paragraph "b" in [Figure 28.15C](#) is applicable in instances in which the incumbent-petitioner and one or more intervenors are on the ballot. If the employees vote to be included in the existing unit, a Certification of Inclusion in Existing Unit is issued ([CHM 56](#)).

Note, as in other self-determination elections, the Notice of Election describes the effect of the vote. In this instance if there is no intervenor, the Notice of Election states whether or not the selection of the petitioner will

result in their being included in the existing unit. Tallying procedures are discussed in [CHM 47.14](#). Note there are not many Authority cases on residual units. If there are any questions about how to handle the proposed unit or the options for self-determination, contact the Office of the General Counsel for case handling advice.

28.15.4 Residual elections involving two groups and two unions: In a partially organized activity, where the incumbent seeks only an election among a group of unrepresented residual employees, *and* a second labor organization seeks an overall unit consisting of employees in the existing unit plus a residual group of unrepresented employees, two voting groups are established and the votes are pooled. The following language is added to the agreement as an Appendix:

If a majority of valid ballots in the residual unit are cast for the incumbent union, separate units could be appropriate or the incumbent could elect to combine them. If a majority of the employees in the existing unit do not select the incumbent, then the two voting groups shall be combined in a single overall unit and their votes shall be pooled. In either event, the appropriate certification will be issued.

Since very few cases are filed involving the issues where votes are “pooled,” the region contacts the Office of the General Counsel to discuss such cases (see also [CHM 28.15.5](#)).

28.15.5 Other types of self-determination elections: Other self-determination elections that may involve pooling of ballots include:

- a. A functional or craft unit constituting a portion of a larger appropriate unit, either of which may be an appropriate unit; i.e., petitioner (A) seeks to represent an appropriate unit which includes the craft or functional group and petitioner (B) seeks to represent only the smaller craft or functional group of employees; or
- b. Global type elections. See *Department of Defense Dependent Schools*, 6 FLRA 297 (1981); the Authority found a worldwide unit and six region-wide units appropriate.

Drafting the Appendix to the agreement for the election: The same procedure as discussed in [CHM 28.15.1](#) and [28.15.4](#) regarding the preparation and

attachment of an Appendix to the Election Agreement is applicable regarding all types of self-determination elections. For example, the Appendix set forth in [Figure 28.15D](#) is an example of the circumstances under which either of two (2) units petitioned-for by different labor organizations may be appropriate, requiring a self-determination election where the votes may be pooled. This particular sample Appendix is used in conjunction with an election agreement for self-determination elections involving functional or craft units but is easily adapted for other similar self-determination elections. The procedures in counting the ballots of the respective voting groups in self-determination elections that involve pooling ballots are discussed in [CHM 47.12](#).

28.15.6 Severance elections: Where parties agree to a severance election, the Regional Director contacts the Office of the General Counsel before approving the Election Agreement.

28.16 Add-on elections: When a union petitions for an election to add employees to an existing unit, the inclusion of such employees results in an overall unit which meets the criteria for appropriateness of unit set forth in 5 U.S.C. 7112(a)(1). If the proposed unit to be added is not a residual unit (covering all unrepresented employees), it **constitutes independently an appropriate unit**. Thus, in any case involving an add-on to an existing unit, if the unit is not a residual unit, the three appropriate unit criteria are applied (*RCL 2*). Add-ons usually occur in one of two circumstances:

- a. when a labor organization seeks to add to its existing unit a group of unrepresented employees in an activity or agency. For example, a labor organization has an agency-level certification for a consolidated unit and seeks to add a group of unrepresented employees to the consolidated unit.
- b. when a labor organization seeks to add to its existing unit a group of represented employees. For example, a labor organization holds exclusive recognition for part of an activity (Unit A) and raids another unit (Unit B) to add these employees to its existing unit (Unit A). Both units (A and B) are appropriate and a combined unit is also appropriate. Thus, the resultant election could be a self-determination election and the effect of a vote for the petitioner could be to add Unit B to Unit A. A vote for the incumbent is a vote to remain in Unit B. *U.S. Department of Labor, Pension and Welfare Benefits Administration, 38 FLRA 65, 73 (1990)*.

28.16.1 Policy considerations in add-ons to consolidated units:

- 28.16.1.1 Local union files a petition:** A local labor organization seeks an election to represent employees at an agency where its national union is certified as the exclusive representative of a single agency/activity-level consolidated unit of employees. This filing may raise standing to file issues as discussed in [CHM 4.7](#) and unit fragmentation issues.
- a. Standing to file issues: Such petitions normally seek to add the unrepresented employees to the existing consolidated unit. The petition is defective if the local union is not authorized by the parties to the certification to file the petition to add the unit to the consolidated unit (see [CHM 4.7 and 12.3](#)). The parties to the nationwide consolidated certification are notified of the petition (see [CHM 14.2](#)).
 - b. Unit fragmentation issues: These situations occur when a party other than the national labor organization holding the certification for a consolidated unit files the election petition, but does not seek to add the unit to the national consolidated unit. If the petitioner, such as a local union, refuses to add the petitioned-for unit to the consolidated unit for which the national union is the exclusive representative, the region contacts the Office of the General Counsel. This scenario does not raise standing to file issues, but rather unit fragmentation issues as the unit, standing alone, may not be appropriate.
- 28.16.1.2 Petition filed to add professionals to a consolidated unit of professionals and nonprofessionals:** see [CHM 28.15.1.1b](#).
- 28.16.2 Appendix to Election Agreement:** The Election Agreement and the Notice of Election reflects the effect of the vote in an add-on election. See [Figure 28.16](#).
- 28.16.3 Certifications for inclusion in existing unit:** When employees in a representation election vote for inclusion in an existing unit, a Certification of Inclusion in Existing Unit, [FLRA Form 192](#), is issued. See [CHM 56](#) for guidance and samples.
- 28.17 Elections to consolidate existing units:** If an election is sought by thirty (30) percent of the affected employees (see [CHM 23.10](#)), an election is

conducted or supervised by the Regional Director.

