

PART 101—STATEMENTS OF PROCEDURES

§§ 101.17 through 101.21 of Subpart C are deleted.

Subpart D—Unfair Labor Practice and Representation Cases Under Sections 8(b)(7) and 9(c) of the Act

§101.22 Initiation and investigation of a case under section 8(b)(7).

(a) The investigation of an alleged violation of section 8(b)(7) of the Act is initiated by the filing of a charge. The manner of filing such charge and the contents thereof are the same as described in §101.2. In some cases, at the time of the investigation of the charge, there may be pending a representation petition involving the employees of the employer named in the charge. In those cases, the results of the investigation of the charge will determine the cause of the petition.

(b) The investigation of the charge is conducted in accordance with the provisions of §101.4, insofar as they are applicable. If the investigation reveals that there is merit in the charge, a complaint is issued as described in §101.8, and an application is made for an injunction under section 10(1) of the Act, as described in §101.37. If the investigation reveals that there is no merit in the charge, the Regional Director, absent a withdrawal of the charge, dismisses it, subject to appeal to the General Counsel. However, if the investigation reveals that issuance of a complaint may be warranted but for the pendency of a representation petition involving the employees of the employer named in the charge, action on the charge is suspended pending the investigation of the petition as provided in §101.23.

§ 101.23 Initiation and investigation of a petition in connection with a case under section 8(b)(7).

(a)(1) A representation petition¹ involving the employees of the employer named in the charge is handled under an expedited procedure when the investigation of the charge has revealed that:

(1) The employer's operations affect commerce within the meaning of the Act;

(2) Picketing of the employer is being conducted for an object proscribed by section 8(b)(7) of the Act;

(3) Subparagraph (C) of that section of the Act is applicable to the picketing;

and

(4) The petition has been filed within a reasonable period of time not to exceed 30 days from the commencement of the picketing.

(2) In these circumstances, the member of the ~~Regional Director's~~regional director's staff to whom the matter has been assigned investigates the petition to ascertain further: the unit appropriate for collective bargaining; and whether an election in that unit would effectuate the policies of the Act.

(b) If, based on such investigation, the ~~Regional Director~~regional director determines that an election is warranted, the ~~Director~~director may, without a prior hearing, direct that an election be held in an appropriate unit of employees. Any party aggrieved may file a request with the Board for special permission to appeal that action to

¹ The manner of filing of such petition and the contents thereof are the same as described in ~~§ 101.17 of this part~~29 CFR 102.60 and 102.61 and the statement of the general course of proceedings under Section 9(c) of the Act published in the Federal Register, insofar as they are applicable, except that the petitioner is not required to allege that a claim was made on the employer for recognition or that the union represents a substantial number of employees.

the Board, but such review, if granted, will not, unless otherwise ordered by the Board, stay the proceeding. If it is determined that an election is not warranted, the

~~Director~~director dismisses the petition or makes other disposition of the matter. Should the ~~Regional Director~~regional director conclude that an election is warranted, the ~~Director~~director fixes the basis of eligibility of voters and the place, date, and hours of balloting. The mechanics of arranging the balloting, the other procedures for the conduct of the election, and the postelection proceedings are the same, insofar as appropriate, as those described in ~~§101.1929~~CFR 102.69 and the statement of this partthe general course of proceedings under Section 9(c) of the Act published in the Federal Register, except that the ~~Regional Director's~~regional director's rulings on any objections to the conduct of the election or challenged ballots are final and binding; unless the Board, on an application by one of the parties, grants such party special permission to appeal from the ~~Regional Director's~~regional director's rulings. The party requesting such review by the Board must do so promptly, in writing, and state briefly the grounds relied on. Such party must also immediately serve a copy on the other parties, including the ~~Regional Director~~regional director. Neither the request for review by the Board nor the Board's grant of such review operates as a stay of any action taken by the ~~Regional Director~~regional director, unless specifically so ordered by the Board. If the Board grants permission to appeal, and it appears to the Board that substantial and material factual issues have been presented with respect to the objections to the conduct of the election or challenged ballots, it may order that a hearing be held on such issues or take other appropriate action.

(c) If the ~~Regional Director~~regional director believes, after preliminary

investigation of the petition, that there are substantial issues which require determination before an election may be held, the ~~Director~~director may order a hearing on the issues.

This hearing is followed by ~~Regional Director or Board~~regional director decision and direction of election, or other disposition. The procedures to be used in connection with such hearing and posthearing proceedings are the same, insofar as they are applicable, as

those described in ~~§§101.20 and 101.21 of this part, except that the parties may not file briefs with the Regional Director or the Board unless special permission therefore is granted, but may state their respective legal positions fully on the record at the hearing, and except that any request for review must be filed promptly after issuance of the Regional Director's decision.~~29 CFR 102.63, 102.64, 102.65, 102.66, 102.67, 102.68, and 102.69, and the statement of the general course.

(d) Should the parties so desire, they may, with the approval of the ~~Regional Director~~regional director, resolve the issues as to the unit, the conduct of the balloting, and related matters pursuant to informal consent procedures, as described in ~~§101.19(a) of this part~~29 CFR 102.62(a) and the statement of the general course.

(e) If a petition has been filed which does not meet the requirements for processing under the expedited procedures, the ~~Regional Director~~regional director may process it under the procedures set forth in subpart C of ~~this~~29 CFR part 102 and the statement of the general course.

§101.24 Final disposition of a charge which has been held pending investigation of the petition.

(a) Upon the determination that the issuance of a direction of election is warranted on the petition, the Regional Director, absent withdrawal of the charge, dismisses it subject to an appeal to the General Counsel in Washington, DC.

(b) If, however, the petition is dismissed or withdrawn, the investigation of the charge is resumed, and the appropriate steps described in §101.22 are taken with respect to it.

§ 101.25 Appeal from the dismissal of a petition, or from the refusal to process it under the expedited procedure.

If it is determined after investigation of the representation petition that further proceedings based thereon are not warranted, the ~~Regional Director~~regional director, absent withdrawal of the petition, dismisses it, stating the grounds ~~therefore~~therefor. If it is determined that the petition does not meet the requirements for processing under the expedited procedure, the ~~Regional Director~~regional director advises the petitioner of the determination to process the petition under the procedures described in subpart C of ~~this~~29 CFR part- 102 and the statement of the general course. In either event, the ~~Regional Director~~regional director informs all the parties of such action, and such action is final, although the Board may grant an aggrieved party permission to appeal from the ~~Regional Director's~~regional director's action. Such party must request such review promptly, in writing, and state briefly the grounds relied on. Such party must also immediately serve a copy on the other parties, including the ~~Regional Director~~regional director. Neither the request for review by the Board, nor the Board's grant of such review, operates as a stay of the action taken by the ~~Regional Director~~regional director, unless specifically so ordered by the Board.

Subpart E—Referendum Cases Under Section 9(e) (1) and (2) of the Act

§ 101.26 Initiation of rescission of authority cases.

The investigation of the question as to whether the authority of a labor organization to make an agreement requiring membership in a labor organization as a condition of employment is to be rescinded is initiated by the filing of a petition by an employee or group of employees on behalf of 30 percent or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization requiring membership in such labor organization. The petition must be in writing and signed, and either must be notarized or must contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. It is filed with the ~~Regional Director~~regional director for the Region in which the alleged appropriate bargaining unit exists or, if the bargaining unit exists in two or more Regions, with the ~~Regional Director~~regional director for any of such Regions. The blank form, which is supplied by the Regional Office upon request or is available online, provides, among other things, for a description of the bargaining unit covered by the agreement, the approximate number of employees involved, ~~and the~~ names of any other labor organizations which claim to represent the employees, the petitioner's position on the type, date(s), time(s), and location(s) of the election sought, and the name of, and contact information for, the individual who will serve as the petitioner's representative. The petition may be filed by facsimile or electronically. The petitioner must supply with the petition, ~~or within 48 hours after filing,~~ evidence of authorization from the employees.

§101.27 Investigation of petition; withdrawals and dismissals.

(a) Upon receipt of the petition in the Regional Office, it is filed, docketed, and assigned to a member of the staff, usually a field examiner, for investigation. The field examiner conducts an investigation to ascertain:

(1) Whether the employer's operations affect commerce within the meaning of the Act,

(2) Whether there is in effect an agreement requiring as a condition of employment membership in a labor organization,

(3) Whether the petitioner has been authorized by at least 30 percent of the employees to file such a petition, and

(4) Whether an election would effectuate the policies of the Act by providing for a free expression of choice by the employees.

The evidence of designation submitted by the petitioner, usually in the form of cards signed by individual employees authorizing the filing of such a petition, is checked to determine the proportion of employees who desire rescission.

(b) The petitioner may on its own initiative request the withdrawal of the petition if the investigation discloses that an election is inappropriate, because, among other possible reasons, the petitioner's card-showing is insufficient to meet the 30-percent statutory requirement referred to in subsection (a) of this section.

(c) For the same or similar reasons the Regional Director may request the petitioner to withdraw its petition. If the petitioner, despite the Regional Director's recommendation, refuses to withdraw the petition, the Regional Director then dismisses the petition, stating the grounds for his dismissal and informing the petitioner of the right of appeal to the Board in Washington, DC. The petitioner may within 14 days appeal

from the Regional Director's dismissal by filing such request with the Board in Washington, DC. The request shall contain a complete statement setting forth the facts and reasons upon which the request is made. After a full review of the file with the assistance of its staff, the Board may sustain the dismissal, stating the grounds for its affirmance, or may direct the Regional Director to take further action.

§ 101.28 Consent agreements providing for election.

(a) The Board makes available to the parties three types of informal consent procedures through which authorization issues can be resolved without resort to formal procedures. These informal agreements are ~~commonly referred to as the~~ consent-election agreement ~~followed by Regional Director's determination, with final regional director determinations of post-election disputes, the~~ stipulated election agreement ~~followed by~~ with discretionary Board ~~certification review~~, and ~~the~~ full consent-election agreement ~~providing for the Regional Director's determination of both~~ with final regional director determinations of pre- and ~~postelection matters~~ post-election disputes. Forms for use in these informal procedures are available in the Regional Offices.

(b) The procedures to be used in connection with a consent-election agreement ~~providing for the Regional Director's determination~~ with final regional director determinations of post-election disputes, a stipulated election agreement ~~providing for~~ with discretionary Board ~~certification review~~, and ~~the~~ full consent-election agreement ~~providing for the Regional Director's determination of both~~ with final regional director determinations of pre- and ~~postelection matters~~ post-election disputes are the same as those ~~already~~ described in subpart C of ~~this part~~ 29 CFR part 102 and the statement of the

general course in connection with similar agreements in representation cases under ~~section~~Section 9(c) of the Act, except that no provision is made for runoff elections.

§ 101.29 Procedure respecting election conducted without hearing.

If the ~~Regional Director~~regional director determines that the case is an appropriate one for election without formal hearing, an election is conducted as quickly as possible among the employees and upon the conclusion of the election the ~~Regional Director~~regional director makes available to the parties a tally of ballots. The parties, however, have an opportunity to make appropriate challenges and objections to the conduct of the election and they have the same rights, and the same procedure is followed, with respect to objections to the conduct of the election and challenged ballots, as ~~has already been~~is described in subpart C of 29 CFR part 102 and the ~~Statements~~statement of ~~Procedure~~the general course in connection with the postelection procedures in representation cases under ~~section~~Section 9(c) of the Act, except that no provision is made for a runoff election. If no such objections are filed within 7 days and if the challenged ballots are insufficient in number to affect the results of the election, the ~~Regional Director~~regional director issues to the parties a certification of the results of the election, with the same force and effect as if issued by the Board.

§ 101.30 Formal hearing and procedure respecting election conducted after hearing.

(a) The procedures are the same as those described in subpart C of 29 CFR part 102 and the ~~Statements~~statement of ~~Procedure~~the general course respecting representation cases arising under ~~section~~Section 9(c) of the Act insofar as applicable. If

the preliminary investigation indicates that there are substantial issues which require determination before an appropriate election may be held, the ~~Regional Director~~regional director will institute formal proceedings by issuance of a notice of hearing on the issues which, after hearing, is followed by ~~Regional Director or Board~~regional director decision and direction of election or dismissal. The notice of hearing together with a copy of the petition is served on the petitioner, the employer, and any other known persons or labor organizations claiming to have been designated by employees involved in the proceeding.

