(C) Request for extension of time to file a statement of use under section 1(d) of the Trademark Act, 15 U.S.C. 1051(d);

(D) Affidavit of continued use under section 8 of the Trademark Act, 15 U.S.C. 1058;

(E) Renewal request under section 9 of the Trademark Act, 15 U.S.C. 1059; and

(F) Requests to change or correct addresses.

(2) The date of deposit with USPS is shown by the ''date in'' on the ''Express Mail'' label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. *See* § 1.6(a).

* * * * *

Dated: May 15, 2002.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 02–12878 Filed 5–22–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AI98

Board of Veterans' Appeals: Rules of Practice—Attorney Fee Matters

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) by establishing safeguards in the case of ''disinterested third-parties'' who pay a veteran's attorney fees and by simplifying certain notice procedures. We have carefully considered the comments submitted in response to our notice of proposed rulemaking (NPRM), and have decided to adopt the amendments we proposed concerning those two matters, but not to adopt the provisions relating to payment of attorney fees from past-due benefits.

DATES: *Effective Dates:* This rule is effective June 24, 2002, except for § 20.609(i) which is effective July 22, 2002.

Applicability Date: Amendments to 38 CFR 20.609(i) will apply to third-party agreements received at the Board of Veterans' Appeals on or after July 22, 2002. Third party fee agreements received prior to that date will be subject to the pre-existing rules, which require that all fee agreements—including third-party agreements—be filed with the Board.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: On December 9, 1997, VA published in the **Federal Register** at 62 FR 64790 a Notice of Proposed Rulemaking (NPRM) which would (1) discontinue VA's practice of paying attorney fees from past-due benefits; (2) establish safeguards in the case of ''disinterested third-party'' payers; and (3) simplify certain notice procedures. We provided a 60-day comment period that ended February 9, 1998.

We received more than 80 comments from attorneys, individuals, local veterans' groups, Vietnam Veterans of America, Veterans' Due Process, National Organization of Veterans' Advocates, a county bar association, and members of Congress.

Most of the comments related to the issue of paying attorney fees from past-due benefits. Some comments addressed the ''third-party'' issue. None of those comments supported either change.

There were no comments relating to the notice procedures.

In this document, we will consider the notice procedures, the fee payment procedures, and the third-party procedures, in that order. We will also separately discuss the effective date provisions of this rule.

Based on the rationales given in the NPRM and in this document, we adopt as a final rule the provisions of the proposed rule with the changes discussed below.

I. Simplifying Notice Procedures

In our NPRM, we proposed to amend Rule 609(i) (38 CFR 20.609(i)), relating to motions to review attorney fee agreements, and Rule 610(d) (38 CFR 20.610(d)), relating to motions challenging expenses. The amendments would eliminate the requirement of mailing by certified mail and replace it with a certification by the mailer.

We received no comments on this proposal. For the reasons set forth in the NPRM, we adopt it as published.

II. Taking VA Out of the Business of Paying Attorney Fees

In our NPRM, we proposed to end VA's discretionary practice of paying attorney fees out of a veteran's past-due benefits. No commenter supported this proposal.

We have decided not to adopt the proposed amendments as a final rule.

III. Third-Party Agreements

Eleven commenters, all attorneys, commented on the ''third-party payer'' rule. Those comments fell into eight categories:

1. VA has no business examining contracts where fees are not to be paid from past-due benefits.

2. VA has no business examining contracts where the veteran does not pay the fee.

3. Without a contingency agreement, third-party payers would have unlimited liability.

4. Prohibiting third-party contingency agreements will discourage attorneys from representing veterans.

5. The additional requirements VA proposed on third-party fee agreements will increase the administrative burden VA is trying to reduce.

6. Include in the presumption of ''not disinterested'' only dependent parents.

7. Do not adopt the proposed amendments because people will violate the law anyway.

8. Without third-party contingent fee agreements, claimants will not be able to afford attorneys.

As discussed below, we find none of these arguments persuasive and publish the rule as proposed.

A. VA Has No Business Examining Contracts Where Fees Are Not To Be Paid from Past-Due Benefits

Some commenters said that VA has no business examining agreements where fees are not to be paid from past-due benefits. The law itself permits the Board to review fee agreements for reasonableness regardless of whether or not they call for payment of fees from past-due benefits. 38 U.S.C. 5904(c)(2). We make no change based on the commenters' argument.

B. VA Has No Business Examining Contracts Where the Veteran Does Not Pay the Fee

Some commenters stated that VA has no authority to examine a fee agreement when the claimant is not paying the fee.

