Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0957 to read as follows:

§ 165.T08–0957 Fixed and Moving Safety Zone; Vicinity of the M/VPIETERSGRACHT, Houston Ship Channel and Morgan's Point, TX.

(a) *Location.* The following areas are temporary safety zones:

(1) *Moving Safety Zone.* All waters within a 100-yard radius of the M/V PIETERSGRACHT, as the vessel transits from the approximate coordinates 29°19′01.21″ N, 094°38′38.1″ W, off the coast of Galveston, TX, and proceeds through the Houston Ship Channel to the assigned docking station.

(2) *Fixed Safety Zone.* All waters within a 25-yard radius of the M/V PIETERSGRACHT while moored at the Barbours Cut Terminal in Morgan's Point, Texas.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Sector Houston-Galveston (COTP) in the enforcement of the safety zones.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, all persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zones described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zones by contacting the COTP by telephone at 866–539–8114, or the COTP's designated representative via VHF radio on channel 16. If authorization is granted by the COTP or the COTP's designated representative, all persons and vessels receiving such authorization must comply with the lawful instructions of the COTP or the COTP's designated representative.

(d) *Enforcement period.* This rule will be subject to enforcement from 1 a.m. on October 29, 2024, through 5 p.m. on November 15, 2024.

Keith M. Donohue,

Captain, U.S. Coast Guard, Captain of the Port Sector Houston-Galveston.

[FR Doc. 2024–24757 Filed 10–24–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900–AR93

Fee Reasonableness Reviews; Effect of Loss of Accreditation on Direct Payment

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this final rule to address its process for reviewing, determining, and allocating reasonable fees for claim representation, and to address the effect on direct payment of the termination of a claims agent's or attorney's VA accreditation.

DATES:

Effective date: This final rule is effective April 1, 2025.

Applicability date: The provisions of this final rule shall apply to all fee allocation notices issued on or after the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: Jonathan Taylor, Office of General Counsel (022D), 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7699. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On December 21, 2023, VA published in the **Federal Register** (88 FR 88,295) a proposed rule to address its process for reviewing, determining, and allocating reasonable fees for claim representation, and to address the effect on direct payment of the termination of a claims agent's or attorney's VA accreditation. The proposed rule allowed for a comment period ending on February 20, 2024. During the comment period, VA received 15 comments, which are discussed below. After considering these comments, VA has decided to finalize the proposed rule without amendment.

Comments on Representatives and Fees Generally

One commenter stated that ''the tone of [VA's] proposal suggests that attorney involvement in the [claims] process is part of some problem.'' VA thanks the commenter for this comment, but, to be clear, VA takes no issue with VA-accredited attorneys and claims agents (hereinafter ''agents'') assisting claimants and recognizes the important service they provide. But the fact of the matter is that there has been an increase in multi-attorney and multi-agent cases and, when those agents and attorneys request direct payment, VA needs an efficient process to allocate fees in all those cases. This rule provides such a process. And this rule's process will (1) empower agents and attorneys to negotiate fees on their own and (2) deliver fees to agents and attorneys more expeditiously (and benefits to veterans more expeditiously). Those are not anti-attorney or anti-agent measures or results.

Another commenter stated that fees should be a matter between a veteran and representative, and that representatives should not get fees from VA. VA thanks the commenter, but—to be clear—VA does not pay representatives independently. VA only pays representatives (out of a claimant's past-due benefits) when the claimant and the representative have requested it. And, under this rule, VA will only get involved with the question of fees when (1) direct payment is requested or (2) a fee reasonableness review is requested or otherwise warranted. Moreover, consistent with this commenter's general view on fee matters, this rule sets forth reasonable default allocations that will allow claimants and representatives to resolve fee matters on their own in many cases. Nevertheless, if that effort is unsuccessful, VA's Office of General Counsel (OGC) remains available to review and decide a reasonable fee allocation for the case.

A third commenter stated that VA should ''require agents or attorneys to

request a fee reasonableness review[ ] in order to receive direct payment.'' VA appreciates this comment, but has not been provided evidence of widespread acceptance of unreasonable fees that would warrant such a drastic action of not releasing *any* fees absent individualized review. Particularly given the workload burden that approach would create, and the legal presumption of fee reasonableness for certain agents or attorneys under 38 CFR 14.636(f)(1), VA declines to implement that approach at this time.

VA makes no changes in response to these comments.

Comments on Unaccredited Companies and Upfront Fees

One commenter stated that the proposed rule was excellent, but questioned how VA was dealing with unaccredited companies that charge high fees to veterans. Another commenter similarly stated support for limitations on fees, but was concerned about individuals and companies charging upfront fees. A third commenter stated that VA needs to shut down unaccredited companies that ''rob veterans, botch claims, and cost vet[eran]s benefits.'' The commenter requested that VA refer these companies to its Office of Inspector General (OIG) and the Department of Justice (DOJ). A fourth commenter stated that VA should be taking action against unaccredited actors, rather than further regulating accredited agents and attorneys. The commenter stated that this rule ''creates more opportunity for unaccredited actors to enter this space.''

The issues of unaccredited companies and upfront fees are beyond the scope of this particular rulemaking. But they are issues VA is actively pursuing in other realms, including coordination with OIG and DOJ, and we do want to take this opportunity to reiterate the following: No individual or organization that lacks VA accreditation may charge any fee for preparation, presentation, or prosecution of a VA benefits claim. 38 U.S.C. 5901. And no individual or organization (even with accreditation) may charge a fee to a veteran for services on a VA benefits claim prior to the initial decision on the claim. 38 U.S.C. 5904(c). Veterans can protect themselves against unaccredited companies involved in predatory practices by only engaging with VA-accredited representatives on VA benefits issues. Moreover, in view of VA's oversight of and authority regarding accredited representatives, veterans engaging with VA-accredited representatives can avail themselves of the fee reasonableness process described in this rule if they believe they are being charged an unreasonable fee.

As to the fourth commenter's allegation that this rule ''creates more opportunity for unaccredited actors to enter this space,'' we do not understand the basis for this allegation. To the extent the allegation is related to VA's statement that including claimants in the default allocation of § 14.636(i)(1)(ii) ''accounts for the possibility that the claimant may have entered into a non-direct pay agreement with other agents or attorneys'' (88 FR at 88,296), that statement is referring to *accredited* agents and attorneys, not unaccredited actors, as confirmed by § 14.636(b) (''Only accredited agents and attorneys may receive fees from claimants . . . .''). Alternatively, to the extent the allegation is based on the commenter's belief that this rule ''could create'' a disincentive for accredited agents or attorneys to represent claimants, we disagree with that premise, as further explained below.

