

- 55 REGIONAL ACTION SUBSEQUENT TO THE REGIONAL DIRECTOR'S DECISION AND ORDER:** Section 2422.31(f) provides that: "The Authority may rule on the issue(s) in an application for review in its order granting the application for review. Neither filing nor granting an application for review shall stay any action ordered by the Regional Director unless specifically ordered by the Authority."
- 55.1 Considerations when scheduling elections or taking other action during the sixty day appeal period:** As discussed in [CHM 53](#), the Regional Director's Decision and Order may result in a direction of election or a direction to open challenged ballots. Subsequent actions include issuing a revised tally of ballots, scheduling a rerun or runoff election, or issuing an appropriate certification, clarification, amendment or revocation.
- 55.1.1 Actions that constitute final actions by the Authority and are deferred:** Certifications, clarifications, amendments and revocations are issued by the Regional Director and constitute final actions by the Authority. As such, they cannot be issued until the case is finished. Exceptions may be allowed in unusual circumstances after obtaining clearance from the Office of the General Counsel. See, for example, [CHM 50.8.2](#).
- 55.1.2 Elections are not deferred:** Absent a stay by the Authority pursuant to § 2422.31(f), the region conducts all elections even though the case may be pending on appeal before the Authority. ([CHM 55.2](#) discusses stays and impounding ballots ordered by the Authority.) However, if the region believes that one of the following circumstances exists, warranting deferring the election, contact the Office of the General Counsel for clearance:
- a. An election requires the expenditure of substantial financial and human resources;
 - b. A unique legal issue was raised in the representation proceeding; or
 - c. The issue involves the denial of intervention. (see [CHM 17.16](#) and [58.4.2](#))
- 55.1.3 Processing elections:** 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 the procedures outlined below. **Regions are not authorized to impound ballots in accordance with § 2422.31(f) unless ordered by the Authority.**

This section states “neither filing nor granting an application for review shall stay any action ordered by the Regional Director unless specifically ordered by the Authority.”. 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.

In cases where the Regional Director issued a Decision and Order and Direction of Election that is appealed, the parties may either: 1) fail to request a stay when filing an appeal; or 2) request a stay which the Authority denies, grants, or gives the region the option to conduct or stay the election. If the region opts to conduct the election and has not been ordered to impound the ballots and there are no determinative challenged ballots or objections filed, the region: a) counts the ballots, b) issues and serves the tally of ballots, but c) delays issuing the certification until such time as the Authority rules on any pending application for review. See also [CHM 28.29](#).

55.2 Stays of Election and Procedures for Impounding Ballots: In an election case, after issuing a Decision and Order and Direction of Election, if an application for review is filed and the applicant requests a stay in the election, the Authority may stay the election, deny the stay or give the region the option of staying or proceeding with the election. In the latter option, the Authority has usually ordered the ballots impounded if the region decides to proceed with the election. See *Department of the Army, Headquarters, Fort Dix, Fort Dix, New Jersey*, 53 FLRA 287 (1997) (The election ordered by the Regional Director was held prior to the Authority's receipt of AFGE's application, mooted AFGE's request for a stay. The Authority stated that: “It is, of course, not possible, for the Authority to act on stay motions where the request is not filed prior to the act to be stayed.”)

In *Department of the Army, U.S. Army Aviation Missile Command (AMCOM I), Redstone Arsenal, Alabama*, 55 FLRA 640 at 644 (1999) the Authority established standards for evaluating requests for stays of Regional Director's decisions. The Authority stated that it would be guided by the standards used by appellate courts to evaluate requests to stay district court orders. The Authority cited the standards as set out in the D.C. Circuit's Rule 8(a)(1) as follows:

- a. The likelihood that the moving party will prevail on the merits;
- b. The prospect of irreparable injury to the moving party if relief is

withheld;

- c. The possibility of harm to other parties if relief is granted; and
- d. The public interest.

Whenever the Authority's gives a region the option of staying an election or conducting it, the Regional Director obtains advice from the OGC about whether to conduct or stay the election ([CHM 58.3.12](#)).

55.2.1 Procedures for impounding ballots:

If possible, when the Authority orders the ballots impounded, the procedures for impounding the ballots are described in detail in the Election Agreement or Direction of Election.

If a Regional Director is ordered to impound the ballots after the Election Agreement is approved, the Director will discuss with the parties how the ballots will be impounded. All impounded ballots will be placed in a large envelope or envelopes in the presence of the parties. The envelope/box is sealed and signed by all of the observers and transparent tape is placed over each of the signatures. The envelope/box is marked clearly to reflect the case number, date of election and polling place. The envelope/box is also labeled to reflect that it contains ballots and that the envelope may not be opened. If more than one envelope is being used, each envelope is marked in sequence; e.g., "Envelope 1 of 2" or "Envelope 2 of 2", etc. The envelope(s) is (are) stored in the office safe or other secure place that the parties agree upon and a photocopy of the envelope face, along with a memorandum of where the envelope(s) is (are) stored is placed in the case file. (See also [CHM 40.15](#).)

When the impounded ballot envelope is removed from the secured place, the region contacts representatives of the parties and affords them the opportunity to be present when the ballots are removed for counting.

55.2.2 Safeguarding impounded ballots: Authority agents may not remove impounded ballots from the safe or open the envelopes without express approval of the Regional Director.

In addition, the Regional Director gives written approval to the agent before any impounded ballots that have been counted are discarded or destroyed. This memorandum is placed in the case file.

Regional Action Subsequent to the RD's Decision and Order

The following procedures are established for safeguarding impounded ballots:

- a. Uncounted impounded ballots remain in a secure place until the Authority decides the related appeal or any blocking unfair labor practice case is decided and action ordered by the Authority is remedied.
- b. Counted impounded ballots are maintained for a year following issuance of the appropriate certification by the Regional Director.