(b) The hearing, usually open to the public, is held before a hearing officer who normally is an attorney or field examiner attached to the Regional Office but may be another qualified Agency official. The hearing, which is nonadversary in character, is part of the investigation in which the primary interest of the Board's agents is to insure that the record contains as full a statement of the pertinent facts as may be necessary for determination of the case. The parties are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions that are relevant to the issue of whether the Board should conduct an election to determine whether the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8(a)(3) of the Act, desire that such authority be rescinded. In most cases a substantial number of the relevant facts are undisputed and stipulated. The parties are permitted to argue orally on the record before the hearing officer.

(c) Upon the close of the hearing, the entire record in the case is then forwarded to the ~~Regional Director or the Board~~regional director, together with an informal analysis by the hearing officer of the issues and the evidence but without recommendations. ~~All~~

~~parties may file Post-hearing briefs with the Regional Director or the Board within 7 days after the close of the hearing. If the case is transferred to the Board after the close of the hearing, briefs may be filed with the Board only upon special permission of the regional director and within the time ~~prescribed~~ and addressing the subjects permitted by the Regional Director. The parties may also request to be heard orally. Because of the nature of the proceeding, however, permission to argue orally is rarely granted. After review of the entire case, the Board issues a decision either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner already described in §101.19 of this ~~part~~ regional director.~~

(d) The parties have the same rights, and the same procedure is followed, with respect to objections to the conduct of the election and challenged ballots as ~~has already been~~ is described in connection with the postelection procedures in representation cases under ~~section~~ Section 9(c) of the Act.

PART 102—RULES AND REGULATIONS, SERIES 8

Subpart C—Procedure Under Section 9(c) of the Act for the Determination of Questions Concerning Representation of Employees² ~~And for Clarification of Bargaining Units and for Amendment of Certifications Under Section 9(b) of the Act~~

§ 102.60 Petitions.

(a) Petition for certification or decertification; ~~who may file; where to file; withdrawal.~~ A petition for investigation of a question concerning representation of employees under paragraphs (1)(A)(i) and (1)(B) of ~~section~~Section 9(c) of the Act (hereinafter called a petition for certification) may be filed by an employee or group of employees or any individual or labor organization acting in their behalf or by an employer. A petition under paragraph (1)(A)(ii) of ~~section~~Section 9(c) of the Act, alleging that the individual or labor organization which has been certified or is being currently recognized as the bargaining representative is no longer such representative (hereinafter called a petition for decertification), may be filed by any employee or group of employees or any individual or labor organization acting in their behalf. Petitions under this section shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury, that its contents are true and correct (see 28 U.S.C. ~~See-~~1746). One original of the petition shall be filed~~;~~ and a copy served on all parties named in the petition. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the

² Procedure under the first proviso to sec. 8(b)(7)(C) of the Act is governed by subpart D of this part.

filing by facsimile, if otherwise proper. A person filing a petition electronically pursuant to § 102.114(i) need not file an original. Except as provided in § 102.72, such petitions shall be filed with the ~~Regional Director~~regional director for the Region wherein the bargaining unit exists, or, if the bargaining unit exists in two or more Regions, with the ~~Regional Director~~regional director for any of such Regions. ~~Prior to the transfer of the case to the Board, pursuant to §102.67, A certificate of service on all parties named in the~~ petition ~~may~~shall also be ~~withdrawn only~~filed with the ~~consent~~regional director when the petition is filed. Along with the petition, the petitioner shall serve the Agency's description of the Regional Director procedures in representation cases and the Agency's Statement of Position form on all parties named in the petition. Prior to the transfer of the record to the Board, the petition may be withdrawn only with the consent of the regional director with whom such petition was filed. After the transfer of the ~~case~~record to the Board, the petition may be withdrawn only with the consent of the Board. Whenever the ~~Regional Director~~regional director or the Board, as the case may be, approves the withdrawal of any petition, the case shall be closed.

(b) Petition for clarification of bargaining unit or petition for amendment of certification ~~under section 9(b) of the Act; who may file; where to file; withdrawal.~~ A petition for clarification of an existing bargaining unit or a petition for amendment of certification, in the absence of a question ~~concerning~~of representation, may be filed by a labor organization or by an employer. Where applicable the same procedures set forth in paragraph (a) of this section shall be followed.

§ 102.61 Contents of petition for certification; contents of petition for decertification; contents of petition for clarification of bargaining unit; contents of petition for amendment of certification.

(a) RC Petitions. A petition for certification, when filed by an employee or group of employees or an individual or labor organization acting in their behalf, shall contain the following:

(1) The name of the employer.

(2) The address of the establishments involved.

(3) The general nature of the employer's business.

(4) A description of the bargaining unit which the petitioner claims to be appropriate.

(5) The names and addresses of any other persons or labor organizations who claim to represent any employees in the alleged appropriate unit, and brief descriptions of the contracts, if any, covering the employees in such unit.

(6) The number of employees in the alleged appropriate unit.

(7) A statement that a substantial number of employees in the described unit wish to be represented by the petitioner. Evidence supporting the statement shall be filed with the petition in accordance with paragraph (f) of this section, but shall not be served on any party.

(8) A statement that the employer declines to recognize the petitioner as the representative within the meaning of ~~section~~Section 9(a) of the Act or that the labor organization is currently recognized but desires certification under the ~~act~~Act.

(89) The name, affiliation, if any, and address of the petitioner, and the name, title, address, telephone number, facsimile number, and email address of the individual who will serve as the representative of the petitioner and accept service of all papers for

purposes of the representation proceeding.

(910) Whether a strike or picketing is in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(1011) Any other relevant facts.

(12) The type, date(s), time(s) and location(s) of the election sought.

(b) RM Petitions. A petition for certification, when filed by an employer, shall contain the following:

(1) The name and address of the petitioner, and the name, title, address, telephone number, facsimile number, and email address of the individual who will serve as the representative of the petitioner and accept service of all papers for purposes of the representation proceeding.

(2) The general nature of the petitioner's business.

(3) A brief statement setting forth that one or more individuals or labor organizations have presented to the petitioner a claim to be recognized as the exclusive representative of all employees in the unit claimed to be appropriate; a description of such unit; and the number of employees in the unit.

(4) The name or names, affiliation, if any, and addresses of the individuals or labor organizations making such claim for recognition.

(5) A statement whether the petitioner has contracts with any labor organization or other representatives of employees and, if so, their expiration date-(s).

(6) Whether a strike or picketing is in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or

picketing commenced.

(7) Any other relevant facts.

(8) Evidence supporting the statement that a labor organization has made a demand for recognition on the employer or that the employer has good faith uncertainty about majority support for an existing representative. Such evidence shall be filed together with the petition, but if the evidence reveals the names and/or number of employees who no longer wish to be represented, the evidence shall not be served on any party. However, no proof of representation on the part of the labor organization claiming a majority is required and the regional director shall proceed with the case if other factors require it unless the labor organization withdraws its claim to majority representation.

(9) The type, date(s), time(s) and location(s) of the election sought.

(c) RD Petitions. Petitions for decertification shall contain the following:

(1) The name of the employer.

(2) The address of the establishments and a description of the bargaining unit involved.

(3) The general nature of the employer's business.

(4) ~~Name~~The name and address of the petitioner and affiliation, if any-, and the name, title, address, telephone number, facsimile number, and email address of the individual who will serve as the representative of the petitioner and accept service of all papers for purposes of the representation proceeding.

(5) ~~Name~~The name or names and addresses of the individuals or labor organizations who have been certified or are being currently recognized by the employer and who claim to represent any employees in the unit involved, and the expiration date of

any contracts covering such employees.

(6) An allegation that the individuals or labor organizations who have been certified or are currently recognized by the employer are no longer the representative in the appropriate unit as defined in ~~section~~Section 9(a) of the Act.

(7) The number of employees in the unit.

(8) A statement that a substantial number of employees in the described unit no longer wish to be represented by the incumbent representative. Evidence supporting the statement shall be filed with the petition in accordance with paragraph (f) of this section, but shall not be served on any party.

(9) Whether a strike or picketing is in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(910) Any other relevant facts.

(11) The type, date(s), time(s) and location(s) of the election sought.

(d) UC Petitions. A petition for clarification shall contain the following:

(1) The name of the employer and the name of the recognized or certified bargaining representative.

(2) The address of the establishment involved.

(3) The general nature of the employer's business.

(4) A description of the present bargaining unit, and, if the bargaining unit is certified, an identification of the existing certification.

(5) A description of the proposed clarification.

(6) The names and addresses of any other persons or labor organizations who

claim to represent any employees affected by the proposed clarifications, and brief descriptions of the contracts, if any, covering any such employees.

(7) The number of employees in the present bargaining unit and in the unit as proposed under the clarification.

(8) The job classifications of employees as to whom the issue is raised, and the number of employees in each classification.

(9) A statement by petitioner setting forth reasons why petitioner desires clarification of unit.

(10) The name, the affiliation, if any, and the address of the petitioner, and the name, title, address, telephone number, facsimile number, and email address of the individual who will serve as the representative of the petitioner and accept service of all papers for purposes of the representation proceeding.

(11) Any other relevant facts.

(e) AC Petitions. A petition for amendment of certification shall contain the following:

(1) The name of the employer and the name of the certified union involved.

(2) The address of the establishment involved.

(3) The general nature of the employer's business.

(4) Identification and description of the existing certification.

(5) A statement by petitioner setting forth the details of the desired amendment and reasons therefor.

(6) The names and addresses of any other persons or labor organizations who claim to represent any employees in the unit covered by the certification and brief

descriptions of the contracts, if any, covering the employees in such unit.

(7) The name, the affiliation, if any, and the address of the petitioner, and the name, title, address, telephone number, facsimile number, and email address of the individual who will serve as the representative of the petitioner and accept service of all papers for purposes of the representation proceeding.

(8) Any other relevant facts.

(f) Provision of original signatures. Evidence filed pursuant to paragraphs (a)(7), (b)(8), or (c)(8) of this section together with a petition that is filed by facsimile or electronically, which includes original signatures that cannot be transmitted in their original form by the method of filing of the petition, may be filed by facsimile or in electronic form provided that the original documents are received by the regional director no later than 2 days after the facsimile or electronic filing.

§ 102.62 Election agreements; voter list; Notice of Election.

(a) Consent-election agreements with final regional director determinations of post-election disputes. Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of employees involved may, with the approval of the ~~Regional Director~~ regional director, enter into a ~~consent-election-an~~ agreement leading to a determination by the Regional Director providing for the waiver of the facts ascertained after such consent a hearing and for an election and further providing that post-election- disputes will be resolved by the regional director. Such agreement, referred to as a consent election agreement, shall include a description of the appropriate unit, the time and place of holding the election, and the payroll period to be used in determining what employees within the appropriate

unit shall be eligible to vote. Such ~~consent~~ election shall be conducted under the direction and supervision of the ~~Regional Director~~regional director. The method of conducting such ~~consent~~ election shall be consistent with the method followed by the ~~Regional Director~~regional director in conducting elections pursuant to §§ 102.69 and 102.70 ~~of this subpart~~ except that the rulings and determinations by the ~~Regional Director~~regional director of the results thereof shall be final, and the ~~Regional Director~~regional director shall issue to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect, in that case, as if issued by the Board, ~~provided further and except~~ that rulings or determinations by the ~~Regional Director~~regional director in respect to any amendment of such certification shall also be final.

(b) Stipulated election agreements with discretionary Board review. Where a petition has been duly filed, the employer and any individuals or labor organizations representing a substantial number of the employees involved may, with the approval of the regional director, enter into an agreement providing for ~~a~~the waiver of a hearing and ~~a consent for an~~ election ~~leading to a determination by the Board as described in paragraph (a) of this section and further providing that~~ the ~~facts ascertained after such consent parties may request Board review of the regional director's resolution of post-election, if such a determination is necessary; disputes~~. Such agreement, referred to as a stipulated election agreement, shall also include a description of the appropriate bargaining unit, the time and place of holding the election, and the payroll period to be used in determining which employees within the appropriate unit shall be eligible to vote. Such ~~consent~~ election shall be conducted under the direction and supervision of the regional director.

The method of conducting such election and the post-election procedure shall be consistent with that followed by the regional director in conducting elections pursuant to §§ 102.69 and 102.70 ~~of this subpart~~.