- 28.17.1 Parties do not agree on election procedures:** In a consolidation case, the basis and procedures for obtaining an election agreement are identical with those in other representation cases. When either party refuses to sign the Election Agreement because of issues related to the appropriateness of consolidating the existing units [§§ 2422.16(c) and 2422.30], the parties are afforded an opportunity for a hearing and a Decision and Order is required ([CHM 28.11.2.1](#)). If the parties refuse to sign the Election Agreement for procedural or other issues unrelated to unit appropriateness, the procedures discussed in [CHM 28.11.1](#) and [28.11.2.2](#) are followed.
- 28.17.2 Limitations on employee participation:** Employees may not intervene in a unit consolidation petition even though they have submitted a 30 percent showing of interest and seek an election. No individual may seek to represent the employees' interest regarding election arrangements, participate in a hearing, have observers at the election, challenge ballots, or file objections to any election. (Policy carried over from Executive Order 11491.)
- 28.17.3 Election procedures:** The consolidation procedure is the only procedure under the Statute whereby an exclusive representative may be certified without an election. However, certain situations require that consolidation elections be held. As noted earlier ([CHM 23.11.1](#)), the employees are given the opportunity to show an interest in having an election on the issue of consolidation. If thirty percent (30%) of the affected employees request an election, the Regional Office secures an election agreement ([FLRA Form 34](#), Agreement for Unit Consolidation Election) and conducts the election, using the procedures available for other representation elections, with the exceptions noted below (See [FLRA Form 36A](#) and [36B](#), Notice of Election). There is no provision for runoff elections.
- 28.17.4 Requiring elections when consolidating professional employees into mixed units:** The status of professional employees presents some unique problems when conducting consolidation elections. The Statute requires that professionals be given a self-determination election when they are sought to be included in a unit with nonprofessional employees. Therefore, professional employees are given a self-determination election in consolidation proceedings when:
- a. the professionals are voting with nonprofessional employees on the issue of the proposed consolidation;

- b. the petition seeks to consolidate existing units of professional employees with existing units of nonprofessional employees;
- c. some of the units included in the proposed consolidation include professionals in mixed units, but not all of the units include professionals. **All of the professionals**, including those in mixed units, get the opportunity to vote in an election to determine their unit. Such self-determination elections are required even if thirty percent (30%) of the employees do not request an election.

See also [CHM 28.15.1.1](#) for a discussion on related issues.

28.17.5 Types of consolidation elections: Three types of elections are possible under the consolidation procedure:

- a. The employees in the proposed consolidated unit are all either professionals or nonprofessionals. This election takes place when requested by an employee showing of interest. The employees choose whether they wish to be represented in a consolidated unit or wish to remain in their existing units. The Sample Ballot in [Figure 28.17A](#) is utilized in this type of election. The tally of ballots for this type of election is prepared on [FLRA Form 39](#), Tally of Ballots, and is modified for consolidation elections. If the employees vote for the consolidated unit, the Regional Director will issue, absent a timely objection to the election or determinative challenged ballots, [FLRA Form 29](#), Certification on Consolidation of Units. If the employees reject consolidation, the Regional Office issues [FLRA Form 27](#), Certification of Results of Election. In such cases, the employees continue to be represented in their existing units. See [CHM 56](#) for guidance in preparing certifications.
- b. The proposed consolidated unit includes both professional and nonprofessional employees, but a general election of all the employees is not sought by an employee showing of interest. In this instance, only the professionals participate in an election. They have one issue to decide, whether they desire to be represented in a consolidated professional unit or a consolidated mixed unit. The Sample Ballot in [Figure 28.17B](#) is utilized in this type of election. The tally of ballots for this procedure is prepared on the first section of [FLRA Form 41](#). If the professionals vote to be in a mixed consolidated unit, the Regional Office will issue one certification covering the mixed consolidated unit. If they vote for a separate professional unit, two certifications, one for the professional

consolidated unit and one for the nonprofessional consolidated unit, are issued by the Regional Director.

- c. The proposed consolidated unit consists of both professional and nonprofessional employees and the affected employees file a sufficient showing of interest to warrant an election. The professionals are given two questions on their ballot. The first question is identical to that asked of all the employees in the proposed unit; i.e., whether or not they wish to be represented in a consolidated unit or remain in their existing units. The ballots of all the employees, both professional and nonprofessional, are tallied first with respect to this question. A modified [FLRA Form 39](#) is used for the tally. If a majority of all of the voting employees vote to be represented in a consolidated unit, the ballots of the professional employees are then tallied separately with respect to the second question; i.e., whether they wish to be in a separate professional consolidated unit or to be part of a mixed consolidated unit. In this type of election, the ballot format for the nonprofessional will be similar to the ballot in [Figure 28.17A](#) while the professional will use the format shown in [Figure 28.17C](#). The separate professional tally is recorded on [FLRA Form 41](#). If a majority of all the employees vote against consolidation, a certification of the results of the election is issued by the Regional Director, [FLRA Form 27](#). If the employees vote for consolidation and the professionals vote for a mixed unit, one certification on consolidation is issued for the mixed unit. However, if the professionals choose to be represented in a separate consolidated professional unit, separate Certifications on Consolidation are issued by the Regional Director for both the professional and nonprofessional units.

NOTE: Any election agreement obtained for a unit consolidation election includes the same Appendices that describe the units, voting groups and the effect of the vote as previously discussed in [CHM 28.15](#).

CHM 28.18 THROUGH CHM 28.31 COVER ELECTION DETAILS DISCUSSED AT ELECTION AGREEMENT MEETINGS

- 28.18 Details of the election agreement form:** Except where specifically noted, this subsection applies to all election agreements ([FLRA Forms 33](#) and [34](#)). Election agreement meetings are held onsite or conducted telephonically.

