

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 2**

RIN 2900-AH00

**Delegation of Subpoena Authority and Description of Means of Service**

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

**SUMMARY:** This document adopts as a final rule an interim rule amending the Department of Veterans Affairs (VA) regulations concerning authority of VA officials to issue subpoenas by revoking the delegation of authority to the Inspector General and subordinate officials and by adding a delegation of authority to the Under Secretary for Health and certain subordinate officials. The interim rule also amended the regulations by specifying the means of service for VA subpoenas. The intended effect of this rule is to make the Department's delegations of subpoena power consistent with legal authority and to ensure that VA has the means to obtain information necessary to determine whether individuals are entitled to income-based benefits.

**EFFECTIVE DATE:** December 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** Barry M. Tapp, Deputy Assistant General Counsel (023A), Office of the General Counsel, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington DC 20420, (202) 273-6334.

**SUPPLEMENTARY INFORMATION:** On August 10, 1995, VA published in the Federal Register (60 FR 40756) an interim rule as described in the *Summary* portion of this document. A 61-day comment period ended October 10, 1995, and no comments were received.

This final rule affirms the information in the interim rule document concerning the Regulatory Flexibility Act.

Accordingly, the interim rule amending 38 CFR part 2 which was published at 60 FR 40756 on August 10, 1995, is adopted as a final rule without change; except that the authority citation for the provisions in this final rule was changed in a document published in the Federal Register on May 7, 1996 (1 FR 20438), and this document leaves in place the new authority citation.

Approved: November 19, 1996.

Jesse Brown,

*Secretary of Veterans Affairs.*

[FR Doc. 96-33075 Filed 12-27-96; 8:45 am]

BILLING CODE 8320-01-P

**38 CFR Parts 3 and 14**

RIN 2900-AI39

**Miscellaneous Regulations**

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

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations by removing an unnecessary provision that states all decisions will conform to the statutes and regulations of the Department of Veterans Affairs and to the precedent opinions of the General Counsel. The intended effect of this amendment is to eliminate unnecessary regulations. This document also makes clarifying changes to the regulations concerning criteria for determining need for aid and attendance, and to those dealing with the effect of written precedent opinions of the General Counsel.

**EFFECTIVE DATE:** This amendment is effective December 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** Steve Tomasek, Consultant, Procedures Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7256.

**SUPPLEMENTARY INFORMATION:** 38 CFR 3.101 states that all decisions of the Department of Veterans Affairs will conform to the statutes and regulations of the Department of Veterans Affairs and to the precedent opinions of the General Counsel. That an agency must comply with its governing statutes and its own regulations, which have the force and effect of law, is such a fundamental legal concept that a regulation specifically requiring such compliance is unnecessary.

38 CFR 14.507 indicates that General Counsel opinions designated as precedential will be considered binding on VA officials as legal interpretations of general applicability. This document revises 38 CFR 14.507(b) to more clearly state that precedent opinions are binding on VA officials and employees in subsequent matters involving a legal issue decided by the precedent opinion. Accordingly, there is no need to state separately in part 3 that VA decisions must conform to VA precedent opinions. For the foregoing reasons, this document amends VA adjudication regulations by removing section 3.101.

This document revises 38 CFR 14.507(b) by adding at the end thereof a sentence stating that an opinion designated as a precedent is binding on VA officials and employees in

subsequent matters involving a legal issue decided in the precedent opinion, unless there has been a material change in a controlling statute or regulation or the opinion has been overruled or modified by a subsequent precedent opinion or judicial decision. Also, a minor conforming change is made to 38 CFR 14.507(a). These changes merely clarify the provisions of the current regulation.

Currently, 38 CFR 14.507(b) authorizes the VA General Counsel to designate as a "precedent opinion" any General Counsel opinion having significance beyond the particular case or matter at issue in the opinion. The term "precedent" has a well-established legal meaning indicating an interpretation of law by a competent authority which is considered binding or persuasive in subsequent cases involving the same issue of law. Further, section 14.507(b) currently provides that General Counsel precedent opinions are subject to the provisions of 5 U.S.C. 552(a)(1), which requires Federal agencies to publish in the Federal Register, among other things, "interpretations of general applicability formulated and adopted by the agency." Although section 14.507(b) presently indicates that General Counsel precedent opinions will be generally applicable and binding on VA employees and officials with respect to matters involving the same question of law, we believe it would be helpful to state the binding effect of precedent opinions in clearer terms.

This document also revises the heading of section 3.352 of the adjudication regulations. Currently the heading reads "Criteria for permanent need for aid and attendance and 'permanently bedridden.'" The heading is revised to read "Criteria for determining need for aid and attendance and 'permanently bedridden.'" The revised heading more accurately indicates that section 3.352 concerns entitlement to increased pension, compensation, or dependency and indemnity compensation based on an individual's need for the regular aid and attendance of another person without regard to whether or not such need is permanent.

Since this rulemaking merely removes an unnecessary nonsubstantive provision and makes clarifying changes, the Secretary finds under 5 U.S.C. 553(b) that prior notice and comment are unnecessary and that there is a basis for dispensing with a 30-day delay of the effective date.

The Secretary hereby certifies that these regulatory amendments would not have a significant impact on a