(c) Full consent election agreements with final regional director determinations of pre- and post-election disputes. Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of the employees involved may, with the approval of the ~~Regional Director~~regional director, enter into an agreement, referred to as a full consent election agreement, providing that pre- and post-election disputes will be resolved by the regional director. Such agreement provides for a hearing pursuant to §§ 102.63, 102.64, 102.65, 102.66 and 102.67 ~~of this subpart to resolve any issue necessary to resolve the to determine if a question concerning of representation exists~~. Upon the conclusion of such a hearing, the ~~Regional Director~~regional director shall issue a ~~Decision~~decision. The rulings and determinations by the ~~Regional Director~~regional director thereunder shall be final, with the same force and effect, in that case, as if issued by the Board. Any election ordered by the ~~Regional Director~~regional director shall be conducted under the direction and supervision of the ~~Regional Director~~regional director. The method of conducting such ~~consent~~ election shall be consistent with the method followed by the ~~Regional Director~~regional director in conducting elections pursuant to §§ 102.69 and 102.70 ~~of this subpart~~, except that the rulings and determinations by the ~~Regional Director~~regional director of the results thereof shall be final, and the ~~Regional Director~~regional director shall issue to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect, in that case, as if issued by the Board,

~~provided further and except~~ that rulings or determinations by the ~~Regional Director~~ regional director in respect to any amendment of such certification shall also be final.

(d) Voter list. Absent agreement of the parties to the contrary specified in the election agreement or extraordinary circumstances specified in the direction of election, within 2 business days after the approval of an election agreement pursuant to paragraphs (a) or (b) of this section, or issuance of a direction of election pursuant to paragraph (c) of this section, the employer shall provide to the regional director and the parties named in the agreement or direction a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular (“cell”) telephone numbers) of all eligible voters. The employer shall also include in a separate section of that list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge, including, for example, individuals in the classifications or other groupings that will be permitted to vote subject to challenge. In order to be timely filed and served, the list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. The list of names shall be alphabetized (overall or by department) and be in an electronic format approved by the General Counsel unless the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list shall be filed electronically

with the regional director and served electronically on the other parties named in the agreement or direction. A certificate of service on all parties shall be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of § 102.69(a). The employer shall be estopped from objecting to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

(e) Notice of election. Upon approval of the election agreement pursuant to paragraphs (a) or (b) of this section or with the direction of election pursuant to paragraph (c) of this section, the regional director shall promptly transmit the Board's Notice of Election to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided). The employer shall post and distribute the Notice of Election in accordance with § 102.67(k). The employer's failure properly to post or distribute the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of § 102.69(a). A party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

§ 102.63 Investigation of petition by regional director; notice of hearing; service of notice; Notice of Petition for Election; Statement of Position; withdrawal of notice of hearing.

(a) Investigation; notice of hearing; Notice of Petition for Election. (1) After a petition has been filed under § 102.61(a), (b), or (c) ~~of this subpart,~~ if no agreement such as that provided in § 102.62 ~~of this subpart~~ is entered into and if it appears to the regional director that there is reasonable cause to believe that a question of representation affecting commerce exists, that the policies of the ~~act~~Act will be effectuated, and that an election will reflect the free choice of employees in ~~thean~~ appropriate unit, the ~~Regional Director~~regional director shall prepare and cause to be served upon the parties and upon any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such investigation, a notice of hearing before a hearing officer at a time and place fixed therein. ~~A copy of the petition shall be served with such notice of hearing. Except in cases presenting unusually complex issues, the regional director shall set the hearing for a date 8 days from the date of service of the notice excluding intervening federal holidays, but if the 8th day is a weekend or federal holiday, the regional director shall set the hearing for the following business day. The regional director may postpone the hearing for up to 2 business days upon request of a party showing special circumstances. The regional director may postpone the opening of the hearing for more than 2 business days upon request of a party showing extraordinary circumstances. A copy of the petition, a description of procedures in representation cases, a “Notice of Petition for Election”, and a Statement of Position form as described in paragraphs (b)(1) through (3) of this section, shall be served with such notice of hearing.~~

Any such notice of hearing may be amended or withdrawn before the close of the hearing by the regional director on ~~his~~the director's own motion.

~~(b) After a petition has been filed under §102.61(d) or (e) of this subpart, the regional director shall conduct an investigation and, as appropriate, he~~(2) Within 2 business days after service of the notice of hearing, the employer shall post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and shall also distribute it electronically if the employer customarily communicates with its employees electronically. The Notice of Petition for Election shall indicate that no final decisions have been made yet regarding the appropriateness of the petitioned-for bargaining unit and whether an election shall be conducted. The employer shall maintain the posting until the petition is dismissed or withdrawn or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of § 102.69(a). A party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

(b)(1) Statement of Position in RC cases. If a petition has been filed under § 102.61(a) and the regional director has issued a notice of hearing, the employer shall file with the regional director and serve on the parties named in the petition its Statement of Position such that it is received by the regional director and the parties named in the petition by the date and time specified in the notice of hearing, which shall be at noon on the business day before the opening of the hearing if the hearing is set to open 8 days from service of the notice. The regional director may set the date and time for filing and

servicing the Statement of Position earlier than at noon on the business day before the hearing in the event the hearing is set to open more than 8 days from service of the notice. The regional director may postpone the time for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances. The regional director may postpone the time for filing and serving the Statement of Position for more than 2 business days upon request of a party showing extraordinary circumstances. The regional director may permit the employer to amend its Statement of Position in a timely manner for good cause.

(i) The employer's Statement of Position shall state whether the employer agrees that the Board has jurisdiction over it and provide the requested information concerning the employer's relation to interstate commerce; state whether the employer agrees that the proposed unit is appropriate, and, if the employer does not so agree, state the basis for its contention that the proposed unit is inappropriate, and state the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit; identify any individuals whose eligibility to vote the employer intends to contest at the pre-election hearing and the basis of each such contention; raise any election bar; state the length of the payroll period for employees in the proposed unit and the most recent payroll period ending date; state the employer's position concerning the type, date(s), time(s), and location(s) of the election and the eligibility period; and describe all other issues the employer intends to raise at the hearing.

(ii) The Statement of Position shall also state the name, title, address, telephone number, facsimile number, and email address of the individual who will serve as the

representative of the employer and accept service of all papers for purposes of the representation proceeding and be signed by a representative of the employer.

(iii) The Statement of Position shall include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing, and if the employer contends that the proposed unit is inappropriate, the employer shall separately list the full names, work locations, shifts, and job classifications of all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit. The employer shall also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. The list(s) of names shall be alphabetized (overall or by department) and be in an electronic format approved by the General Counsel unless the employer certifies that it does not possess the capacity to produce the list in the required form.

(2) Statement of Position in RM cases. If a petition has been filed under § 102.61(b) and the regional director has issued a notice of hearing, each individual or labor organization named in the petition shall file with the regional director and serve on the other parties named in the petition its Statement of Position such that it is received by the regional director and the parties named in the petition by the date and time specified in the notice of hearing, which shall be at noon on the business day before the opening of the hearing if the hearing is set to open 8 days from service of the notice. The regional director may set the date and time for filing and serving the Statement of Position earlier than at noon on the business day before the hearing in the event the hearing is set to open more than 8 days from service of the notice. The regional director may postpone the time

for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances. The regional director may postpone the time for filing and serving the Statement of Position for more than 2 business days upon request of a party showing extraordinary circumstances. The regional director may permit each individual or labor organization named in the petition to amend its Statement of Position in a timely manner for good cause.

(i) Individual or labor organization's Statement of Position. Each individual or labor organization's Statement of Position shall state whether it agrees that the Board has jurisdiction over the employer; state whether it agrees that the proposed unit is appropriate, and, if it does not so agree, state the basis for its contention that the proposed unit is inappropriate, and state the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit; identify any individuals whose eligibility to vote the individual or labor organization intends to contest at the pre-election hearing and the basis of each such contention; raise any election bar; state its position concerning the type, date(s), time(s), and location(s) of the election and the eligibility period; and describe all other issues it intends to raise at the hearing.

(ii) Identification of representative for service of papers. Each individual or labor organization's Statement of Position shall also state the name, title, address, telephone number, facsimile number, and email address of the individual who will serve as its representative and accept service of all papers for purposes of the representation proceeding and be signed by the individual or a representative of the individual or labor organization.

(iii) Employer's Statement of Position. Within the time permitted for filing the Statement of Position, the employer shall file with the regional director and serve on the parties named in the petition a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. The list(s) of names shall be alphabetized (overall or by department) and be in an electronic format approved by the General Counsel unless the employer certifies that it does not possess the capacity to produce the list in the required form. The employer's Statement of Position shall also state whether the employer agrees that the Board has jurisdiction over it and provide the requested information concerning the employer's relation to interstate commerce; identify any individuals whose eligibility to vote the employer intends to contest at the pre-election hearing and the basis of each such contention; and state the length of the payroll period for employees in the proposed unit and the most recent payroll period ending date. The regional director may permit the employer to amend its Statement of Position in a timely manner for good cause.

(3) Statement of Position in RD cases. If a petition has been filed under § 102.61(c) and the regional director has issued a notice of hearing, the employer and the certified or recognized representative of employees shall file with the regional director and serve on the parties named in the petition their respective Statements of Position such that they are received by the regional director and the parties named in the petition by the date and time specified in the notice of hearing, which shall be at noon on the business day before the opening of the hearing if the hearing is set to open 8 days from service of the notice. The regional director may set the date and time for filing and serving the

Statement of Position earlier than at noon on the business day before the hearing in the event the hearing is set to open more than 8 days from service of the notice. The regional director may postpone the time for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances. The regional director may postpone the time for filing and serving the Statement of Position for more than 2 business days upon request of a party showing extraordinary circumstances. The regional director may permit the employer and the certified or recognized representative of employees to amend their respective Statements of Position in a timely manner for good cause.

(i) The Statements of Position of the employer and the certified or recognized representative shall state each party's position concerning the Board's jurisdiction over the employer; state whether each agrees that the proposed unit is appropriate, and, if not, state the basis for the contention that the proposed unit is inappropriate, and state the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit; identify any individuals whose eligibility to vote each party intends to contest at the pre-election hearing and the basis of each such contention; raise any election bar; and state each party's respective positions concerning the type, date(s), time(s), and location(s) of the election and the eligibility period; and describe all other issues each party intends to raise at the hearing.

(ii) The Statements of Position shall also state the name, title, address, telephone number, facsimile number, and email address of the individual who will serve as the representative of the employer or the certified or recognized representative of the employees and accept service of all papers for purposes of the representation proceeding

and be signed by a representative of the employer or the certified or recognized representative, respectively.

(iii) The employer's Statement of Position shall also include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing, and if the employer contends that the proposed unit is inappropriate, the employer shall separately list the full names, work locations, shifts, and job classifications of all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit. The employer shall also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. The list(s) of names shall be alphabetized (overall or by department) and be in an electronic format approved by the General Counsel unless the employer certifies that it does not possess the capacity to produce the list in the required form. The employer's Statement of Position shall also provide the requested information concerning the employer's relation to interstate commerce and state the length of the payroll period for employees in the proposed unit and the most recent payroll period ending date.

(c) UC or AC cases. After a petition has been filed under § 102.61(d) or (e), the regional director shall conduct an investigation and, as appropriate, may issue a decision without a hearing; or prepare and cause to be served upon the parties and upon any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such investigation, a notice of hearing before a hearing officer at a time and place fixed therein; or take other appropriate action. If a notice of hearing is served, it shall be accompanied by a copy of the petition. Any such notice of

hearing may be amended or withdrawn before the close of the hearing by the regional director on ~~his~~the director's own motion. All hearing and posthearing procedure under this paragraph (~~bc~~) shall be in conformance with §§_102.64 through 102.~~68~~69 whenever applicable, except where the unit or certification involved arises out of an agreement as provided in §_102.62(a) ~~of this subpart,~~ the regional ~~director's~~director's action shall be final, and the provisions for review of regional ~~director's~~director's decisions by the Board shall not apply. Dismissals of petitions without a hearing shall not be governed by §_102.71 ~~of this subpart,~~ The regional ~~director's~~director's dismissal shall be by decision, and a request for review therefrom may be obtained under §_102.67 ~~of this subpart,~~ except where an agreement under §_102.62(a) ~~of this subpart~~ is involved.

§ 102.64 Conduct of hearing.

(a) The purpose of a hearing conducted under Section 9(c) of the Act is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or concerning a unit in which an individual or labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted. If, upon the record of the hearing, the regional director finds that a question of representation exists, the director shall direct an election to resolve the question.