28.18.1 Names of parties: The correct and complete name(s) of the parties are inserted in the Election Agreement.

- a. Agency / Activity: The correct and complete name of the agency and activity are included in the unit description in the order in which the parties agree that will reflect the level of recognition (see [CHM 28.14](#)). **The agency designation in the unit description are reflected in the caption on the ballot.** “Agency” as defined in 5 U.S.C. 7103(a)(3) means an Executive agency, the Library of Congress, and the Government Printing Office. Exceptions are reflected in 5 U.S.C 7103(a)(3). “Activity” as defined in § 2421.4 of the regulations means any facility, organizational entity, or geographical subdivision or combination thereof, of any agency.
- b. Labor organization(s): The correct and complete names of any labor organizations are inserted in the paragraph headed “Wording on the Ballot” in Item #8 on FLRA Form 33. If a shortened name is requested, it is shown *in addition to* the full name and is placed in parentheses. **The wording on the ballot will reflect the wording on the Certification of Representative, if one issues.** Where there is only one labor organization on the ballot, and the question asks for a “yes” or “no” response, the name of the labor organization is placed next to the heading “first.”

In unit consolidation elections, the correct and complete name of the agency and/or activity and the labor organization(s) are inserted in the paragraph discussing the effect of the vote. This wording is used on the ballot and will reflect the wording on the Certification of Representative, if one issues.

28.18.2 Positions on the ballot:

- a. Where two (2) or more labor organizations are on the same ballot, the position of their names on the ballot is generally determined by agreement of the labor organizations involved. The petitioning labor organization does not enjoy any special privilege or preference in determining position on the ballot. If the labor organizations are unable to reach agreement, they may resort to a toss of the coin, drawing of lots; or the Regional Director decides the matter.
- b. The wording of the negative choice on the ballot depends upon the number of labor organizations appearing on the ballot:

- (i) single labor organization -- “Yes” and “No” choices;
 - (ii) two labor organizations -- The name of each and a “Neither” choice; or
 - (iii) three or more labor organizations -- the name of each and a “No Union” choice.
- c. The specific negative designation, “Neither” or “No Union” is used where two or more labor organizations are involved. There is no fixed position for either of these negative choices on the ballot, and therefore, it is determined as part of the sequence of all choices reading from left to right on the ballot.

28.18.3 Eligibility period for participating in the election and preparation of voting list: Section 2421.19 defines “eligibility period” as the payroll period during which an employee must be in an employment status with an agency or activity to be eligible to vote in a representation election.

28.18.3.1 Eligibility: Eligibility to vote is based upon: 1) employment in the unit as of a specified payroll period and 2) the employment status of the employee on the date the ballots are counted. To be eligible to vote in an election, an employee must be eligible to vote both on the cutoff date for eligibility established in the Election Agreement and on the date the election is held. *U.S. Army Corps of Engineers, Headquarters, South Pacific Division, San Francisco, California, 39 FLRA 1445 (1991).*

- a. In an election agreement, eligible employees are those employees who were employed during the payroll period that ends immediately preceding the execution of the agreement.
- b. In a directed election, the eligibility period is fixed by the Decision and Order and Direction of Election, or in certain circumstances and absent the parties’ agreement, the Direction of Election. **The eligibility period for participating in an election in the Regional Director’s Decision and Order and Direction of Election is the payroll period immediately preceding the date of the decision.** If the Authority directs an election, the eligibility period is the payroll period immediately preceding the date of the Authority’s Decision or the date set by the Authority

in its decision. See *Department of Defense Dependent Schools*, 6 FLRA 297 (1981).

In no event is the payroll period one that is after the parties have signed the agreement. If questions arise concerning **setting an eligibility date which follows the date that the Election Agreement is approved, e.g., due to an expansion or contraction of the unit, the region contacts the Office of the General Counsel.**

28.18.3.2 Employment during the designated payroll period: Employees in the unit who are employed during the designated payroll period include: 1) those who did not work during that period because of illness, vacation or furlough; 2) employees on military leave if they appear at the polls; and 3) any employee who has been removed and is appealing such adverse action may vote under challenge. Ineligible to vote are employees who have quit or been discharged after the designated payroll period and who are not rehired before the date of the election.

28.18.3.3 Posting of eligibility list: The list of employees who are eligible to vote **may not** be posted with the Notice of Election or in any other manner. The inadvertent omission of a name may discourage an employee from appearing at the voting place where the opportunity to vote by challenged ballot is available. The agent reminds the parties not to distribute copies of the eligibility list.

28.18.3.4 Reviewing the eligibility list at the election agreement meeting: The parties review the most current list prepared by the activity during the election agreement meeting.

Role of Agent:

- a. Make sure parties understand consequences of their agreements.
- b. Take efforts to reduce any future inclusion/exclusion questions.
- c. Take an active role setting out case law and help parties apply that law, including suggesting inclusions/exclusions.
- d. Raise with the parties whether a particular position is

eligible or ineligible for the unit (regardless of the parties' agreement) when:

- (i) the agent's review of the list reveals that the title of the position or the grade level raises a question of the status, or
- (ii) the agent has independent knowledge that brings into question the status.

If the agent's questions (based on face of the list or independent knowledge) are not resolved to the satisfaction of the agent, the agent reports to the RD who can decide to approve the parties' agreed upon list or hold a hearing.

The list:

Usually this is the same list, or an updated list, that the activity furnished to the region to check the showing of interest ([CHM 28.9.2](#)). It is preferable to use an updated eligibility list as of the date of the proposed cutoff period for eligibility. The parties and the agent review the list for inaccuracies and raise any eligibility issues during the meeting. If the parties are unable to resolve the eligibility issues, follow the guidelines described in [CHM 28.11](#) and [28.12](#). If the election agreement meeting is held onsite and the parties agree to the list, the parties initial the list signifying that it is the official eligibility list. The agent takes custody of the list and it is the official list used during the election. An exception is when there are multiple polls and separate voting lists of voters assigned to each polling site are prepared ([CHM 28.21.1](#)).

If an updated list is not available at the election agreement meeting, the activity provides an updated list to all parties immediately following the election agreement meeting or teleconference, but in no event later than the pre-election conference. Prior to the election, the agent has the parties check and approve the list promptly.

