

[6735-01-M]

Title 29—Labor

CHAPTER XXVII—FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PART 2700—PROCEDURAL RULES

Amendment of Interim Rule

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Amendment of interim procedural rule.

SUMMARY: The Federal Mine Safety and Health Review Commission, having adopted on a provisional basis certain interim procedural rules (29 CFR Part 2700), notifies the general public that it is amending 29 CFR 2700.57 effective on date of publication of the amendment. The amendment revokes that section and substitutes therefor new § 2700.57 which clarifies procedures applicable to appeals pending before the Interior Department and transferred by section 301 et seq., of the Federal Mine Safety and Health Amendments of 1977, 30 U.S.C. 961 et seq.

DATE: Effective October 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Philip Paschall, Attorney, Office of General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street NW., Washington, D.C. 20006, phone 202-632-4770.

The Federal Mine Safety and Health Review Commission has determined to continue in effect interim procedural rules until publication of final rules of procedure and amends effective upon publication § 2700.57 by revoking § 2700.57 and substituting therefor the following:

§ 2700.57 Appeals pending before Interior Department Board of Mine Operations Appeals on March 8, 1978.

With respect to any appeal pending before the Board of Mine Operations Appeals as of March 8, 1978, no further pleadings need be filed to perfect such appeal before the Commission.

(Sec. 113(d)(2), Pub. L. 95-164, 91 Stat. 1314 (30 U.S.C. 823).)

Issued in Washington, D.C., by the Commission on October 4, 1978.

JEROME WALDIE,
Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 78-28486 Filed 10-6-78; 8:45 am]

[3810-70-M]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER M—MISCELLANEOUS

PART 242B—GENERAL PROCEDURES AND DELEGATIONS OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Alteration of Number and Responsibilities of Officers Reporting to the Dean of the University (President)

AGENCY: Uniformed Services University of the Health Sciences.

ACTION: Final rule.

SUMMARY: This document amends the general procedures and delegations to realine certain functions of officers reporting to the dean of the university (president). It adds one officer, and revises titles and responsibilities to correspond to the realignment of functions.

EFFECTIVE DATE: November 9, 1978.

ADDRESS: Legal Counsel, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Md. 20014.

FOR FURTHER INFORMATION CONTACT:

Merel Glaubiger, Legal Counsel, 202-295-2113.

SUPPLEMENTARY INFORMATION: In FR DOC 77-36169 published in the FEDERAL REGISTER on December 20, 1977 (42 FR 63775), the Uniformed Services University of the Health Sciences published general procedures and delegations of the board of regents of the Uniformed Services University of the Health Sciences. The purpose of this amendment is to alter the number and responsibilities of officers reporting to the dean of the university (president). The rule changes the title of director of administrative affairs to director of resource management. It adds a new officer, the assistant dean for administration and sets forth the responsibilities of each.

Because these rules relate solely to matters of university organization and procedure, notice of proposed rule-making and public participation in the rulemaking are not required by section 553 of title 5 of the United States Code.

Accordingly, pursuant of the Uniformed Services Health Professions Revitalization Act, and sections 552 and 553 of title 5 of the United States Code, the board of regents of the Uniformed Services University of the Health Sciences, amends Part 242b.7, Chapter I, Title 32, Code of Federal Regulations by revising § 242b.7(a)(7) and § 242b.7(b)(3) and by adding § 242b.7(b)(4) as follows:

§ 242b.7 Officers of the university.

(a) * * *

(7) * * *

(iii) A director of resource management; and

(iv) An assistant dean for administration.

(b) * * *

(3) Director of resource management

(i) The director of resource management shall be responsible for the preparation of budget estimates and program submission presentations for the approval of the board.

(ii) He or she shall be responsible for:

(A) Accounting and financial management;

(B) Internal audit; and

(C) Manpower planning.

(iii) He or she shall make all books, records, and vouchers available for the inspection of any member of the board and shall report at each meeting of the administrative affairs committee.

(4) Assistant dean for administration

(i) The assistant dean for administration shall be responsible for:

(A) The management of the university property and facilities;

(B) Administrative support of the university educational and research programs; and

(C) Personnel management.

(ii) He or she shall report at each meeting of the administrative affairs committee regarding matters of importance in the university's administrative affairs.

