

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub.

L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME,

LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
11/13/91	NM	Taos	Taos Muni.	FDC 1/5629	NDB Rwy 4 Orig.
11/13/91	NM	Taos	Taos Muni.	FDC 1/5630	VOR/DME-B Amdt. 2.
11/19/91	MO	Excelsior Springs	Excelsior Springs Meml	FDC 1/5984	VOR Rwy 19, Orig.
11/21/91	AZ	Yuma Proving Ground/Yuma	Laguna AAF	FDC 1/5814	COPTER NDB 070 Amdt 1.
11/21/91	AZ	Yuma Proving Ground/Yuma	Laguna AAF	FDC 1/5815	NDB-A Amdt. 1.
11/21/91	AZ	Yuma Proving Ground/Yuma	Laguna AAF	FDC 1/5816	VOR Rwy 6 Amdt. 3.
11/25/91	NY	Buffalo	Greater Buffalo Intl	FDC 1/5845	NDB Rwy 5 Amdt. 10.
11/25/91	NY	Buffalo	Greater Buffalo Intl	FDC 1/5846	ILS Rwy 5 Amdt 13.
11/25/91	NY	Buffalo	Greater Buffalo Intl	FDC 1/5847	ILS Rwy 23 Amdt 28.
11/27/91	WA	Yakima	Yakima Air Terminal	FDC 1/5961	ILS Rwy 27 Amdt 26.

[FR Doc. 91-30265 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board****15 CFR Part 400**

[Order No. 530; Docket No. 21222-1208]

RIN 0625-AA04

Foreign-Trade Zones in the United States; Correction

AGENCY: Foreign-Trade Zones Board, Commerce.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations, which were published Tuesday, October 8, 1991 (56 FR 50790). The regulations related to the authorization and regulation of foreign-trade zones and zone activity in the United States.

EFFECTIVE DATE: November 7, 1991.

FOR FURTHER INFORMATION CONTACT: John J. Da Ponte, Jr., Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**Background**

The final regulations that are the subject of these corrections, are comprehensive and constitute a complete revision, replacing the present version of 15 CFR part 400.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on October 8, 1991 of the final regulations, which were the subject of FR Doc. 91-24130, is corrected as follows.

§ 400.28 [Corrected]

1. On page 50804, in the third column, in § 400.28, paragraph (a)(8), line three, the number "7" is corrected to read "17".

2. On page 50804, in the third column, in § 400.28, paragraph (a)(8), line seventeen, the number "7" is corrected to read "17".

Dated: December 13, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-30358 Filed 12-18-91; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 510****Animal Drugs, Feeds, and Related Products; Change of Sponsor Name and Address**

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a

change of sponsor name and address from Biomed Laboratories to Med-Pharmex, Inc., Biomed Laboratories, 325 East Arrow Hwy., suite 502, San Dimas, CA 91773.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT:

Benjamin Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

SUPPLEMENTARY INFORMATION:

Biomed Laboratories, 438 West Arrow Hwy., Unit 30, San Dimas, CA 91773, has advised FDA of a change of sponsor name and address from Biomed Laboratories to Med-Pharmex, Inc., Biomed Laboratories, 325 East Arrow Hwy., suite 502, San Dimas, CA 91773. The agency is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) to reflect this change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Biomed Laboratories," and by alphabetically adding a new entry "Med-Pharmex, Inc., Biomed Laboratories," and in the table in paragraph (c)(2) in the entry for "051259" by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

(c) * * *	
(1) * * *	
Firm name and address	Drug labeler code
Med-Pharmex, Inc., Biomed laboratories, 325 East Arrow Hwy., suite 502, San Dimas, CA 91773	051259
(2) * * *	
Drug labeler code	Firm name and address
051259	Med-Pharmex, Inc., Biomed Laboratories, 325 East Arrow Hwy., Suite 502, San Dimas, CA 91773.