28.18.3.5

Impact of the parties agreement on the eligibility list on future eligibility issues: If parties agree on inclusions and exclusions, and the Regional Director approves an election agreement, those inclusions and exclusions are binding unless:

- a. If ineligible - stay ineligible unless:
 - (i) changed circumstances, see *Federal Trade Commission (FTC I)*, 15 FLRA 247 (1984) (the parties can show that the duties and functions of established positions or job classifications covered in such agreements have undergone meaningful changes after the unit was certified), or
 - (ii) positions were eligible in the first instance and constitute a residual unit. See *Federal Trade Commission (FTC II)*, 35 FLRA 576 (1990).

- b. If eligible - stay eligible unless:
 - (i) changed circumstances, or
 - (ii) position was ineligible in the first instance under 7112(b)(1) thru (7) statutory exclusions. See *U.S. Department of the Army, U.S. Army Law Enforcement Command Pacific, Fort Shafter, Hawaii*, 53 FLRA 1602 (1998) (the parties improperly agreed to include positions that were not in conformance with the Statute and were subject to statutory exclusions).

If parties agreed under 15% rule to disagree and allow the vote, and if not resolved as a challenge before tally or resolved as a determinative challenge after tally - either party can file a petition to clarify a particular position covered by the 15% agreement.

28.18.3.6

Contents of eligibility list: A typical voting list is divided into two parts: one part lists the names of all employees who are eligible to vote; the second part lists all employees who are not eligible to vote. In addition to the employee's name, other identifying information includes the employee's position, title and grade, and the activity code or shop number where the employee works. This information assists the observers in identifying anyone not known to them. Identifying information is particularly important if two voters have the same name.

If there are professional employees voting with nonprofessional employees, the list is annotated to reflect the professional employees.

28.18.3.7 Updating the list before the election: The agent reminds the activity in the letter transmitting the approved Election Agreement that the activity is required to update the eligibility list prior to the manual election or before the mail-out of the ballots. This can be done several ways. Guidance is found at [CHM 35.2 - 35.6](#).

28.19 Considerations in deciding the type of election: The Authority's 1981 policy states that manual elections should, "to the extent possible," be held in multi-union elections unless the parties agree to a mail ballot election approved by the Regional Director. Manual ballot elections are encouraged in all elections, regardless of the number of labor organizations on the ballot (see [CHM 28.8](#)). The 1996 revisions to the Representation regulations give Regional Directors the discretion in § 2422.16(b) to decide the method of elections. Regional Directors consider the following in deciding whether to conduct a mail or manual ballot election:

- a. location and size of the voting unit; a mail ballot election is used if most of the employees in the unit are widely dispersed or whose work stations are in isolated or remote locations;
- b. significance of the election to the community;
- c. availability of regional resources; and
- d. other factors, such as temporary addresses, summer vacations, etc.

See also Army and Air Force Exchange Service, Dallas, Texas, 55 FLRA 1239 (1999).

28.20 Manual ballot procedures:

28.20.1 Date of manual ballot election: The date selected is one that balances the desires of the parties, operational considerations, facilitating employee participation, and a prompt the election. Avoid dates near holidays or heavy vacation schedules.

An election is held as soon as possible, but the region ensures there is ample time to prepare the materials, obtain an updated eligibility list and have the notice of election posted. The notice of election is posted at least three working days prior to the date of the election (see [CHM 33](#)).

28.20.2 Date of election following Decision and Order and Direction of Election: After issuing a Decision and Order and Direction of Election, absent a stay,

the agent, on behalf of the Regional Director, meets with the parties, and schedules and conducts the election following procedures outlined below. **Regions are not authorized to impound ballots.** See § 2422.31(f) that states “neither filing nor granting an application for review shall stay any action ordered by the Regional Director unless specifically ordered by the Authority.” See also [CHM 28.29](#) for processing elections during the period for filing an application for review of the Regional Director’s decision and potential Authority action.

NOTE: If possible, the region will provide for a potential runoff election in the original Election Agreement. Such provisions include the date, time and place of the election. See [CHM 48.1.6](#).

28.20.3 Selection of hours: The hours of the election depend on the circumstances of each case. The agent and the parties are responsible for scheduling every polling session to guarantee the time of day and length of time is adequate for all voters to cast their votes on official time. It is essential that all eligible employees be afforded sufficient opportunity to vote. The polling hours are based on the total number of employees eligible to vote and the nature of the operations of the activity involved. Thus, where the operations are such as to require that a certain number of employees be on the job at any given time or that certain tasks be completed before an employee can leave to vote, the duration of the voting period is adjusted accordingly. As a general rule, about two hundred (200) employees can vote per hour per polling place, assuming a continuous flow using one checking table and four booths.

28.20.3.1 Multiple voting periods: Where the activity operates one or more shifts, the number of voting periods are established as follows:

- a. 1-shift operation -- one voting period, usually at the beginning of the shift;
- b. 2-shift operation -- one voting period overlapping the end of the first shift and the beginning of the second shift; or
- c. 3-shift operation -- one voting period overlapping the third and first shifts and a second voting period overlapping the first and second shifts.

Any other combination of voting periods may be agreed upon if deemed desirable or necessary by the parties.

28.20.3.2 Scheduling election when polling hours cannot be set: In very rare circumstances, it may not be possible to set the polling hours in the Election Agreement. An example includes employees who work on floating barges dredging rivers and the Activity cannot predict when the barge will dock. These circumstances are detailed carefully in the Election Agreement so that the Agreement clearly reflects the circumstances as well as the parties' agreement and arrangement to vote the eligible employees.

28.21 Selection of place to hold election: The agent and the parties select a polling place that is: a) within easy access to the employees (see [CHM 28.9.3](#)); b) is spatially and visually separated from the scene of any other activity during the voting period; and c) has adequate space for all equipment and all personnel. A convenient location facilitates greater participation in the election. An office, conference room, shipping room etc., are examples of appropriate places. Often, a polling site has two doors, one to use for an entrance and one to use as an exit. This arrangement minimizes potential objectionable conduct by voters (see also [CHM 38.5](#)). If possible, elections are not scheduled outdoors.

The location of the polling place is also based on such factors as freedom from noises and interference due to nearby operating machinery, heavy traffic of people or equipment, etc. and enough space to accommodate a steady flow of voters.

