

Common Laws and Regulations for Completing Decisions

Purpose: This guide includes common law and regulations found in Title 38 of the United States Code (U.S.C.) and Code of Federal Regulations (C.F.R.). Decisionmakers should refer to this list when preparing VA decisions. This list is not all inclusive, and does not replace review of the U.S.C. and C.F.R. for other applicable laws and regulations.

BASIC LAWS AND REGULATIONS	
38 U.S.C. 5107(a)	Claimant Responsibility
38 U.S.C. 5107(b)	Benefit of the Doubt
38 C.F.R. 3.1(p)(1)	Initial Claim
38 C.F.R. 3.1(p)(1)(ii)	Claim for Increase
38 C.F.R. 3.1(p)(2)	Supplemental Claim
38 C.F.R. 3.102	Reasonable Doubt (if evidence in equipoise)
38 C.F.R. 3.103	Procedural Due Process and Other Rights
38 C.F.R. 3.103(c)(2)	Treatment of Evidence Received After Notice of a Decision
38 C.F.R. 3.103(f)	Notification of Decisions
38 C.F.R. 3.104	Binding Nature of Decisions
38 C.F.R. 3.104(c)	Favorable Findings
38 C.F.R. 3.159	Department of Veteran Affairs Assistance in Developing Claims
38 C.F.R. 20.501	If Contested Claim
38 C.F.R. 3.1 and 38 C.F.R. 3.6	If Reserves/National Guard
38 C.F.R. 3.2400	Applicability of Modernized Review System
38 C.F.R. 3.2500	Review of Decisions Generally
38 C.F.R. 3.2500(a) 38 C.F.R. 3.2500(b) 38 C.F.R. 3.2500(d)	<ul style="list-style-type: none"> ❖ Appeal Time ❖ Concurrent Election Prohibited ❖ Voluntary Withdrawal
38 C.F.R. 3.2502	Return by Higher-Level Adjudicator or Remand by the Board of Veterans' Appeals
38 C.F.R. 3.2600	Legacy Review of Benefit Claims Decisions
38 C.F.R. 3.151(c)	Issues Within a claim
38 C.F.R. 3.151(d)	Evidentiary Record
38 C.F.R. 3.2501	Supplemental Claims
38 C.F.R. 3.2601	Higher-Level Review

Basic Laws and Regulations (Legacy)	
38 C.F.R. 19.32	Closing of Appeal for failure to Respond to SOC
38 C.F.R. 20.302	Time Limit for Filing NOD, Substantive

	Appeal, and Response to SSOC
38 C.F.R. 20.201	Requirements for Valid and complete NODs
38 C.F.R. 19.23	Definition of complete NOD
38 C.F.R. 19.24	Definition of NOD

Service Connection	
38 U.S.C. 1110 (Wartime)	Basic Entitlement
38 U.S.C. 1131 (Peacetime)	Basic Entitlement
38 U.S.C. 1153 38 C.F.R. 3.306 38 C.F.R. 3.322(a) 38 C.F.R. 3.322(b)	Aggravation <ul style="list-style-type: none"> ❖ Aggravation of <i>Pre-service</i> Disability ❖ Aggravation of <i>Service-Connected</i> Disability
38 U.S.C. 1154(b)	Consideration to be accorded time, place and circumstances of service (combat)
38 C.F.R. 3.303	Principles Relating to Service Connection Direct (All)
38 C.F.R. 3.304	Direct Service Connection; Wartime & Peacetime (All)
38 C.F.R. 3.304(f)	Post-Traumatic Stress Disorder due to Combat or Sexual Trauma

Presumptive (Service Connection)	
38 C.F.R. 3.307	Presumptive (chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947)
38 C.F.R. 3.309(a)	Presumptive Chronic
38 C.F.R. 3.309(b)	Tropical Diseases
38 C.F.R. 3.309(c)	POW Status (interned/detained not less than 30 days)
38 C.F.R. 3.309(d) 38 C.F.R. 3.311	Diseases specific to radiation-exposed veterans <ul style="list-style-type: none"> ❖ Exposure to Ionizing Radiation
38 C.F.R. 3.309(e)	Disease associated with exposure to certain Herbicide Agents
38 C.F.R. 3.309(f)	Disease associated with exposure to contaminants in the water supply at Camp Lejeune
38 C.F.R. 3.313	Claims Based on Service in Vietnam
38 C.F.R. 3.316	Claims Based on Chronic Effects of Exposure to Mustard Gas
38 C.F.R. 3.317	Undiagnosed Illness (Gulf War)
38 C.F.R. 3.318	Amyotrophic Lateral Sclerosis (ALS)

