

United States Code Service Title  
38 (Veterans Benefits)  
&  
38 Code of Federal  
Regulations

# How to get a copy

- US Government Bookstore <https://bookstore.gpo.gov/catalog/cfr-title-38-pensions-bonuses-veterans-relief> two volume of CFR cost (\$66 and \$47) you really need vol 1 (part 1-17)
- NVLSP <https://productsbynvlsp.org/publications-2/> cost as little as \$84 for USCS and 38 CFR parts 1-77. Other products Available
- Online from the .GOV [https://www.ecfr.gov/cgi-bin/text-idx?gp=&SID=bb1aab6b5a09f28bed3406428d583038&mc=true&tpl=/ecfrbrowse/Title38/38tab\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?gp=&SID=bb1aab6b5a09f28bed3406428d583038&mc=true&tpl=/ecfrbrowse/Title38/38tab_02.tpl) Supposedly this version of CFR is updated daily. FREE
- Title 38 USC online from the Gov. <https://uscode.house.gov/browse/prelim@title38/part2/chapter17/subchapter3&edition=prelim>

# The Difference

- The **United States Code (USC)** is made up of the official federal statutes of the United States, and contains 53 titles. It includes laws passed by Congress, also called statutes.
- The **Code of Federal Regulations (CFR)** contains all of the regulations promulgated by executive agencies. In the context of veterans law, the CFR contains the regulations put in place by VA that put statutes from the USC into administrative practice. Title 38 of the CFR contains those regulations that pertain to veterans benefits. Regulations in the CFR can change every year, so it is important to stay updated with the most recent version as it relates to veterans benefits.

Regulations can also be worded differently than their corresponding statute since they are VA's practical implementation of the statute.

**The CONSTITUTION of  
The UNITED STATES of AMERICA**

Established

**The CONGRESS**

which passes bills about veterans which when signed into law by

**The PRESIDENT**

are codified as

**Title 38 United States Code (U.S.C.)**

which is interpreted by VA in

**38 Code of Federal Regulations (C.F.R.)**

from which policy & procedural instructions are given in

**DIRECTIVES**

**MANUALS**

**VBA FAST LETTERS**

NOTE: The Court of Appeals for Veterans Claims (in CAVC case decisions) and VA General Counsel (in GC Opinions) will refine the interpretation of Title 38 U.S.

# Examples of Code

- **USC § 1111, presumption of sound condition**
- The presumption of sound condition, also referred to as the presumption of soundness, holds that all veterans are presumed to be of sound condition when they enter service, unless it is otherwise noted at the time of the veteran's entrance examination to service.
- **USC § 1116, presumption of service connection for diseases associated with herbicide exposure and the presumption of exposure for veterans who served in the Republic of Vietnam**
- This statute outlines the conditions that VA is to recognize as associated with herbicide exposure as it pertains to presumptive service connection. It also states that veterans who served "in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975" are presumed exposed to herbicides.
- **USC § 1159, protection of service connection**
- The protection of service connection states that VA cannot sever service connection of a disability that has been service connected for ten years or more, unless the original grant of service connection was based on fraud or it is discovered that the veteran did not have the required service or character of discharge.

# Examples of CFR

- 38 CFR §3.304 (b) *Presumption of soundness*. The veteran will be considered to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto and was not aggravated by such service. Only such conditions as are recorded in examination reports are to be considered as noted.

(Authority: 38 U.S.C. 1111)

# Examples of CFR

- 38 CFR §3.309 (e) *Disease associated with exposure to certain herbicide agents.* If a veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be service-connected if the requirements of §3.307(a)(6) are met even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of §3.307(d) are also satisfied.

(Authority: 38 U.S.C. 1116)

# Examples of CFR

- 38 CFR §3.957 Service connection for any disability or death granted or continued under title 38 U.S.C., which has been in effect for 10 or more years will not be severed except upon a showing that the original grant was based on fraud or it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge. The 10-year period will be computed from the effective date of the Department of Veterans Affairs finding of service connection to the effective date of the rating decision severing service connection, after compliance with §3.105(d). The protection afforded in this section extends to claims for dependency and indemnity compensation or death compensation.