VA makes no change to this rule in response to these comments, but nevertheless thanks the commenters for raising this important issue.

Comments on Declining Direct Payment for Agents or Attorneys Whose VA Accreditation Has Been Terminated

One commenter expressed ''full support'' for VA's proposal to decline direct payment for agents or attorneys who have had their accreditation revoked (§ 14.636(h)(1)(iii)). Another commenter agreed with such an approach, and applauded VA's efforts to strengthen regulations that protect veterans and their dependents from unreasonable fees. A third commenter, however, was concerned ''with the impact this policy may have on those who voluntarily terminate their accreditation due to illness or retirement.'' The commenter questioned ''whether these individuals will lose their fees or be forced to stay accredited to receive earned fees even when they are no longer taking on new clients.''

VA thanks each of the commenters on this issue. As to the last commenter's question, under this rule, even though there will be no direct payment for agents or attorneys whose VA accreditation has been terminated, that does not mean they lose the right to previously-earned fees or are forced to stay accredited to retain fee eligibility. Rather, upon receipt of a fee allocation notice, if they believe they deserve a fee from the award at issue, they can work out an arrangement with the other parties or (if that is unsuccessful) can request an OGC fee reasonableness review. In sum, while VA will no longer directly pay agents or attorneys who have lost their accreditation, this rule still allows those individuals to pursue a fee if they believe they have earned one in the case.

VA makes no change in response to these comments.

Comments on Current Fee Reasonableness Wait Times

One commenter stated that their law firm has five cases that have been pending fee reasonableness review since 2022, even though all the attorneys on the case were from the same firm. A similar commenter stated that they are currently waiting for a fee reasonableness determination, there is no timeline for such a determination, and that the process is haphazard. A third commenter stated that fee matters are ''often inexplicably and systematically delayed.'' A fourth commenter described their ''unpleasant experience'' waiting over 430 days for a fee reasonableness review that ''lacks any sort of transparent business process.'' This commenter stated that the case was referred for a reasonableness review simply because another attorney—who did not represent the claimant at the Board of Veterans' Appeals (Board) and now remained silent on the issue of fees—had represented the claimant six years prior.

VA thanks these commenters. This rule has been designed to remedy this issue and reduce fee reasonableness wait times. With the institution of reasonable default allocation rules, there will be less cases in the queue for a fee reasonableness review; thus, those cases that warrant such review will receive a determination more promptly. The first commenter's situation is an apt example. Under this rule, if no party objects to the default allocation within 60 days, VA may immediately release the fee to the successor attorney at the firm (or split the fee, depending on which default allocation rule applies). *See* 38 CFR 14.636(i)(1)–(2). Parties will no longer have to wait for a fee reasonableness review just because two attorneys represented the claimant. The fourth commenter's situation is also instructive. Even though another attorney provided representation six years prior, if no party objects within 60 days, the commenter could receive the entire fee shortly thereafter (assuming the § 14.636(i)(1) default is applicable). Moreover, the efficiency gains under this rule could also free up OGC resources to implement business practices that better serve the parties during the fee reasonableness process. Because this rule remedies these

commenters' concerns, VA makes no change in response to the comments.

The fourth commenter further stated that the increase in fee reasonableness case inventory was the result of VA's policy choice to refer all direct-pay multi-attorney or multi-agent matters for a fee reasonableness review without any opportunity for the parties to resolve the matter on their own. We do not dispute that VA's policy to refer to OGC all direct-pay multi-attorney/agent fee matters, in conjunction with the rising number of multi-attorney/agent matters, has been a factor for the increase. Because there was no rule setting forth default allocations, VA had to refer all these cases for a determination on how much to pay each agent or attorney. Now, however, as stated in the preamble to the proposed rule, VA believes that the best course forward is to establish default allocation rules, which will allow veterans and representatives the opportunity to resolve fee matters on their own in lieu of a fee reasonableness review. 88 FR at 88,295. We believe this approach accords with the commenter's view. VA thanks the commenter and makes no change in response to the comment.

Comments on the § 14.636(i)(1)(i) Default Allocation

One commenter expressed support for the default allocation for cases involving a ''continuous'' agent or attorney, § 14.636(i)(1)(i), stating that such an allocation ''incentivizes ethical behavior and the high quality representation that our Veterans deserve.'' The commenter stated that there is an ''unethical (but sadly widespread) practice wherein a representative submits a few documents on behalf of a client, drops representation of that client, and then sits back and collects fees for the next 5–10 years based on the work done by subsequent representatives or by the Veteran on his [or her] own.'' According to the commenter, this default properly prioritizes ''protecting honest Veterans from unscrupulous representatives'' and ''encouraging ethical and responsible legal representation of Veterans'' over certain representatives' attempts ''to collect fees from awards granted to Veterans long after their representation ends.'' A second commenter, however, expressed concern with this default allocation, stating that a discharged agent or ''attorney can spend years developing evidence, submitting argument, consulting with and advising a client, and investing other resources on a case. . . . VA would entirely ignore all these services and simply award the fee to the 'continuous' agent or attorney.''

VA thanks both commenters for their comments. We agree with several of the points made by the first commenter. As to the second commenter's concern, we acknowledge that there are situations where the discharged [1] agent or attorney performed more valuable services for the claim than the continuous agent or attorney; there are also situations where the continuous agent or attorney performed the more valuable services. Accordingly, we structured the default allocation to be nothing more than an initial baseline: If the discharged agent or attorney (or the claimant) disagrees with the default in a given case, the parties have a 60-day window to resolve the matter on their own—and, if an agreement cannot be reached, OGC reasonableness review is available.[2] But the efficiency gain of a default is that—if no party has an issue with the continuous agent or attorney receiving the fee, or if the parties reach an agreement on their own as to how they will re-allocate the fee after its release—that is the end of the matter and OGC will not have to adjudicate a case that no party has asked it to resolve. Accordingly, VA makes no change in response to these comments.

Comments on the § 14.636(i)(1)(ii) Default Allocation

One commenter expressed concern with the default allocation for cases where all agents and attorneys have been discharged, § 14.636(i)(1)(ii), stating that ''VA would treat both attorneys equally, even if the latter performed only minimal work.'' VA thanks the commenter for the comment, but, again, the default allocation is just an initial baseline; if any party believes the default split is not reasonable in a given case, the parties can work out on their own how to re-allocate the fee after receipt or (if that effort proves unsuccessful) request OGC review. The default is not there to assume that all cases with discharged agents or attorneys involve equal work by those agents or attorneys; it is there to provide a generally reasonable baseline that will be satisfactory to the parties in many circumstances and will enable OGC to focus its resources on those cases where a party has affirmatively expressed a desire for OGC review.