Dated: October 3, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 78-28367 Filed 10-6-78; 8:45 am]

[4910-14-M]

Title 33—Navigation and Navigable Waters

**CHAPTER I—COAST GUARD,
DEPARTMENT OF TRANSPORTATION**

[OCGD3-78-7-R]

PART 165—SAFETY ZONES

**Establishment of Safety Zone in
Upper Bay, New York Harbor, N.Y.**

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard's Safety Zone Regulations establishes a portion of the water of the Upper Bay, New York Harbor as a safety zone. This safety zone is established to protect vessels from possible damage due to the presence of a fireworks display at the southern tip of Governors Island, N.Y. No vessel may enter or remain in a safety zone without the permission of the captain of the port.

EFFECTIVE DATE: This amendment is effective on October 9, 1978, from 9:15 p.m., e.d.s.t., to 9:45 p.m., e.d.s.t.

FOR FURTHER INFORMATION CONTACT:

Captain J. L. Fleishell, Captain of the Port, New York, Building 109, Governors Island, N.Y., 212-668-7917.

SUPPLEMENTARY INFORMATION: This information is issued without publication of a notice of proposed rulemaking and this amendment is effective in less than 30 days from the date of publication because the short time between scheduling of the event and its occurrence made such procedures impractical. Extensive local public notice has been given.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are: Lieutenant Junior Grade Ristaino, Project Manager, Captain of the Port, New York, N.Y., and Commander James L. Walker, Project Attorney, Legal Office, Third Coast Guard District, New York, N.Y.

In consideration of the foregoing, part 165 of title 33 of the Code of Federal Regulations is amended by adding § 165.302 to read as follows:

§ 165.302 Upper Bay, New York Harbor, N.Y.

The water of the Upper Bay, New York Harbor, within 1,000 yards of the southern tip of Governors Island, N.Y., is a safety zone from 9:15 p.m., October 9, 1978, to 9:45 p.m., October 9, 1978.

(86 Stat. 427 (33 U.S.C. 1224); 49 CFR 1.46(n)(4).)

Dated: October 4, 1978.

J. L. FLEISHELL,
Captain, U.S. Coast Guard,
Captain of the Port, New York.

[FR Doc. 78-28499 Filed 10-6-78; 8:45 am]

[8320-01-M]

**Title 38—Pensions, Bonuses and
Veterans' Relief**

**CHAPTER I—VETERANS
ADMINISTRATION**

**PART 14—LEGAL SERVICES,
GENERAL COUNSEL**

**Recognition of Organizations,
Attorneys, and Agents**

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: These regulations provide for representation of Veterans Administration claimants, including recognition of organizations and their representatives, agents, and attorneys to assure qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits. The Veterans Administration hopes to accomplish more complete claims representation for all veterans and their dependents.

EFFECTIVE DATE: October 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Joseph J. Lindekugel (02A1), Director, Management and Operations Staff, Office of General Counsel, Veterans Administration, Washington, D.C. 20420, 202-389-3730.

SUPPLEMENTAL INFORMATION: On pages 17482 to 17484 of the FEDERAL REGISTER of April 25, 1978, there was published a notice of proposed revision of regulations providing for representation of Veterans Administration claimants and recognition of organizations, accredited representatives, attorneys and agents. Interested parties were given 30 days to submit comments, suggestions or objections to the proposed revision of regulations. We received 25 comments, which are discussed in the following paragraphs.

Section 14.626

Two comments on the "Purpose" section of the proposed regulations suggested that the word "qualified" be changed to "competent," however, the "Purpose" section has not been changed since the Veterans Administration intended by the use of the word "qualified" to convey the meaning first given in Webster's New Collegiate Dictionary: " * * * (F)itted (as by

training or experience) for a given purpose; competent." The Veterans Administration desires that those presenting claims on behalf of veterans and their dependents possess a skill sufficient to insure a high quality of representation and believes that the word "qualified" conveys that desire. It was also intended that representation be limited to those who can meet a standard of skill, thus, the requirement that representatives demonstrate their ability to present claims by either passing a test or showing some other ability which would enable them to effectively present claims. The word "qualified" conveys the intention of the Veterans Administration.

One group commented that the need to monitor an applicant's choice of representative was like other administrative agencies which do not so monitor claims representatives. No survey has been done by the Veterans Administration to determine that "no other administrative agency" requires regulation of representatives. However, because of the complexities of claims presentation related to veterans' benefits, we believe it is desirable to have a monitoring system to assure that veterans with valid claims receive the benefits to which they are entitled.

Section 14.627

One comment was that the definition of "National Organizations" should be altered to include the National Association of State Directors of Veterans Affairs. A national organization is not recognized to "improve the communication and flow of information between * * * (the State organizations) in assisting our mobile veteran population in the United States," as suggested, but rather to prepare, present and prosecute claims for veterans' benefits authorized by Federal law. Each State veterans' organization is recognized for this purpose in § 14.628(b).