(Authority: 38 U.S.C. 1159)



# What you will most likely use most!

- 38 CFR parts 3 and 4
  - Part 3 – Adjudication. Has paragraphs on things like:
    - Evidence requirements
    - Apportionments
    - Reductions and discontinuances
    - Effective dates
    - Ratings and evaluations: Service Connection
    - Ratings for special purposes
    - Special benefits
  - Part 4 - Schedule for rating disabilities – Basically how to rate different disabilities. And the actual schedule for each diagnostic code.

# Part 4 Example

- Diagnostic code 7005- Arteriosclerotic heart disease
- (Coronary artery disease):

With documented coronary artery disease resulting in:	
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent	100
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent	60
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray	30
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required	10

Ok **big book** poorly indexed how do I find what I need.

- In the CFR at the start of every Part there is an index (see ECFR).
- On the NVLSP (Lexus Nexus) addition there is a somewhat index that is hard to navigate (unless you have a Law School trained mind).
  - On their ebook bundle the whole publication is searchable.
  - Some e readers search better than others.

# NVLSP Veterans Benefit Manual

- First I am not getting a commission from NVLSP (Lexus Nexus).
- They publish a Veterans Benefit Manual with tips on how to interpret the law.
- The Veterans Benefit Manual also is poorly indexed.

# Examples of cases won on appeal using the CFR/NVLSP Veterans Benefit Manual

- Tinnitus-veteran applied with in 6 months of separation. Denied stated you worked in USAF in material management a low probability of hazardous noise exposure with this specialty.
- Submitted NOD requesting a DRO (now would be HLR). Stating veteran worked on flight line etc. Denied again.
- Searched the Veterans benefit manual and found:
  - CAVC have found that a lay person (the veteran) is competent to diagnose Tinnitus.
  - 38 CFR §3.309 (a) disease Subject to presumptive service connection (if manifest in 1yr to a compensable level within one year of discharge)-Other organic diseases of the nervous system.
  - In Fountain v. McDonald the Court held that tinnitus is an organic disease of the nervous system under 3.309(a)
- BVA Granted with a \$13K retro

# Incidentally M21R on Organic Diseases of the Brain

- **III.iv.4.N.1.d.** Other **Organic Diseases** of the Nervous System Under 38 CFR 3.309(a)
- For purposes of establishing presumptive SC for a chronic disease under 38 CFR 3.307, the term other **organic diseases** of the nervous system in 38 CFR 3.309(a) includes any commonly recognized neurological disease (**such as may be found in a valid contemporary medical treatise**), which is not otherwise specifically enumerated under 38 CFR 3.309(a). This includes, but is not limited to, the following conditions:
  - carpal tunnel syndrome
  - migraine headaches
  - sensorineural hearing loss
  - tinnitus
  - glaucoma
  - progressive spinal muscular atrophy
  - diseases of the cranial nervous system
  - cranial nerve conditions, and
  - peripheral nerve conditions, such as peripheral neuropathy.
- Important: If there is uncertainty as to whether or not a claimed disability may be considered as an **organic disease** of the nervous system for purposes of 38 CFR 3.309(a), send the case to Compensation Service's Advisory Review Staff for guidance.

# Examples of cases won on appeal using the CFR and NVLSP Veterans Benefit Manual

- Coronary Artery disease due to agent orange exposure.
- Vietnam veteran with CAD also has COPD. C&P estimated METs at 3-5. and opined that “Veterans METs score is note solely due to cardiac function and METs cannot be provided without resorting to mere speculation. The veteran’s LVEF testing renders a more accurate finding regarding cardiovascular manifestations alone.” Veteran was awarded 10% for CAD.

- NVLSP Manual provided:
  - Waddell v. Brown which stated the VA must conduct a through exam to determine functional impairment attributable to service connected disability when several disorders are present with the service connected disorder.
  - Mittleider v. West states where it is impossible to separate the effects of a service connected disability from the effects of a non service connected disability, the benefit of the doubt must be accorded to the veteran and all signs and symptoms must be attributed to the service connected disability.
- DRO ordered another exam and reviewed records. Veteran was rated 100% P&T for CAD Retro check of \$142K