Another commenter recalled a situation in which their client was ''unknowingly solicited to sign a new [representation] agreement'' with another entity, such that they subsequently had to re-establish representation of the client. The commenter stated that, under this rule, the ''soliciting entity could have received an equal split'' or ''I may have been boxed out of my fees,'' *i.e.,* ''my years of work may have been thrown away or allocated out by default because a different or multiple representatives could have existed on decision day.'' VA thanks the commenter, but, to be clear, in this situation, so long as the representation is re-established prior to the date of the award of benefits (and is direct-pay eligible), the commenter would be allocated the entire fee under § 14.636(i)(1)(i). If the representation is not re-established in time, the commenter would nevertheless receive the fee allocation notice and, if dissatisfied with a § 14.636(i)(1)(ii) split, could request OGC review to ensure receipt of a reasonable fee. Accordingly, this rule provides agents and attorneys in such circumstances a sufficient remedy.

A third commenter stated opposition to a ''default fee split of any kind'' because it ''unlawfully impose[s] fee sharing'' and is unethical under ABA Formal Opinion 487. *See* ABA Comm. On Ethics & Prof'l Responsibility, Formal Op. 487 (2019). VA thanks the commenter, but Opinion 487 addresses a *successor counsel's obligations* to its client and prior counsel upon (and prior to) fee receipt; it does not address an *agency's* authorities or obligations under 38 U.S.C. 5904 in a multi-agent or multi-attorney case. To be clear, we do not dispute the relevance of this opinion in terms of the ethical obligations of representatives. Indeed, in the preamble to its proposed rule, VA stated that, ''upon receipt of a fee allocation notice, the agent or attorney has a professional responsibility to review the default fee and ensure that it is not clearly unreasonable; if it is, that agent or attorney has an ethical obligation to return that fee to the claimant.'' 88 FR at 88,296. VA further emphasized that ''[t]he failure to return the fee to the claimant in such circumstances could constitute a violation of VA's standards of conduct warranting suspension or cancellation of the agent's or attorney's accreditation to represent claimants before VA.'' *Id.* So, we agree that the Model Rules of Professional Conduct and Opinion 487 are relevant to agent and attorney obligations under this rule, but we do not agree that either ethically precludes VA from implementing this rule. We also do not agree with the commenter's allegation that this rule imposes mandatory fee sharing; as

[1] Herein, ''discharged'' refers to representatives who were either discharged or withdrew from the representation prior to the award of benefits.

[2] As merely an initial baseline, the default has no effect once a party requests OGC review. 88 FR at 88,296.

stated above, the default allocation is just an initial baseline, and if any agent or attorney believes they should not have to share a fee with another representative, they can simply file for OGC reasonableness review.

Accordingly, VA makes no change in response to these comments.

Comments on Fee Reasonableness Data

One commenter stated that the ''very small pool of data'' presented by VA in the preamble to the proposed rule (88 FR at 88,296) was insufficient to ''draw a sweeping conclusion that a client should automatically be part of the default allocation,'' when considering ''the large number of fees awarded in a year that never are contested.'' Another commenter stated that different data—comparing the cases that returned some of the potential fee to the claimant with ''the total number of cases where fees were generated, entitlement was established, and there was no referral or contest to OGC''—would be more relevant.

VA appreciates these comments, but disagrees about what data is most relevant here. The purpose of the data presented in the preamble to the proposed rule was to explain why we included the claimant in the default allocation for cases where all agents or attorneys were discharged. 38 CFR 14.636(i)(1)(ii). We reviewed the data for OGC reviews in such cases (not just a sample, but the entire pool of such cases from fiscal year 2022 and the first three-quarters of fiscal year 2023); the data reflected that—more often than not—OGC found it reasonable to return some of the potential fee to the claimant; and we concluded (for this reason and others, *see* 88 FR at 88,296) that a default that included the claimant in the allocation was a generally reasonable baseline for this type of case. Comparing this data to the total number of cases where OGC review was *not* provided is less relevant, because chronicling the number of cases where *no entity decided reasonableness* does not illuminate what a generally reasonable baseline for this type of case would or should be.[3]

A third commenter stated that VA's data reflects that OGC should continue reviewing fee reasonableness for every multi-agent or multi-attorney case. VA appreciates this comment, but the data presented was not addressing all multi-agent or multi-attorney cases; it was only addressing cases where all agents or attorneys had been discharged; and there is no basis for assuming that the data from this subset of cases is replicated for ''continuous'' agent or attorney matters, where fundamentally different factors are at play that generally result in the return of less money to claimants, including (1) the fact that the favorable decision awarding benefits was obtained *during* the representation and (2) the presumption that the continuous representative's fee is reasonable under § 14.636(f)(1). In general, VA believes that OGC's time and resources should be primarily dedicated to protecting claimants from unreasonable fees and resolving disputes over fees, rather than *sua sponte* deciding a fee allocation between attorneys or agents at no benefit to a claimant (as occurs in many cases where the § 14.636(f)(1) presumption of fee reasonableness applies).

A fourth commenter suggested that additional data—regarding OGC's inventory, OGC's oldest pending cases, VA regional offices that refer cases to OGC, and the percentage of OGC's cases initiated by a party—would be relevant. While VA does not have comprehensive data on all these issues, a review of OGC's incoming cases from the first quarter of fiscal year 2024 reflects that 77.5% of incoming cases were referred by the Veterans Benefits Administration, while 22.5% were the result of a party's request for review. Moreover, a sample of 138 OGC cases decided between March 2022 and January 2024 reflects that, on average, a decision on fee reasonableness was issued 2.9 years after VA's determination on fee eligibility. This data confirms that this rule's fundamental change—from automatic OGC review of direct-pay multi-agent or multi-attorney cases to party-initiated review[4]—is likely to have a significant effect on efficiency and to enable both representatives and veterans to receive their fees and benefits faster.[5]

VA makes no change in response to these comments.

