

# Proposed Rules

Federal Register

Vol. 70, No. 246

Friday, December 23, 2005

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.

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 3 and 4

RIN 2900-AH21

#### Total Disability Ratings Based on Inability of the Individual To Engage in Substantially Gainful Employment

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** In a document published in the *Federal Register* at 66 FR 49886 on October 1, 2001, the Department of Veterans Affairs (VA) proposed to amend those portions of its adjudication regulations and its Schedule for Rating Disabilities dealing with the issue of total disability ratings based on inability of the individual to engage in substantially gainful employment in claims for service-connected compensation or non-service-connected pension. This document withdraws that proposed rule.

**DATES:** The proposed rule is withdrawn as of December 23, 2005.

**FOR FURTHER INFORMATION CONTACT:** Beth Easter, Consultant, Policy and Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Ave., NW., Washington, DC 20420, telephone (202) 273-7141.

**SUPPLEMENTARY INFORMATION:** The purpose of VA's notice of proposed rulemaking was to clarify the procedures and substantive standards for determining whether a veteran's disabilities, although they do not meet the schedular requirements for a total disability rating, nonetheless prevent him or her from engaging in substantially gainful employment. The intended effect of the rulemaking was to ensure consistency of decisions concerning claims for total disability ratings based upon individual unemployability. VA has carefully considered the issues relating to the payment of benefits under the proposed rule and determined that it does not

accomplish the stated purpose or intended effect. Accordingly, VA is withdrawing the proposal and is developing a new proposal, which it intends to publish at a later date.

Approved: December 14, 2005.

**R. James Nicholson,**

*Secretary of Veterans Affairs.*

[FR Doc. E5-7758 Filed 12-22-05; 8:45 am]

**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 14

RIN 2900-AM29

#### Accreditation of Service Organization Representatives and Agents

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations governing accreditation of representatives of claimants for veterans' benefits. These proposed changes would require that recognized organizations periodically recertify the qualifications of accredited representatives, and require that VA is notified when a recognized organization requests cancellation of a representative's accreditation based upon misconduct or lack of competence, or if a representative resigns to avoid cancellation of accreditation for misconduct or lack of competence. The proposed changes would also require that accredited claims agents periodically reestablish their good character and reputation and qualifications to assist claimants for VA benefits. We would also clarify that the authority to cancel accreditation includes the authority to suspend accreditation for a period of time. The purpose of these proposed changes is to ensure that claimants for veterans' benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims.  
**DATES:** Comments must be received on or before February 21, 2006.

**ADDRESSES:** Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to

(202) 273-9026; e-mail through [www.Regulations.gov](http://www.Regulations.gov). Comments should indicate that they are submitted in response to "RIN 2900-AM29." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment.

#### FOR FURTHER INFORMATION CONTACT:

Michelle D.D. Bernstein, Staff Attorney, Office of General Counsel (022G), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-6315. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** Section 5902 of title 38, United States Code, authorizes the Secretary of Veterans Affairs to recognize representatives of approved organizations for the preparation, presentation, and prosecution of claims under laws administered by the Secretary. Section 5904 of title 38, United States Code, authorizes the Secretary to recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Secretary. It further authorizes the Secretary to require such individuals to show that they are of good moral character and in good repute, are qualified to render claimants valuable service, and otherwise are competent to assist claimants in presenting claims as a prerequisite to recognition. Section 5901 of title 38, United States Code, prohibits an individual from acting as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary, unless such individual has been recognized for such purposes by the Secretary. The purpose of the regulation of representatives is to assure that claimants for Department of Veterans Affairs (VA) benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for such benefits. See 38 CFR 14.626.

The Secretary has promulgated regulations specifying criteria that must be met for an individual to be approved as an accredited representative through a recognized organization or as an accredited claims agent. Pursuant to 38 CFR 14.629(a), recognized organizations

must certify that each prospective representative is of good character and reputation and has demonstrated an ability to represent claimants. In addition, the organization must certify that the prospective representative is a member in good standing or paid employee of the organization or accredited and functioning as a representative of another recognized organization. Individuals desiring accreditation as an agent must establish their good character and reputation and qualifications to assist claimants in the preparation of their claims under 38 CFR 14.629(b). They must file a specific application (VA Form 21a) containing particular information and achieve a passing score on a written VA examination. If, subsequent to having been certified or accredited, a representative or agent fails to meet any of these criteria, they would no longer be qualified to represent claimants for veterans' benefits.

After a period of time, a representative may no longer have the requisite ties to the certifying organization through membership or employment to qualify as an accredited representative, the representative may not have maintained the skills required for effective representation, or information may have come to light concerning the representative's competence or character. Similarly, an agent may not have maintained the skills, competence, or good character required to assist claimants. Consequently, we propose to require that recognized organizations periodically recertify the qualifications of the accredited representatives of the organization and that agents reestablish their character, reputation and qualifications to assist VA benefits claimants by refiling VA Form 21a and retaking the written examination. Recertification of representatives would be accomplished using the same VA Form 21 that is currently used for requests for accreditation, except that only the certifying official of the recognized organization, not the individual representatives, would be required to sign the form for purposes of recertification. The organization would file the form with the VA Office of General Counsel not later than five years after initial accreditation of the representative by VA or the most recent recertification of the representative by the organization. Thus, as an initial requirement under this rule, recognized organizations would be required to recertify the character and qualifications of any representative that received VA accreditation five or more years before

the effective date of the rule. Recertification will ensure that claimants for VA benefits continue to have responsible, qualified representation. Requiring recertification every five years strikes an appropriate balance between the need to assure continuing qualifications and the need to avoid unnecessary paperwork for organizations and the Department.