(b) Hearings shall be conducted by a hearing officer and shall be open to the public unless otherwise ordered by the hearing officer. At any time, a hearing officer may

be substituted for the hearing officer previously presiding. ~~Subject to the provisions of § 102.66, it~~ shall be the duty of the hearing officer to inquire fully into all matters and issues necessary to obtain a full and complete record upon which the Board or the regional director may discharge their duties under ~~section~~Section 9(c) of the Act.

(~~b~~c) The hearing ~~officers~~shall continue from day to day until completed unless the regional director concludes that extraordinary circumstances warrant otherwise. The regional director may, in ~~his~~the director's discretion, ~~continue~~adjourn the hearing ~~from day to day, or adjourn it to a later date or~~ to a different place; by announcement thereof at the hearing or by other appropriate notice.

§ 102.65 Motions; ~~interventions~~intervention; ~~appeals of hearing officer's rulings.~~

(a) All motions, including motions for intervention pursuant to paragraphs (b) and (e) of this section, shall be in writing or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. An original and two copies of written motions shall be filed and a copy thereof immediately shall be served on the other parties to the proceeding. Motions made prior to the transfer of the ~~ease~~record to the Board shall be filed with the regional director, except that motions made during the hearing shall be filed with the hearing officer. After the transfer of the ~~ease~~record to the Board, all motions shall be filed with the Board. Such motions shall be printed or otherwise legibly duplicated; ~~Provided, however, That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted.~~ Eight copies of such motions shall be filed with the Board. ~~Extra copies of electronically-~~filed papers need not be filed. The regional director may rule upon all motions filed with him, causing a copy of ~~said~~the ruling to be served on the parties, or ~~he~~ may refer the

motion to the hearing officer: ~~Provided, That, except that~~ if the regional director prior to the close of the hearing grants a motion to dismiss the petition, the petitioner may obtain a review of such ruling in the manner prescribed in § 102.71 ~~of this subpart.~~ The hearing officer shall rule, either orally on the record or in writing, upon all motions filed at the hearing or referred to ~~him~~the hearing officer as hereinabove provided, ~~except that the hearing officer shall rule on motions to intervene and to amend the petition only as directed by the regional director, and~~ except that all motions to dismiss petitions shall be referred for appropriate action at such time as the entire record is considered by the regional director or the Board, as the case may be. All motions, rulings, and orders shall become a part of the record, except that rulings on motions to revoke subpoenas shall become a part of the record only upon the request of the party aggrieved thereby as provided in § 102.66(f).

(b) Any person desiring to intervene in any proceeding shall make a motion for intervention, stating the grounds upon which such person claims to have an interest in the proceeding. The regional director, or the hearing officer, ~~as at the case may be~~specific direction of the regional director, may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as ~~he~~the regional director may deem proper, and such intervenor shall thereupon become a party to the proceeding.

(c) ~~All motions, rulings, and orders shall become a part of the record, except that rulings on motions to revoke subpoenas shall become a part of the record only upon the request of the party aggrieved thereby as provided in § 102.66(c) of this subpart. Unless expressly authorized by the Rules and Regulations, rulings by the regional director~~

~~or~~Rulings by the hearing officer shall not be appealed directly to the ~~Board, but shall be~~ considered by the Board on appropriate appeal pursuant to §102.67 (b), (c), and (d) of this subpart or whenever the case is transferred to it for decision: *Provided, however,* ~~That if the regional director has issued an order transferring the case to the Board for decision such rulings may be appealed directly to the Board by special permission of the Board. Nor shall rulings by the hearing officer be appealed directly to the regional director unless expressly authorized by the Rules and Regulations~~regional director, except by special permission of the regional director, but shall be considered by the regional director when ~~he~~the director reviews the entire record. Requests to the regional director, ~~or to the Board in appropriate cases,~~ for special permission to appeal from a ruling of the hearing officer, together with the appeal from such ruling, shall be filed promptly, in writing, and shall briefly state the reasons special permission should be granted and the grounds relied on for the appeal. The moving party shall immediately serve a copy of the request for special permission and of the appeal on the other parties and on the regional director. Any statement in opposition or other response to the request and/or to the appeal shall be filed promptly, in writing, and shall be served immediately on the other parties and on the regional director. No party shall be precluded from raising an issue at a later time because it did not seek special permission to appeal. If the ~~Board~~ ~~or the~~ regional director, ~~as the case may be,~~ grants the request for special permission to appeal, the ~~Board or the~~ regional director may proceed forthwith to rule on the appeal. Neither the filing nor the grant of such a request shall stay the proceedings unless otherwise ordered by the regional director. As stated in § 102.67, the parties may request Board review of regional director actions.

(d) The right to make motions or to make objections to rulings on motions shall not be deemed waived by participation in the proceeding.

(e) (1) A party to a proceeding may, because of extraordinary circumstances, move after the close of the hearing for reopening of the record, or move after the decision or report for reconsideration, for rehearing, or to reopen the record, but no such motion shall stay the time for filing a request for review of a decision or exceptions to a report. No motion for reconsideration, for rehearing, or to reopen the record will be entertained by the Board or by any regional director or hearing officer with respect to any matter which could have been but was not raised pursuant to any other section of these rules: ~~Provided, however, That, except that~~ the regional director may treat a request for review of a decision or exceptions to a report as a motion for reconsideration. A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on for the motion. A motion for rehearing or to reopen the record shall specify briefly the error alleged to require a rehearing or hearing *de novo*, the prejudice to the movant alleged to result from such error, the additional evidence sought to be adduced, why it was not presented previously, and what result it would require if adduced and credited. Only newly discovered evidence—evidence which has become available only since the close of the hearing—or evidence which the regional director or the Board believes should have been taken at the hearing will be taken at any further hearing.

(2) Any motion for reconsideration or for rehearing pursuant to ~~this~~ paragraph (e)(1) of this section shall be filed within 14 days, or such further period as may be allowed, after the service of the decision or report. Any request for an extension of time

to file such a motion shall be served promptly on the other parties. A motion to reopen the record shall be filed promptly on discovery of the evidence sought to be adduced.

(3) The filing and pendency of a motion under this provision shall not unless so ordered operate to stay the effectiveness of any action taken or directed to be taken; ~~except that, if the motion~~ nor will a regional director or the Board delay any decision or action during the period specified in paragraph (e)(2) of this section, except that, if a motion for reconsideration based on changed circumstances or to reopen the record based on newly discovered evidence states with particularity that the granting thereof will affect the eligibility to vote of specific employees, the ~~ballots of such employees shall be challenged and impounded~~ Board agent shall have discretion to allow such employees to vote subject to challenge even if they are specifically excluded in the direction of election and to challenge or permit the moving party to challenge the ballots of such employees even if they are specifically included in the direction of election in any election conducted while such motion is pending. A motion for reconsideration, for rehearing, or to reopen the record need not be filed to exhaust administrative remedies.

§ 102.66 Introduction of evidence: rights of parties at hearing; preclusion; subpoenas; oral argument and briefs.

(a) Rights of parties at hearing. Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, ~~and any party and the hearing officer shall~~ to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer shall also have power to call, examine, and cross-examine witnesses and to introduce into the

record documentary and other evidence. Witnesses shall be examined orally under oath.

The rules of evidence prevailing in courts of law or equity shall not be controlling.

Stipulations of fact may be introduced in evidence with respect to any issue.

(b) Response to Statement of Position. Issues in dispute shall be identified as follows: After a Statement of Position is received in evidence and prior to the introduction of further evidence, all other parties shall respond on the record to each issue raised in the Statement. The regional director may permit the Statement of Position to be amended in a timely manner for good cause, in which event the other parties shall respond to each amended position. The regional director may also permit responses to be amended in a timely manner for good cause. The hearing officer shall not receive evidence concerning any issue as to which parties have not taken adverse positions, except that this provision shall not preclude the receipt of evidence regarding the Board's jurisdiction over the employer or limit the regional director's discretion to direct the receipt of evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

(c) Offers of proof. The regional director shall direct the hearing officer concerning the issues to be litigated at the hearing. The hearing officer may solicit offers of proof from the parties or their counsel as to any or all such issues. Offers of proof shall take the form of a written statement or an oral statement on the record identifying each witness the party would call to testify concerning the issue and summarizing each witness's testimony. If the regional director determines that the evidence described in an offer of proof is insufficient to sustain the proponent's position, the evidence shall not be received.

(d) Preclusion. A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

(e) Objections. Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the

record. No such objection shall be deemed waived by further participation in the hearing.

~~(e)(f)~~ Subpoenas. The Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof. Any party may file applications for subpoenas in writing with the ~~Regional Director~~ regional director if made prior to hearing, or with the hearing officer if made at the hearing. Applications for subpoenas may be made ex parte. The ~~Regional Director~~ regional director or the hearing officer, as the case may be, shall forthwith grant the subpoenas requested. Any person served with a subpoena, whether ad testificandum or duces tecum, if he or she does not intend to comply with the subpoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received. Such petition shall be filed with the regional director who may either ~~rules~~ rule upon it or refer it for ruling to the hearing officer: ~~Provided, however, That, except that~~ if the evidence called for is to be produced at a hearing and the hearing has opened, the petition to revoke shall be filed with the hearing officer. Notice of the filing of petitions to revoke shall be promptly given by the regional director or hearing officer, as the case may be, to the party at whose request the subpoena was issued. The regional director or the hearing officer, as the case may be, shall revoke the subpoena if, in his opinion, the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the

subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.

The regional director or the hearing officer, as the case may be, shall make a simple statement of procedural or other grounds for his ruling. The petition to revoke, any answer filed thereto, and any ruling thereon shall not become part of the record except upon the request of the party aggrieved by the ruling. Persons compelled to submit data or evidence are entitled to retain or, on payment of lawfully prescribed costs, to procure copies or transcripts of the data or evidence submitted by them.

(d)(g) Election details. Prior to the close of the hearing, the hearing officer will:

(1) Solicit the parties' positions on the type, date(s), time(s), and location(s) of the election and the eligibility period, but shall not permit litigation of those issues;

(2) Solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election in the event the regional director directs an election;

(3) Inform the parties that the regional director will issue a decision as soon as practicable and that the director will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and

(4) Inform the parties what their obligations will be under these rules if the director directs an election and of the time for complying with such obligations.

(h) Oral argument and briefs. Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing.

~~(e) The Post-hearing officer may submit an analysis briefs shall be filed only upon special permission of the ~~record to the~~ regional director ~~or~~ and within the time and addressing the Board but he shall make no recommendations.~~

~~(f) Witness fees and mileage shall be paid subjects permitted by the party at whose instance the witness appears.~~

~~§102.67 Proceedings before the regional director; further hearing; briefs; action by the regional director; appeals from action by the regional director; statement in opposition to appeal; transfer of case to the Board; proceedings before the Board; Board action.~~

~~(a) The regional director may proceed, either forthwith upon the record or after oral argument, the submission of briefs, or further hearing, as he may deem proper, to determine the unit appropriate for the purpose of collective bargaining, to determine whether a question concerning representation exists, and to direct an election, dismiss the petition, or make other disposition of the matter. Any party desiring to submit a brief to the regional director shall file the original and one copy thereof, which may be a typed carbon copy, within 7 days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause the hearing officer may grant an extension of time not to exceed an additional 14 days. Copies of the brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the regional director together with the brief. No reply brief may be filed except upon special leave permission of the regional director.~~

~~(b)(i) Hearing officer analysis. The hearing officer may submit an analysis of the record to the regional director but shall make no recommendations.~~

~~(j) Witness fees. Witness fees and mileage shall be paid by the party at whose~~

instance the witness appears.

§ 102.67 Proceedings before the regional director; further hearing; action by the regional director; appeals from actions of the regional director; statement in opposition; requests for extraordinary relief; Notice of Election; voter list.

(a) Proceedings before regional director. The regional director may proceed, either forthwith upon the record or after oral argument, the submission of briefs, or further hearing, as the director may deem proper, to determine whether a question of representation exists in a unit appropriate for purposes of collective bargaining, and to direct an election, dismiss the petition, or make other disposition of the matter. A decision by the regional director upon the record shall set forth ~~his~~the director's findings, conclusions, and order or direction. ~~The decision~~

(b) Directions of elections. If the regional director ~~shall be final: Provided, however, That within 14 days after service thereof any party may file a request for review with~~directs an election, the ~~Board in Washington, DC~~direction ordinarily will specify the type, date(s), time(s), and location(s) of the election and the eligibility period. The regional director shall schedule ~~and conduct any election directed by the decision notwithstanding~~the election for the earliest date practicable consistent with these rules. The regional director shall transmit the direction of election to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided). The regional director shall also transmit the Board's Notice of Election to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided), and it will ordinarily be transmitted simultaneously with the direction of election. If the direction of election provides for individuals to vote subject to challenge because their eligibility has not been determined, the Notice of Election shall so state, and

shall advise employees that a request the individuals are neither included in, nor excluded from, the bargaining unit, inasmuch as the regional director has permitted them to vote subject to challenge. The election notice shall further advise employees that the eligibility or inclusion of the individuals will be resolved, if necessary, following the election.