Comments on Allowing for Compromise Between the Parties

One commenter expressed appreciation for ''the time and effort OGC exerted to propose a solution'' for expediting fee matters and agreed with VA that ''there are many fee matters that can be worked out between the parties'' (quoting 88 FR at 88,295). However, the commenter then opined that VA's proposal ''does not provide for such resolutions'' and suggested that ''parties should be permitted to submit a negotiated agreement.'' Another commenter stated that VA should ''create a process for attorneys and accredited agents'' to submit a ''consented arrangement.'' A third commenter suggested that ''VA create a form in which attorneys and accredited agents clearly state the mutually requested allocation of the fee, waive the rights to appeal and to reasonableness review, and in which claimants could additionally opt to waive the 60-day due process period. Upon receipt of this form signed by all parties, VA would simply release payment according to the parties' mutual agreement.'' The commenter stated that this process would not ''overlook[ ] the possibility of a reasonable compromise [on fees] between accredited agents and attorneys.''

VA thanks the commenters for these suggestions. But this final rule *does* allow for ''negotiated agreement[s]'' or ''consented arrangement[s],'' and *does not* overlook the possibility of compromise amongst the parties at issue. Indeed, VA has structured the default allocation rules so that the parties have a 60-day window to reach a compromise on their own. If a compromise is reached, there is no need to submit anything to VA: VA will release the fee in accord with the fee allocation notice and the parties can simply re-allocate the fee on their own in accord with the compromise reached. Thus, this final rule achieves the same aims as the commenters' proposals.

Moreover, while achieving the same aims, the final rule is preferable to the commenters' proposals. The commenters' proposals would require OGC review whenever an agreement *is not* submitted; this final rule would require OGC review whenever a request for reasonableness review *is* submitted. That difference between ''opt-in'' and ''opt-out'' will have a significant effect on the queue for OGC reasonableness reviews and the time that attorneys, agents, and claimants must wait to receive their earned fees and benefits. The final rule is preferable on that front.

[3] We will take this opportunity to note that the data for the first three quarters of fiscal year 2023 (88 FR at 88,296) remained consistent through the last quarter. In total, of the 115 fee reasonableness decisions issued in fiscal year 2023 addressing the situation where all agents and attorneys had been discharged, OGC returned some of the potential fee to the claimant in 103 of those decisions (89%). Overall, $2.2 million was at stake in these 115 cases, and OGC returned $1.52 million to claimants (69% of the amount at stake). This data further confirms that § 14.636(i)(1)(ii) provides a generally reasonable baseline for this type of case.

[4] Though OGC may still initiate its own review, § 14.636(i)(4), this rule was structured so that most of its reviews would be the product of party initiation.

[5] The above data (as well as the data provided in the preamble to the proposed rule) has been placed on the rulemaking docket, available at *www.regulations.gov*.

Finally, to the extent the commenters are seeking an avenue to waive the 60-day period, it is unclear that the benefit of such an avenue (fee release days or weeks earlier) outweighs the burden of carefully reviewing such a waiver to ensure that claimants have knowingly and voluntarily waived their appellate rights (to both OGC and Board review). We do not outright reject the idea, but think it is best to implement this final rule and then reassess. The final rule as it stands will, in many cases, reduce the time for fee receipt from 2.9 years on average (see data noted above) to approximately 60 days.

Accordingly, VA makes no change in response to these comments.

Comments on Consequences of This Rule

One commenter stated that this rule could add to OGC's inventory of fee reasonableness cases, because discharged agents or attorneys who worked on a case for years will not be satisfied with the provision of fees to a continuous agent or attorney under § 14.636(i)(1)(i), or with a split fee under § 14.636(i)(1)(ii), and will therefore request OGC review. Another commenter similarly predicted ''more reasonableness reviews/appeals'' under this rule.

VA appreciates the comments, but disagrees that OGC will have a higher inventory under this rule. Currently, OGC reviews *every* direct-pay case involving multiple agents or attorneys, whether the parties desire that review or not. Under this rule, OGC will generally limit its review to cases where a party requests it. That is a dramatic difference, as it could divert up to 77.5% of OGC's incoming caseload (per the data presented above). The situation laid out by the first commenter—discharged agents or attorneys who provided extensive services on a case for years—may be the most common circumstance where (the parties have difficulty reaching a compromise and) OGC review is desired, but there are many situations (*e.g.,* all representatives are from the same law firm; all representatives reach an agreement to re-allocate fees upon release; all representatives are fine with the default allocation) where OGC review will no longer be needed under this rule. This efficiency gain will enable both representatives and veterans to receive their fees and benefits faster.

The first commenter further stated that this rule could incentivize claimants ''to terminate representation when they anticipate a favorable decision,'' and could disincentivize agents and attorneys from representing claimants with prior agent or attorney representation. The second commenter echoed the concern about a potential disincentive here. VA appreciates the comments, but sees no basis for such speculation. First, the prospect that a claimant could be so confident that a favorable decision is forthcoming, so knowledgeable about § 14.636(i)(1)(ii), and so manipulative as to terminate representation to take advantage of that provision, is extremely unlikely. This assessment is confirmed by another commenter, who stated that ''the vast majority of the thousands of clients we've successfully represented before VA have been proven to be extremely honest and would never even think to purposely drop us as their legal representative in order to avoid having to pay our legal fee.'' In any event, even in that extremely unlikely case of claimant manipulation, the attorney or agent at issue could simply file for OGC review to ensure receipt of a reasonable fee for the case. Second, even if VA decided *not* to enact this rule, that same ''incentive to terminate'' would still exist, because terminating a representative before a decision renders the presumption of fee reasonableness inapplicable. *Compare* 38 CFR 14.636(f)(1) *with* 38 CFR 14.636(f)(2). So this rule presents no meaningful incentive change for claimants.

The same logic applies to the concern that agents and attorneys will not represent claimants with prior agent or attorney representation. Even if VA decided *not* to enact this rule, that same ''disincentive'' already exists under current practice, because all direct-pay cases involving multiple agents or attorneys are currently referred to OGC for allocation of the fee. So, either way, agents and attorneys know that the fee in the case will have to account for the prior agent or attorney. If anything, when compared to current practice, the rule change *promotes* representation of claimants with prior agent or attorney representation, given the structure of the § 14.636(i)(1)(i) default.

Accordingly, VA makes no change in response to these comments.

