

PART 102—RULES AND REGULATIONS, SERIES 8

1. 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 also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). 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)).

2. Section 102.11 is revised to read as follows:

§ 102.11 Forms; jurat; or declaration.

Such charges 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. Sec. 1746). One original of such charge shall be filed. A party filing a charge 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.

3. Section 102.60(a) is revised to read as follows:

§ 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 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 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. Sec. 1746). One original of the petition shall be filed. 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. Except as provided in § 102.72, such petitions shall be filed with the 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 for any of such Regions. Prior to the transfer of the case to the Board, pursuant to § 102.67, 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 to the Board, the petition may be withdrawn only with the consent of the Board. Whenever the Regional Director or the Board, as the case may be, approves the withdrawal of any petition, the case shall be closed.

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4. Section 102.83 is revised to read as follows:

§ 102.83 Petition for referendum under 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 wherein the bargaining unit exists or, if the unit exists in two or more Regions, with the 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. The petition may be withdrawn only with the approval of the 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.

Dated, Washington, DC, December 21, 2001.

By Direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 02-79 Filed 1-4-02; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1912 and 1912a

RIN 1218-AC04

Advisory Committees

ACTION: Final rule; amendments to procedural rules.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending its rules governing membership on advisory committees to clarify that the Secretary has the discretion to remove and replace an advisory committee member at any time. The advisory committee rules, including the rules dealing with the tenure of members, are rules of agency organization, practice, or procedure, for which public notice and comment are not required.

DATES: These amendments are effective January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, OSHA Office of Public Affairs, U. S. Department of Labor, 200 Constitution Avenue, N.W., Room N3647, Washington, DC 20210, phone (202) 693-1999.

SUPPLEMENTARY INFORMATION: Section 7(a)(1) of the Occupational Safety and Health Act, 29 U.S.C. 656(a)(1), establishes a National Advisory Committee on Occupational Safety and Health (NACOSH). The purpose of NACOSH is to "advise, consult with, and make recommendations to the Secretary [of Labor] and the Secretary of Health and Human Services on matters relating to the administration of the Act." 29 U.S.C. 656(a)(2). NACOSH consists of 12 members, appointed by the Secretary of Labor, who represent management, labor, occupational safety and occupational health professions, and the public.

The Construction Safety Act (CSA), 40 U.S.C. 333, created the Advisory Committee on Construction Safety and Health (ACCSH), to advise the Secretary on standard-setting and other matters

related to the administration of the CSA. See 29 CFR 1912.3. In addition, section 7(b) of the Act, 29 U.S.C. 656(b), gives the Secretary of Labor the authority to establish additional advisory committees to assist in the Secretary's standard-setting functions under 29 U.S.C. 655. Such committees may be either continuing committees or ad hoc committees established to render advice in particular rulemaking proceedings. 29 CFR 1912.2. The Secretary has exercised that authority to establish, as a continuing committee, the Maritime Advisory Committee for Occupational Safety and Health (MACOSH), and has also established ad hoc committees to advise on particular rules.

Advisory committees have played an important role in the administration of the OSH Act by providing a means for the Secretary and the Assistant Secretary for Occupational Safety and Health to obtain the advice of persons representing a variety of interests on how best to fulfill the Act's objective of ensuring that American workers have safe and healthful workplaces. However, the advice the committees render is only valuable to the Secretary and the Assistant Secretary if they have full confidence in the members of the committees. To ensure such confidence, the Secretary must have the discretion to remove and replace any member in whom she lacks confidence.

The current regulations governing the tenure of all advisory committee members except those on NACOSH give the Secretary complete discretion to appoint members who have her confidence. Section 1912.3(e), which applies to ACCSH, allows the Secretary to remove and replace a member "in the interests of the administration of legislation involved." Section 1912.10(a), which governs other continuing advisory committees, allows the Secretary to remove a member "in the interest of the administration of the Act." Similarly, section 1912.11, which deals with ad hoc committees, allows the Secretary to remove a member "in the interest of the administration of the Act." These provisions also provide for the Secretary to remove a member of an advisory committee if that member becomes unable to serve or no longer meets the representational requirements of the Act. The current regulation governing tenure of members on NACOSH is unique in that it does not provide for removal of a member at the discretion of the Secretary. A member may be removed only if he or she becomes unable to serve, if the Secretary determines that he or she no longer meets the representational requirements of the Act. 29 CFR 1912a.3.

OSHA believes that the same removal requirements should apply to all advisory committees. As already discussed, the Secretary and Assistant Secretary must have complete confidence in all advisory committee members and must be able to remove any member in whom they have lost confidence. Therefore, section 1912a.3, which applies to NACOSH, is being amended to be consistent with the regulations applicable to the other advisory committees under the Act to give the Secretary full discretion to remove any advisory committee member for any reason. By providing that the Secretary has complete discretion to remove a member, it is no longer necessary to include the specific bases upon which a member may be removed (i.e., unable to serve or no longer meets the representational requirements of the Act). Therefore, the sections pertaining to removal—1912a.3, 1912.3(a), 1912.10(a), and 1912.11—are being amended so that they are worded consistently and provide that the Secretary may, in his or her discretion, remove any member at any time.

These amendments constitute a rule of agency organization, practice, or procedure. Hence, notice-and-comment procedures are not required. 5 U.S.C. 553(b). These amendments are to take effect immediately. Given the technical and procedural nature of these amendments, the agency finds that it is unnecessary to provide 30 days before this rule takes effect, and hence has good cause for making the effective date immediate pursuant to 5 U.S.C. 553(d)(3).

AUTHORITY AND SIGNATURE: This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to sections 7 and 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657), 5 U.S.C. 553, and Secretary's Order 3-2000 (65 FR 50017).

