

Section 2422.31

Language in the current regulation (5 CFR 2422.17(b)) has been added to subsection (b) of the final rule. Subsection (c) of the proposed regulation offered two options for when the Authority would grant an application for review of a Regional Director's decision. Option 1 retained the current grounds for review with minor editorial changes. Option 2 specified that, in addition to satisfying one or more of those grounds, a party seeking review was obliged to assert and establish that the Authority's decision would have a substantial impact on labor-management relations law unless the Authority determines, in its discretion, that extraordinary circumstances exist to grant review. Option 1 was the overwhelming preference of those commenting on this subsection. The final rule adopts a modified version of option 1. An error in phraseology in subsection (f) has been corrected.

Section 2422.32

An incorrect reference in proposed subsection (a)(2) has been revised to refer to section 2422.31(e). The "Revocations" subsection, mistakenly identified as subsection (c), has been redesignated as subsection (b).

Section 2422.33

Final rule is same as proposed rule.

Section 2422.34

Several commenters noted and objected to subsection (a) of the proposed regulation changing current law by requiring the fulfillment of representational and bargaining obligations during periods when there is a "question concerning representation." The commenters are correct that this subsection is, in some respects, a change from current law. This revision is intended to allow more flexibility during such periods through the exercise of bargaining and representational obligations. As such, the modification of the law enhances both government efficiency and federal sector labor relations. Proposed subsection (b) has been amended by adding statutory references which define the term "employee" and provide for which employees may be included within a unit. The inclusion of this phrase is intended to clarify that subsection (b) only trumps subsection (a) to the extent that subsection (b) allows parties to take action based on unit status of individuals.

Part 2429

Changes to Part 2429 are required as a result of the different section numbers in the revised Part 2422.

Section 2429.21

In subsection (a), in discussing how time will be computed in various bar situations, there are two references to sections 2422.3 (c) and (d). In the revised regulations, the bars to which this section refers will be located in section 2422.12 (c), (d), (e), and (f). In subsection (b), the filing of a representation petition is listed as an exception to the "postmark date" rule and reference is made to section 2422.2. Because the revised regulations have numerous sections dealing with such filings, the reference is changed to Part 2422.

Section 2429.22

The revised regulations address applications for review of a Regional Director Decision and Order in section 2422.31. Accordingly, the reference to section 2422.17 is changed to section 2422.31.

List of Subjects**5 CFR Part 2421**

Government employees, Labor-management relations.

5 CFR Part 2422

Administrative practice and procedure, Government employees, Labor unions.

5 CFR Part 2429

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set forth in the preamble, the Federal Labor Relations Authority amends Parts 2421, 2422, and 2429 of its regulations as follows:

PART 2421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

1. The authority citation for Part 2421 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. Section 2421.11 is revised to read as follows:

§ 2421.11 Party.

Party means:

- (a) Any labor organization, employing agency or activity or individual filing a charge, petition, or request;
- (b) Any labor organization or agency or activity
 - (1) Named as
 - (i) A charged party in a charge,
 - (ii) A respondent in a complaint, or

(iii) An employing agency or activity or an incumbent labor organization in a petition;

(2) Whose intervention in a proceeding has been permitted or directed by the Authority; or

(3) Who participated as a party

(i) In a matter that was decided by an agency head under 5 U.S.C. 7117, or

(ii) In a matter where the award of an arbitrator was issued; and

(c) The General Counsel, or the General Counsel's designated representative, in appropriate proceedings.

3. Sections 2421.18 through 2421.22 are added to read as follows:

§ 2421.18 Petitioner.

Petitioner means the party filing a petition under Part 2422 of this Subchapter.

§ 2421.19 Eligibility period.

Eligibility period means the payroll period during which an employee must be in an employment status with an agency or activity in order to be eligible to vote in a representation election under Part 2422 of this Subchapter.

§ 2421.20 Election agreement.

Election agreement means an agreement under Part 2422 of this Subchapter signed by all the parties, and approved by the Regional Director, concerning the details and procedures of a representation election in an appropriate unit.

§ 2421.21 Affected by issues raised.

The phrase *affected by issues raised*, as used in Part 2422, should be construed broadly to include parties and other labor organizations, or agencies or activities that have a connection to employees affected by, or questions presented in, a proceeding.

§ 2421.22 Determinative challenged ballots.

Determinative challenged ballots are challenges that are unresolved prior to the tally and sufficient in number after the tally to affect the results of the election.

4. Part 2422 is revised to read as follows:

PART 2422—REPRESENTATION PROCEEDINGS**Sec.**

- 2422.1 Purposes of a petition.
- 2422.2 Standing to file a petition.
- 2422.3 Contents of a petition.
- 2422.4 Service requirements.
- 2422.5 Filing petitions.
- 2422.6 Notification of filing.
- 2422.7 Posting notice of filing of a petition.
- 2422.8 Intervention and cross-petitions.