Pursuant to 38 CFR 14.633(a), VA may cancel the accreditation of a representative at the request of the organization that certified the individual to VA. Under current regulations, when an organization requests that VA cancel the accreditation of one of its representative's, the organization need not disclose the reason for requesting cancellation. Individuals may be accredited through more than one organization, and when one organization requests cancellation of a representative's accreditation for cause, such as misconduct or incompetence, it is desirable that VA and the other organization or organizations through which the individual is accredited know the basis for the cancellation, so that they may determine whether the individual should remain accredited through the other organization or organizations. Further, the individual may later seek accreditation through another organization, and this information would be valuable to VA in determining whether to approve the accreditation.

Therefore, we propose to add a requirement to 38 CFR 14.633(a) that any recognized organization requesting that a particular representative's accreditation be cancelled inform VA if the reason for such request for cancellation is misconduct or lack of competence on the part of the representative or resignation of the representative to avoid cancellation of accreditation for misconduct or lack of competence. Only if VA learns of any improper conduct or incompetence on the part of an accredited representative can it investigate and, if necessary, take action to terminate accreditation through other organizations to assure that claimants have responsible, qualified representation.

In addition, we propose to clarify that the authority to cancel accreditation includes the authority to suspend accreditation for a period of time. We consider our current authority to cancel accreditation to include the lesser sanction of suspension, and this amendment would make that clear. Suspension may be appropriate in cases involving extenuating circumstances or where misconduct is not so severe as to

warrant the harsher penalty of permanently canceling the authority to represent claimants.

Finally, we propose to remove the requirement in 38 CFR 14.633 that we maintain records for three years in a case that has been under inquiry or when accreditation has been canceled or suspended because we do not limit our maintenance of such records.

#### **Paperwork Reduction Act of 1995**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this proposed regulation are revisions of existing collections under Office of Management and Budget (OMB) Control No. 2900-0018, which pertains to the application for accreditation as a service organization representative, and OMB Control No. 2900-0605, which pertains to the application for accreditation as a claims agent. Comments on the information collections included in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1068, Washington, DC 20420; fax to (202) 273-9026; e-mail through [www.Regulations.gov](http://www.Regulations.gov). Comments should indicate that they are submitted in response to "RIN 2900-AM29," and must be received on or before February 21, 2006.

Comments by the public on proposed collections of information will help VA in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*Title:* Accreditation of Service Organization Representatives and Agents.

*Summary of collection of information:*

- Section 14.629(a)—Under this section, VA requires the individual and organization seeking accreditation to provide basic information demonstrating eligibility for accreditation and VA requires the sponsoring recognized organization to certify that the individual is of good character and is qualified to present claims. VA proposes to require recognized veterans service organizations to recertify the qualifications of accredited representatives of the organization every five years.

- Section 14.629(b)—Under this section, VA requires individuals seeking accreditation to establish their good character, reputation, and qualifications to present claims. VA proposes to require agents to reestablish their good character and qualifications by filing VA Form 21a and passing a written VA examination every five years.

- Section 14.633(a)—Under this section, VA proposes to require recognized veterans service organizations to inform VA of the reason for a request to cancel a representative's accreditation under certain circumstances.

*Description of need for information and proposed use of information:* The collections of information are necessary to ensure that claimants for VA benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims. VA will use this information to determine whether particular individuals are qualified to represent claimants before VA.

*Description of likely respondents:* Individuals applying for accreditation as agents and service organization representatives and recognized service organizations that request accreditation of representatives or that have representatives accredited to represent claimants for VA benefits.

*Estimated number of respondents:* For recertifications under 38 CFR 14.629(a), we anticipate receiving 2,360 responses in fiscal year 2006. For recertifications under 38 CFR 14.629(b), we anticipate receiving 8 responses in fiscal year 2006. Under 38 CFR 14.633(a), we

anticipate receiving no more than 20 responses in fiscal year 2006.

*Estimated frequency of responses:* For recertifications under 38 CFR 14.629(a) and (b), once every five years. Under 38 CFR 14.633(a), on occasion.

*Estimated average burden per response:* For recertifications under 38 CFR 14.629(a), 10 minutes. Under 38 CFR 14.629(b), 10 minutes. Under 38 CFR 14.633(a), 30 minutes.

*Estimated total annual reporting burden:* For recertifications under 38 CFR 14.629(a), 393 hours in fiscal year 2006. Under 38 CFR 14.629(b), no more than 2 hours in fiscal year 2006. Under 38 CFR 14.633(a), 10 hours in fiscal year 2006.