Comments on Fee Eligibility and Reasonableness

One commenter stated that VA's proposal unlawfully vests OGC with the authority to decide questions of fee eligibility in the first instance. Respectfully, that is a misunderstanding. Under this rule, § 14.636(i)(1) is clear that ''the agency of original jurisdiction that issued the decision'' awarding past-due benefits—which is not OGC—''shall decide whether the agents or attorneys who filed direct-pay fee agreements in the case are eligible for direct payment.'' Moreover, § 14.636(i)(5) provides that OGC may address fee eligibility only ''if no other agency of original jurisdiction has made a determination on that issue.'' This language is substantively identical to VA's previous regulatory language on the matter. VA is not expanding, or attempting to expand, the scope of OGC's authority in this rulemaking.

Another commenter stated that VA's proposal ''conflates'' the concepts of entitlement to a fee and reasonableness of a fee, because the default rules assume fee entitlement for all agents and attorneys. Again, with respect, that is a misunderstanding. Under this rule, § 14.636(i)(1) is clear that the agency of original jurisdiction that issued the decision awarding past-due benefits ''shall decide whether the agents or attorneys who filed direct-pay fee agreements in the case are eligible for direct payment''; § 14.636(i)(1)(i) and (ii) also contain the ''eligible for direct payment'' caveat; and § 14.636(i)(2) provides that ''direct payment eligibility determination[s]'' are appealable to the Board. In sum, VA's rule does not assume fee eligibility or entitlement for all agents and attorneys—it requires an agency of original jurisdiction finding of eligibility before an attorney or agent is included in the default allocation.

The same commenter asserted that VA's proposal ''creates a default on reasonableness that conflicts with'' 38 U.S.C. 5904(a)(5). VA appreciates the comment, but, in 2019, VA addressed the interplay between section 5904(a)(5) (''A fee that does not exceed 20 percent of the past due amount of benefits awarded on a claim shall be presumed reasonable.'') and the holding of *Scates* v. *Principi,* 282 F.3d 1362, 1365–66 (Fed. Cir. 2002) (discharged attorneys are only entitled to a fee based on quantum meruit that reflects their contribution to and responsibility for the benefits awarded). 84 FR 138, 151 (2019). VA explained that the section 5904(a)(5) presumption applied to continuous agents or attorneys whose fee does not exceed 20 percent of the past-due benefits awarded, while the *Scates* quantum meruit standard applied to discharged agents or attorneys. 84 FR at 151. VA incorporated that distinction in 38 CFR 14.636(f)(1)–(2). *See also Cox* v. *McDonough,* 34 Vet. App. 112, 126 (2021) (confirming that, per *Scates,* the fee reasonableness presumption does not apply when attorney is discharged), *aff'd,* 2023 WL 1846117 (Fed. Cir. 2023).

This rule merely continues that distinction. As VA explained in the

preamble to its proposed rule, the default allocation for cases involving a (direct pay eligible) ''continuous'' agent or attorney is logical because that individual's fee is presumed reasonable under § 14.636(f)(1); and the default allocation for cases where all agents or attorneys have been discharged is logical because the reasonableness presumption does not apply to those individuals—quantum meruit does, under *Scates* and § 14.636(f)(2). 88 FR at 88,296. So, to the extent the commenter discerns a conflict between this rule and section 5904(a)(5), any such conflict would be based in the holding of *Scates* and the distinction laid out at § 14.636(f)(1)–(2), not the provisions being instituted here.

A third commenter asserted that a default allocation that includes a claimant ''absent a concern raised by that individual is misplaced'' given the presumption of fee reasonableness. Again, however, the default allocation that includes a claimant (§ 14.636(i)(1)(ii)) is only applicable when the presumption of fee reasonableness does not apply and quantum meruit does. In a quantum meruit setting, where discharged attorneys or agents bear the burden of proving the value of their services, *Dobbs* v. *DePuy Orthopedics, Inc.,* 842 F.3d 1045, 1050 (7th Cir. 2016); *Turpin* v. *Anderson,* 957 S.W. 2d 421, 427 (Mo.App. 1997), there is nothing improper about (1) having a default allocation that effectively proposes a quantum meruit fee amount and (2) requiring discharged attorneys or agents to (negotiate with the other parties or) file with OGC if they believe they have earned more.

Accordingly, VA makes no change in response to these comments.

Comment on Non-Direct Pay Agreements

One commenter suggested that VA's proposal may have contained a ''simple oversight'' in not treating ''a current legal representative with a valid non-direct pay fee agreement'' as ''a continuous agent or attorney (meaning that there would be no presumption that they deserve their entire legal fee). . . .'' The commenter requested that VA pay no fee to discharged representatives if the claimant has a current legal representative with a valid non-direct pay fee agreement; alternatively, that VA institute a presumption that a discharged representative's fee agreement has ''no legal force'' if ''factors indicate that [the representative's] work was unsuccessful''; or, in the further alternative, that VA ''simply stop'' direct payment ''in all cases.''

VA appreciates the comment, but declines these requests. At the outset, as a technical matter, those with non-direct pay agreements *do* meet the definition of ''continuous agent or attorney'' in § 14.636(i) as long as they provided representation that continued through the date of the decision awarding benefits. But they are not entitled to a ''presumption that they deserve their entire legal fee,'' which could be 30, 33, or even 50 percent of the claimant's past-due benefits. Indeed, in VA's experience non-direct pay agreements hardly ever qualify for the statutory presumption of reasonableness: A review of 206 non-direct pay fee agreements received by OGC between February 15, 2023, and March 6, 2023, reflects that 204 of the agreements (99.03%) charged a fee over 20 percent of the past-due benefits awarded and therefore were ineligible for the presumption of reasonableness. 38 U.S.C. 5904(a)(5). In contrast, direct pay agreements must charge a fee that does not exceed 20 percent of the past-due benefits awarded, 38 U.S.C. 5904(d)(1), and therefore are all eligible for the presumption of reasonableness, 38 U.S.C. 5904(a)(5). Thus, direct pay and non-direct pay agreements do not always warrant identical treatment, and particularly when it comes to the default allocation rules, which—only implicated ''[w]hen one or more *direct-pay* fee agreements has been filed''—are primarily designed to facilitate efficient direct payment. 38 CFR 14.636(i)(1) (emphasis added).

That said, as noted in the preamble to the proposed rule, the default allocation of § 14.636(i)(1)(ii) ''accounts for the possibility that the claimant may have entered into a non-direct pay agreement with other agents or attorneys and may be personally responsible for paying those other agents or attorneys.'' 88 FR at 88,296. So this rule does preserve a portion of the fee for agents and attorneys with non-direct pay fee agreements. If the agent or attorney with the non-direct pay fee agreement believes that portion is insufficient, they have 60 days to resolve the matter with the other parties on their own; if an agreement cannot be reached, they can request OGC reasonableness review.