Section 14.628

The previous regulations included "governmental services or organizations granted a charter or recognition by act of Congress" under "National Organizations." The proposed new regulation dropped the term "governmental services." One group was concerned that the new regulation appeared to preclude legal services organizations and their paralegals from presenting claims. It is not the intent of either the old or new regulations that legal service organizations, even though receiving governmental funds, be recognized as "National Organizations." However, legal service organizations and their paralegals may qualify to present claims under other sections of the new regulations.

Two suggested that there be more than one State organization recognized under § 14.628(b). This section remains unchanged because the Veterans Administration believes it is desirable to recognize only the one instrumentality set up by each State to handle veterans' affairs. County and city veterans' organizations may still qualify to represent claimants under other sections, however.

There were numerous comments on various aspects of § 14.628(c). The requirement for a paid-up membership of 1,000 in order to qualify as an "Other Organization" received 18 comments.

Of these, only one group commented that the 1,000 member requirement was too low. The rest stated that the requirement bore no relationship to qualified representation and was too difficult for small veterans' service groups to reach. The Veterans Administration agrees with this assessment and the regulation has been changed.

The intent was to insure that an organization recognized to represent claimants was stable, responsible and competent. The organization must now demonstrate this by showing organizational membership or by showing that it is a veterans' service organization primarily dedicated to helping veterans and their dependents with title 38, United States Code benefits and programs, or dedicated to assisting former armed forces personnel under other Federal and State programs designed for this purpose. The Veterans Administration considers that a veterans' service organization which has a sizable membership or has served a sizable number of veterans in the area of the above programs has demonstrated that it is stable, responsible and competent. Prior experience in representation before the Veterans Administration or the Board of Veterans Appeals, or representation in a discharge upgrading proceeding may be examples of ability to represent.

Other groups may individually qualify their representatives as "agents" under § 14.629. One suggestion was that "the number of power of attorney forms filed by agents of an organization, the types of claims represented before the Veterans Administration and the percentage success rate before the Board of Veterans Appeals" be considered. This type of criteria is reflected in the changes in § 14.628 (d) and (e) and will be considered when granting recognition.

Other suggestions of criteria which should be used to determine whether an organization can provide qualified representation have also been incorporated into the changes in § 14.628(e), information to be submitted.

Two groups commented on the requirement in the proposed regulations

that "Other Organizations" be incorporated or chartered by a State. Both agreed with the Veterans Administration that this was indicative of a serious commitment by an organization seeking recognition. This requirement was kept in the final regulations. However, rather than being a prime requisite, it is now one item to be supplied, as appropriate, under information to be submitted.

Two critical comments were received on the requirement that "Other Organizations" have as their primary purpose the presentation of claims before the Veterans Administration. We agree and have changed the primary purpose for "Other Organizations" to providing services to veterans or to other former armed forces personnel and their dependents. We do not believe that organizations which primarily aid other individuals (elderly, etc.) would be as attuned to the specific needs and problems connected with Veterans Administration claims as veterans service organizations are. However, individual members of other groups who wish to deal with Veterans Administration claims may still be recognized under § 14.629(b).

Several comments were received concerning the provision in the proposed regulations requiring representation in some form before the Board of Veterans Appeals. Four commenters recognized the need for such a requirement but requested greater flexibility in affiliating with a national organization. One suggested that there be no requirement of representation before the Board of Veterans Appeals. The Veterans Administration believes the ability to provide representation before the Board of Veterans Appeals is an important aspect of claims' service. A claimant works closely with and becomes dependent upon an organization to provide representation at the local level, and if the nature of the claim requires representation beyond the regional office, the claimant should be guaranteed a continuous service. The changes in the final regulations reflect the importance of a complete claims service, yet provide the flexibility desired by the commenters. The organization now will not need to affiliate with a national organization, but instead, can affiliate with any organization recognized by the Veterans Administration to provide representation. Moreover, it will not now be mandatory that an organization provide representation before the Board of Veterans Appeals either directly or by affiliation, but instead such organization must make certain that the claimant is aware of the limited representation it can provide.

Four commenters suggested that the language "may be recognized" by the Veterans Administration gave too

much discretion in granting recognition to an organization and should be replaced with "shall be recognized." "May" was not changed as this is an adoption of the statutory language used in 38 U.S.C. 3402-3404.