VA is the part of the Executive Branch charged with enforcing, among other things, the provisions of 38 U.S.C. 5904. *Id.* 501(a) (Secretary has authority to prescribe all rules and regulations necessary or appropriate to carry out the laws administered by the Department). VA is neither required nor expected to turn a blind eye to attempts to evade the law. Indeed, it is a criminal offense to charge a fee in VA cases except as provided by statute. 38 U.S.C. 5905.

It has been our experience that the majority of third-party agreements are rather blatant attempts to avoid the

restriction, imposed by the Veterans' Judicial Review Act (VJRA), Public Law 100–687, Div. A, 102 Stat. 4105 (1988), that attorneys may not charge veterans for services which are rendered prior to the first final Board decision on an issue. The Congress was quite clear that attorneys should not be paid until the veteran had gone through the system once using the free representation provided by veterans service organizations (VSOs). That clarity is shown in this statement by the Chairman of the Senate Committee on Veterans' Affairs during the 1988 debate on the VJRA:

> The compromise agreement before us today prohibits attorneys fees until after the BVA makes its first final decision, thus contemplating that the current practice of veterans being assisted by skilled veterans' service officers throughout the VA and initial BVA administrative processes would continue to operate exactly as it does now.

134 Cong. Rec. S16632, 16646 (daily ed. Oct. 18, 1988) (debate on the VJRA) (remarks of Sen. Cranston). *See also id.* at H10333, H10344 (daily ed. Oct. 19, 1988) (remarks of Rep. Montgomery, Chairman of the House Committee on Veterans' Affairs) (VJRA was designed to permit VSOs to continue to have the predominant role in helping veterans get the benefits they deserve).

In addition, the disinterested third-party exception to the restriction on payment of attorney fees is just that: an exception. Not any third party may pay a veteran's legal bills—only a ''disinterested'' third party. VA cannot know if an arrangement meets this criterion unless it is able to examine the agreement.

VA has the authority to review agreements, so we make no change based on the argument to the contrary.

C. Without a Contingency Agreement, Third—Party Payers Would Have Unlimited Liability

In our NPRM, we proposed barring any contingent fee agreements by third parties. The primary basis for this proposal was that contingent fee agreements function as a financing device that enables a client to assert and prosecute an otherwise unaffordable claim. If a third party agrees to pay an attorney to represent a veteran (or other claimant) because the law bars the attorney from charging the veteran a fee, the issue of ''financing'' the cost of the litigation through a successful outcome is moot: By definition, a disinterested third party will receive no benefit from any award to the veteran, so that the outcome can generate no funds with which to pay the attorney. 62 FR at 64792.

Some commenters argued that contingent fee agreements were useful because such agreements would limit the liability of the payer.

We make no change based on the commenters' argument. Agreeing to pay a percentage of an award does not, in any real sense, limit the liability of the third-party payer. Such a payer still has no idea at the outset how much that award will be. Some past-due benefits amount to a few hundred dollars, some to hundreds of thousands. In many cases, there is simply no way to predict what that amount will be.

D. Prohibiting Third-Party Contingency Agreements Will Discourage Attorneys from Representing Veterans

Some commenters argued that prohibiting third-party contingency agreements will discourage attorneys from representing veterans. For the reasons discussed above and in the Supplementary Information to our NPRM, we do not believe that contingency agreements make any sense in the third-party context. Their use encourages evasion of the law. The only attorneys who will be ''discouraged'' will be those who rely on the veteran to reimburse the so-called ''disinterested'' third party. We make no change on the commenters'' argument.

E. The Additional Requirements VA Proposed on Third-Party Fee Agreements Will Increase the Administrative Burden VA is Trying to Reduce

Three commenters argued that our proposed increased requirements relating to third-party agreements will increase the administrative burden that VA is attempting to reduce by this rulemaking. While that is true as far as it goes, it is also true that these changes are necessary to help enforce statutory limitations on payment that are being violated. As discussed above and in the Supplementary Information to our NPRM, it is our experience that third-party agreements are being used to evade those limitations. We cannot quantify the effect of the increased requirements, but, since the number of cases involving attorney representation is relatively small—2,132 of 34,028 appeals in FY 2000 (6.3%)'and since we assume that most attorneys follow the law and regulations relating to filing fee agreements, we have no reason to believe that the overall cost to VA will be high. We make no change based on the commenters' argument.

F. Include in the Presumption of ''not disinterested'' Only Dependent Parents

One commenter suggested that we amend 38 CFR 609(d)(2)(ii), which provides that a parent is presumed not to be a disinterested third party, to provide that only dependent parents would be so presumed. As we discussed in our NPRM, one of our concerns in third-party issues is the creation of ''straw men,'' i.e., individuals who nominally pay the attorney fee, but who in fact are, at best, mere conduits for the client's money. We note that the same regulation permits a person who is presumed not to be disinterested to demonstrate, by clear and convincing evidence, that he or she has no financial interest in the success of the claim. Accordingly, we reject this suggestion.