(c) Requests for Board review has been filed with or granted by the Board. The of regional director actions. Upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under Section 3(b) of the Act except as the Board's rules provide otherwise, but such a request review shall not, unless otherwise specifically ordered by the Board, operate as a stay of the election or any action taken or directed by the regional director: Provided, however, That if a pending. The request for review has not been ruled upon or has been granted ballots whose validity might may be affected filed at any time following the action until 14 days after a final disposition of the proceeding by the final Board decision regional director. No party shall be segregated precluded from filing a request for review of the direction of election within the time provided in an appropriate manner, and all ballots shall be impounded and remain unopened pending such decision this paragraph because it did not file a request for review of the direction of election prior to the election.

(e)(d) Grounds for review. The Board will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:

- (1) That a substantial question of law or policy is raised because of:
 - (i) The absence of; or

(ii) A departure from, officially reported Board precedent.

(2) That the regional director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(3) That the conduct of ~~the~~any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

(4) That there are compelling reasons for reconsideration of an important Board rule or policy.

~~(d) Any~~(e) Contents of request. A request for review must be a self-contained document enabling the Board to rule on the basis of its contents without the necessity ~~of~~ recourse to the record; however, the Board may, in its discretion, examine the record in evaluating the request. With respect to the ground (listed in paragraph (d)(2),) of this section, and other grounds where appropriate, ~~said~~the request must contain a summary of all evidence or rulings bearing on the issues together with page citations from the transcript and a summary of argument. ~~But such~~Such request may not raise any issue or allege any facts not timely presented to the regional director.

~~(e)~~(f) Opposition to request. Any party may, within 7 days after the last day on which the request for review must be filed, file with the Board a statement in opposition ~~thereto,~~ which shall be served in accordance with the requirements of paragraph ~~(k)~~ of this section. ~~A statement of such service of opposition shall be filed simultaneously with the Board.~~ The Board may grant or deny the request for review without awaiting a statement in opposition ~~thereto.~~

~~(f)~~(g) Finality; waiver; denial of request. The regional director's actions are final unless a request for review is granted. The parties may, at any time, waive their right to

request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmance of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

~~(g)~~(h) Grant of review; briefs. The ~~granting grant~~ of a request for review shall not stay the regional director's ~~decision~~action unless otherwise ordered by the Board. Except where the Board rules upon the issues on review in the order granting review, the appellants and other parties may, within 14 days after issuance of an order granting review, file briefs with the Board. Such briefs may be reproductions of those previously filed with the regional director and/or other briefs which shall be limited to the issues raised in the request for review. Where review has been granted, the Board may provide for oral argument or further hearing. The Board will consider the entire record in the light of the grounds relied on for review and shall make such disposition of the matter as it deems appropriate. Any request for review may be withdrawn with the permission of the Board at any time prior to the issuance of the decision of the Board thereon.

~~(h) In any case in which it appears to the regional director that the proceeding raises questions which should be decided by the Board, he may, at any time, issue an order, to be effective after the close~~(i)(1) Format of the hearing and before decision, transferring the case to the Board for decision. Such an order may be served on the parties upon the record of the hearing.

~~(i) If any case is transferred to the Board for decision after the parties have filed briefs with the regional director, the parties may, within such time after service of the order~~

~~transferring the case as is fixed by the regional director, file with the Board the brief previously filed with the regional director. No further briefs shall be permitted except by special permission of the Board. If the case is transferred to the Board before the time expires for the filing of briefs with the regional director and before the parties have filed briefs, such briefs shall be filed as set forth above and served in accordance with the requirements of paragraph (k) of this section within the time set by the regional director. If the order transferring the case is served on the parties during the hearing, the hearing officer may, prior to the close of the hearing and for good cause, grant an extension of time within which to file a brief with the Board for a period not to exceed an additional 14 days. No reply brief may be filed except upon special leave of the Board.~~

~~(j) Upon transfer of the case to the Board, the Board shall proceed, either forthwith upon the record, or after oral argument or the submission of briefs, or further hearing, as it may determine, to decide the issues referred to it or to review the decision of the regional director and shall direct a secret ballot of the employees or the appropriate action to be taken on impounded ballots of an election already conducted, dismiss the petition, affirm or reverse the regional director's order in whole or in part, or make such other disposition of the matter as it deems appropriate.~~

~~(k)(1)request.~~ All documents filed with the Board under the provisions of this section shall be filed in eightseven copies, double spaced, on 8¹/₈ 1/2- by 11-inch paper, and shall be printed or otherwise legibly duplicated. CarbonExtra copies of typewritten materials will electronically-filed papers need not be acceptedfiled. Requests for review, including briefs in support thereof and any motions under paragraph (j) of this section; statements in opposition thereto; and briefs on review shall not exceed 50 pages in length,

exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefor, filed not less than 5 days, including Saturdays, Sundays, and holidays, prior to the date the document is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page authorities cited. A party may combine a request for review of the regional director's decision and direction of election with a request for review of a regional director's post-election decision, if the party has not previously filed a request for review of the pre-election decision. Repetitive requests will not be considered.

(2) Service. The party filing with the Board a request for review, a statement in opposition to a request for review, or a brief on review shall serve a copy thereof on the other parties and shall file a copy with the regional director. A ~~statement~~certificate of ~~such~~ service shall be filed with the Board together with the document.

(3) Extensions. Requests for extensions of time to file requests for review, statements in opposition to a request for review, or briefs, as permitted by this section, shall be filed with the Board or the ~~Regional Director~~regional director, as the case may be. The party filing the request for an extension of time shall serve a copy thereof on the other parties and, if filed with the Board, on the ~~Regional Director~~regional director. A statement of such service shall be filed with the document.

(j) Requests for extraordinary relief. (1) A party requesting review may also move in writing to the Board for one or more of the following forms of relief:

(i) Expedited consideration of the request;

(ii) A stay of some or all of the proceedings, including the election; or

(iii) Impoundment and/or segregation of some or all of the ballots.

(2) Relief will be granted only upon a clear showing that it is necessary under the particular circumstances of the case. The pendency of a motion does not entitle a party to interim relief, and an affirmative ruling by the Board granting relief is required before the action of the regional director will be altered in any fashion.

(k) Notice of election. The employer shall post copies of the Board's Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least 3 full working days prior to 12:01 a.m. of the day of the election and shall also distribute it electronically if the employer customarily communicates with employees in the unit electronically. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the regional office in the mail. In all cases, the notices shall remain posted until the end of the election. The term working day shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays. The employer's failure properly to post or distribute the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of § 102.69(a). A party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

(l) Voter list. Absent extraordinary circumstances specified in the direction of election, the employer shall, within 2 business days after issuance of the direction, provide to the regional director and the parties named in such direction a list of the full names, work locations, shifts, job classifications, and contact information (including

home addresses, available personal email addresses, and available home and personal cellular (“cell”) telephone numbers) of all eligible voters. The employer shall also include in a separate section of that list the same information for those individuals who, according to the direction of election, will be permitted to vote subject to challenge, including, for example, individuals in the classifications or other groupings that will be permitted to vote subject to challenge. In order to be timely filed and served, the list must be received by the regional director and the parties named in the direction respectively within 2 business days after issuance of the direction of election unless a longer time is specified therein. The list of names shall be alphabetized (overall or by department) and be in an electronic format approved by the General Counsel unless the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list shall be filed electronically with the regional director and served electronically on the other parties named in the direction. A certificate of service on all parties shall be filed with the regional director when the voter list is filed. The employer’s failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of § 102.69(a). The employer shall be estopped from objecting to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

§ 102.68 Record in pre-election proceeding; what constitutes; transmission to Board.

The record in a proceeding conducted pursuant to the foregoing section shall consist of: the petition, notice of hearing with affidavit of service thereof, statements of

position, responses to statements of position, offers of proof made at the pre-election hearing, motions, rulings, orders, the stenographic report of the hearing and of any oral argument before the regional director, stipulations, exhibits, affidavits of service, and any briefs or other legal memoranda submitted by the parties to the regional director or to the Board, and the decision of the regional director, if any. Immediately upon issuance ~~by the regional director of an order transferring the case to the Board, or upon issuance~~ of an order granting a request for review by the Board, the regional director shall transmit the record to the Board.

§ 102.69 Election procedure; tally of ballots; objections; certification by the regional director; ~~report on challenged ballots; report~~hearings; hearing officer reports on objections and challenges; exceptions to hearing officer reports; regional director decisions on objections; exceptions; action of the Board; hearing and challenges.

(a) Election procedure; tally; objections. Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the ~~Regional Director~~regional director in whose Region the proceeding is pending. All elections shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, either participant may, upon its prompt request to and approval thereof by the ~~Regional Director~~regional director, whose decision shall be final, have its name removed from the ballot: ~~Provided, however, That, except that~~ in a proceeding involving an employer-filed petition or a petition for decertification, the labor organization certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving timely notice in writing to all parties and the ~~Regional Director~~regional director, disclaiming any representation interest among the employees in the unit. ~~Any~~ A pre-election conference may be held at which the parties may check the

list of voters and attempt to resolve any questions of eligibility or inclusions in the unit.

When the election is conducted manually, any party may be represented by observers of its own selection, subject to such limitations as the ~~Regional Director~~regional director

may prescribe. Any party and Board agents may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election the ballots will be counted and a tally of ballots prepared and immediately made available to the parties. Within 7 days after the

tally of ballots has been prepared, any party may file with the ~~Regional Director~~regional

director an original and five copies of objections to the conduct of the election or to

conduct affecting the results of the election; which shall contain a short statement of the

reasons therefor; and a written offer of proof in the form described in § 102.66(c) insofar

as applicable, except that the regional director may extend the time for filing the written

offer of proof in support of the election objections upon request of a party showing good

cause. Such filing(s) must be timely whether or not the challenged ballots are sufficient in

number to affect the results of the election. The party filing the objections shall serve a

copy of the objections, including the short statement of reasons therefor, but not the

written offer of proof, on each of the other parties to the case, and include a certificate of

such service with the objections. A person filing objections by facsimile pursuant to §

102.114(f) ~~of this part~~ shall also file an original for the Agency's records, but failure to

do so shall not affect the validity of the filing ~~by facsimile,~~ if otherwise proper. In

addition, extra copies need not be filed if the filing is by facsimile or electronically

pursuant to § 102.114(f) ~~of this part.~~or (i). The ~~Regional Director~~regional director will

~~cause~~transmit a copy of the objections to ~~be served on~~ each of the other parties to the

proceeding. ~~Within 7 days after the filing of objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections., but shall not transmit the offer of proof.~~

(b) Certification in the absence of objections, determinative challenges and runoff elections. If no objections are filed within the time set forth ~~above~~ in paragraph (a) of this section, if the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election is to be held pursuant to § 102.70 ~~of this subpart~~, the regional director shall forthwith issue to the parties a certification of the results of the election, including certification of representative where appropriate, with the same force and effect as if issued by the Board, ~~and the proceeding will thereupon be closed.~~

(c)(1)(i) Decisions resolving objections and challenges without a hearing. If timely objections are filed to the conduct of ~~the~~ an election or to conduct affecting the results of the election, and the regional director determines that the evidence described in the accompanying offer of proof would not constitute grounds for setting aside the election if introduced at a hearing, and the regional director determines that any determinative challenges do not raise substantial and material factual issues, the regional director shall issue a decision disposing of the objections and determinative challenges, and a certification of the results of the election, including certification of representative where appropriate.