VA has considered the options presented by the commenter, including declining direct payment for discharged representatives, premising direct payment on a multi-factor test, or stopping direct payment altogether. But thousands of agents and attorneys and countless claimants still find value in direct payment, given (1) the relative certainty of collection it provides to agents and attorneys, (2) the 20 percent fee limitation it guarantees for claimants, and (3) the power imbalance and potential for confusion that arises when a representative privately attempts to collect a fee from a claimant. While this rule's enactment of § 14.636(h)(1)(iii) is itself evidence that VA is open to the prospect of declining direct payment in certain types of cases, VA is not willing—at this point—to abandon the direct payment option in the circumstances contemplated by the commenter (or to institute a potentially lengthy and subjective multi-factor test). Accordingly, VA makes no change in response to this comment.

Comment on Rosinski and Snyder

One commenter stated that the ''cash payment'' provision that VA proposed to relocate without change from § 14.636(h)(1)(iii) to § 14.636(h)(1)(iv) ''directly conflicts'' with *Rosinski* v. *Wilkie,* 32 Vet. App. 264 (2020), and *Snyder* v. *Nicholson,* 489 F.3d 1213 (Fed. Cir. 2007). VA thanks the commenter for the comment, but its proposed rule did not contemplate a substantive change to this provision; it merely relocated the provision without change to make way for a new and unrelated direct-payment requirement. That said, upon review of the comment, VA has determined that the continued propriety and suitability of the cash payment provision in light of *Rosinski* and *Snyder* does warrant additional consideration and public comment, so VA will issue a proposed amendment to the provision in an upcoming rulemaking. In terms of the current rulemaking, however, VA did not inform the public that the substance of this provision was at issue, and VA received no other comments weighing in on this issue, so VA declines to make any changes to the current rulemaking in response to this comment.

Questions About This Rule

One commenter asked how VA will ensure that all affected parties will be provided a fee allocation notice, because (according to the commenter) ''VA mailing irregularities are well-documented.'' Under this rule, VA ''shall issue'' the fee allocation notice ''to the parties,'' which includes ''the claimant or appellant [and] any agent or attorney who represented the claimant or appellant in the case.'' 38 CFR 14.636(i), (i)(1). So, all affected parties will be provided notice. But VA declines to implement any distinct procedure from its ordinary notification processes, and the commenter has suggested no alternative procedures.

The commenter also asked ''what training and resources'' will be provided to retrain affected employees and ''what quality assurance will be implemented.'' Suffice it to say here that training will be provided, procedures manuals will be updated, and quality review will be implemented. Because the commenter has not suggested any specific actions on that front, VA declines further comment on the matter.

The commenter further asked how VA ''will handle waiver of prior attorneys in fee cases,'' because (according to the commenter) a reasonableness review in the case of waiver ''is unnecessary'' and VA's approach to waiver has been ''inconsistent[ ].'' When an agent or attorney waives fees, VA will treat them as ineligible for direct payment (just like a *pro bono* agent or attorney) when applying the default rules of § 14.636(i)(1)(i) and (ii) to the case.

Finally, this commenter asked ''what notice VA will issue to whom if it determines there has been no qualifying request for review, or no entitlement to fees,'' because (according to the commenter) ''VA routinely makes such findings erroneously.'' As to ''no entitlement,'' as long as one ''direct-pay fee agreement[ ] has been filed,'' VA will provide notice to all parties of any determination of fee ineligibility. 38 CFR 14.636(i)(1). As to ''no qualifying request for review,'' if no request for OGC review or appeal to the Board is timely filed, VA may release the fee without additional notice. 38 CFR 14.636(i)(2).

The above question relates to a comment by another commenter, who recalled a situation where VA overlooked their direct-pay fee agreement and the claimant thus received the entirety of the past-due benefits. If the rare circumstance arises where VA mistakenly overlooks a direct-pay fee agreement (or a timely request for OGC review) and releases the fee, the affected party should contact OGC, which could move to review the matter on its own initiative. 38 CFR 14.636(i)(4).

A different commenter asked whether ''there should be a route to address'' the situation where veterans had to pay attorney fees from successful clear and unmistakable (CUE) claims pertaining to a Secretary of Veterans Affairs equitable relief decision on the issue of traumatic brain injury. Respectfully, this topic is outside of the scope of this rulemaking. This rulemaking does not address or amend any provisions regarding fees associated with CUE or equitable relief.

VA thanks the commenters and makes no change in response to these questions.

Severability

The purpose of this section is to clarify VA's intent with respect to the severability of provisions of this rule. Each provision of this rulemaking is capable of operating independently. If any provision of this rule is determined by judicial review or operation of law to be invalid, that partial invalidation will not render the remainder of this rule invalid. Likewise, if the application of any portion of this rule to a particular circumstance is determined to be invalid, VA intends that the rule remain applicable to all other circumstances.

Executive Orders 12866, 13563, and 14094

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Orders 12866 and 13563. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under E.O. 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will 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. 601–612). The basis for this certification is the fact that the rule will merely institute reasonable default rules for fee allocation and provide that agents and attorneys who have lost their VA accreditation collect any earned fees without VA assistance. These changes will not result in any loss of fees to which an agent or attorney is reasonably entitled, because, as noted above, any party dissatisfied with the default allocation in a given case can request OGC's determination on reasonable fees in the case. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

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 final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule includes a provision constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collection of information associated with this rulemaking has an assigned OMB control number of 2900–0605 requiring a reinstatement. A reinstatement of this collection of information requires review and approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval. VA received no comments on the collection of information requiring reinstatement.

OMB has received the collection of information for reinstatement. OMB's receipt of the collection of information for reinstatement is not an approval to conduct or sponsor an information collection under the Paperwork Reduction Act of 1995. In accordance with 5 CFR 1320, the collection of information reinstatement associated with this rulemaking is not approved by OMB at this time. OMB's approval of the collection of information reinstatement will occur within 30 days after the Final rulemaking publishes. If OMB does not approve the collection of information reinstatement as requested, VA will immediately remove the provision containing the collection of information or take such other action as is directed by OMB.

The collection of information contained in 38 CFR 14.629 and 14.636 is described immediately following this paragraph, under its respective title.

Title: Application for Accreditation as a Claims Agent or Attorney, Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements.

OMB Control No: 2900–0605.

CFR Provisions: 38 CFR 14.636.