One comment stated that gratuities should be allowed. The word "fee" or "gratuity" is intended to refer to "fee or compensation" pursuant to statutory language. According to Webster's New Collegiate Dictionary, a gratuity is given in "return for or in anticipation of some service." If gratuities were allowed, the door would be open to an abuse which would completely circumvent the intent of 38 U.S.C. 3402.

Two comments on membership were received. One suggested that it be changed so that a showing of "(t)otal paid-up membership should only be required of membership organizations." The other, that the section would not be applicable to certain organizations. The section was changed to provide for nonmembership organizations.

Two groups objected to what they thought was a requirement that representatives of national organizations be full-time paid employees. This is not the case. The information requested here, and included in the final regulations as § 14.628(e)(6)(iii), applies only to those representatives who are also full-time paid employees. Nothing would prevent less than full-time paid workers from becoming representatives.

One group objected to requiring all recognized organizations to submit a copy of the last financial statement of the organization. Although the requirement has been modified somewhat in § 14.628(e)(3)(i), we believe it is important that the Veterans Administration receive financial information to determine the assets committed to veterans' services. This is indicative of a sincere purpose on the part of the organization to provide competent and qualified services. It also indicates that the organization is, indeed, one which provides the services outlined in § 14.628(c), i.e., that it is a veterans service organization.

Section 14.629

Two groups commented on the fact that representatives in § 14.629(a) and agents in § 14.629(b) must establish that they are "of good character and reputation," and expressed an uncertainty of the meaning of the phrase. We do not believe that a definition is necessary, but instead have provided that if there is a challenge to the good character and reputation of a specific individual, the District Counsel, pursuant to § 14.629 will resolve the question of current qualifications of a representative, agent or attorney. The

statutory language of 38 U.S.C. 3404 requires agent applicants to show that "they are of good moral character and in good repute."

Many commenters approved of the provisions in § 14.629(a) requiring some sort of testing and training of representatives. One group suggested annual seminars and exams with mandatory attendance. Another suggested that everyone be tested, and another stated that currently operating representatives be tested to retain their status. Section 14.629(a) was left unchanged. Because of the affirmative action requirement of § 14.628(d)(5) and the certification required, representatives will be closely supervised by the recognized organizations or risk losing their status. (See § 14.633(c)(1) of the new regulations.) A training program conducted by the organization (and approved by the Veterans Administration), or a past demonstration by the applicant of ability to present claims should provide a basis equal to that of passing a test to ensure qualified representation. Currently qualified representative should have demonstrated their ability to present claims and, in the absence of complaints concerning their service, will be allowed to continue their representation without reaccreditation.

One group commented that there was no provision to permit paralegals or law students supervised by attorneys to represent claimants. This comment is related to the suggestions of two others that § 14.629(a)(2) be changed to include part-time paid employees and volunteers. The section remains unchanged as the Veterans Administration believes that there is enough flexibility to include these situations. The use of the term "member" in § 14.629(a)(2) is intended to establish that an accredited representative is functioning as a part of an organization and subject to some control by that organization. There must be some affiliation between the representative and the recognized organization so that the Veterans Administration can look to the organization in cases where there are questions as to the functions and capacity of the representative. Paralegals, law students, volunteers, and part-time workers so affiliated with a recognized organization may become accredited representatives.

One group suggested a type of limited representation where those with expertise in only a certain area of claims representation would be limited to that area. With the training and testing provisions of § 14.629(a), sufficient safeguards exist to insure quality representation and it was therefore not believed necessary to provide for limited representation.

One group pointed out the lack of information given prospective agents in § 14.629(b). The Veterans Administration was in agreement with the comment, and the section was changed so that applicants will know that they must file their applications with the Office of General Counsel.

One suggestion was that attorneys should not be exempt from the requirement of testing or otherwise demonstrating their ability to present claims. The Veterans Administration did not change the section to include attorneys in a testing or training program because it accepts the basic premise that attorneys who have been licensed to practice law are assumed to have been trained to represent clients (including Veterans Administration claimants) and to protect the clients' rights. There are provisions for removal after a hearing, if ability is challenged.

Section 14.629(c) has been changed to reflect a suggestion by the Controller of the Veterans Administration to clarify the extent of information an attorney may receive from a claimant's file without the signature of the claimant.

Section 14.631

One group commented that § 14.631 was unclear whether more than one person in the same organization could act on the claimant's behalf. Paragraph (c) of § 14.631 points out that "only one organization, agent, or representative will be recognized at one time in the prosecution of a claim for one specific benefit." This paragraph seemed clear enough and was not changed. In the case of recognized organizations, the organization is given the power of attorney. This would enable several members to review the claimant's file in preparation of the claim. It is not appropriate that, in the case of an individual such as an agent or attorney, more than one person at a time have the ability to review an individual's file.