(ii) Notices of hearing on objections and challenges. If timely objections are filed to the conduct of the election or to conduct affecting the results of the election, and the regional director determines that the evidence described in the accompanying offer of

proof could be grounds for setting aside the election if introduced at a hearing, or if the challenged ballots are sufficient in number to affect the results of the election, the regional director shall, consistent and raise substantial and material factual issues, the regional director shall transmit to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided) a notice of hearing before a hearing officer at a place and time fixed therein. The regional director shall set the hearing for a date 21 days after the preparation of the tally of ballots or as soon as practicable thereafter, unless the parties agree to an earlier date, except that the regional director may consolidate the hearing concerning objections and challenges with the provisions of §102.69(d) of this subpart, initiate an investigation, as required, of such objections or challenges an unfair labor practice proceeding before an administrative law judge. In any proceeding wherein the election has been held pursuant to § 102.62(a) or (c) and the representation case has been consolidated with an unfair labor practice proceeding for purposes of hearing, the administrative law judge shall, after issuing a decision, sever the representation case and transfer it to the regional director for further processing.

(2) If a consent election has been held pursuant to §102.62(b) of this subpart, the regional director shall prepare and cause to be served on the parties a report on challenged ballots or on objections, or on both, including his recommendations, which report, together with the tally of ballots, he shall forward to the Board in Washington, DC. Within 14 days from the date of issuance of the report on challenged ballots or on objections, or on both, any party may file with the Board in Washington, DC, exceptions to such report, with supporting documents as permitted by §102.69(g)(3) of this subpart and/or a supporting

~~brief if desired. Within 7 days from the last date on which exceptions and any supporting documents and/or supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief, with supporting documents as permitted by §102.69(g)(3) of this subpart if desired, with the Board in Washington, DC. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The report on challenged ballots may be consolidated with the report on objections in appropriate cases.~~

~~(3) If the election has been conducted pursuant to a direction of election issued following any proceeding under §102.67 of this subpart, the regional director may:~~

~~(i) Issue a report on objections or on challenged ballots, or on both, as in the case of a consent election pursuant to paragraph (b) of §102.62 of this subpart, or~~

~~(ii) Exercise his authority to decide the case and issue a decision disposing of the issues, and directing appropriate action or certifying the results of the election.~~

~~(4) If the regional director issues a report (iii) Hearings; hearing officer reports; exceptions to regional director. The hearing on objections and challenges, the parties shall have the rights set forth in paragraph (c)(2) of this section and in §102.69(f) of this subpart; if the regional director issues a decision, the parties shall have the rights set forth in §102.67 of this subpart to the extent consistent herewith, including the right to submit documents supporting the request for review or opposition thereto as permitted by §102.69(g)(3) of this subpart.~~

~~(d) In issuing a report on objections or challenged ballots, or both, following proceedings under §§102.62(b) or 102.67 of this subpart, or in issuing a decision on objections or~~

~~challenged ballots, or both, following proceedings under §102.67 of this subpart, the regional director may act on the basis of an administrative investigation or upon the record of a hearing before a hearing officer. Such hearing shall be conducted with respect to those objections or challenges which shall continue from day to day until completed unless the regional director concludes~~ ~~raise substantial and material factual issues.~~

~~(e)that extraordinary circumstances warrant otherwise.~~ Any hearing pursuant to this section shall be conducted in accordance with the provisions of §§ 102.64, 102.65, and 102.66 ~~of this subpart~~, insofar as applicable, ~~except that, upon.~~ Any party shall have the right to appear at the hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the objections and determinative challenges that are the subject of the hearing. The hearing officer may rule on offers of proof. Post-hearing briefs shall be filed only upon special permission of the hearing officer and within the time and addressing the subjects permitted by the hearing officer. Upon the close of such hearing, the hearing officer shall, ~~if directed by the regional director,~~ prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the issues. ~~In any case in which the regional director has directed that a report be prepared and served, any~~ Any party may, within 14 days from the date of issuance of such report, file with the regional director thean original and one copy, ~~which may be a carbon copy,~~ of exceptions to such report, with supporting brief if desired. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the regional director.

Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the regional director may allow, a party opposing the exceptions may file an answering brief with the regional director. An original and one copy, ~~which may be a carbon copy~~, shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the regional director. Extra copies of electronically-filed papers need not be filed. The regional director shall thereupon decide the matter upon the record or make other disposition of the case. If no exceptions are filed to such report, the regional director, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case.

~~(f) In a case involving a consent election held pursuant to §102.62(b) of this subpart, if exceptions are filed, either to the report on challenged ballots or on objections, or on both if it be a consolidated report, and it appears to the Board that such exceptions do not raise substantial and material issues with respect to the conduct or results of the election, the Board may decide the matter forthwith upon the record or may make other disposition of the case. If it appears to the Board that such exceptions raise substantial and material factual issues, the Board may direct the regional director or other agent of the Board to issue and cause to be served on the parties a notice of hearing on said exceptions before a hearing officer. The hearing shall be conducted in accordance with the provisions of §§102.64, 102.65, and 102.66 of this subpart insofar as applicable. Upon the close of the hearing the agent conducting the hearing, if directed by the Board, shall prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations to the Board as to the disposition of the challenges~~

~~or objections, or both if it be a consolidated report. In any case in which the Board has directed that a report be prepared and served, any party may within 14 days from the date of issuance of the report on challenged ballots or on objections, or on both, file with the Board in Washington, DC, exceptions to such report, with supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief with the Board in Washington, DC. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The Board shall thereupon proceed pursuant to §102.67: *Provided, however,* That in any with an unfair labor practice case for purposes of hearing the provisions of §102.46 of this part of these rules shall govern with respect to the filing of exceptions or an answering brief to the exceptions to the administrative law judge's decision.~~

(g)(2) Regional director decisions and Board review. The decision of the regional director may include a certification of the results of the election, including certification of representative where appropriate, and shall be final unless a request for review is granted. If a consent election has been held pursuant to §§ 102.62(a) or (c), the decision of the regional director is not subject to Board review. If the election has been conducted pursuant to § 102.62(b), or by a direction of election issued following any proceeding under § 102.67, the parties shall have the right to Board review set forth in § 102.67, except that in any proceeding wherein a representation case has been consolidated with an unfair labor practice proceeding for purposes of hearing and the election was conducted pursuant to §§ 102.62(b) or 102.67, the provisions of § 102.46 shall govern

with respect to the filing of exceptions or an answering brief to the exceptions to the administrative law judge's decision, and a request for review of the regional director's decision and direction of election shall be due at the same time as the exceptions to the administrative law judge's decision are due.

(d)(1)(i) Record in case with hearing. In a proceeding pursuant to this section in which a hearing is held, the record in the case shall consist of the notice of hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, exhibits, together with the objections to the conduct of the election or to conduct affecting the results of the election, ~~any report on such objections, any report on challenged ballots, exceptions to any such report~~offers of proof made at the post-election hearing, any briefs or other legal memoranda submitted by the parties, any report on such objections and/or on challenged ballots, exceptions, the decision of the regional director, ~~if any~~ requests for review, and the record previously made as defined in § 102.68 ~~of this subpart~~. Materials other than those set out above shall not be a part of the record.

(ii) Record in case with no hearing. In a proceeding pursuant to this section in which no hearing is held, the record shall consist of the objections to the conduct of the election or to conduct affecting the results of the election, any ~~report on objections or on challenged ballots and any exceptions to such a report, any regional director's~~ decision on objections or on challenged ballots and any request for review of such a decision, any documentary evidence, excluding statements of witnesses, relied upon by the regional director in his decision ~~or report~~, any briefs or other legal memoranda submitted by the parties, and any other motions, rulings or orders of the regional director. Materials other than those set out above shall not be a part of the record, except as provided in paragraph

~~(gd)~~(3) of this section.

~~(2) Immediately upon issuance of a report on objections or challenges, or both, upon issuance by the regional director of an order transferring the case to the Board, or~~(2)

Immediately upon issuance of an order granting a request for review by the Board, the regional director shall transmit to the Board the record of the proceeding as defined in paragraph ~~(gd)~~(1) of this section.

(3) In a proceeding pursuant to this section in which no hearing is held, a party filing ~~exceptions to a regional director's report on objections or challenges,~~ a request for review of a regional director's decision on challenged ballots or on objections or challenges on both, or any opposition thereto, may support its submission to the Board by appending thereto copies of ~~documentary evidence, any offer of proof,~~ including copies of any affidavits, or other documentary evidence, it has timely submitted to the regional director and which were not included in the ~~report or~~ decision. Documentary evidence so appended shall ~~there upon~~thereupon become part of the record in the proceeding. Failure ~~to timely submit such documentary evidence to the regional director, or~~ to append that evidence to its submission to the Board in the representation proceeding as provided above, shall preclude a party from relying on such evidence in any subsequent ~~related~~ unfair labor proceeding.

~~(h)~~e) Revised tally of ballots. In any ~~such~~ case under this section in which the regional director or the Board, upon a ruling on challenged ballots, has directed that such ballots be opened and counted and a revised tally of ballots issued, and no objection to such revised tally is filed by any party within 7 days after the revised tally of ballots has been made available, the regional director shall forthwith issue to the parties certification

of the results of the election, including certifications of representative where appropriate, with the same force and effect as if issued by the Board. ~~The proceeding shall thereupon be closed.~~

~~(i)(1) The action (f) Format of the filings with regional director. All documents filed with the regional director in issuing a notice of hearing on objections or challenged ballots, or both, following proceedings under §102.62(b) of this subpart shall constitute a transfer of the case to the Board, and the provisions of §102.65(e) of this subpart shall apply with respect to special permission to appeal to the Board from any such direction of hearing.~~
~~(2) Exceptions, if any, to the hearing officer's report or to the administrative law judge's decision, and any answering brief to such exceptions, this section shall be filed with the Board in Washington, DC, in accordance with paragraph (f) of this section.~~

~~(j)(1) All documents filed with the Board under the provisions of this section shall be filed in eight copies, double spaced, on 8¹/₂ by 11-inch paper, and shall be printed or otherwise legibly duplicated. Carbon Extra copies of typewritten materials will electronically-filed papers need not be accepted filed.~~ Briefs in support of exceptions or answering briefs shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the ~~Board~~ regional director by motion, setting forth the reasons therefor, filed not less than 5 days, including Saturdays, Sundays, and holidays, prior to the date the brief is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

~~(2) The party filing with the Board exceptions to a report, a supporting brief, or an answering brief shall serve a copy thereof on the other parties and shall file a copy with the regional director. A statement of such service shall be filed with the Board together with the document.~~

~~(3)~~g) Extensions of time. Requests for extensions of time to file exceptions ~~to a report, requests for review,~~ supporting briefs, or answering briefs, as permitted by this section, shall be filed with the Board ~~or~~ the Regional Director~~regional director~~, as the case may be. The party filing the request for an extension of time shall serve a copy thereof on the other parties and, if filed with the Board, ~~or~~ on the Regional Director~~regional director~~. A statement of such service shall be filed with the document.

§102.70 Runoff election.

(a) The regional director shall conduct a runoff election, without further order of the Board, when an election in which the ballot provided for not less than three choices (i.e., at least two representatives and “neither”) results in no choice receiving a majority of the valid ballots cast and no objections are filed as provided in §102.69. Only one runoff shall be held pursuant to this section.

(b) Employees who were eligible to vote in the election and who are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

(d) In the event the number of votes cast in an inconclusive election in which the ballot provided for a choice among two or more representatives and “neither” or “none”

is equally divided among the several choices; or in the event the number of ballots cast for one choice in such election is equal to the number cast for another of the choices but less than the number cast for the third choice, the regional director shall declare the first election a nullity and shall conduct another election, providing for a selection from among the three choices afforded in the original ballot; and he shall thereafter proceed in accordance with paragraphs (a), (b), and (c) of this section. In the event two or more choices receive the same number of ballots and another choice receives no ballots and there are no challenged ballots that would affect the results of the election, and if all eligible voters have cast valid ballots, there shall be no runoff election and a certification of results of election shall be issued. Only one such further election pursuant to this paragraph may be held.

(e) Upon the conclusion of the runoff election, the provisions of §102.69 shall govern, insofar as applicable.

§ 102.71 Dismissal of petition; refusal to proceed with petition; requests for review by the Board of action of the regional director.

(a) If, after a petition has been filed and at any time prior to the close of hearing, it shall appear to the regional director that no further proceedings are warranted, the regional director may dismiss the petition by administrative action and shall so advise the petitioner in writing, setting forth a simple statement of the procedural or other grounds for the dismissal, with copies to the other parties to the proceeding. Any party may obtain a review of such action by filing a request therefor with the Board in Washington, DC, in accordance with the provisions of paragraph (c) of this section. A request for review from

an action of a regional director pursuant to this subsection may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.

(2) There are compelling reasons for reconsideration of an important Board rule or policy.