28.21.1 Multiple polling places: In large installations, involving several thousand employees and/or where the employees are widely dispersed, multiple polling places are required. It is important, however, that a separate voting list be prepared, alphabetically, for each polling place in order to preclude the possibility of multiple voting. If the activity is unable to divide the eligibility list or limit the accessibility of the polling sites to the voters, the agent includes arrangements in the Election Agreement for ensuring that multiple voting does not occur. One alternative is to provide the voters with voting cards prior to the election. The Agreement will reflect that the activity will ensure the cards are distributed and that to vote unchallenged, the voter hands in the card and show his/her identification.

The Notice of Election reflects the locations of all of the polling places and the parties' agreement as to the procedures for voting the employees. The Notice of Election also states that any employee who is unable to vote at the designated polling place or fails to receive special identification, etc., may vote at any other location by challenge.

28.22 Policy on voter identification: Procedures for identifying voters are included in the Election Agreement and the Notice of Election describes the voter identification procedures. As part of the Election Agreement Conference, the Agent raises the issue of voter identification with the parties. The Regional Director has the discretion initially to determine whether identification is necessary under the circumstances, considering such factors as the size of the election, the number of voting locations, whether roving polls are used, the parties' interests, etc.

- a. If the Regional Director and the parties agree that voters are not required to show identification, the agreement reflects that identification is not required in order to vote. This does not preclude an observer from challenging a voter s/he believes is not eligible to vote. The voting list includes identifying information such as the employee's position title and grade, the activity code or shop number where the employee works ([CHM 28.18.3.5](#)). This information will assist the observers in identifying anyone who they do not know. This is particularly important if there are two voters with the same name.
- b. If the parties agree that employees show identification in order to vote, the agreement defines the acceptable identification. The agreement also reflects that if a voter does not bring identification to the polling site, the observers may require the voter to get the identification. Additionally, the agreement may state that the voter may be allowed to vote as long as one of the observer's knows the voter by name and the other observers do not challenge the voter's eligibility.
- c. If the parties agree that some form of identification is required in a multiple polling site election, the Election Agreement includes identification procedures that describe the types of identification that are acceptable to the observers.

Procedures for identifying voters are included on the Notice of Election.

- d. When the parties can not agree on procedures for identifying voters, voter identification will be required. The issue is treated as a procedural matter pursuant to § 2422.16(b) and the Regional Director issues a Direction of Election ([CHM 28.11](#) and [28.12](#)). For voting procedures, see [CHM 40.5](#).

28.23 Mail ballot elections: Where the parties agree upon an all mail ballot election, the details are set forth in an Appendix to the Election Agreement. Item #10 of FLRA Form 33 and Item #8 of FLRA Form 34 state, "See Appendix attached to and made a part of this" The Appendix:

- a. provides:
 - (i) the date of mailing of the ballots and accompanying material to the employees;
 - (ii) the date by which the ballots must be received in order to be counted;
 - (iii) the date and place of the count of the mail ballots; and
 - (iv) procedures when an eligible employee fails to receive a ballot.

Generally, a period of about three to four weeks is allowed for the forwarding and return of the mail ballots.

- b. includes the return mail address for the mail ballots. The address is usually the region's office address or a post office box that the region rents for mail ballot elections;
- c. describes the activity's responsibility to prepare mailing labels for eligible voters at their home addresses and provide them to the Regional Office by a date certain; and
- d. includes any other details which are pertinent to the circumstances of the particular mail ballot election.

See [Figure 28.23](#) for a sample Mail Ballot Appendix.

28.23.1 Eligibility list: The eligibility list for use in a mail ballot election is usually prepared alphabetically, unless there are other unique organizational concerns that warrant organizing the list another way. It contains the same information as discussed in [CHM 28.18.3](#). Where a dispute arises regarding the eligibility of any employee(s) (the participating labor organization(s) contending that the employee(s) are eligible and the activity asserting a contrary position) the activity includes the disputed name(s) on the list in accordance with the parties agreement (see [CHM 28.11.3.2](#)). The list is due in the Regional Office by a date established in the Election Agreement. The

Election Agreement also sets forth the activity's duty to furnish the region by a date certain, the names and home addresses of all eligible employees on mailing labels. **If an activity refuses to provide the employees' mailing addresses, contact the Office of the General Counsel immediately. Provide the name and telephone number of the activity representative who made the decision.**

NOTE: The region may not give a copy of the employees' home addresses to the union under any circumstances. Questions are referred to the Office of the General Counsel.

28.23.2 Eligibility statement and signature: An eligibility statement and space for the voter's signature appear on the outer envelope in which the mail ballot is returned. This envelope includes the following statement of voting eligibility on the left side of the return envelope:

"I believe I am an eligible voter in this election. I personally voted the within ballot."

(Signature of Voter)

(Print name)

The mail ballot is void if the signature of the voter does not appear on the return envelope when received. This requirement is included in the Appendix to the Election Agreement. See [Figure 28.23](#).

28.23.3 Use of key numbers: In mail ballot elections involving a substantial number of employees, the use of key numbers as a means of facilitating identification of the voters is encouraged. This procedure involves:

- a. Each name on the eligibility list is numbered in sequence, this number being placed immediately adjacent to the name on the list;
- b. The number assigned to each employee is entered immediately above the typed statement of voting eligibility on the return envelope being forwarded to that employee; and
- c. When checking the returned mail ballots against the eligibility list, the signature and number appearing on the outer envelope is compared with the name and number on the list.

28.23.4 Material accompanying the mail ballot: The following items accompany the mail ballot when forwarded to the voter*s residence:

- a. Notice of Election and Instructions To Eligible Employees Voting By United States Mail, [FLRA Document 1013](#);
- b. Copy of the Notice of Mail Ballot Election, [FLRA Forms 125B](#) , 210B (3 blank panels) or [36B](#) (consolidation election only) or Notice of Election [[FLRA Form 125A](#), 210A(3 blank panels) or [36A](#) in mixed mail/manual elections] or a facsimile thereof;
- c. Envelope marked "Secret Ballot" (FLRA Form 1280); and
- d. Self-addressed business reply envelope that is signed by the voter and used to return the ballot in the secret ballot envelope (FLRA Form number by region).

