

**HEARINGS
CHM 29 through 31**

- 29. NOTICE OF REPRESENTATION HEARING:** As required in § 2422.30(b) and discussed in [CHM 27.5](#), the Regional Director will issue a notice of representation hearing (notice of hearing) to inquire into any matter about which a material issue of fact exists, or any time there is reasonable cause to believe a question exists regarding unit appropriateness.
- a. **Purpose of notice of representation hearing:** The Regional Director may issue a Notice of Representation Hearing involving any issues raised in the petition [§ 2422.17(a)].
 - b. **Contents:** The regulations provide that the notice of hearing will advise affected parties about the hearing. The Regional Director will also notify affected parties of the issues raised in the petition and establish a date for the prehearing conference [§ 2422.17(b)].
 - i. [FLRA Form 46](#): FLRA Form 46 is the Notice of Representation Hearing and is used when the Regional Director is prepared to issue all accompanying material described in CHM 29.2.2 and 29.3 with the notice. This form, or when necessary, a modified version of it includes:
 - a. the name of the agency or activity, petitioner and any intervenor.
 - b. the date, location and time of the hearing. *There is no minimum notice requirement for setting a date for the hearing, but a date is set when the notice issues. The agent obtains the positions of the parties regarding the date and location of the hearing and prehearing conference. If the parties agree on a reasonably prompt date, the Regional Director considers their recommendations. However, the fact that the parties agree on the date of the hearing is not controlling.*

and
 - c. a statement of the authority and jurisdiction under which the hearing is held.

If the information outlined in CHM 29.3 is not available when the Notice of Hearing is issued, the region issues FLRA Form 46A, which is a different version of the general Notice of Hearing. [FLRA Form 46A](#) notifies the parties

that documents containing the information required by the regulations and the Manual will be sent by the region to the parties in sufficient time to allow the parties to prepare adequately for the hearing.

NOTE: in either case, materials that are described in CHM 29.3 are “attachments” to the Notice of Hearing, either FLRA Form 46 or 46A, and are attached as part of the formal exhibits for the hearing record. See HOG 4.1.

- c. **Materials to accompany notice of hearing:** Attached to the notice of hearing are:
- i. A copy of the petition and any amended petition. In cases requesting a clarification of, or an amendment to, a recognition or certification in effect, or any other matter relating to representation, a copy of all attachments to the petition in support of the clarification, amendment, good faith doubt, successorship, etc., are attached to the petition.
 - ii. A letter signed by the Regional Director to:
 - a. establish the time, date and location of the prehearing conference;
 - b. describe known issues raised by the petition;
 - c. address unusual prehearing and hearing procedures and evidentiary requirements if not otherwise covered in the Statement of Standard Procedures In Representation Proceedings Before Hearing Officers, [FLRA Doc. 1014](#);
 - d. request the parties to furnish the Hearing Officer and each other with a list of prospective witnesses by a date certain, normally not less than five (5) days prior to the start of the hearing;
 - e. include a copy of any stipulation reflecting the parties' agreement on any matter on which the parties reached agreement. The substance of the matter(s) agreed to by the parties is described with particularity because the statement is used as:
 - (i) a basis for the Hearing Officer's determination that it is unnecessary to take evidence on the matter(s);
 - (ii) a formal exhibit by the Regional Director; and

- (iii) a basis for acceptance of such agreement by the Regional Director in issuing its decision in the matter.
- f. include a statement that the Regional Director's determination to issue a notice of hearing is not appealable to the Authority [§ 2422.17(d)].

See [Figure 29.3](#) for a sample letter.

- iii. An outline or checklist of the information necessary 1) to address adequately the issues raised by the petition and 2) to ensure a full and complete record (see substantive and employee categories in *HOG* for assistance in preparing this outline).
 - iv. [FLRA Doc. 1014](#), Statement of Standard Procedures In Representation Proceedings Before Hearing Officers.
- d. **Assigning the Hearing Officer:** Assignments are made with a view towards the most efficient and expeditious handling of the case. If the Hearing Officer is not the same agent who investigated the petition initially, the Regional Director and the agent assigned to investigate the case inform the Hearing Officer about the case as discussed in [HOG 3](#).
- e. **Hearing logistics:**
- i. **Obtaining a court reporter:** An official reporter makes the only official transcript of representation hearings. It is the responsibility of the Regional Office to obtain a court reporter as soon as possible and according to procedures established by the Administrative Services Division. The reporting service is notified promptly when there is a change in the date, time or place of the hearing, or where the hearing is canceled by withdrawal of the notice of hearing. Whenever possible, initial notification of any change is given to the reporting service by telephone at least twenty-four (24) hours before the hearing is scheduled to open and confirmed by fax.
 - ii. **Arranging for the hearing room:** Representation hearings are usually scheduled on the activity's premises. The hearing is a nonadversarial proceeding and many of the witnesses can be pulled from their work site on notice. If the region asks the activity to schedule a hearing room, the region checks its acceptability with the other parties before issuing the notice of hearing. Locations other than onsite are also acceptable.