### Executive Order 12866—Regulatory Planning and Review

VA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of \$100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

VA concludes that this proposed rule is a significant regulatory action under the Executive Order since it raises novel legal and policy issues under Section 3(f)(4). VA concludes, however, that this proposed rule does not meet the significance threshold of \$100 million effect on the economy in any one year under Section 3(f)(1). VA requests comments regarding this determination, and invites commenters to submit any relevant data that will assist the agency in estimating the impact of this rulemaking.

### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule would affect the 87 veterans service organizations and 42 agents recognized by VA to represent

benefit claimants. However, it would not have a significant economic impact on these organizations because it would only impose reporting requirements the costs of which would not be significant. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

### Catalog of Federal Domestic Assistance Numbers

There are no Federal Domestic Assistance programs associated with this proposal.

### List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Approved: September 12, 2005.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 14 as follows:

### PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

1. The authority citation for part 14 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5902–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

2. Revise § 14.629(a) introductory text, (b)(1) introductory text, and (b)(2) to read as follows:

**§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.**

\* \* \* \* \*

(a) *Service Organization Representatives.* A recognized organization shall file with the Office of

the General Counsel VA Form 21 (Application for Accreditation as Service Organization Representative) for each person it desires accredited as a representative of that organization. For each of its accredited representatives, a recognized organization shall complete and file with the Office of the General Counsel, not later than five years after initial accreditation through that organization or the most recent recertification by that organization, VA Form 21 to certify that the representative continues to meet the criteria for accreditation specified in paragraph (a)(1), (2) and (3) of this section. In recommending a person, the organization shall certify that the designee:

\* \* \* \* \*

(b) \* \* \* (1) An individual desiring accreditation as an agent must establish and demonstrate that he or she is of good character and reputation and is qualified to render assistance to claimants in the presentation of their claims(s). All accredited agents must seek reaccreditation every five years. An individual desiring accreditation or reaccreditation as an agent must file a completed application with the Office of the General Counsel on VA Form 21a on which the applicant submits the following:

\* \* \* \* \*

(2) Applicants for accreditation or reaccreditation must achieve a score of 75 percent or more on a written examination administered by VA as a prerequisite to accreditation and must achieve such score at least every five years to maintain accreditation. No applicant shall be allowed to sit for the examination more than twice in any 6-month period.

(Authority: 38 U.S.C. 501(a), 5940)

\* \* \* \* \*

3. Section 14.633 is amended by:

a. Revising paragraphs (a) and (e)(2)(i).

b. In paragraphs (b), (c) introductory text, and (d), adding "or suspended" after "canceled" each time it appears.

c. In paragraph (e)(1), removing "and maintain the record for 3 years".

d. In paragraph (e)(2)(ii), adding "or suspension" after "cancellation" and "or suspended" after "cancel" each time it appears.

e. In paragraph (g), adding "or suspension or continuation of suspension" after "termination", and by removing the last sentence of the paragraph.

The revisions read as follows:

**§ 14.633 Termination of accreditation of agents, attorneys, and representatives.**

(a) Accreditation may be canceled at the request of an agent, attorney, representative, or canceled or suspended at the request of an organization. When an organization requests cancellation of the accreditation of a representative due to misconduct or lack of competence on the part of the representative or because the representative resigned to avoid cancellation of accreditation for misconduct or lack of competence, the organization shall inform VA of the reason for the request for cancellation and the facts and circumstances surrounding any incident that led to the request.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(i) As to representatives, suspend accreditation immediately and notify the representative and the representative's organization of the interim suspension and of an intent to cancel or continue suspension of accreditation. The notice to the representative will also state the reasons for the interim suspension and impending cancellation or continuation of suspension, and inform the representative of a right to request a hearing on the matter or to submit additional evidence within 10 working days following receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

\* \* \* \* \*

[FR Doc. E5-7759 Filed 12-22-05; 8:45 am]

BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2005-0322; FRL-7751-3]

**Benzaldehyde, Captafol, Hexaconazole, Paraformaldehyde, Sodium dimethyldithiocarbamate, and Tetradifon; Proposed Tolerance Actions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to revoke specific tolerances and tolerance exemptions for residues of the insecticides paraformaldehyde and tetradifon; fungicides captafol, hexaconazole, and sodium dimethyldithiocarbamate; and bee

repellant benzaldehyde. EPA canceled food use registrations or deleted food uses from registrations following requests for voluntary cancellation or use deletion by the registrants, or non-payment of registration maintenance fees. Also, stakeholders have withdrawn their support for import tolerances for captafol and hexaconazole. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996. The regulatory actions proposed in this document pertain to the proposed revocation of 39 tolerances and tolerance exemptions of which 38 would be counted as tolerance reassessments toward the August 2006 review deadline.

**DATES:** Comments must be received on or before February 21, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2005-0322, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.

- *Agency Web Site:* EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at <http://www.regulations.gov/>. Follow the on-line instructions.

- *E-mail:* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number EPA-HQ-OPP-2005-0322.

- *Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number EPA-HQ-OPP-2005-0322.

- *Hand Delivery:* Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number EPA-HQ-OPP-2005-0322. Such deliveries are only accepted during the Docket's normal hours of operation, and