One suggestion was that the word "field" in § 14.631(a)(2) be eliminated because power-of-attorney forms may be filed at other than Veterans Administration field offices. This suggestion was accommodated.

Section 14.632

One group commented that challenges to recognition should apply to attorneys as well as agents and representatives. There are provisions for removal after a hearing if ability is challenged. Moreover, formal training and oversight by a bar association provide some degree of safeguard.

Two groups suggested the Veterans Administration provide greater due process safeguards to those seeking initial recognition as representatives

or agents. The section remains unchanged as it is the Veterans Administration's opinion that the safeguards provided prospective representatives and agents at this stage in the recognition procedure are sufficient.

Section 14.633

One group commented that this section did not set out clearly whether an accused person will be suspended from practice before a final determination has been made by the General Counsel. The paragraphs were rearranged in an attempt to make it clearer that the accused person will be suspended from practice only after the initial inquiry justifies further investigation and hearings on the matter. They also suggested that a standard of proof be included. In response, the standard of "by clear and convincing evidence" was added to be used as the standard of proof in determining whether recognition should be suspended or revoked.

Several comments were received on the reasons listed for suspension or revocation of recognition. Two groups commented on the willfully withholding of material evidence as an unlawful, unprofessional, or unethical practice subject to suspension or revocation of recognition. It was suggested, and the Veterans Administration agrees that this requirement may run counter to several provisions in the Code of Professional Responsibility for attorneys. An attorney should not be required to furnish evidence detrimental to the client's claim, therefore, that language was eliminated from the section.

Two comments were that incompetent representation should also be specifically listed as an offense subject to suspension or revocation. The Veterans Administration chose not to list this offense specifically as instances of incompetence would be covered under § 14.633(c)(4).

Two groups commented that the provision "failing to furnish evidence within 90 days of request by the Veterans Administration" was unclear. No change was thought necessary as the passage clearly refers to cases where the claims representative, agent, or attorney has failed to furnish the evidence due to his or her own fault.

One comment suggested that the hearing provided for in the proposed regulations be changed so that a board of at least three members should preside at the hearing. This section was not changed as it does in reality conform to the spirit of the suggestion. The District Counsel will have made an initial decision. The hearing at the regional level will be by a hearing officer who is not a member of the Office of District Counsel. These two, plus the additional review at the General

Counsel level will mean that three people have reviewed the case.

Proposed § 14.633(c)(4), now § 14.633(d)(1) was changed to accommodate the comment from one group that it appeared the District Counsel's recommendation, rather than the hearing officer's recommendation, would be sent on to the General Counsel. It was intended, and now clearly states, that the District Counsel will submit the entire case to the General Counsel, including the hearing officer's findings as well as District Counsel recommendations.

Section 14.634

One group suggested that a list of allowable expenses be included; however it was concluded that a list would be overly lengthy. Other minor changes are for the purpose of clarity.

Section 14.637

Two groups suggested that space and office facilities be furnished to others besides the national organizations. This regulation implements 38 U.S.C 3402(a)(2) which states: "The Administrator may, in his discretion, furnish, if available, space and office facilities for the use of paid full-time representatives of national organizations so recognized". Because of limitation on space and because of the statute, we elected not to change the regulation.

The proposed regulations are hereby adopted as changed.

Approved: October 4, 1978.

MAX CLELAND,
Administrator of
Veterans' Affairs.

The centerhead preceding § 14.626 is changed, §§ 14.626 through 14.660 are revoked and §§ 14.626 through 14.637 are added to read as follows:

REPRESENTATION OF VETERANS ADMINISTRATION CLAIMANTS; RECOGNITION OF ORGANIZATIONS, ACCREDITED REPRESENTATIVES, ATTORNEYS, AGENTS; RULES OF PRACTICE AND INFORMATION CONCERNING FEES, 38 U.S.C. 3401-3405

§ 14.626 Purpose.

The purpose of the regulation of representatives is to assure that claimants for Veterans' Administration benefits have qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits.

§ 14.627 Definitions.

As used in regulations on representation of Veterans' Administration claimants:

(a) "Agent" means a person who has met the standards and qualifications outlined in § 14.629(b).

(b) "Attorney" means a member in good standing of a State bar.

(c) "Cancellation" means termination of authority to represent claimants.

