

the bar is to prevent an incumbent from totally avoiding the possible effect of a bar by withdrawing prior to an election. As a result, unlike a petitioner seeking an election, an incumbent may not avoid the effect of an election bar by filing a timely withdrawal. The titles to subsection (b) and (c) have been abbreviated.

Section 2422.15

One commenter noted that by locating the cooperation requirement as a subsection in a section addressing the duty to furnish information, the regulation suggested that providing information was the primary component of the cooperation obligation. Agreeing with this point, the title of the section has been broadened and proposed subsection (c) has been rewritten to specifically articulate the duty of all parties to cooperate.

Section 2422.16

One commenter suggested that the "method of election," i.e., typically mail or manual balloting, be listed as a procedural determination that the Regional Director could make. This suggestion has been incorporated into subsection (b) of the final rule. The word "an" has been deleted before the word "Election" in subsection (b) of the final rule. In subsection (c)(2) the word "the" before the phrase "unit appropriateness" has been omitted from the final rule. A minor punctuation change has been made in subsection (c) of the final rule.

Section 2422.17

The title of the section has been expanded to include a reference to the prehearing conference. One commenter noted that the section's use of the phrase "employees and interested parties" was vague and could be construed too broadly. Accordingly, subsection (b) has been revised to refer to "affected parties." It was also noted that the notice of hearing does not identify issues or establish prehearing dates; as a result, the final sentence in subsection (b) has been added to reflect that notice of these matters will be separate. The revisions to subsection (c) make it consistent with the changes made to final subsection (b). A commenter noted that the title and body of proposed subsection (d) were inconsistent. The title and body of subsection (d) have been revised to indicate that there is no interlocutory appeal of a Regional Director's decision of whether to hold a hearing.

Section 2422.18

Final rule is same as proposed rule.

Section 2422.19

Subsection (c)(2) of proposed rule has been deleted to bring this section of the final rule into conformity with revisions made to section 2422.8(b).

Section 2422.20

In subsection (b) of the final rule the word "copy" is changed for clarification purposes to "copies," and the word "between" is changed to "between/among."

Section 2422.21

Subsection (a) of this proposed section offered two options. Option 1 followed current regulations. Option 2 specifically authorized a Hearing Officer to make recommendations on the record on any issue. All commenters addressing this section favored option 2. Record recommendations would advise the parties of the Hearing Officer's views and could facilitate resolution of questions under consideration. Moreover, the Hearing Officer's recommendations could be helpful to the Regional Director in resolving certain issues. As a result, the final rule incorporates option 2. The final rule includes minor changes, substituting an "and" for a comma and substituting the word "Duties" for the word "Duty" in the title of subsection (a).

Section 2422.22

Final rule is same as proposed rule.

Section 2422.23

Subsection (a) has been revised to clarify that the Regional Director will decide whether to conduct or supervise the election and agencies are obliged to assist as specified. In subsection (b) of the final rule the word "distributed" has been added between the phrases "and/or" and "in a manner," for the sake of consistency with a similar change in § 2422.7(a) of the final rule. In subsection (e), the word "procedures," which was inadvertently included, has been deleted, and the word "with" has been substituted for the word "to" before the phrase "the Authority." The final rule reframes subsection (h)(2) & (3) in positive terminology to reflect who can, rather than who cannot, serve as an observer. Subsection (h)(2)(i) has been revised to incorporate the statutory terminology contained in 5 U.S.C. 7103(a) (10) & (11). One commenter recommended that proposed subsection (h)(3) be revised to prevent union officials from acting as observers for labor organizations. This suggestions has been adopted in part and is reflected in subsection (h)(3)(ii).

Section 2422.24

In subsection (b) of the final rule, parentheses were placed around the letter "s" in the word "ballots" in the phrase "unresolved challenged ballots," for the sake of consistency with other references to ballots in the subsection.

Section 2422.25

A minor grammatical change was made in subsection (b) of the final rule.

Section 2422.26

Subsection (a) has been clarified to reflect that only a party may file an objection to an election. One commenter objected to the requirement that objections must be "received by" the Regional Director within 5 days of the furnishing of the tally of ballots and recommended that the Authority retain the "postmarked by" rule. The final rule adopts the "received by" rule as preferable because it allows the Regional Director to certify election results after a fixed period if no objections are lodged. The "postmark" rule would require the Regional Director to delay acting for some uncertain period of time after 5 days have passed in order to provide timely posted objections—if there are any—an opportunity to arrive. Note that pursuant to 5 CFR 2429.21(a), intermediate Saturdays, Sundays, and Federal legal holidays are excluded from the 5-day period.

Section 2422.27

The order of subsections (c) and (d) has been reversed for clarification purposes. One commenter questioned whether the opportunity for a hearing, provided for under the previous regulations, would continue. The revised final regulations do not discontinue the opportunity for a hearing on challenged ballots.

Section 2422.28

Final rule is same as proposed rule.

Section 2422.29

Final rule is same as proposed rule.

Section 2422.30

One commenter noted that as proposed, subsection (c)—in conjunction with sections 2422.8(b), 2422.10(c), and 2422.11(c)—extends the time period for filing interventions, cross petitions, and challenges until after the Regional Director has directed an election or approved an election agreement. This would be disruptive of the representation process. Accordingly, the final subsection (c) has been revised to include directing an election or approving an election agreement.