• *Summary of collection of information:*

(1) Applicants seeking accreditation as claims agents or attorneys to represent benefits claimants before VA must file VA Form 21a with OGC. The information requested in VA Form 21a includes basic identifying information, as well as certain information concerning training and experience, military service, and employment.

(2) Accredited agents and attorneys must file with VA any agreement for the payment of fees charged for representing claimants before VA. 38 U.S.C. 5904(c)(2); 38 CFR 14.636(g).

(3) Claimants, accredited agents, or accredited attorneys may request an OGC determination on a reasonable fee allocation in a given case. If they do, OGC will solicit (optional) responses from the other parties in the case. 38 U.S.C. 5904(c)(3); 38 CFR 14.636(i).

• *Description of need for information and proposed use of information:*

(1) The information in the VA Form 21a is used by OGC to determine the applicant's eligibility for accreditation as a claims agent or attorney. More specifically, it is used to evaluate qualifications, ensure against conflicts of interest, and to establish that statutory and regulatory eligibility requirements, *e.g.,* good character and reputation, are met.

(2) The information in recertifications is used by OGC to monitor whether accredited attorneys and agents continue to have appropriate character and reputation and whether they remain fit to prepare, present, and prosecute VA benefit claims.

(3) The information in a fee agreement is used by the Veterans Benefits Administration (VBA) to associate the fee agreement with the claimant's claims file, to potentially determine the attorney or agent's fee eligibility, and to potentially process direct payment of a fee from the claimant's past-due benefits. It is used by OGC to monitor whether the agreement is in compliance with laws governing paid representation, and to potentially review fee reasonableness.

(4) The information in a request for OGC fee review, or a response to such request, is used by OGC to determine the agents' or attorneys' contribution to and responsibility for the ultimate outcome of the claimant's claim, so that a determination on reasonable fees can be rendered.

• *Description of likely respondents:* Claimants, Attorneys, Agents.

• *Estimated number of respondents:* 34,695.

(1) For VA Form 21a applications, 2,280.

(2) For recertifications, 4,860.

(3) For fee agreements, 27,250 (750 first time filers and 26,500 repeat filers).

(4) For requests for OGC fee review, 305.

Total estimated number of respondents (2,280, 4,860, 27,250, 305 = 34,695).

• *Estimated frequency of responses:* One time.

• *Estimated Completion Time:* Varies as specified below.

(1) For VA Form 21a applications, 45 minutes.

(2) For recertifications, 10 minutes.

(3) For fee agreements, 1 hour for first time filers and 10 minutes for repeat filers.

(4) For requests for OGC fee review, 2 hours.

• *Total Annual Burden Hours:* 8,297 hours.

(1) For VA Form 21a applications, 1,710 hours.

(2) For recertifications, 810 hours.

(3) For fee agreements, 5,167 hours (750 hours for first time filers and 4,417 hours for repeat filers).

(4) For requests for OGC fee review, 610 hours.

Total estimated annual burden (1,710 hours, 810, hours, 5,167 hours, 610 hours = 8,297 hours).

• *Estimated cost to respondents per year:* $633,349.

(1) For VA Form 21a applications, $79,845 ($41,360 + $22,666 + $15,819).

650 initial responses by attorneys	$84.84 × 487.5 hours (650 × 45 minutes/response)	$41,360.00
960 initial responses by non-attorneys	$31.48 × 720 hours (960 × 45 minutes/response)	22,666.00
670 follow-up responses by non-attorneys	$31.48 × 502.5 hours (670 × 45 minutes/response)	15,819.00

(2) For recertifications, $68,720 (810 hours × $84.84).

(3) For fee agreements, $438,368 (5,167 hours × $84.84).

(4) For requests for OGC fee review, $46,416 ($43,268 + $3,148).

255 responses by non-claimants	$84.84 × 510 hours (255 × 120 minutes/response)	$43,268.00
50 responses by claimants	$31.48 × 100 hours (50 × 120 minutes/response)	3,148.00

Total estimated cost to respondents per year: ($79,845, $68,720, $438,368, $46,416 = $633,349).

* To estimate the total information collection burden cost, VA used the May 2023. Bureau of Labor Statistics (BLS) average hourly wage codes of 23–1011: Lawyers ($84.84) and 00–0000: All Occupations ($31.48) to derive PRA estimates. This information is available at *https://www.bls.gov/oes/current/oes_nat.htm.* Please note numbers are subject to rounding for VA estimates.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

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.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on October 17, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 14 as set forth below:

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, 5901–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

■ 2. Amend § 14.636 by:
■ a. Removing paragraph (c)(4);
■ b. Revising paragraphs (e), (g)(3), and (h)(1)(ii) and (iii);
■ c. Adding paragraph (h)(1)(iv); and
■ d. Revising paragraphs (i) through (k).

The revisions read as follows:

§ 14.636 Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.

* * * * *

(e) *Fee reasonableness factors.* Fees set forth in a fee agreement, charged, or received for the services of an agent or attorney admitted to practice before VA must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

(1) The extent and type of services the agent or attorney performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the agent or attorney in giving the services;

(4) The amount of time the agent or attorney spent on the case;

(5) The results the agent or attorney achieved, including the amount of any benefits recovered;

(6) The level of review to which the claim was taken and the level of the review at which the agent or attorney was retained;

(7) Rates charged by other agents or attorneys for similar services;

(8) Whether, and to what extent, the payment of fees is contingent upon the results achieved;

(9) If applicable, the reasons why an agent or attorney was discharged or withdrew from representation before the date of the decision awarding benefits; and

(10) If applicable, the fee entitlement of another agent or attorney in the case.

* * * * *

(g) * * *

(3) A copy of a direct-pay fee agreement, as defined in paragraph (g)(2) of this section, must be filed with the agency of original jurisdiction within 30 days of its execution. A copy of any fee agreement that is not a direct-pay fee agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Only fee agreements that do not provide for the direct payment of fees, documents related to review of fees under paragraph (i) of this section, and documents related to review of expenses under § 14.637, may be filed with the Office of the General Counsel. All documents relating to the adjudication of a claim for VA benefits, including any correspondence, evidence, or argument, must be filed with the agency of original jurisdiction, Board of Veterans' Appeals, or other VA office as appropriate. VA may accept fee agreements that were not filed within 30 days of execution upon a showing of sufficient cause.