(d) "Claim" means application made under Title 38, United States Code, and implementing directives, for entitlement to Veterans' Administration benefits, reinstatement, continuation or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.

(e) "Claimant" means a person who has filed a written application for determination of entitlement to benefits provided under Title 38, United States Code, and implementing directives.

(f) "National organization" means an organization chartered by act of the U.S. Congress or previously recognized by the Veterans Administration.

(g) "Recognition" means certification by the Veterans' Administration of organizations, their representatives, attorneys, and agents, to represent claimants.

(h) "Representative" means a person who has been recommended by a recognized organization and certified by the Veterans' Administration.

(i) "State" includes any State, possession, territory, Commonwealth, or the District of Columbia.

(j) "Suspension" means temporary withholding of authority to represent claimants.

§ 14.628 Requirements for recognition of organizations.

Authorized officers of an organization may request recognition by letter to the Administrator of the Veterans' Administration.

(a) *National organizations.* An organization chartered by act of Congress may be recognized as a national organization in the presentation of claims under the laws administered by the Veterans' Administration.

(b) *State organizations.* State organizations created for the purpose of serving the needs of veterans of that State may be recognized. Only one such organization may be recognized in each State.

(c) *Other organizations.* Organizations other than State and National organizations as set forth in paragraphs (a) and (b) of this section may be recognized when the Veterans Administration has determined that they are veterans service organizations primarily involved in delivering services connected with either title 38, United States Code benefits and programs or other Federal and State programs designed to assist veterans. The term "veteran" as used in this paragraph shall include veterans, former armed forces personnel and the dependents of either. Further, the organizations shall provide responsible, qualified

representation in the preparation, presentation and prosecution of claims for title 38, United States Code benefits.

(d) *Requirements for recognition.* In order to be recognized under paragraph (c) of this section the organization:

(1) Shall have as a primary purpose, services to veterans; and

(2) Shall demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of those veterans' services to a sizable number of veterans; and

(3) Shall devote an appreciable portion of its assets to veterans' services; and

(4) Shall establish either that complete claims service will be provided to each veteran requesting representation, or shall give written notice of any limitation in its claims service with advice concerning alternate service. Complete claims service includes the ability to assure representation before the Board of Veterans Appeals. However, representation before the Board of Veterans Appeals may be provided by agreement with another organization recognized by the Veterans Administration; and

(5) Shall take affirmative action, such as training and monitoring of its recognized representatives, to ensure proper handling of claims.

(e) *Information to be submitted.* In order to be recognized under paragraph (c) of this section, the following information shall be supplied:

(1) *Purpose.* A statement outlining the purpose of the organization, the extent of services provided, and the manner in which veterans would benefit by recognition.

(2) *Service commitment.* (i) The number of members and number of posts, chapters, or offices and their addresses; and

(ii) A copy of the articles of incorporation, constitution, charter, and bylaws of the organization, as appropriate; and

(iii) The type of title 38, United States Code services performed with an approximation of the number of veteran and dependent clients served by the organization in each type of service designated; and/or

(iv) the type of services performed in connection with other Federal and State programs which are designed to assist former armed forces service personnel and their dependents, and an approximation of the number of veteran and dependent clients served by the organization under each program designated.

(3) *Assets.* (i) A copy of the last financial statement of the organization indicating the amount of funds allo-

cated for conducting veterans' services; and

(ii) A statement of the skills, training and other qualifications for handling veterans' claims of paid or volunteer staff positions.

(4) *Complete claims service.* (i) The record of representation before a discharge review board or the Veterans Administration, or other proof of ability to present claims before the Veterans Administration; and

(ii) Some proof of capability to provide representation before the Board of Veterans Appeals; or

(iii) The proof of association or agreement for the purpose of representation before the Board of Veterans Appeals with another recognized service organization, or the proposed method of informing claimants of the limitations in service that can be provided, with advice concerning alternate service.

(5) *Affirmative action.* The organization shall execute an agreement which states that it shall take affirmative action, such as training and monitoring of its recognized representatives to ensure proper handling of claims.

(6) *Other.* (i) A statement that neither the organization nor its representatives will charge or accept a fee or gratuity for service to a claimant; and

(ii) The names, titles, and addresses of officers and the officials authorized to certify representatives; and

(iii) The names, titles, and addresses of full-time paid employees who are qualified to act as accredited representatives.

(f) *Recognition or denial.* A notice of recognition will be sent within 90 days of receipt of all information to be supplied. However, if recognition is denied an organization, the Veterans Administration will set forth an explanation of the reasons for denial. A denial of recognition may be appealed to the Administrator within 90 days of the denial. The Veterans Administration will consider the appeal within 30 days of receiving such request. The organization will have an opportunity to fully document its position, and the appeal will cover all aspects of the application for recognition and denial.