Specific Issues	
38 C.F.R. 3.1000 38 U.S.C. 5121	Accrued (payment of certain accrued benefits upon death of a beneficiary)
38 C.F.R. 3.808	Automobiles or other conveyances; certification
38 C.F.R. 3.807	Chapter 35
38 C.F.R. 3.12	Character of Discharge
38 C.F.R. 4.9	Congenital or developmental defects
38 C.F.R. 3.358 and 38 C.F.R. 3.800	Claims under 38 U.S.C. 1151
38 C.F.R. 3.361	Benefits under 38 U.S.C. 1151(a) for additional disability or death due to hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program
38 C.F.R. 4.25	Combined Rating Tables
38 C.F.R. 3.6	Duty Periods
38 C.F.R. 3.114	Change of law or Department of Veterans Affairs issue.
38 C.F.R. 3.109	Time limit for filing evidence
38 C.F.R. 3.155	Informal Claims
38 C.F.R. 3.400	Effective Dates
38 C.F.R. 3.401	Effective Dates – Veteran
38 C.F.R. 3.402	Effective Dates – Surviving Spouse
38 C.F.R. 3.403	Effective Dates – Children
38 C.F.R. 3.404	Effective Dates – Parents
38 C.F.R. 3.405	Effective Dates – Filipino Veterans and Survivors
38 U.S.C. 5313	Fugitive Felon
38 C.F.R. 3.385	Hearing Loss
38 C.F.R. 3.356	Helpless Child (Conditions which determine permanent incapacity for self-support)
38 C.F.R. 4.127	Mental retardation and personality disorders
38 C.F.R. 3.31	Omnibus (Commencement of the period of payment)
38 C.F.R. 3.350	Special Monthly Compensation Ratings
38 C.F.R. 3.51(a-d)	Special monthly dependency and indemnity compensation, death compensation, pension and spouse's compensation ratings
38 C.F.R. 3.352(a)	Basic criteria for regular aid and attendance and permanently bedridden
38 C.F.R. 3.806	Death gratuity; certification
38 C.F.R. 3.809(a)	Special Adapted Housing under 38 U.S.C. 2101(a)/Special Home Adaptation

Specific Issues	
38 C.F.R. 3.310	Secondary Conditions (Disabilities that are proximately due to, or aggravated by, service-connected disease or injury)
38 C.F.R. 3.50	Spouse and surviving spouse
38 C.F.R. 3.1(n) -3.301(c)(2) -3.301(c)(3)	Definitions-Willful Misconduct/LOD plus Alcoholism Drug Abuse
38 C.F.R. 3.383	Special Consideration for paired Organs and extremities
38 U.S.C. 1702	Presumption of Soundness Related to Psychosis

Increased Evaluation Denied	
38 C.F.R. 3.321(a)(b)(1)	General Rating Considerations
38 C.F.R. 3.655	Failure to report for VAE
38 C.F.R. 4.1	Essentials of Evaluative Ratings
38 C.F.R. 4.2 <i>(only if VAE was performed)</i>	Interpretation of Examination Reports
38 C.F.R. 4.3	Resolution of Reasonable Doubt
38 C.F.R. 4.6	Evaluation of Evidence
38 C.F.R. 4.7	Higher of Two Evaluations
38 C.F.R. 4.10	Functional Impairment
38 C.F.R. 4.20	Appropriate Diagnostic Code(s) 38 C.F.R. Part 4 <i>Schedule for Rating Disabilities</i>
	Analogous Ratings