- 29.6 Serving the notice of hearing:** The Regional Director serves a copy of the Notice, [FLRA Form 46](#), together with all accompanying material on all parties in accordance with § 2429.12.
- 29.7 Scheduling and conducting hearings on § 2422.16(c) matters unrelated to unit appropriateness:** Where there are no questions regarding unit appropriateness, but the parties are unable to agree on an election agreement on other than procedural matters, 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. There is no appeal of a Direction of Election and the election is conducted without delay. The Direction of Election includes a provision 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 or objections to the election or both [see § 2422.16(d) and [CHM 28.12.4](#)].
- 29.7.1 Issuing the Notice of Representation Hearing:** When there are no unit appropriateness questions, notices of hearing pursuant to § 2422.16(c) are issued only because the parties are unable to agree to the election details. The Regional Director is required to issue the notice pursuant to § 2422.30. **These notices are issued, and the hearing held, as soon as possible after the parties state their refusal to enter into an election agreement** on other than appropriate unit issues, or strictly procedural matters ([CHM 28.11.2.2](#)).
- 29.7.2 Issuing the Direction of Election:** Any Direction of Election issued following a hearing held pursuant to § 2422.16(c)(2) **is issued timely and consistent with the strategic plan goals** (see [CHM 28.12.3](#)).
- 29.8 Prehearing procedures:** Prehearing matters are discussed in detail in [HOG 17](#). General information is provided in this subsection. Prior to the opening of the hearing, the Regional Director retains authority to amend the notice of hearing by changing the date, place(s), or hour of the hearing; or by consolidating for hearing the instant case and any related case, whether or not a notice has been issued thus far on that case. Authority to withdraw the notice of hearing and, if appropriate, to dismiss the petition remains with the Regional Director unless s/he transfers the case to the Authority. The Regional Director may act in these respects on his/her own initiative or on motion or request by any party.
- 29.8.1 Amending the notice of hearing:** A notice of hearing may be amended at any time prior to the opening of the hearing. The purpose of amending the notice is to correct an error in the date, time, or place of hearing established

in the original notice, and not for the purpose of rescheduling a hearing. The word "Amended" is inserted in the title of the notice so as to read, "Amended Notice of Representation Hearing." If another amendment becomes necessary, the title reads, "Second Amended Notice of Hearing," etc. In addition, the following language is inserted in the blank space immediately below the title of the notice, namely, "Upon motion by the undersigned Regional Director, the notice of hearing dated (...) is amended to read as follows: . . ." The date, time and place of hearing is also restated, making the appropriate correction.

The same service requirements as discussed in [CHM 29.6](#) are applicable to an amended notice of hearing. However, the region is not required to attach the material that accompanied the original notice of hearing unless the information in the attachments is changed.

- iii. **Petition amended subsequent to notice of hearing:** If a petition is amended following issuance of the notice of hearing but before the opening of the hearing, the Regional Director amends the notice accordingly, unless the nature of the amendment calls for some other action ([CHM 13.9](#), [13.10](#) and [13.11](#) and [HOG 25](#)).
- iv. **Order setting time or location of hearing:** Occasionally, the notice of hearing is issued without a time or location of the hearing. Once the logistics are confirmed, the Regional Director issues an Order Setting ... (*time or location, as appropriate*). Copies are served on all parties and the Court Reporting Service. See [Figure 29.8B](#).
- v. **Prehearing motions to postpone:** A motion for postponement of the hearing is filed with the Regional Director and a copy served on each of the other parties. The request is specific as to the reason(s) for the desired postponement, and sets forth the suggested date(s) for rescheduling the hearing. The moving party also ascertains in advance, and set forth in the request, the respective positions of the parties regarding the request (see [FLRA Document 1014](#)).

NOTE: It is the policy of the OGC that cases set for hearing are heard on the day set, and that postponements are granted only for good cause shown. See [HOG 17.2](#) for a complete discussion on prehearing motions to postpone and procedures for granting or denying them.

