

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]

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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

substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The amendments would not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There are no applicable Catalog of Federal Domestic Assistance program numbers.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

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.

Approved: December 9, 1996.

Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 parts 3 and 14 are amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.101 [Removed]

2. Section 3.101 is removed.

3. The section heading of § 3.352 is revised to read as follows:

§ 3.352 Criteria for determining need for aid and attendance and “permanently bedridden.”

PART 14—LEGAL SERVICES, GENERAL COUNSEL

4. 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), 5502, 5902–5905, unless otherwise noted.

§ 14.507 [Amended]

5. In § 14.507, the first sentence of paragraph (a) is amended by removing the words “is a change” and adding, in their place, the words “has been a material change”, and paragraph (b) is

amended by adding at the end thereof the words “An opinion designated as a precedent opinion is binding on Department 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.”

[FR Doc. 96–33076 Filed 12–27–96; 8:45 am]

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38 CFR Part 19

RIN 2900–AI59

Appeals Regulations: Notice of Board of Veterans’ Appeals Decisions

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

SUMMARY: This document amends the Department of Veterans Affairs’ (VA) Appeals Regulations for appeals to the Board of Veterans’ Appeals (Board) by removing provisions that do not conform to recent legislation.

EFFECTIVE DATE: December 30, 1996.

FOR FURTHER INFORMATION CONTACT:

Steven L. Keller, Chief Counsel, Board of Veterans’ Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: Section 509 of the Veterans’ Benefits Improvements Act of 1996, Public Law 104–275, § 509, 110 Stat. 3322, 3344, amended 38 U.S.C. 7104(e) to permit the Board to mail copies of its decision to the claimant’s representative or to use any other means of delivery likely to result in delivery within the same time as would be expected with mailing by first-class mail. 38 CFR 19.8 previously reflected the old provisions of 38 U.S.C. 7104(e) that permitted decision delivery only by mailing. This document removes from § 19.8 material on Board decision delivery that does not conform to the new legislation and makes nonsubstantive changes to the remaining material in § 19.8 concerning preservation of claimants’ privacy interests in simultaneously contested claims.

This final rule concerns agency procedure or practice and, pursuant to 5 U.S.C. 553, is exempt from notice and comment requirements.

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 VA beneficiaries 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 requirement of sections 603 and 604.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: December 16, 1996.

Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 19 is amended as set forth below:

PART 19—BOARD OF VETERANS’ APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. Section 19.8 is revised to read as follows:

§ 19.8 Content of Board decision, remand, or order in simultaneously contested claims.

The content of the Board’s decision, remand, or order in appeals involving a simultaneously contested claim will be limited to information that directly affects the issues involved in the contested claim. Appellate issues that do not involve all of the contesting parties will be addressed in one or more separate written decisions, remands, or orders that will be furnished only to the appellants concerned and their representatives, if any.

(Authority: 5 U.S.C. 552a(b), 38 U.S.C. 5701(a))

[FR Doc. 96–33077 Filed 12–27–96; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

RIN 1090–AA59

Administrative and Audit Requirements and Cost Principles for Assistance Programs

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This final rule is in response to the “Omnibus Consolidated Appropriations Act of 1997,” and the “Energy and Water Development Appropriations Act, 1997.” Section 307(a) of Public Law 104–208 required