

help assess Wabtec's Fastbrake systems, and to expand the scope of NYAB CCB II locomotives being evaluated under the waiver.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov) and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 20, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-

14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of [regulations.gov](http://www.regulations.gov).

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety,  
Chief Safety Officer.*

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**BILLING CODE 4910-06-P**

## DEPARTMENT OF VETERANS AFFAIRS

### Summary of a Precedent Opinion of the General Counsel

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Office of the General Counsel (OGC) involving crediting certain veterans for their payment of the statutory funding fee. This interpretation is considered precedential by VA and will be followed by VA officials and employees in matters involving the same legal issues. This summary is published to provide the public with notice of VA's interpretations regarding the legal matters at issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne Hill, Law Librarian, Department of Veterans Affairs, Office of the General Counsel, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-7624.

**SUPPLEMENTARY INFORMATION:** A VA regulation at 38 Code of Federal Regulation 2.6(e)(8) delegates to the VA General Counsel, the power to designate an opinion as precedential, and 38 CFR 14.507(b) specifies that precedential opinions are binding on VA officials and employees in subsequent matters involving the legal issue decided in the precedent opinion. The interpretation of the General Counsel on legal matters contained in such opinions is conclusive as to all VA officials and employees not only in the matter at issue but also in subsequent matters unless there has been a material change in a controlling statute or regulation or a superseding written legal opinion of the General Counsel or a judicial decision. 38 CFR 14.507(b). VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the

General Counsel that must be followed in future matters. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above or by accessing the opinions on the internet at: [http://www.va.gov/ogc/precedent\\_opinions.asp](http://www.va.gov/ogc/precedent_opinions.asp).

### VAOPGPCREC 2-2019

#### Questions Presented

1. Does VA have legal authority to issue a refund of a funding fee collected under 38 United States Code 3729 when the requirements for waiver of the fee under section 3729(c) are met?

2. If yes, to whom and under what circumstances?

3. Is a refund determination subject to the Veterans Appeals Improvement and Modernization Act of 2017 (AMA)?

#### Held

1. Yes. If VA determines that veterans impermissibly incurred funding fees due to overt error, systems limitations, or process limitations, VA should promptly credit such veterans for the fees they incurred. Additionally, VA must refund a funding fee if a later-in-time award of disability compensation is effective as of a date that is on or before the date the funding fee was collected.

2. We believe a claim for remittance of a funding fee that was improperly assessed or that may now be refunded due to an intervening retroactive award of service-connected benefits is similar to the types of claims that the U.S. Court of Appeals for Veterans Claims has found not to be claims for benefits. Since a claim for a refund is not a claim for benefits, VA should promulgate rules clarifying VA's policy and procedures for processing claims for refunds. VA should continue to issue refunds whenever VA determines on its own, or if a veteran provides documentation, that a refund is due.

3. The three-lane review scheme of the AMA applies to claims for "benefits"; VA is not required to make all three AMA review options available with respect to determinations not involving benefit claims. VA could choose to make higher-level review processes for supplemental claims or make similar processes available for decisions concerning requests for refund of the funding fee.

*Effective Date:* June 25, 2019.

Richard J. Hipolit,

*Principal Deputy General Counsel*

*Signing Authority:* The Secretary of Veterans Affairs, or designee, approved this document 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. Pamela J. Powers, the Chief of Staff of Veterans Affairs,

approved this document on November 13, 2019, for publication.

**Jeffrey M. Martin,**

*Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

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