(3) The request for review is accompanied by documentary evidence previously submitted to the regional director raising serious doubts as to the regional director's factual findings, thus indicating that there are factual issues which can best be resolved upon the basis of a record developed at a hearing.

(4) The regional director's action is, on its face, arbitrary or capricious.

(5) The petition raises issues which can best be resolved upon the basis of a record developed at a hearing.

(b) Where the regional director dismisses a petition or directs that the proceeding on the petition be held in abeyance, and such action is taken because of the pendency of concurrent unresolved charges of unfair labor practices, and the regional director, upon request, has so notified the parties in writing, any party may obtain a review of the regional director's action by filing a request therefor with the Board in Washington, DC, in accordance with the provisions of paragraph (c) of this section. A review of an action of a regional director pursuant to this subsection may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.

(2) There are compelling reasons for reconsideration of an important Board rule or policy.

(3) The regional director's action is, on its face, arbitrary or capricious.

(c) A request for review must be filed with the Board in Washington, DC, and a copy filed with the regional director and copies served on all the other parties within 14 days of service of the notice of dismissal or notification that the petition is to be held in abeyance. The request shall be submitted in eight copies and shall contain a complete

statement setting forth facts and reasons upon which the request is based. ~~Such~~The request shall be printed or otherwise legibly duplicated: ~~Provided, however, That carbon,~~ Extra copies of ~~typewritten materials will~~electronically-filed papers need not be ~~accepted~~filed. Requests for an extension of time within which to file the request for review shall be filed with the Board in Washington, DC, and a ~~statement~~certificate of service shall accompany ~~such request~~the requests.

§102.72 Filing petition with general counsel; investigation upon motion of general counsel; transfer of petition and proceeding from region to general counsel or to another region; consolidation of proceedings in same region; severance; procedure before general counsel in cases over which he has assumed jurisdiction.

(a) Whenever it appears necessary in order to effectuate the purposes of the Act, or to avoid unnecessary costs of delay, the general counsel may permit a petition to be filed with him in Washington, DC, or may, at any time after a petition has been filed with a regional director pursuant to §102.60, order that such petition and any proceeding that may have been instituted with respect thereto:

(1) Be transferred to and continued before him, for the purpose of investigation or consolidation with any other proceeding which may have been instituted in a regional office or with him; or

(2) Be consolidated with any other proceeding which may have been instituted in the same region; or

(3) Be transferred to and continued in any other region, for the purpose of investigation or consolidation with any proceeding which may have been instituted in or transferred to such region; or

(4) Be severed from any other proceeding with which it may have been consolidated pursuant to this section.

(b) The provisions of §§102.60 to 102.71, inclusive, shall, insofar as applicable, apply to proceedings before the general counsel pursuant to this section, and the powers granted to regional directors in such provisions shall, for the purpose of this section, be reserved to and exercised by the general counsel. After the transfer of any petition and any proceeding which may have been instituted in respect thereto from one region to another pursuant to this section, the provisions of this subpart shall, insofar as applicable, govern such petition and such proceedings as if the petition has originally been filed in the region to which the transfer was made.

(c) The regional director may exercise the powers in paragraph (a)(2) and (4) of this section with respect to proceedings pending in his region.

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Subpart D—Procedure for Unfair Labor Practice and Representation Cases Under Sections 8(b)(7) and 9(c) of the Act

§102.73 Initiation of proceedings.

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of section 8(b)(7) of the Act, the regional director shall investigate such charges, giving it the priority specified in subpart G of this part.

§102.74 Complaint and formal proceedings.

If it appears to the regional director that the charge has merit, formal proceedings in respect thereto shall be instituted in accordance with the procedures described in §§102.15 to 102.51, inclusive, insofar as they are applicable, and insofar as they are not inconsistent with the provisions of this subpart. If it appears to the regional director that issuance of a complaint is not warranted, he shall decline to issue a complaint, and the provisions of §102.19, including the provisions for appeal to the general counsel, shall be applicable unless an election has been directed under §§102.77 and 102.78, in which event the provisions of §102.81 shall be applicable.

§102.75 Suspension of proceedings on the charge where timely petition is filed.

If it appears to the regional director that issuance of a complaint may be warranted but for the pendency of a petition under section 9(c) of the Act, which has been filed by any proper party within a reasonable time not to exceed 30 days from the commencement of picketing, the regional director shall suspend proceedings on the charge and shall proceed to investigate the petition under the expedited procedure provided below, pursuant to the first proviso to subparagraph (C) of section 8(b)(7) of the Act.

§ 102.76 Petition; who may file; where to file; contents.

When picketing of an employer has been conducted for an object proscribed by ~~section~~Section 8(b)(7) of the Act, a petition for the determination of a question concerning representation of the employees of such employer may be filed in accordance with the provisions of §§ 102.60 and 102.61, insofar as applicable: ~~Provided, however, That, except that~~ if a charge under § 102.73 has been filed against the labor organization on whose behalf picketing has been conducted, the petition shall not be required to contain a statement that the employer declines to recognize the petitioner as the representative within the meaning of ~~section~~Section 9(a) of the Act; or that the union represents a substantial number of employees; or that the labor organization is currently recognized but desires certification under the ~~act~~Act; or that the individuals or labor organizations who have been certified or are currently recognized by the employer are no longer the representative; or, if the petitioner is an employer, that one or more individuals or labor organizations have presented to the petitioner a claim to be recognized as the exclusive representative of the employees in the unit claimed to be appropriate.

§ 102.77 Investigation of petition by regional director; directed election.

(a) Where a petition has been filed pursuant to § 102.76 the regional director shall make an investigation of the matters and allegations set forth therein. Any party, and any individual or labor organization purporting to act as representative of the employees involved and any labor organization on whose behalf picketing has been conducted as described in section 8(b)(7)(C) of the Act may present documentary and other evidence relating to the matters and allegations set forth in the petition.

(b) If after the investigation of such petition or any petition filed under subpart C

of this part, and after the investigation of the charge filed pursuant to § 102.73 ~~of this subpart~~, it appears to the regional director that an expedited election under section 8(b)(7)(C) of the Act is warranted, and that the policies of the ~~act~~Act would be effectuated thereby, ~~he~~the regional director shall forthwith proceed to conduct an election by secret ballot of the employees in an appropriate unit, or make other disposition of the matter: ~~Provided, however, That, except that~~ in any case in which it appears to the regional director that the proceeding raises questions which cannot be decided without a hearing, ~~he~~the director may issue and cause to be served on the parties, individuals, and labor organizations involved a notice of hearing before a hearing officer at a time and place fixed therein. In this event, the method of conducting the hearing and the procedure following, ~~including transfer of the case to the Board, shall be governed insofar as applicable by §§ 102.63 to 102.68 of this part, inclusive, except that the parties shall not file briefs without special permission of the regional director or the Board, as the case may be, but shall, however, state their respective legal positions upon the record at the close of the hearing, and except that any request for review of a decision of the regional director shall be filed promptly after the issuance of such decision shall be governed insofar as applicable by §§ 102.63 through 102.68 inclusive.~~

§ 102.78 Election procedure; method of conducting balloting; postballoting procedure.

If no agreement such as that provided in § 102.79 has been made, the regional director shall fix the time and place of the election, eligibility requirements for voting, and other arrangements for the balloting. The method of conducting the balloting and the postballoting procedure shall be governed, insofar as applicable, by the provisions of

§§102.69 and 102.70 except that the labor organization on whose behalf picketing has been conducted may not have its name removed from the ballot without the consent of the regional director and except that the regional director's rulings on any objections or challenged ballots shall be final unless the Board grants special permission to appeal from the regional director's rulings. Any request for such permission shall be filed promptly, in writing, and shall briefly state the grounds relied upon. The party requesting review shall immediately serve a copy thereof on each other party. A request for review shall not operate as a stay of the regional director's rulings unless so ordered by the Board.

§ 102.79 Consent-election agreements.

Where a petition has been duly filed, the parties involved may, subject to the approval of the regional director, enter into an agreement governing the method of conducting the election as provided for in §102.62(a), insofar as applicable.

§102.80 Dismissal of petition; refusal to process petition under expedited procedure.

(a) If, after a petition has been filed pursuant to the provisions of §102.76, and prior to the close of the hearing, it shall appear to the regional director that further proceedings in respect thereto in accordance with the provisions of §102.77 are not warranted, he may dismiss the petition by administrative action, and the action of the regional director shall be final, subject to a prompt appeal to the Board on special permission which may be granted by the Board. Upon such appeal the provisions of

§102.71 shall govern insofar as applicable. Such appeal shall not operate as a stay unless specifically ordered by the Board.

(b) If it shall appear to the regional director that an expedited election is not warranted but that proceedings under subpart C of this part are warranted, he shall so notify the parties in writing with a simple statement of the grounds for his decision.

(c) Where the regional director, pursuant to §§102.77 and 102.78, has determined that a hearing prior to election is not required to resolve the issues raised by the petition and has directed an expedited election, any party aggrieved may file a request with the Board for special permission to appeal from such determination. Such request shall be filed promptly, in writing, and shall briefly state the grounds relied upon. The party requesting such appeal shall immediately serve a copy thereof on each other party. Should the Board grant the requested permission to appeal, such action shall not, unless specifically ordered by the Board, operate as a stay of any action by the regional director.

§102.81 Review by the general counsel of refusal to proceed on charge; resumption of proceedings upon charge held during pendency of petition; review by the general counsel of refusal to proceed on related charge.

(a) Where an election has been directed by the regional director or the Board in accordance with the provisions of §§102.77 and 102.78, the regional director shall decline to issue a complaint on the charge, and he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making the charge may obtain a review of such action by filing an appeal with the general counsel in Washington, DC, and filing a copy of the appeal with the regional director, within 7 days from the service of the notice of such refusal by the regional

director. In all other respects the appeal shall be subject to the provisions of §102.19. Such appeal shall not operate as a stay of any action by the regional director.

(b) Where an election has not been directed and the petition has been dismissed in accordance with the provisions of §102.80, the regional director shall resume investigation of the charge and shall proceed in accordance with §102.74.

(c) If in connection with an 8(b)(7) proceeding, unfair labor practice charges under other sections of the act have been filed and the regional director upon investigation has declined to issue a complaint upon such charges, he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making such charges may obtain a review of such action by filing an appeal with the general counsel in Washington, DC, and filing a copy of the appeal with the regional director, within 7 days from the service of the notice of such refusal by the regional director. In all other respects the appeal shall be subject to the provisions of §102.19.

§102.82 Transfer, consolidation, and severance.

The provisions of §§102.33 and 102.72, respecting the filing of a charge or petition with the general counsel and the transfer, consolidation, and severance of proceedings, shall apply to proceedings under this subpart, except that the provisions of §§102.73 to 102.81, inclusive, shall govern proceedings before the general counsel.

Subpart E—Procedure for Referendum Under Section 9(e) of the Act

§ 102.83 Petition for referendum under ~~section~~Section 9(e)(1) of the Act; who may file; where to file; withdrawal.

A petition to rescind the authority of a labor organization to make an agreement requiring as a condition of employment membership in such labor organization may be filed by an employee or group of employees on behalf of 30 percent or more of the employees in a bargaining unit covered by such an agreement. The petition shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. One original of the petition shall be filed with the ~~Regional Director~~regional director wherein the bargaining unit exists or, if the unit exists in two or more Regions, with the ~~Regional Director~~regional director for any of such Regions. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. A person filing a petition electronically pursuant to § 102.114(i) need not file an original. The petition may be withdrawn only with the approval of the ~~Regional Director~~regional director with whom such petition was filed, ~~except that if the proceeding has been transferred to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Board.~~ Upon approval of the withdrawal of any petition the case shall be closed.

§ 102.84 Contents of petition to rescind authority.

(a) The name of the employer.

(b) The address of the establishments involved.

(c) The general nature of the employer's business.

(d) A description of the bargaining unit involved.

(e) The name and address of the labor organization whose authority it is desired to rescind.

(f) The number of employees in the unit.

(g) Whether there is a strike or picketing in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(h) The date of execution and of expiration of any contract in effect covering the unit involved.

(i) The name and address of the ~~person designated to petitioner, and the name,~~ title, address, telephone number, facsimile number, and email address of the individual who will serve as the representative of the petitioner and accept service of ~~documents~~all papers for ~~petitioners~~purposes of the proceeding.

(j) A statement that 30 percent or more of the bargaining unit employees covered by an agreement between their employer and a labor organization made pursuant to Section 8(a)(3) of the Act, desire that the authority to make such an agreement be rescinded.

(k) Any other relevant facts.

