

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Parts 101 and 102

#### Proposed Rules Governing Consent-Election Agreements

July 22, 2004

**AGENCY:** National Labor Relations Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** As part of its ongoing efforts to address the needs of employers, individuals and labor organizations and to further the fundamental purposes of the Act, the National Labor Relations Board (NLRB) is proposing to revise its rules to provide a mechanism to have preelection disputes decided with finality by the Regional Director.

**DATES:** All comments must be received on or before August 26, 2004.

**ADDRESSES:** All written comments should be sent to the Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. The comments should be filed in eight copies, double spaced, on 8½-by-11 inch paper and shall be printed or otherwise legibly duplicated.

**FOR FURTHER INFORMATION CONTACT:** Lester A. Heltzer, Executive Secretary, Telephone: (202) 273-1067.

**SUPPLEMENTARY INFORMATION:** Section 102.62 of the Board's Rules and Regulations currently provides two kinds of "consent" election procedures. Under both procedures, the parties must stipulate with respect to jurisdictional facts, labor organization status, appropriate unit description, and classifications of employees included and excluded. The parties must also agree to the time, place and other election details. Under § 102.62(a), the parties agree that postelection disputes will be resolved with finality by the Regional Director. Under § 102.62(b), postelection disputes are resolved pursuant to § 102.69, with the parties retaining the right to file exceptions or

requests for review with the Board. The current proposal for revision of the Board's Rules and Regulations would create a new, voluntary procedure whereby the parties could agree to the conduct of an election with disputed preelection and postelection matters to be resolved with finality by the Regional Director.

The proposal would also amend § 102.62(a) to provide that the decision of the Regional Director in a postelection proceeding would have the same force and effect as that of the Board "in that case." The addition of this language would make it clear that the Regional Director's decision will not be regarded as Board precedent in future cases. Identical language is present in the proposed § 102.62(c).

In addition to revisions to § 102.62 of the Board's Rules and Regulations, also proposed are revisions to the Statements of Procedures, §§ 101.19 and 101.28, to reflect the revisions to § 102.62 in the description of Board processing of union deauthorization elections (§ 101.28) and all other elections (§ 101.19).

Under the proposed new procedures, after the filing of a petition supported by the requisite showing of interest, an employer and individual or labor organization can voluntarily enter into an agreement under which the Regional Director will resolve with finality disputed pre- and postelection issues and issue a certification of representative or results. If the parties voluntarily agree to utilize this new procedure they will be assured of a more expeditious and final resolution of their question concerning representation by a Regional Director, who will act in a neutral, expert, and conclusive fashion.

Although the Agency has decided to give notice of proposed rulemaking with respect to these rule changes, the changes involve rules of agency organization, procedure or practice and thus no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act (5 U.S.C. 553). Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601), does not apply to these rule changes.

#### List of Subjects in 29 CFR Parts 101 and 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, the NLRB proposes to amend 29 CFR Parts 101 and 102 as follows:

#### PART 101—STATEMENTS OF PROCEDURES

1. The authority citation for 29 CFR part 101 continues to read as follows:

**Authority:** Section 6 National Labor Relations Act, as amended (29 U.S.C. 151, 156), and sec. 55(a) of the Administrative Procedure Act (5 U.S.C. 552(a)). Section 101.14 also issued under sec. 2112(a)(1) of Pub. L. 100-236, 28 U.S.C. 2112(a)(1).

2. Section 101.19 is amended by revising the introductory text and adding paragraph (c) to read as follows:

#### § 101.19 Consent adjustments before formal hearing.

The Board has devised and makes available to the parties three types of informal consent procedures through which representation issues can be resolved without recourse to formal procedures. These informal arrangements are commonly referred to as consent-election agreement followed by Regional Director's determination, stipulated election agreement followed by Board certification, and full consent agreement, in which the parties agree that all pre- and postelection disputes will be resolved with finality by the Regional Director. Forms for use in these informal procedures are available in the Regional Offices.

\* \* \* \* \*

(c) The full consent-election agreement followed by the Regional Director's determination of representatives is another method of informal adjustment of representation cases.