(h) * * *

(1) * * *

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant,

(iii) The agent or attorney is accredited (*see* §§ 14.627(a) and 14.629(b)) on the date of VA's fee allocation notice (*see* paragraph (i) of this section), and

(iv) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 5304(a) and 38 CFR 3.750))

* * * * *

(i) *Fee review.* For purposes of this paragraph (i), ''party'' means the claimant or appellant or any agent or attorney who represented the claimant or appellant in the case; ''eligible for direct payment'' means eligible for direct payment of a fee under the requirements of paragraphs (c), (g), and (h) of this section; ''continuous agent or attorney'' means the agent or attorney who provided representation that continued through the date of the decision awarding benefits; and ''timely filed'' means within 60 days of the fee allocation notice.

(1) When one or more direct-pay fee agreements has been filed in accordance with paragraph (g) of this section and a decision awards past-due benefits in a case, the agency of original jurisdiction that issued the decision shall issue to the parties a fee allocation notice. The fee allocation notice shall decide whether the agents or attorneys who filed direct-pay fee agreements in the case are eligible for direct payment, and shall provide one of two default fee allocations:

(i) In cases where a continuous agent or attorney is eligible for direct payment, the default shall be allocation of the fee to the continuous agent or attorney.

(ii) In cases where paragraph (i)(1)(i) of this section does not apply, the default shall be an equal split of the fee based on the number of agents or attorneys who are eligible for direct payment plus the claimant or appellant.

(2) A party that disagrees with the default fee allocation in a given case may file a request for Office of the General Counsel fee review, as provided in paragraph (i)(3) of this section. A party that disagrees with a direct payment eligibility determination may only appeal to the Board of Veterans' Appeals. Absent a timely filed request for Office of the General Counsel fee review or a timely filed appeal to the Board of Veterans' Appeals, the default fee allocation described in paragraphs (i)(1)(i) and (ii) of this section is final and VA may release the fee.

(3) A request for Office of the General Counsel fee review under this paragraph (i) must be filed electronically in accordance with the instructions on the Office of the General Counsel's website, or at the following address: Office of the General Counsel (022D), 810 Vermont Avenue NW, Washington, DC 20420. The request must include the names of the veteran and all parties, the applicable VA file number, and the date of the decision awarding benefits. The request must set forth the requestor's proposal as to reasonable fee allocation, and the reasons therefor, and must be accompanied by all argument and evidence the requestor desires to submit.

(4) Upon the receipt of a timely filed request under paragraph (i)(3) of this section, or upon his or her own initiative, the Deputy Chief Counsel with subject-matter jurisdiction will initiate the Office of the General Counsel's motion for a fee review by sending notice to the parties. Not later than 30 days from the date of the motion, any party may file a response, with all argument and evidence the party desires to submit, electronically in accordance with the instructions on the Office of the General Counsel's website, or at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW, Washington, DC 20420. Such responses must be served on all other parties. The Deputy Chief Counsel

with subject-matter jurisdiction may, for a reasonable period upon a showing of sufficient cause, extend the time for any party's response.

(5) The General Counsel or his or her designee shall render the Office of the General Counsel's decision on the matter. The decision will be premised on the reasonableness factors of paragraph (e) of this section, the standards of paragraph (f) of this section, the limitation on direct payment of paragraph (h)(1)(i) of this section, the claims file, the parties' submissions, and all relevant factors. The decision may address the issue of fee eligibility if no other agency of original jurisdiction has made a determination on that issue.

(6) The Office of the General Counsel's decision is a final adjudicative action that may only be appealed to the Board of Veterans' Appeals. Unless a party files a Notice of Disagreement with the Office of the General Counsel's decision, the parties must allocate any excess payment in accordance with the decision not later than the expiration of the time within which the Office of the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

(j) *Failure to comply.* In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 to terminate the agent's or attorney's accreditation to practice before VA.

(k) *Appeals.* Except as otherwise provided in this section, appeals shall be initiated and processed using the procedures in 38 CFR part 20 applicable to appeals under the modernized system.

[FR Doc. 2024–24708 Filed 10–24–24; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0338; FRL–12118–03–R9]

Interim Final Determination To Stay or Defer Sanctions; California; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the State of California has submitted revisions to the California State Implementation Plan (SIP) that correct the deficiency prompting the partial disapproval of previous SIP submissions addressing the requirements under the Clean Air Act (CAA or ''Act'') for contingency measures for the 2008 ozone national ambient air quality standards (NAAQS or ''standards'') for the San Joaquin Valley ozone nonattainment area. This determination is based upon a proposed conditional approval, published elsewhere in this issue of the **Federal Register**, of SIP revisions addressing the contingency measure requirements for the 2008 ozone NAAQS for the San Joaquin Valley. The effect of this interim final determination is to stay the application of the offset sanction and to defer the application of the highway sanction that were triggered by the EPA's previous partial disapproval of SIP revisions submitted to address the contingency measure requirements for the 2008 ozone NAAQS for this area.

DATES: This interim final determination is effective on October 25, 2024. However, comments will be accepted on or before November 25, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0338 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Ledezma, Air Planning Office (ARD–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3985, or by email at *Ledezma.Andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Background

In March 2019, the EPA took final action to approve, or conditionally approve, certain state implementation plan (SIP) revisions submitted by the State of California to meet CAA requirements for the 2008 ozone NAAQS in the San Joaquin Valley, California, ozone nonattainment area.[1] Specifically, the EPA approved the base year emissions inventory, reasonable further progress (RFP) demonstration, and motor vehicle emissions budgets, and conditionally approved the contingency measure element for the 2008 ozone NAAQS. We justified a conditional approval of the contingency measure element, even though the contingency measure itself would only achieve a small fraction of the recommended amount for contingency measures, on the basis of a surplus in emissions reductions that could be anticipated from already-implemented measures in the milestone years and year after the attainment year and a commitment by the State to achieve additional emissions reductions by the attainment year in the San Joaquin Valley that would reduce the chances that additional contingency measures would be needed for failure to attain the 2008 ozone NAAQS by the applicable attainment date.[2]

Our final conditional approval of the contingency measure element was the subject of a legal challenge and, in a 2021 Ninth Circuit decision in the *Association of Irritated Residents* v. *EPA* case, the Court remanded the conditional approval action back to the Agency.[3] In so doing, the Court found that, by taking into account the emissions reductions from already-implemented measures to find that the contingency measure would suffice to

[1] 84 FR 11198 (March 25, 2019).

[2] 83 FR 61346, at 61357 (November 29, 2018) (proposed conditional approval), finalized at 84 FR 11198, at 11205–11206.

[3] *Association of Irritated Residents* v. *EPA,* 10 F.4th 937 (9th Cir. 2021).