NOTE: *Include all Applicable Diagnostic Codes*

Other Laws & Regulations Specific to Issues of Evaluation	
38 C.F.R. 3.321(a)(b)(1)	Extra Scheduling Evaluation
38 C.F.R. 3.324	Multiple Non-compensable SC Disabilities
38 C.F.R. 4.14	Avoidance of Pyramiding
38 C.F.R. 4.20	Analogous Ratings
38 C.F.R. 4.31	A No-percent Rating
38 C.F.R. 4.68	Amputation Rule
<p>NOTE: Cite all applicable diagnostic codes (DCs) that apply to a particular disability. A single DC used in a rating will not always be the only pertinent DC to use when preparing an SOC. You must provide other related codes as needed for clarity.</p> <p>NOTE: If maximum evaluation is assigned, include all potential DC that allow for a higher evaluation.</p> <p>NOTE: When a change in law revises 38 C.F.R. Part 4, <i>Schedule for Rating Disabilities</i>, provide both old and new rating schedule criteria.</p>	

Additional Regulations When Evaluating a Joint

38 C.F.R. 4.40	Functional Loss (Deluca)
38 C.F.R. 4.45	The Joints (Deluca)
38 C.F.R. 4.59	Painful Motion

Additional Regulations When Evaluating a Mental Condition

38 C.F.R. 4.126	Evaluation of Disability from Mental Disorders
38 C.F.R. 4.130	Schedule of Ratings-Mental Disorders

Additional Regulations When Evaluating Hearing Loss

38 C.F.R. 3.383(a)(3)	Special Consideration for paired Organs and extremities
38 C.F.R. 4.85	Evaluation of Hearing Impairment
38 C.F.R. 4.86	Evaluation Tables
❖ Tables VI	Hearing impairment based on puretone threshold average & speech discrimination
❖ VIA	Hearing impairment based only on puretone threshold average
❖ VII	Percentage evaluation for hearing impairment (diagnostic code 6100)
Note: Mandated use of Hearing Loss Calculator (User Guide)	

Additional Regulations When Evaluating Scars

38 C.F.R. 4.118	Schedule of ratings-skin
DC 7800	Burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck due to other causes; or other disfigurement of the head, face, or neck
DC 7801	Burn scar(s) or scar(s) due to other causes , not of the head, face, or neck, that are <u>deep</u> and <u>nonlinear</u>
DC 7802	Burn scar(s) or scar(s) due to other causes , not of the head, face, or neck, that are <u>superficial</u> and <u>nonlinear</u>
DC 7804	Scar(s), unstable or painful:
DC 7805	Evaluate any disabling effect(s) not considered in a rating provided under diagnostic codes 7800-04 under an appropriate diagnostic code.
Review FL 08-44 Final Rule: Schedule for Rating Disabilities; Evaluation of Scars	

Entitlement To Total Compensation On Account of IU

38 C.F.R. 3.321(b)(1)	Extra Scheduler Consideration (Compensation)
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38 C.F.R. 3.340	Total and Permanent Total Ratings and Unemployables
38 C.F.R. 4.15	Total Disability Ratings
38 C.F.R. 4.16	Total Disability Ratings Based on IU
38 C.F.R. 4.18	Unemployability
38 C.F.R. 4.19	Age in service-connected claims
NOTE: Review <i>Rice v. Shinseki</i> , 22 Vet. App. 447 (2009) regarding TDIU Claims.	

Permanent and Total for Pension Purpose	
38 C.F.R. 3.321	General rating considerations
38 C.F.R. 3.321(b)(2)	Extra-Schedular Consideration
38 C.F.R. 3.327	Reexaminations
38 C.F.R. 3.340	Total and Permanent Ratings and IU
38 C.F.R. 3.342	Permanent and Total Disability Ratings for Pension Purposes
38 C.F.R. 4.15	Total Disability Ratings
38 C.F.R. 4.17	Total Disability Ratings for Pension Based on IU and age of Individual
Diagnostic Code(s) for Disability(ies)	38 C.F.R. Part 4, Schedule for Rating Evaluated Disabilities

Pension Income	
38 C.F.R. 3.3	Pension
38 C.F.R. 3.23	Improved pension rates-Veterans and surviving spouses.
38 C.F.R. 3.24	Improved pension rates-surviving children.
38 C.F.R. 3.29	Rounding
38 C.F.R. 3.260 and 38 C.F.R. 3.271	Computation of Income
38 C.F.R. 3.262	Evaluation of income
38 C.F.R. 3.272	Exclusions from income
38 C.F.R. 3.273	Rate Computation
38 C.F.R. 3.275	Criteria for evaluating net worth
38 C.F.R. 3.277 38 C.F.R. 3.256	Eligibility reporting requirements

