

without delay when the parties agree on, and a Regional Director approves, an appropriate unit even though the parties are unable to agree on such matters as the eligibility of employees that do not affect the appropriateness of the unit. Any party would be permitted to file challenges to the eligibility of any person voting in the election and/or file objections to the election.

Section 2422.17—This section, pertaining to a notice of hearing, provides that parties must participate in a prehearing conference scheduled by the Hearing Officer and must be prepared to discuss, narrow and resolve the issues raised by the petition set forth in the notice of hearing. This section, in conjunction with section 2422.13, emphasizes the resolution of issues at the earliest stage possible during a proceeding.

Sections 2422.18–2422.20—These three sections set forth hearing procedures and rights of the parties at a hearing.

Section 2422.21—This section offers two options. Option 1 follows current regulations. Option 2 would authorize a Hearing Officer to make recommendations on the record on any issue. Other options exist, including limiting the type of recommendations that may be made to certain matters, such as credibility and eligibility issues. Following receipt of comments, consideration will be given to whether, if current regulations are changed, the authority of Hearing Officers to make recommendations should be more limited than that proposed in Option 2.

Section 2422.22—This section addresses objections to the conduct of the hearing.

Section 2422.23—This section clarifies and simplifies the procedure by which elections are conducted or supervised by a Regional Director. This section continues current practices with two exceptions: subsection (e) provides that when the parties agree, the Regional Director may allow an intervenor to remove its name from the ballot even if the request to withdraw is received after the approval of an election agreement or the direction of an election; subsection (f) adds that if an incumbent withdraws from a ballot to decertify the incumbent, any intervenor will be given time, as established by a Regional Director, to proffer a thirty percent (30%) showing of interest in the unit. Subsection (g) describes whether an election will be held when the petitioner requests withdrawal.

Sections 2422.24–2422.29—These six sections discuss challenged ballots, the tally of ballots, objections to the election, the processing of determinative

challenged ballots and objections to an election, and runoff and inconclusive elections. These sections make no substantive changes in current practices in these areas, except in one instance: subsection (a) of section 2422.26 provides that objections to an election must be filed and received by a Regional Director within 5 days after the tally of ballots has been furnished to the parties. Current regulations measure the timeliness of objections from the date of service of the objections, which encompasses the date mailed. This change allows certifications following elections to be issued more expeditiously.

Section 2422.30—This section clarifies in subsection (b), consistent with section 2422.16(c), that a Regional Director will issue a notice of hearing when there is either a material issue of fact or reasonable cause to believe a question exists regarding unit appropriateness. The section also clarifies in subsection (e) what constitutes “the record” in a representation proceeding. The section makes no substantive changes in the current practices in these areas. The section states that a Regional Director will resolve matters in dispute and issue a Decision and Order when appropriate but does not list all potential actions a Regional Director may take.

Section 2422.31—Subsection (c) includes two options for when the Authority will grant an application for review of a Regional Director's decision. Option 1 retains the current grounds for review with minor editorial changes. Option 2 specifies that, in addition to satisfying one or more of those grounds, a party seeking review must assert and establish that the Authority's decision will have a substantial impact on labor-management relations law unless the Authority determines, in its discretion, that extraordinary circumstances exist to grant review. Following receipt of comments, the Authority will adopt one of the options or a combination thereof.

Section 2422.32—This is a new section that states when certifications and revocations may be issued. The section allows a Regional Director to issue, as appropriate, revocations of recognitions or certifications, when an exclusive representative no longer represents an appropriate unit, such as when a disclaimer is filed by an incumbent or when there has been a substantial change in the character and scope of a unit. The issuance of revocations will enable parties and the Authority to better track the history of a bargaining unit and provide a definitive declaration of the representational status of the unit. The

section also clarifies that a revocation of a certification has no impact on any rights and obligations that may exist under the Statute.

Section 2422.33—This section clarifies that relief which was or could have been obtained in a representation proceeding may not be obtained in an unfair labor practice proceeding.

Section 2422.34—This new substantive rule sets out the obligations and rights of parties during the pendency of a representation petition.

Subsection (a) provides that during the pendency of any representation petition, parties must maintain existing recognitions and adhere to the terms and conditions of existing collective bargaining agreements. These aspects of the section reflect existing case law requirements. *E.g., U.S. Department of the Navy, Naval Air Engineering Center, Lakehurst, New Jersey*, 3 FLRA 568 (1980); *Department of Energy*, 2 FLRA 838 (1980). Subsection (a) also provides that, during such pendency, parties must fulfill all other representational and bargaining responsibilities. In part, this aspect of subsection (a) reflects existing requirements. *See, e.g., Department of the Interior, Bureau of Reclamation, Yuma Projects Office, Yuma Arizona*, 4 FLRC 486, 497 (1976) (during pendency of a representation petition, if an agency “must make changes in otherwise negotiable personnel policies and practices and matters affecting working conditions, then the agency must notify the incumbent union or unions of those proposed changes and, upon request, negotiate on those matters * * *”). However, subsection (a) would alter existing law by permitting changes after representational and collective bargaining responsibilities under the Statute are satisfied. Additionally, subsection (a) departs from existing law insofar as it would require parties to, among other things, bargain over and execute a term agreement during the pendency of certain petitions. *E.g., Immigration and Naturalization Service*, 16 FLRA 80, 87 (1984) (agency did not violate the Statute by refusing to bargain over changes in negotiated promotion plan during pendency of a question concerning representation because such bargaining “would necessarily have led to changes in conditions of employment * * * which the [r]espondent was required to maintain to the maximum extent possible”). Subsection (b) permits parties to take actions consistent with their position regarding the unit status of individual employees, subject to challenge and review. For example, an agency may refuse to process, under a negotiated grievance procedure, a