List of Subjects

29 CFR Part 1912

Advisory committees, Freedom of information, Occupational safety and health.

29 CFR Part 1912a

Advisory committees, Occupational safety and health.

Signed at Washington, DC, this 28th day of December, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

Accordingly, parts 1912 and 1912a of 29 CFR are hereby amended as set forth below:

PART 1912—[AMENDED]

1. The authority citation for 29 CFR part 1912 is revised to read as follows:

Authority: Secs. 4, 6, 7, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 656, 657); 5 U.S.C. 553; Federal Advisory Committee Act (5 U.S.C. App. 2); sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), or 3-2000 (65 FR 50017), as applicable.

2. Paragraph (e) of § 1912.3 is revised to read as follows:

§ 1912.3 Advisory Committee on Construction Safety and Health.

* * * * *

(e) Except as provided in paragraphs (f) through (j) of this section, each member of the Advisory Committee shall serve for a period of 2 years. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

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3. Paragraph (a) of § 1912.10 is revised to read as follows:

§ 1912.10 Terms of continuing committee members.

(a) Each member of a continuing committee established under section 7(b) of the Act, other than those appointed to a committee when it is formed initially shall serve for a period of 2 years. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

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4. Section 1912.11 is revised to read as follows:

§ 1912.11 Terms of ad hoc committee members.

Each member of an ad hoc advisory committee shall serve for such period as the Assistant Secretary may prescribe in his notice of appointment. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint a new member to serve for the remaining portion of the period prescribed in the notice appointing the original member of the committee.

PART 1912a—[AMENDED]

5. The authority citation for 29 CFR Part 1912a is revised to read as follows:

Authority: Secs. 4, 6, 7, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 656, 657); 5 U.S.C. 553; Federal Advisory Committee Act (5 U.S.C. App. 2); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), or 3-2000 (65 FR 50017), as applicable.

6. Section 1912a.3 is revised to read as follows:

§ 1912a.3 Terms of membership.

Commencing on July 1, 1973, the terms of membership shall be divided into two classes, each consisting of six members. Members of the first class shall be appointed for a term of one year. Members of the second class shall be appointed for a term of two years. Thereafter, members shall be appointed for regular terms of two years. At all times the Committee shall be composed of representatives of management, labor, and occupational safety and health professions, and of the public. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

[FR Doc. 02-122 Filed 1-4-02; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 52

RIN 2900-AJ74

Per Diem for Adult Day Health Care of Veterans in State Homes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes regulations setting forth a mechanism for paying per diem to State homes providing adult day health care to eligible veterans. The intended effect of the rule is to ensure that veterans receive high quality care in State homes.

DATES: *Effective Date:* February 6, 2002.

The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of February 6, 2002.

FOR FURTHER INFORMATION CONTACT: L. Nan Stout, Chief, State Home Per Diem Program (114), Veterans Health Administration, 202-273-8538.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on June 28, 2000 (65 FR 39835), we proposed to establish a new part 52 setting forth a mechanism for the Department of Veterans Affairs (VA) to pay per diem to State homes providing adult day health care to eligible veterans. We provided a 60-day comment period which ended August 28, 2000. We received comments from six states and one association. The issues raised in the comments are discussed below. Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule with changes explained below.

One commenter commended VA for including provisions in the rule to ensure that State homes meet the fire and safety provisions of the National Fire Protection Association's Life Safety Code entitled "NFPA 101, Life Safety Code." The final rule incorporates, by reference, the 2000 edition instead of the 1997 edition since the Life Safety Code has been updated.

A commenter questioned VA's authority to establish the provisions in § 52.40 that provide for State home payments to be made on a per diem basis. The commenter asserted that instead of per diem payments the payments should be made based on individual contracts between VA and the State. The commenter further asserted that the proposed per diem amount is inadequate to cover State

costs, including construction and other capital expenditures. No changes are made based on these comments. In 38 USC 1741(a)(2) VA is authorized to make payments to State homes for adult day health care only on a per diem basis at a rate determined by VA. We believe Congress intended VA to determine one national per diem as is required for per diem payments for domiciliary, nursing home, or hospital care. We also do not believe this statute can be interpreted to permit contracting for care in State homes because it requires VA to "determine" a per diem rate. This per diem rate is not intended to cover costs of construction and capital expenditures. To obtain VA assistance in paying for those costs, States may apply for a State home construction or acquisition grant established under 38 USC 8131-8136.

One commenter stated that staffing would be cost-prohibitive with the low per diem amount paid by VA. No changes are made based on this comment. The per diem amount is a grant to a State under 38 U.S.C. 1741 for adult day health care, but was not intended to cover the total cost of care.

The proposed regulations at § 52.40(a)(2) state that per diem will be paid only for a day that the veteran is under care of the facility at least six hours. Three commenters asserted that the six-hour requirement should be lessened. They argue that their costs are fixed and based on the projected numbers for each day. We believe that we should provide per diem only for periods for which a veteran would be provided the full range of therapeutic activities that the veteran needs. Upon further reflection we believe this still can be accomplished if the veteran is present for at least three hours.

Consistent with this conclusion and administrative concerns, we have changed the rule to allow for one per diem payment for a period of six hours or more in one calendar day or any two periods of at least three hours each (but each less than six hours) in any two calendar days in a calendar month.

The proposed regulations at § 52.50 set forth eligibility requirements for veterans receiving adult day health care on whose behalf VA pays per diem. One commenter asserted that the criteria are too restrictive. No changes are made based on this comment. The eligibility criteria reflect statutory requirements that may not be changed by regulation.

The proposed rule at § 52.80 provides that participants in the adult day health care program must meet certain conditions, including two of seven indicators. One of the indicators is met simply by being "75 years old or over."