Fiduciary	
38 C.F.R. 13.40	Representation of Beneficiaries in Fiduciary Program
38 C.F.R. 13.500	Removal of Fiduciaries
38 C.F.R. 13.510	Fiduciary Withdrawals
38 C.F.R. 13.120	Field Examinations
38 C.F.R. 13.140	Responsibilities of Fiduciaries

38 C.F.R. 13.220	Fiduciary Fees
38 C.F.R. 13.400	Misuse of Benefits
38 C.F.R. 13.50	Suspension of Benefits

Claims Based on New and Material Evidence (Legacy)	
38 C.F.R. 3.105	Revision of Decision
38 C.F.R. 3.156(a)	New and Material Evidence
38 C.F.R. 20.1100 and 38 C.F.R. 20.1104 (only if denial previously upheld by BVA)	Finality of Decisions of the Board and Finality of Determination of the Agency of Original Jurisdiction Affirmed on Appeal

Claims Based on New and Relevant Evidence	
38 C.F.R. 3.156(d)	New and Relevant Evidence
38 C.F.R. 3.105(a)(1)	Error in Final Decisions
38 C.F.R. 3.105(B)	Specific Allegations Required

Service Connection for Cause of Death Denied	
38 C.F.R. 3.303	Principles Relating to SC
38 C.F.R. 3.304 ❖ 38 C.F.R. 3.304(f)	Direct SC Post-Traumatic Stress Disorder
38 C.F.R. 3.312	Cause of Death
38 C.F.R. 3.307 and 38 C.F.R. 3.309 (<i>delete parts of regulation not applicable</i>)	Presumptive Conditions (chronic, AO, POW, etc.)
Veterans Rated Total at Time of Death (10 Years, 5 Years, or 1 Year)	
38 C.F.R. 3.22	DIC Benefits for Survivors of Certain Veterans Rated Totally Disabled at Time of Death

OTHER RATING ISSUES	
Competency	
38 C.F.R. 3.353	Determination of Incompetency/Competency
Paragraph 29	
38 C.F.R. 4.29	Ratings for service-connected disabilities requiring hospital treatment or observation
Paragraph 30	
38 C.F.R. 4.30	Convalescent Ratings
Dental (Teeth Only)	
38 C.F.R. 3.381	SC of Dental Conditions for Treatment Purposes

Revision of Decision	
38 C.F.R. 3.105(a) 38 C.F.R. 3.105(b) 38 C.F.R. 3.105(d)	Clear & Unmistakable Error (CUE) Difference of Opinion Severance
38 C.F.R. 3.2600	Review of Benefit Claims Decision
Reductions in Evaluation	
38 C.F.R. 3.105(e)	Reduction in Evaluation (Comp)
38 C.F.R. 3.343	Continuance of Total Disability Ratings (If Reduced from Total, including IU)
38 C.F.R. 3.344	Stabilization of Disability Evaluations
38 C.F.R. 3.951	Preservation of Disability Ratings
38 C.F.R. 3.957	Service Connection

Entitlement to an Earlier Effective Date	
38 C.F.R. 3.155	Informal Claim
38 C.F.R. 3.155	How to file a claim
38 C.F.R. 3.400 38 C.F.R. 3.400(b)(2) 38 C.F.R. 3.400(c) 38 C.F.R. 3.400(0) 38 C.F.R. 3.400(q) 38 C.F.R. 3.400(r) 38 C.F.R. 3.400(x)	General Regulation on Effective Dates ❖ Service Connection (Direct/Presumptive) ❖ Death Benefits ❖ Increased Evaluation ❖ New and Material Evidence ❖ Reopened Claims ❖ Determination of Incompetency
38 C.F.R. 3.402	Effective Dates – Surviving Spouse
38 C.F.R. 3.403	Effective Dates – Children
38 C.F.R. 3.404	Effective Dates – Parents
38 C.F.R. 3.405	Effective Dates – Filipino Veterans and Survivors

Timeliness of Appeal	
38 C.F.R. 3.109	Time Limit
38 C.F.R. 3.156	New and Material Evidence
38 C.F.R. 3.160(d)	Status of Claims-Finally Adjudicated Claim
38 C.F.R. 3.160(e)	Status of Claims-Reopened Claims Prior to Effective Date of Modernized Review System
38 C.F.R. 20.303	Extension of Time for Filing Substantive Appeal and Response to Supplemental Statement of the Case.