§ 14.629 Requirements for recognition of representatives, agents, and attorneys.

The District Counsel will resolve any question of current qualifications of a representative, agent or attorney. The claimant; the representative, agent or attorney, or an official of the organization for which they would act; or the appropriate Veterans Administration official may appeal such determination to the General Counsel.

(a) *Representatives.* Recognized organizations shall file with the Office of the General Counsel VA Form 2-21 (Application for Accreditation as Serv-

ice Organization Representative) for each person they desire recognized as a representative of that organization. In recommending a person, the organization shall certify that the designee:

(1) Is of good character and reputation; and:

(i) Has successfully completed a Veterans Administration approved course of instruction on veterans' benefits; or

(ii) Has passed an examination approved by the Veterans Administration; or

(iii) Has otherwise demonstrated an ability to present claims before the Veterans Administration;

(2) Is either a member in good standing or a full-time paid employee of such organization, or is recognized and functioning as a representative of another recognized organization;

(3) Is not employed in any civil or military department or agency of the United States.

(b) *Agents.* Individuals desiring recognition as agents must file an application with the Office of General Counsel and establish that they are of good character and reputation. In addition, applicants shall pass a written examination concerning laws administered by the Veterans Administration which shall be prepared and graded in the Office of General Counsel. The examination may, however, be taken at any convenient District Counsel office under the supervision of the District Counsel.

(c) *Attorneys.* Attorneys shall state in writing on their letterhead that they are authorized to represent the claimant in order to have access to information in the claimant's file pertinent to the particular claims presented. For an attorney to have complete access to all information in an individual's records, the attorney must provide a signed consent from the claimant or the claimant's guardian. The consent shall be equivalent to an executed power of attorney. (38 U.S.C. 3401; 3404.)

§ 14.630 Authorization for a particular claim.

Any person may be authorized to prepare, present, and prosecute a particular claim. A proper power of attorney, and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the office where the claim is presented. A person recognized under this section shall represent only one claimant; however, in unusual circumstances, appeal of such limitation may be made to the General Counsel. (38 U.S.C. 3403.)

§ 14.631 Powers of attorney.

(a) A power of attorney, executed on either VA Form 23-22 (Appointment

of Veterans Service Organization as Claimant's Representative) or VA Form 2-22a (Appointment of Attorney or Agent as Claimant's Representative), is required to represent a claimant, except when representation is by an attorney who complies with § 14.629(c). The power of attorney shall meet the following requirements:

(1) Contain signature by:

(i) The claimant, or

(ii) The claimant's guardian, or

(iii) In the case of an incompetent, minor, or otherwise incapacitated person without a guardian, the following in the order named—spouse, parent, other relative or friend (if interests are not adverse), or the director of the hospital in which the claimant is maintained; and

(2) Shall be presented to the appropriate Veterans Administration office for filing in the veteran's claims folder.

(b) Questions concerning powers of attorney shall be referred to the District Counsel of jurisdiction for initial determination. This determination may be appealed to the General Counsel.

(c) Only one organization, agent, or representative will be recognized at one time in the prosecution of a claim for one specific benefit. All transactions concerning the claim will be conducted exclusively with the recognized organization, agent, or representative of record until notice of a change, if any, is received by the Veterans Administration.

(d) A power of attorney may be revoked at any time and an attorney may be discharged at any time. A new power of attorney shall constitute a revocation of any existing power of attorney.

(e) The authority which a power of attorney provides may be continued for a reasonable time after the death of the claimant, to determine whether the claim will be continued by a new claimant and whether a new power of attorney will be executed. (38 U.S.C. 3402, 3403, 3404.)

§ 14.632 Letters of recognition.

If challenged, the qualifications of prospective representatives or agents shall be verified by the District Counsel of jurisdiction. The report of the District Counsel, if any, including any recommendation of Veterans Administration station directors, and the application shall be transmitted to the General Counsel for final action. If the designee is disapproved by the General Counsel, the reasons will be stated and an opportunity will be given to submit additional information. If the designee is approved, letters of recognition, or an identification card, will be issued by the General Counsel, and will constitute authority

to prepare, present, and prosecute claims in all Veterans Administration installations. Record of recognition will be maintained in the Office of General Counsel. (38 U.S.C. 3402.)

§ 14.633 Termination of recognition.

(a) Recognition may be canceled by request.