[FLRA Form 48](#) is an Order Rescheduling Hearing and [Figure 29.8C](#) is a sample Order Rescheduling Hearing after an indefinite postponement.

- 29.8.5 Consolidation of cases within a region:** Whenever it appears necessary to effectuate the purposes of the Statute, or to avoid unnecessary costs or delay, the Regional Director will consolidate cases for hearing within the region. For example, the Regional Director may consolidate cases where separate representation petitions involving the same activity have been filed in the same region. Regional Directors are required to consolidate cross-petitions. Cases are consolidated by issuing a [FLRA Form 45](#), Order Consolidating Cases.
- Cases may be consolidated at the same time the Regional Director issues a notice of hearing. This is accomplished through the issuance of an Order Consolidating Cases and Notice of Hearing ([Figure 29.8A](#)).
- 29.8.6 Transfer and consolidation of cases in different regions:** Whenever it appears necessary to effectuate the purposes of the Statute, or to avoid unnecessary costs or delay, the Regional Director may transfer a case to another region for hearing. The region transferring the case issues an Order Transferring the Case. When a transferred case is consolidated with another case pending in the region, a [FLRA Form 45](#), Order Consolidating Cases, is issued by the region receiving the case. [CHM 63.4](#).
- 29.8.7 Severance of cases:** At any time prior to the close of the hearing, the Regional Director, by issuance of an appropriate Order, may sever cases which were previously ordered consolidated.
- NOTE:** see [CHM 63](#) for a discussion of general policy considerations relating to service, transfer, consolidation and severance of cases between regions.
- 29.9 Prehearing conference:** The Hearing Officer is required to conduct a prehearing conference, either by meeting or teleconference [§ 2422.17(c)]. All parties are required to participate in the prehearing conference and be prepared to fully discuss, narrow, and resolve the issues set forth in the notification of the prehearing conference. See [HOG 8](#).
- 29.10 Withdrawal of notice of hearing:** A notice of hearing may be withdrawn by the Regional Director any time after the notice issues. A notice of hearing may be withdrawn for a variety of reasons.
- 29.10.1 Request to withdraw petition:** If there are no intervenors, and a petitioner files a request to withdraw a petition after the notice of hearing issues, the Regional Director issues a Withdrawal of Notice of Hearing and Approval of Request to Withdraw Petition, [FLRA Form 49](#). See [HOG 19](#) for processing

withdrawal requests submitted prior to the opening of the hearing, during the hearing or posthearing or both.

A petitioner who submits a withdrawal request for a petition seeking an election after a notice of hearing issues 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 the Regional Director approves the withdrawal [§ 2422.14(b)]. This provision is added to the approval of the withdrawal request. [CHM 11.9.2](#). **Note that this regulation applies only to petitions seeking an election.**

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)].

29.10.2 Withdrawal upon motion of Regional Director: The Regional Director retains authority to withdraw a notice of hearing on the Regional Director*s own motion at any time. Withdrawal of the notice of hearing may be due to a number of reasons, such as:

- a. Failure of the petitioner, after amending the petition, to submit an adequate showing of interest;
- b. Upon further review of the case, the Regional Director decides to withdraw the notice of hearing due to inadequate showing of interest, untimely filing of the petition, etc.;
- c. The case is being transferred to another region; or
- d. The parties enter into a stipulation approved by the Regional Director.

Where the Regional Director decides to withdraw a notice of hearing on the Regional Director*s own motion, the parties and the reporting service are served with a copy of a "Withdrawal of Notice of Hearing," as set forth in [Figure 29.10A](#).

- 29.10.3 Withdrawal prior to dismissal of petition:** The Regional Director follows the procedures outlined below when dismissing a petition.
- a. If the case has been consolidated with another case, issues an Order Severing Cases;
 - b. Issues a Withdrawal of Notice of Hearing;
 - c. Solicits withdrawal request as discussed in [CHM 27.4.6](#); and
 - d. Absent withdrawal, issues a Decision and Order as discussed in [CHM 53](#).
- 29.10.4 Approval of an election agreement:** The Regional Director's approval of an election agreement also constitutes a withdrawal of a notice of hearing (see FLRA Form 33 and [CHM 28.32](#) and [28.33](#)).
- 29.11 Notice of hearing on remand:** If, upon the filing of an application for review of the Regional Director's Decision and Order, the Authority directs that a hearing be held or reopened, a notice of hearing on remand is issued by the Regional Office as soon as possible. The notice of hearing on remand as set forth in [Figure 29.11](#) is specially prepared.