The envelope used to mail the election materials to eligible voters is clearly marked with instructions to open upon receipt.

28.23.5 Alerting regional staff: To ensure proper handling and safeguarding of the returned mail ballots, the agent alerts the regional staff about the election when mail ballots are sent out, placing particular emphasis on the fact that such mail is not opened.

28.24 Mixed manual and mail ballot election: An election may be conducted under the terms of an election agreement in which a major portion of the employees vote manually; i.e., in person, and the remainder by mail ballot. The mail ballot procedure in such instances is limited to those eligible employees who will not be able to vote manually because they are absent on official business on the day of the election, or are located in remote sites ([CHM 28.19](#) and [43.7](#)). Mail ballots are **not** sent to any eligible employee for any other reason such as illness, vacation or furlough that may preclude the employee from being able to vote on the day of the election.

In the event that the parties agree to use mail ballots in conjunction with a manually conducted election, the mail ballot procedure is set forth in an Appendix to the agreement, as discussed in [CHM 28.23](#). The last day for receipt of the mail ballots is generally the day before or the day of the manual election so both groups of ballots can be counted at the same time. Under no circumstances are the mail ballots counted separately from the manually cast ballots. **Exceptions are cleared with the Office of the General Counsel.** In all instances, the mail ballot is identical in all respects with the

ballot used in the manual portion of the mixed election (assuming both groups of employees are included in the same voting unit - see [CHM 34](#) for ballot preparation).

NOTE: The Notice of Election used for a mixed mail/manual ballot election is [FLRA Form 125A](#) or [FLRA Form 210A](#) (3 blank panels). The ballots used are the same.

- 28.25 Absentee ballots:** Absentee ballots are used when the parties anticipate that employees will be away from the activity on official business on the day of the manual ballot election (TDY), but are unable to predict the date of their departure or return. As a result, a mail ballot procedure is impractical. Employees who are absent for any other reason including illness, vacation, furlough (see [CHM 28.18.3.2](#)), are not eligible for the absentee ballot procedure.

The absentee ballot procedure is handled by representatives of the parties designated at the time of the Election Agreement, whose names are included in the Agreement as points of contact. An Appendix to Item #10 is prepared similar to an Appendix describing the Mail Ballot Procedure. The Appendix includes a description of the employees who are eligible to receive an absentee ballot, procedures for obtaining an absentee ballot, and instructions to the activity and labor organization(s) for conducting an absentee ballot. See [Figure 28.25](#) for a sample Appendix that outlines the procedures for handling absentee ballots. Absentee ballots are considered challenged ballots to ensure that employees who receive absentee ballots do not also vote in the manual ballot election ([CHM 47.7.3](#)).

During the election agreement meeting the agent:

- a. explains the purpose of the Absentee Ballot procedure to the parties;
- b. obtains information on the number of employees who could be eligible for the procedure; and
- c. offers the procedure to the parties for voting eligible employees.

The use of absentee balloting is required when there are a significant number of employees on “TDY” who will be disenfranchised from the election. The procedure is discretionary only if the region agrees that the number of employees who may be on “TDY” is so insignificant that the absentee ballot procedure is impractical. If the parties decline the Absentee Ballot procedure in these circumstances, the Election Agreement reflects that

the parties do not wish to use the procedure and waive their right to file objections on this matter.

Unusual elections may provide for a manual, mail and absentee ballot procedure. As in Mail Ballot Procedures, information about Absentee Balloting is included in the Notice of Election.

- 28.26 Custody of ballots between voting sessions:** The FLRA agent assigned to conduct the election always maintains control of the ballots, the eligibility list and the ballot box between voting sessions. This information is recorded in Item #12 of FLRA Form 33 and Item #10 of FLRA Form # 34.
- 28.27 Tally of ballots:** In manual ballot elections, the count of the ballots usually occurs immediately after the polls are closed; or in a mail ballot election, the day after the ballots are due to be returned or on the day the ballots are due. Absentee ballots are counted with other ballots. (See also [CHM 28.24](#)). The Election Agreement includes the time and place of the count of the ballots in Item # 13 (FLRA Form 33) and Item # 11 (FLRA Form 34). [CHM 47](#) discusses procedures for tallying ballots and [CHM 47.16](#) discusses completing the Certification of Tally.
- 28.28 Service of the tally:** Section 2422.25(b) requires the tally to be served in accordance with the Election Agreement or Direction of Election. Since objections must be received within five (5) days after the tally has been served [§ 2422.26(a)], the regions are responsible for serving the tally consistent with the Election Agreement or Direction of Election. Item #15 (FLRA Form 33) and Item #13 (FLRA Form 34) require the parties to state how the tally will be served. The region honors each parties' request for service of the tally.
- 28.29 Processing elections during appeal period or while appeal is pending:** After issuing a Decision and Order and Direction of Election, absent a stay, the agent on behalf of the Regional Director, meets with the parties, and schedules and conducts the election following procedures outlined below.
- 28.29.1 Authority action after an application for review is filed:** When an application for review is filed, the party seeking review may request the Authority to stay the election until such time as it rules on the application. The Authority may deny a stay, grant the stay (but has not yet done so), or grant the Regional Director discretion to stay the election on his/her own initiative. In cases where discretion is granted, the Authority has ordered the region, in the event an election is conducted, to impound the ballots. See [CHM 55.2](#) for standards that the Authority has adopted for deciding whether to stay an election. *Department of the Army, U.S. Army Aviation Missile*

Command (AMCOM I), Redstone Arsenal, Alabama, 55 FLRA 640 at 644 (1999). See [CHM 55.2.1](#) for procedures for impounding ballots.

If the Authority grants the Regional Director discretion to conduct the election, contact the OGC. [CHM 58.3.12](#).