(b) Upon receipt of information indicating improper conduct, the District Counsel of jurisdiction will initiate an inquiry.

(1) If the result of the inquiry does not justify further action, the District Counsel will close the inquiry and maintain the record for 2 years.

(2) If the result of the inquiry justifies further action, the District Counsel shall take immediate action to suspend recognition. The notice of suspension will state the reason and will also advise that additional evidence may be submitted, or a hearing requested (or both), within 10 working days of receipt of the notice. The time may be extended for sufficient reason.

(c) Recognition shall be suspended or revoked upon a finding by clear and convincing evidence of one of the following:

(1) Violation or refusal to comply with the laws administered by the Veterans Administration or with the regulations or instructions governing practice before the Veterans Administration.

(2) Knowingly presenting or prosecuting a fraudulent claim against the United States.

(3) Demanding or accepting unlawful compensation for preparing, presenting, prosecuting, or advising or consulting concerning a claim.

(4) Any other unlawful, unprofessional, or unethical practice. (Unlawful, unprofessional, or unethical practice shall include but not be limited to the following—deceiving, misleading or threatening a claimant or prospective claimant; neglecting to prosecute a claim for 6 months or more; failing to furnish evidence within 90 days of request by the Veterans Administration; or willfully withholding of an application for benefits.)

(d) If a hearing is requested, a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the District Counsel. The hearing officer will have authority to administer oaths. A member of the district counsel's office will present the evidence. The suspended person will have a right to counsel, to present evidence and to cross-examine witnesses. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim.

(1) Within 10 working days after either the time allowed under para-

graph (b)(2) of this section, or the close of the hearing if one is conducted, the District Counsel will submit the entire case to the General Counsel.

(2) The decision of the General Counsel is final. The records of the case will be maintained in the General Counsel's office for 5 years. (38 U.S.C. 3404, 3405.)

§ 14.634 Fees and expenses

Accredited representatives of national, State or other recognized organizations and individuals recognized for a particular claim shall not be entitled to receive fees. Attorneys and agents are entitled to receive fees as provided by statute. (38 U.S.C. 3404(c).)

(a) *Amount of fees.* For the successful prosecution of claims, attorneys and agents may receive the fee permitted by statute. The fee will be paid to the attorney or agent of record at the time of allowance, by deduction from the benefit allowed, after approval by the Veterans Administration. Questions concerning the amount or proper payee of fees allowed will be resolved by the District Counsel, or designee, who will consider the quality, nature, and extent of the services.

(b) *Expenses.* Without regard to entitlement to fees, an agent, attorney, or other person who incurs an expense in the prosecution of a claim, may submit a sworn itemized account of the expense to the Veterans Administration. It will be retained in the claims folder as part of the permanent record. Payment of expenses is the responsibility of the claimant; however, before demanding or receiving reimbursement from the claimant, the expense shall be approved by the District Counsel, or designee. Notice of the action taken shall be transmitted to the requestor by the service handling the claim. (38 U.S.C. 3404.)

§ 14.635 Reconsideration of denial of fees and expenses.

A request for reconsideration of a denied fee, or statement of expenses, must be received by the General Counsel within 1 year of the date of denial. If agreement cannot be reached and a hearing is requested, a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the District Counsel. The hearing officer will have authority to administer oaths. A member of the District Counsel's office will present the evidence. The complainant will have a right to counsel, to present evidence and to cross-examine witnesses. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. Within 10 working days after the close of the hearing,

the District Counsel will submit the entire case to the General Counsel. The decision of the General Counsel is final.

§ 14.636 Banks or trust companies acting as guardians.

Banks or trust companies, corporate entities, acting as guardians for claimants, may be represented before adjudicating agencies as authorized representatives of claimants by an officer or employee, including a regularly employed attorney, if the employee or attorney represents the corporation in its fiduciary capacity. No fee shall be allowed for such services under § 14.634(a).

§ 14.637 Space and office facilities.

The Administrator may furnish space and office facilities, if available, for the use of paid full-time representatives of recognized national organizations. (38 U.S.C. 3402.)

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[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 983-7; PP 8E2102/R180]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

N-(Mercaptomethyl)Phthalimide S-(O,O-Dimethyl Phosphorodithioate)

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide N-(mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate) on kiwi fruit. The regulation was requested by Stauffer Chemical Co. This rule establishes a maximum permissible level for residues of the subject insecticide on kiwi fruit.

EFFECTIVE DATE: October 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Timothy Gardner, Product Manager (PM) 15, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460, 202-426-9425.