(l) Evidence supporting the statement that 30 percent or more of the bargaining unit employees desire to rescind the authority of their employer and labor organization to

enter into an agreement made pursuant to Section 8(a)(3) of the Act. Such evidence shall be filed together with the petition, but shall not be served on any other party.

(m) Evidence filed pursuant to paragraph (l) of this section together with a petition that is filed by facsimile or electronically, which includes original signatures that cannot be transmitted in their original form by the method of filing of the petition, may be filed by facsimile or in electronic form provided that the original documents are received by the regional director no later than 2 days after the facsimile or electronic filing.

(n) The type, date(s), time(s) and location(s) of the election sought.

§ 102.85 Investigation of petition by regional director; consent referendum; directed referendum.

Where a petition has been filed pursuant to § 102.83 ~~of this subpart~~, and it appears to the regional director that the petitioner has made an appropriate showing, in such form as the regional director may determine, that 30 percent or more of the employees within a unit covered by an agreement between their employer and a labor organization requiring membership in such labor organization desire to rescind the authority of such labor organization to make such an agreement, ~~he~~the director shall proceed to conduct a secret ballot of the employees involved on the question whether they desire to rescind the authority of the labor organization to make such an agreement with their employer: ~~Provided, however, That, except that~~ in any case in which it appears to the regional director that the proceeding raises questions which cannot be decided without a hearing, ~~he~~the director may issue and cause to be served on the parties a notice of hearing before a hearing officer at a time and place fixed therein. The regional director shall fix the time

and place of the election, eligibility requirements for voting, and other arrangements of the balloting, but the parties may enter into an agreement, subject to the approval of the regional director, fixing such arrangements. In any such consent agreements, provision may be made for final determination of all questions arising with respect to the balloting by the regional director or, upon grant of a request for review, by the Board.

§ 102.86 Hearing; posthearing procedure.

The method of conducting the hearing and the procedure following the hearing, ~~including transfer of the case to the Board~~, shall be governed, insofar as applicable, by §§ 102.63 ~~through~~ 102.68 ~~of this part~~, inclusive.

§102.87 Method of conducting balloting; postballoting procedure.

The method of conducting the balloting and the postballoting procedure shall be governed by the provisions of §102.69, insofar as applicable.

§102.88 Refusal to conduct referendum; appeal to Board.

If, after a petition has been filed, and prior to the close of the hearing, it shall appear to the regional director that no referendum should be conducted, he shall dismiss the petition by administrative action. Such dismissal shall be in writing and accompanied by a simple statement of the procedural or other grounds. The petitioner may obtain a review of such action by filing a request therefor with the Board in Washington, DC, and filing a copy of such request with the regional director and the other parties within 14 days from the service of notice of such dismissal. The request shall contain a complete statement setting forth the facts and reasons upon which the request is based.

Subpart I—Service and Filing of Papers

§102.111 Time computation.

(a) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the official closing time of the receiving office on the next Agency business day (see appendix A to this part 102 setting forth the official business hours of the Agency's several offices). When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) When the Act or any of these rules require the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the official closing time of the receiving office on the last day of the time limit, if any, for such filing or extension of time that may have been granted (see appendix A to the part 102 setting forth the official business hours of the Agency's several offices). A request for an extension of time to file a document shall be filed no later than the official closing time of the receiving office on the date on which the document is due. Requests for extensions of time filed within three days of the due date must be grounded upon circumstances not reasonably foreseeable in advance. In construing this section of the rules, the Board will accept as timely filed any document which is hand delivered to the Board on or before the official closing time of the receiving office on the due date or postmarked on the day before (or earlier than) the due date; documents which are postmarked on or after the due

date are untimely. "Postmarking" shall include timely depositing the document with a delivery service that will provide a record showing that the document was tendered to the delivery service in sufficient time for delivery by the due date, but in no event later than the day before the due date. *Provided, however,* The following documents must be received on or before the official closing time of the receiving office on the last day for filing:

(1) Charges filed pursuant to section 10(b) of the Act (see also §102.14).

(2) Applications for awards and fees and other expenses under the Equal Access to Justice Act.

(3) Petitions to revoke subpoenas.

(4) Requests for extensions of time to file any document for which such an extension may be granted.

(c) The following documents may be filed within a reasonable time after the time prescribed by these rules only upon good cause shown based on excusable neglect and when no undue prejudice would result:

(1) In unfair labor practice proceedings, motions, exceptions, answers to a complaint or a backpay specification, and briefs; and

(2) In representation proceedings, exceptions, requests for review, motions, briefs, and any responses to any of these documents. A party seeking to file such documents beyond the time prescribed by these rules shall file, along with the document, a motion that states the grounds relied on for requesting permission to file untimely. The specific facts relied on to support the motion shall be set forth in affidavit form and sworn to by individuals with personal knowledge of the facts. The time for filing any document

responding to the untimely document shall not commence until the date a ruling issues accepting the untimely document. In addition, cross-exceptions shall be due within 14 days, or such further period as the Board may allow, from the date a ruling issues accepting the untimely filed documents.

§ 102.112 Date of service; date of filing.

The date of service shall be the day when the matter served is deposited in the United States mail, or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service, or is delivered in person, as the case may be. Where service is made by electronic mail, the date of service shall be the date on which the message is sent. Where service is made by facsimile transmission, the date of service shall be the date on which transmission is received. The date of filing shall be the day when the matter is required to be received by the Board as provided by § 102.111.

§ 102.113 Methods of service of process and papers by the Agency; proof of service.

(a) Service of complaints and compliance specifications. Complaints and accompanying notices of hearing, compliance specifications, and amendments to either complaints or to compliance specifications, shall be served upon all parties either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(b) Service of final orders and decisions. Final orders of the Board in unfair labor practice cases and administrative law judges' decisions shall be served upon all parties

either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(c) Service of subpoenas. Subpoenas shall be served upon the recipient either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(d) Service of other documents. Other documents may be served by the Agency by any of the foregoing methods as well as regular mail, electronic mail or private delivery service. Such other documents may be served by facsimile transmission with the permission of the person receiving the document.

(e) Proof of service. In the case of personal service, or delivery to a principal office or place of business, the verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same. In the case of service by mail or telegraph, the return post office receipt or telegraph receipt therefor when registered or certified and mailed or when telegraphed shall be proof of service of the same. However, these methods of proof of service are not exclusive; any sufficient proof may be relied upon to establish service.

(f) Service upon representatives of parties. Whenever these rules require or permit the service of pleadings or other papers upon a party, a copy shall also be served on any attorney or other representative of the party who has entered a written appearance in the proceeding on behalf of the party. If a party is represented by more than one attorney or representative, service upon any one of such persons in addition to the party shall satisfy this requirement. Service by the Board or its agents of any documents upon any such

attorney or other representative may be accomplished by any means of service permitted by these rules, including regular mail.

§ 102.114 Filing and service of papers by parties; form of papers; manner and proof of filing or service; electronic filings.

(a) Service of documents by a party on other parties may be made personally, or by registered mail, certified mail, regular mail, electronic mail (if the document was filed electronically) or if specifically provided for in these rules, or private delivery service.

Service of documents by a party on other parties by any other means, including facsimile transmission, is permitted only with the consent of the party being served. Unless otherwise specified elsewhere in these rules, service on all parties shall be made in the same manner as that utilized in filing the document with the Board, or in a more expeditious manner; however, when filing with the Board is done by hand, the other parties shall be promptly notified of such action by telephone, followed by service of a copy in a manner designed to insure receipt by them by the close of the next business day. The provisions of this section apply to the General Counsel after a complaint has issued, just as they do to any other party, except to the extent that the provisions of § 102.113(a) or ~~§102.113~~(c) provide otherwise.

(b) When service is made by registered mail, or by certified mail, the return post office receipt shall be proof of service. When service is made by a private delivery service, the receipt from that service showing delivery shall be proof of service. However, these methods of proof of service are not exclusive; any sufficient proof may be relied upon to establish service.

(c) Failure to comply with the requirements of this section relating to timeliness of service on other parties shall be a basis for either:

(1) A rejection of the document; or

(2) Withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond.

(d) Papers filed with the Board, General Counsel, Regional Director, Administrative Law Judge, or Hearing Officer shall be typewritten or otherwise legibly duplicated on ~~8¹/₂~~ by 11-inch plain white paper, shall have margins no less than one inch on each side, shall be in a typeface no smaller than 12 characters-per-inch (elite or the equivalent), and shall be double spaced (except that quotations and footnotes may be single spaced). ~~Carbon copies shall not be filed and will not be accepted.~~ Nonconforming papers may, at the Agency's discretion, be rejected.

(e) The person or party serving the papers or process on other parties in conformance with §102.113 and paragraph (a) of this section shall submit a written statement of service thereof to the Board stating the names of the parties served and the date and manner of service. Proof of service as defined in paragraph (a) of this section shall be required by the Board only if subsequent to the receipt of the statement of service a question is raised with respect to proper service. Failure to make proof of service does not affect the validity of the service.

(f) Unfair labor practice charges, petitions in representation proceedings, objections to elections, and requests for extensions of time for filing documents will be accepted by the Agency if transmitted to the facsimile machine of the appropriate office.

Other documents, except those specifically prohibited in paragraph (g) of this section, will be accepted by the Agency if transmitted to the facsimile machine of the office designated to receive them only with advance permission from the receiving office which may be obtained by telephone. Advance permission must be obtained for each such filing. At the discretion of the receiving office, the person submitting a document by facsimile may be required simultaneously to serve the original and any required copies on the office by overnight delivery service. When filing a charge, a petition in a representation proceeding, or election objections by facsimile transmission pursuant to this section, receipt of the transmitted document by the Agency constitutes filing with the Agency. A failure to timely file or serve a document will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason.

(g) Facsimile transmissions of the following documents will not be accepted for filing: ~~Showing of Interest in Support of Representation Petitions, including Decertification Petitions;~~ Answers to Complaints; Exceptions or Cross-Exceptions; Briefs; Requests for Review of Regional Director Decisions; Administrative Appeals from Dismissal of Petitions or Unfair Labor Practice Charges; Objections to Settlements; EAJA Applications; Motions for Default Judgment; Motions for Summary Judgment; Motions to Dismiss; Motions for Reconsideration; Motions to Clarify; Motions to Reopen the Record; Motions to Intervene; Motions to Transfer, Consolidate or Sever; or Petitions for Advisory Opinions. Facsimile transmissions in contravention of this rule will not be filed.

(h) Documents and other papers filed through facsimile transmission shall be served on all parties in the same way as used to serve the office where filed, or in a more expeditious manner, in conformance with paragraph (a) of this section. Thus, facsimile transmission shall be used for this purpose whenever possible. When a party cannot be served by this method, or chooses not to accept service by facsimile as provided for in paragraph (a) of this section, the party shall be notified personally or by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service or overnight delivery service.

(i) The Agency's Web site (<http://www.nlr.gov>) contains certain forms that parties or other persons are permitted to file with the Agency electronically. Parties or other persons choosing to utilize those forms to file documents electronically are permitted to do so by following the instructions described on the Web site, notwithstanding any contrary provisions elsewhere in these rules. In the event the document being filed electronically is required to be served on another party to a proceeding, the other party shall be served by electronic mail (e-mail), if possible. If the other party does not have the ability to receive electronic service, the other party shall be notified by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service no later than the next day, by overnight delivery service, or, with the permission of the party receiving the document, by facsimile transmission.

PART 103—OTHER RULES

Subpart B—Election Procedures

~~§103.20 Posting of election notices.~~

~~(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.~~

~~(b) The term *working day* shall mean an entire 24 hour period excluding Saturdays, Sundays, and holidays.~~

~~(c) A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.~~

~~(d) Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of §102.69(a).~~

§ 103.20 Election procedures and blocking charges; filing of blocking charges; simultaneous filing of offer of proof; prompt furnishing of witnesses.

Whenever any party to a representation proceeding files an unfair labor practice charge together with a request that it block the processing of the petition to the election, or whenever any party to a representation proceeding requests that its previously filed unfair labor practice charge block the further processing of a petition, the party shall simultaneously file, but not serve on any other party, a written offer of proof in support of

the charge. The offer of proof shall provide the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block the processing of a petition shall also promptly make available to the regional director the witnesses identified in its offer of proof. If the regional director determines that the party's offer of proof does not describe evidence that, if proven, would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself, and thus would require that the processing of the petition be held in abeyance absent special circumstances, the regional director shall continue to process the petition and conduct the election where appropriate.