28.29.2 If the Authority denies a request for a stay:

- a) conducts the election,
- b) counts the ballots,
- c) issues and serves the tally of ballots,
- d) investigates any determinative challenged ballots or timely objections to preserve the evidence,
- e) contacts the Office of the General Counsel prior to issuing the Decision and Order,
- f) if appropriate, issues and serves the tally of ballots; but
- g) delays issuing the certification until such time as the Authority rules on any pending application for review.

See also [CHM 55.1.2](#) and [55.1.3](#) - *policy considerations*.

28.29.3 Regional Directors are not authorized to impound ballots on their own initiative: Section 2422.31(f) states “neither filing nor granting an application for review shall stay any action ordered by the Regional Director unless specifically ordered by the Authority.” If no stay is requested, the region:

- a) conducts the election,
- b) counts the ballots,
- c) issues and serves the tally of ballots,
- d) investigates any determinative challenged ballots or timely objections to preserve the evidence; and
- e) contacts the Office of the General Counsel prior to issuing the Decision and Order if one is required.

If there are no determinative challenged ballots or objections, the case is held in abeyance. Regional Directors may not issue the certification while an appeal is pending since issuing a certification constitutes a final action by the Authority.

28.30 Waiver of right to file an application for review: The region informs the parties during the election agreement meeting that, as part of the Election Agreement, they may waive their right to file an application for review with the Authority of the Regional Director’s Decision and Order that may issue on objections and/or determinative challenged ballots.

- 28.31 Side agreements:** Parties may enter into a separate side agreement setting out the ground rules regarding various aspects of pre-election activities, such as campaigning, distribution of election materials, etc. **Under no circumstances shall such agreement be made a part of the Election Agreement or Direction of Election by incorporation by reference, attachment, or otherwise.** The Authority does not police such agreements. The regions, however, investigate any conduct constituting an objection that allegedly improperly affected the conduct or the results of the election, regardless of whether it is included in the party's side agreement. *Veterans Administration Hospital, Jamaica Plain, Massachusetts*, Case No. 31-3178, 1 Rulings on Requests for Review 85 (1970), Report on Ruling Number 20, 1 A/SLMR 615 (1970). Also discussed in [CHM 46.1.2](#).
- 28.32 Election Agreement obtained immediately preceding or during a hearing:** Election Agreements may be obtained anytime after the notice of hearing issues and during the hearing. Follow the guidance described in this section for negotiating the details of the agreement. For procedural guidance on processing election agreements obtained immediately prior to or during a hearing, see [HOG 31](#). Approval of the Election Agreement constitutes withdrawal of the Notice of Hearing ([CHM 29.10](#)).
- 28.33 Election agreements obtained after the close of a hearing:** When an election agreement is reached after a hearing is closed, the Regional Director will review the Election Agreement to ensure that any unit claimed to be appropriate meets the appropriate unit criteria as set forth in 5 U.S.C. 7112(a)(1). Approval of the Election Agreement constitutes withdrawal of the Notice of Hearing ([CHM 31.7](#)).
- 28.34 Interventions, cross-petitions and challenges filed at the election agreement meeting or prior to the Regional Director's approval of the Agreement or Direction of Election:** These are threshold issues that are considered by the Regional Director before s/he can approve the Election Agreement or issue a Direction of Election.
- 28.34.1 Interventions or cross-petitions:** 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 if the intervention request or cross-petition cannot be decided quickly, the meeting is adjourned.

The procedures outlined in [CHM 17](#) 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.

There are three possible scenarios when interventions or cross-petitions are filed at the election agreement meeting:

- a. The agent checks the sufficiency of the intervention request or cross-petition and contacts the Regional Director for approval to approve the intervention or cross-petition. In this situation, the intervenor or cross-petitioner is permitted to participate in the election agreement meeting as a party.
- b. The agent checks the sufficiency of the intervention request or cross-petition and determines that the intervention or cross-petition is not supported by adequate evidence. The agent contacts the Regional Director to discuss the evidence. The Regional Director directs the agent to refer the intervention request or cross-petition to him/her for processing and disposition. In this scenario, neither the party requesting intervention nor the cross-petitioner may participate in the election agreement conference.
- c. The agent checks the sufficiency of the intervention request or cross-petition and cannot make a recommendation to the Regional Director because the request or petition may raise issues that cannot be resolved immediately. The Regional Director will instruct the agent to postpone the election agreement meeting until s/he decides the merits of the request to intervene or cross-petition. If the Regional Director decides to grant intervenor or cross-petitioner status, the election agreement meeting is reconvened. If the Regional Director decides to deny the intervenor or cross-petitioner status, s/he may issue a Decision and Order denying the intervention or dismissing the cross-petition at the same time s/he approves the Election Agreement or issues the Direction of Election.

28.34.2 Validity challenges: Challenges to the validity of the showing of interest raise a threshold issue that is resolved before the Regional Director approves an election agreement or issues a Direction of Election. If the challenge is made during the election agreement meeting, the meeting is adjourned so that the challenge can be investigated and decided. All evidence is submitted at the time the challenge is filed. A determination that the challenge does not raise a valid issue is handled administratively and will not delay further proceedings. A decision that a valid challenge has been raised

to the petitioner's showing of interest may result in the dismissal of the petition (see [CHM 18.19.16](#)). In such cases, absent withdrawal, the Regional Director issues a Decision and Order dismissing the petition. A Decision and Order finding that the challenge to the intervenor's showing of interest is valid will not stay processing the case unless specifically ordered by the Authority.

28.34.3 Status challenges: A status challenge raises a threshold issue that the Regional Director investigates before approving an election agreement or issuing a Direction of Election. If a challenge to the status of a labor organization is filed pursuant to section 7103(a)(4) or pursuant to section 7111(f)(1) of the Statute alleging that the labor organization is subject to corrupt influences or influences opposed to democratic principles, the region investigates the challenge prior to executing the election agreement. See [CHM 19](#) for investigating challenges filed pursuant section 7103(a)(4). See [CHM 20.1.8](#) and [CHM 23.9.3](#) for investigating challenges based on 7111(f)(1). Note that a status challenge filed pursuant to section 7111(f)(1) may block the case if the challenging party shows that a complaint has been filed properly with a third party. See [CHM 23.9.3.3](#).