(1) Under these terms the parties agree that if they are unable to informally resolve disputes arising with respect to the appropriate unit and other issues pertaining to the resolution of the question concerning representation; the payroll period to be used as the basis of eligibility to vote in an election, the place, date, and hours of balloting, or other details of the election, those issues will be presented to, and decided with finality by the Regional Director after a hearing conducted in a manner consistent with the procedures set forth in § 101.20.

(2) Upon the close of the hearing, the entire record in the case is forwarded to the Regional Director. The hearing

officer also transmits an analysis of the issues and the evidence, but makes no recommendations as to resolution of the issues. All parties may file briefs with the Regional Director within 7 days after the close of the hearing. The parties may also request to be heard orally. After review of the entire case, the Regional Director issues a final 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 this section.

(3) All matters arising after the election, including determinative challenged ballots and objections to the conduct of the election shall be processed in a manner consistent with paragraphs (a)(4), (5), and (6) of this section.

3. Section 101.28 is revised to read as follows:

**§ 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 consent-election agreement followed by Regional Director's determination, stipulated election agreement followed by Board certification, and full consent-election agreement providing for the Regional Director's determination of both pre- and postelection matters. 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, a stipulated election agreement providing for Board certification, and the full consent-election agreement providing for the Regional Director's determination of both pre- and postelection matters are the same as those already described in subpart C of this part in connection with similar agreements in representation cases under section 9(c) of the Act, except that no provision is made for runoff elections.

**PART 102—RULES AND REGULATIONS, SERIES 8**

4. The authority citation for 29 CFR part 102 continues to read as follows:

**Authority:** Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 552a(j) and (k) of

the Privacy Act (5 U.S.C. 552a(j) and (k)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

5. Section 102.62 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 102.62 Consent-election agreements.**

(a) 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, enter into a consent-election agreement leading to a determination by the Regional Director of the facts ascertained after such consent election. Such 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. The method of conducting such consent election shall be consistent with the method followed by the Regional Director in conducting elections pursuant to §§ 102.69 and 102.70 except that the rulings and determinations by the Regional Director of the results thereof shall be final, and the 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 that rulings or determinations by the Regional Director in respect to any amendment of such certification shall also be final.

\* \* \* \* \*

(c) 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, enter into an agreement providing for a hearing pursuant to §§ 102.63, 102.64, 102.65, 102.66 and 102.67 to resolve any issue necessary to resolve the question concerning representation. Upon the conclusion of such a hearing, the Regional Director shall issue a Decision. The rulings and determinations by the 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 shall be conducted under the direction and supervision of the Regional Director. The method of conducting such consent election shall

be consistent with the method followed by the Regional Director in conducting elections pursuant to §§ 102.69 and 102.70, except that the rulings and determinations by the Regional Director of the results thereof shall be final, and the 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 that rulings or determinations by the Regional Director in respect to any amendment of such certification shall also be final.

Dated in Washington, DC, on July 22, 2004.

By direction of the Board.

**Lester A. Heltzer,**

*Executive Secretary.*

[FR Doc. 04-17095 Filed 7-26-04; 8:45 am]

**BILLING CODE 7545-01-P**

**DEPARTMENT OF DEFENSE**

**Department of the Army, Corps of Engineers**

**33 CFR Part 334**

**RIN 0710-AA58**

**United States Army Danger Zone; Salt River, Rolling Fork River, and Otter Creek; U.S. Army Garrison, Fort Knox Military Reservation; Fort Knox, Kentucky**

**AGENCY:** United States Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Corps of Engineers is proposing regulations to establish a danger zone on navigable portions of the Salt River and the Rolling Fork River and the non-navigable portions of Otter Creek, within the installation boundaries of the Fort Knox Military Reservation. These regulations will enable the Army to prohibit public access to the area and enhance safety and security within active military impact and training areas. The Salt River passes through an active military area. Unexploded ordnance (UXO) from military weapons firing is located within the area along the river and a multi-purpose digital training range is under construction in this area. The Salt River is also used for river training activities. Training and military weapons firing activities occur approximately 320 days per year in this area. The Rolling Fork River passes through the center of the Yano Multi-purpose Training Range. Weapons firing