G. We Should Not Publish the Rules Because People Will Violate the Law Anyway

One commenter suggested that we abandon our third-party rules because people will violate the law anyway. We do not find this a persuasive argument.

H. Without Third-Party Contingent Fee Agreements, Claimants will not be Able to Afford Attorneys

One commenter suggested that, without third-party contingent agreements, claimants will not be able to afford attorneys. As we discussed above and in our NPRM, if an attorney's fee is being paid by a disinterested third party, the represented claimant's ability to pay is simply irrelevant. The whole point of payment by a disinterested third party is that someone other than the claimant pays the attorney's fee. Accordingly, we make no change based on this argument.

IV. Effective Dates

Most of the amendments made by this notice are effective June 24, 2002. However, the amendments to 38 CFR 20.609(i) requiring specific information and certifications in the case of third-party fee agreements will apply only to third-party agreements received at the Board of Veterans' Appeals on or after July 22, 2002. Third-party fee agreements received prior to that date will be subject to the pre-existing rules which, since 1992, have required that all fee agreements—including third-party agreements—be filed with the Board. Rule 609(g), 38 CFR 20.609(g). We are delaying the applicability date of the third-party changes to give attorneys time to modify their contracts with clients, if necessary.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

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. This rule will affect only the processing of claims by VA and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: March 1, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

2. In subpart A, § 20.3, paragraphs (n), (o), and (p) are redesignated as paragraphs (o), (p), and (q), respectively; and a new paragraph (n) is added to read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(n) *Past-due benefits* means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

* * * * *

3. In subpart G, § 20.609, paragraphs (d)(2), (f), (g), and (i) are revised and paragraph (j) is added to read as follows:

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) * * *

(2) *Payment of fee by disinterested third party.* (i) An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in question has no financial interest in the success of the claim.

(iii) The provisions of paragraph (g) of this section (relating to fee agreements) shall apply to all payments or agreements to pay involving disinterested third parties. In addition, the agreement shall include or be accompanied by the following statement, signed by the attorney or agent: ''I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid.''.

* * * * *

(f) *Presumption of reasonableness.* Fees which total no more than 20 percent of any past-due benefits awarded, as defined in Rule 20.3(n) (§ 20.3(n) of this part), will be presumed to be reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of attorneys-at-law and agents (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the attorney-at-law or agent. The agreement must include the name of the veteran, the name of the claimant or appellant if other than the veteran, the name of each disinterested third-party payer (see paragraph (d)(2) of this section), the applicable Department of Veterans Affairs file number, and the specific terms under which the amount to be paid for the services of the attorney-at-law or agent will be determined. A copy of the agreement must be filed with the Board of Veterans' Appeals within 30 days of its execution by mailing the copy to the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

* * * * *

(i) *Motion for review of fee agreement.* The Board of Veterans' Appeals may review a fee agreement between a claimant or appellant and an attorney-at-law or agent upon its own motion or upon the motion of any party to the agreement and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is excessive or unreasonable; must be accompanied by all evidence the moving party desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent by first-class mail, postage prepaid, to each other party to the agreement, setting forth the address to which each such copy was mailed. Such motions (other than motions by the Board) must be filed at the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. The other parties may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion and must include a signed statement certifying that a copy of the response and any evidence was sent by first-class mail, postage prepaid, to each other party to the agreement, setting forth the address to which each such copy was mailed. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion. If a reduction in the fee is ordered, the attorney or agent must

credit the account of the claimant or appellant with the amount of the reduction and refund any excess payment on account to the claimant or appellant not later than the expiration of the time within which the ruling may be appealed to the United States Court of Appeals for Veterans Claims.

(j) 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 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals.

* * * * *

4. In subpart G, § 20.610, paragraph (d) is revised, and paragraph (e) is added to read as follows:

§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) *Expense charges permitted; motion for review of expenses.* Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans' Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must specifically identify which expenses charged are unreasonable; must set forth the reason, or reasons, why such expenses are excessive or unreasonable; must be accompanied by all evidence the claimant or appellant desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent by first-class mail, postage prepaid, to the representative. Such motions must be filed at the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. The representative may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion and must include a signed statement certifying that a copy of the response and any evidence was sent by first-class mail, postage prepaid, to the claimant or appellant, setting forth the address to which the copy was mailed. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, whether travel expenses are in keeping with expenses normally incurred by other representatives, etc. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion.

(e) 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 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals.

* * * * *

[FR Doc. 02–12866 Filed 5–22–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA247–0325a; FRL–7201–6]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent usage and graphic arts operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 22, 2002 without further notice, unless EPA receives adverse comments by June 24, 2002. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814;

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182; and,

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

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

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).