38 C.F.R. 20.305	Computation of Time Limit for Filing
38 C.F.R. 20.1103	Finality of Determinations-Appeal Not Perfected
38 C.F.R. 20.1104	Finality of Determinations-Affirmed on Appeal

Board of Veterans' Appeals	
38 C.F.R. 8.30	Review of Decisions and Appeal to Board of Veterans' Appeals
38 C.F.R. 14.629	Requirements for Accreditation of Service Organization Representatives; Agents; and Attorneys
38 C.F.R. 14.633	Termination of Accreditation or Authority to Provide Representation Under 14.630
38 C.F.R. 14.636	Payment of Fees for Representation by Agents and Attorneys in Proceedings Before Agencies of Original Jurisdiction and Before the Board of Veterans' Appeals
38 C.F.R. 14.637	Payment of Expenses of Agents and Attorneys in Proceedings Before Agencies of Original jurisdiction and Before the Board of Veterans' Appeals
38 C.F.R. 19.1	Provisions Applicable to Legacy Appeals
38 C.F.R. 19.2	Appellant's Election for Review of a Legacy Appeal in the Modernized System
38 C.F.R. 19.30	Furnishing the Statement of the Case and Instructions for Filing a Substantive Appeal
38 C.F.R. 20.104	Jurisdiction of the Board
38 C.F.R. 20.200	Notification by Agency of Original Jurisdiction of Right to Appeal
38 C.F.R. 20.201	What Constitutes an Appeal
38 C.F.R. 20.202	Notice of Disagreement
38 C.F.R. 20.302	Appeals with a Request for a Board Hearing
38 C.F.R. 20.704	Scheduling and Notice of Hearings conducted by the Board of Veterans' Appeals
38 C.F.R. 20.702	Methods by Which Hearings Are Conducted
38 C.F.R. 20.602	When a Hearing Before the Board of Veterans' Appeals May Be Requested in Legacy appeal; Procedure for Requesting a Change in Method of Hearing
38 C.F.R. 20.703	When Hearing Before the Board of Veterans' Appeals May be Requested; Procedures for Requesting a Change in Method of Hearing
38 C.F.R. 20.603	Scheduling and Notice of Hearings Conducted by the Board of Veterans' Appeals at Department of Veterans Field Facilities in a Legacy Appeal
38 C.F.R. 20.601	Methods by Which Hearings in Legacy appeals are Conducted; Scheduling and Notice Provisions for

Board of Veterans' Appeals	
	Such Hearings
38 C.F.R. 20.1103	Finality of Determinations of the Agency of Original Jurisdiction Where Issues is not Appealed
38 C.F.R. 20.1305	Procedures for Legacy appellants to Request a Change in Representation, Personal Hearing, or Submission of Additional Evidence Following Certification of an Appeal to the Board of Veterans' Appeals
38 C.F.R. 20.1304	Request for a Change in Representation
38 C.F.R. 20.1403	What Constitutes Clear and Unmistakable Error; What Does Not
38 C.F.R. 20.1035	Legacy Review of Benefit Claims Decisions

Other Appealable Issues	
Burial	
38 C.F.R. 3.954	Burial allowance
38 C.F.R. 3.1607	Cost of flags
38 C.F.R. 3.1608	Non-allowable expenses
38 C.F.R. 3.1612	Monetary allowance in lieu of a Government-furnished headstone or marker
38 C.F.R. 14.631	Powers or Attorney; Disclosure of Claimant Information

QUICK LINKS	
Fenderson v. West , January 29, 1999, No. 96-947	Evaluating disability levels; Application of 38 C.F.R. §§ 4.40 and 4.45; "Staged" ratings
Tatum v. Shinseki , September 28, 2009, No. 07-2728	Applying Various Regulations to Rating Schedule
Hensley v. Brown , May 18, 1993, No. 91-1179	Reasons or bases, 38 C.F.R. § 3.385, benefit-of-the-doubt rule
McLendon v. Nicholson , June 5, 2006, No. 04-0185	Duty to Assist – Examinations.
Nieves-Rodriguez v. Peake , December 1, 2008, No. 06-0312	Medical Opinions
Rice v. Shinseki , May 6, 2009, No. 06-1445	TDIU Claims