Any status challenge made prior to or during the election agreement meeting is treated as an "other than procedural matter" pursuant to § 2422.16(c). Pursuant to § 2422.16(c) the Regional Director is required to provide the parties an opportunity for a hearing on other than procedural matters ([CHM 28.11.2.2](#)). If there are no questions regarding unit appropriateness, the Regional Director may issue a Direction of Election without a Decision and Order ([CHM 19.6](#)).

By issuing the Direction of Election, the Regional Director decides that the status issue does not interfere with conducting the election. The Direction of Election is issued without prejudice to a party's right to file a challenge to the eligibility of any person participating in the election and/or objections to the election. If objections concerning the status of the labor organization are filed after the election, the Regional Director has a record that forms the basis of the objection's investigation ([CHM 50](#)).

Neither a Decision and Order: a) denying a status challenge in the case of a petitioning or intervening labor organization; or b) granting the challenge in the case of the intervening labor organization; nor the filing or granting of an application for review will stay processing the petition unless specifically ordered by the Authority. The regions contact the Office of the General Counsel whenever questions arise concerning deferring a petition pending an appeal of a decision based on a challenge to the status of a labor organization. See also [CHM 55](#).

- 28.35 Forwarding the Election Agreement to the Regional Director for approval:** The agent prepares a recommendation to the Regional Director and submits it with the parties' Election Agreement for approval. These recommendations may be in the form of checklists or a report, as directed by the Regional Director. The "recommendation" describes the matters about which the parties agree and/or dispute. The agent references the agreement, if any, concerning the appropriateness of the unit and any agreement concerning the eligibility of particular classifications of employees. If the parties disagree with the appropriateness of the unit, the agent makes a recommendation as described in [CHM 26.2 and 26.3](#). If the parties disagree as to other matters, the report provides the basis for the disagreement and analyzes the issues and appropriate requirements in § 2422.16.
- 28.35.1 Action by Regional Director:** If the Regional Director approves the Election Agreement, the parties are notified in writing and a copy of the Election Agreement is attached. If the Regional Director does not approve the Election Agreement, s/he issues a notice of hearing ([CHM 28.11.2 and 27](#)) or takes other appropriate action. [Figure 28.35](#) is a sample letter in which the Regional Director disapproves an election agreement.
- 28.35.2 Action upon approval of Agreement and/or Issuance of Direction of Election:** A copy of the Election Agreement is forwarded to the parties with a cover letter confirming the details of the election. The letter is signed by the agent assigned to conduct the election and includes a summary of matters discussed at the conference and the following information (see also [CHM 32 through 37](#)):
- a. how the election will be conducted:
 - (i) if the region conducts the election, the letter states the information for which the region and the parties are responsible;
 - (ii) if the region supervises the election, the letter provides specific details concerning the responsibilities of the parties;
 - b. notice of election: requirements to reproduce and post, period for posting;
 - c. rules for obtaining observers [cite § 2422.23(h)];
 - d. requirement to update eligibility list, how to do it and a reminder not to post the eligibility list;

- e. pre-election conference: time, date and place; what will be discussed and attendance requirements;
- f. any other specific arrangements that were not provided in the election agreement (such as arrangements for the count, transportation to multiple site polls); and
- g. reminder about campaign rules.

28.35.3 Regional Director may revoke approval of Election Agreement: The Regional Director retains authority to revoke his/her approval, for cause, at any time before the election. Examples that may provide a basis for revoking approval include: 1) a reorganization occurs that appears to affect the unit or the eligibility list; 2) the activity fails to follow through with certain election procedures that may cause serious disruption or affect the conduct of the election. See *U.S. Army Electronics Command, Procurement and Production Directorate, Fort Monmouth, Red Bank, New Jersey*, 1 Rulings on Requests for Review 166 (1971), Report on Ruling Number 42, 1 A/SLMR 627 (1971).

28.36 Pre-election rulings: The Regional Director rules on all requests or motions of the parties made subsequent to approval of the Election Agreement. His/her rulings with respect to the Election Agreement are final, subject to the right of the parties to file appropriate objections to the election.

28.37 Withdrawal from election agreements:

28.37.1 Effect on timeliness of refiling:

28.37.1.1 Withdrawal by petitioner: A petitioner who submits a withdrawal request for a petition seeking an election that is received by the Regional Director after the notice of hearing issues or after approval of an election agreement, whichever occurs first, will be barred from filing another petition seeking an election for the same unit or any subdivision of the unit for six (6) months from the date of the approval of the withdrawal by the Regional Director.[§ 2422.14(b)]. [CHM 11.9.2](#)

28.37.1.2 Withdrawal by incumbent: When an election is not held because the incumbent disclaims any representation interest in a unit, a petition by the incumbent seeking an election involving the same unit or a subdivision of the same unit will not be considered timely if filed within six (6) months of cancellation of the election.[§ 2422.14(c)]. [CHM 11.9.3](#)

28.37.2 Effect on processing:

28.37.2.1 Intervenor withdrawal from ballot: When two or more labor organizations are included as choices in an election, an intervening labor organization may, prior to the approval of an election agreement or before the direction of an election, file a written request with the Regional Director to remove its name from the ballot. If the request is not received prior to the approval of an election agreement or before the direction of an election, unless the parties and the Regional Director agree otherwise, the intervening labor organization will remain on the ballot. The Regional Director's decision on the request is final and not subject to the filing of an application for review with the Authority. [§ 2422.23(e)]

28.37.2.2 Incumbent withdrawal from ballot in an election to decertify an incumbent representative: When there is no intervening labor organization, an election to decertify an incumbent exclusive representative will not be held if the incumbent provides the Regional Director with a written disclaimer of any representation interest in the unit.

When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Regional Director. [§ 2422.23(f)]

28.37.2.3 Petitioner withdraws from ballot in an election: When there is no intervening labor organization, an election will not be held if the petitioner provides the Regional Director with a written request to withdraw the petition.

When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Regional Director. [§ 2422.23(g)]