Dated: December 13, 1991.
Robert G. Livingston,
Director, Office of New Animal Drug
Evaluation Center for Veterinary Medicine.
[FR Doc. 91-30263 Filed 12-18-91; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Log Export and Substitution Restriction Exceptions

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: On August 20, 1990, the President signed into law the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) ("Act"). The Act directs the Secretary of Agriculture to prescribe new regulations to implement this Act on National Forest System Lands. The provisions in this rulemaking concern NFS lands west of the 100th meridian in the contiguous 48 states. This rulemaking implements

certain provisions of the Act. This rule continues the existing reporting procedures applicable to timber sale contracts awarded prior to August 20, 1990; amends existing rules for sourcing area disapproval and review procedures; and establishes application procedures for persons applying for a share of the limited amount of unprocessed timber originating from National Forest System lands in the State of Washington that is exempted from the prohibition against indirect substitution.

EFFECTIVE DATE: This rule is effective December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald D. Lewis, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090. (202) 475-3755.

SUPPLEMENTARY INFORMATION:

Background

The Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) ("Act") was enacted on August 20, 1990. The Department published an interim rule on November 20, 1990 (55 FR 48572) to implement portions of the Act required to be implemented before notice and comment could occur. The interim rule outlined the sourcing area application and approval procedures, detailed the certification procedures for non-manufacturers, sourcing area applicants, and persons with historic export quotas, extended the current surplus species determinations until new determinations can be made, and included definitions pertaining to the provisions in the interim rule. The interim rule asked for comments. The comment period for the interim rule closed on December 20, 1990. On January 29, 1991, the Department published two proposed rules, a comprehensive rule (56 FR 3354) and a rule of more limited scope to implement provisions required to be implemented before the statutory deadline for the comprehensive rule (56 FR 3375). The comment period for the comprehensive rule closed March 15, 1991. The final comprehensive rule will include all regulations published pertaining to the Act.

The comment period for the rule that is more limited in scope closed on February 28, 1991. This rulemaking finalizes the proposed rule of limited scope. This rulemaking:

1. Continues the timber export and substitution reporting procedures required under contracts awarded prior to August 20, 1990;
2. Establishes revised procedures for the disapproval of sourcing area

applications and the review of sourcing areas; and

3. Establishes procedures for a person who exports private timber to acquire a limited amount of unprocessed timber originating from National Forest System lands within the State of Washington.

Comments received on the proposed rule of limited scope (56 FR 3375) have been given full consideration. Comments received on the interim rule pertinent to the subjects in this rule were also given full consideration. The Department has made changes to the rule, as proposed, as a result of some of the comments.

Eleven comments were received on the proposed rule and four comments were received on the interim rule that pertain to this proposed rule. Twelve comments were from timber purchasers or timber industry representatives, one comment was from an individual, and two comments were from public interest groups. All responses came from the West—ten from Washington, three from Idaho, and two from Montana.

The following summarizes the relevant comments and suggestions received and the Department's response to these in the final rule.

Comments and Responses by Section of the Proposed Rule

Section 223.48 Restrictions on Export and Substitution of Unprocessed Timber

The proposed rule proposed to amend paragraph (a) of § 223.48 to clarify that contracts awarded prior to August 20, 1990, the date of enactment, remain subject to the timber export and substitution rules at subpart D of part 223. The timber export and substitution reporting procedures required under these contracts remained the same, but paragraphs (a)-(c) were proposed to be redesignated. The proposed rule proposed to add a new paragraph (b) to direct that all contracts awarded on or after August 20, 1990, include a provision making such contracts subject to the new Act. The proposed rule also proposed to add a new paragraph (c) regarding the OMB clearance number for the information collection requirement contained in the rule.

Comment. One respondent expressed concern that contracts awarded prior to August 20, 1990, may incur additional reporting requirements over and above those required by the provisions of these contracts. This respondent suggested that those contract holders be compensated if additional reporting requirements are imposed by this rule. Another respondent stated that the rules in § 223.48 are redundant in that they

are already required in all existing contracts.

Response. Contracts awarded prior to August 20, 1990, will continue to be subject only to the annual reporting requirements of the rules under subpart D, pursuant to section 497 of the Act. Section 223.48 of the proposed rule simply repeated the present reporting and recordkeeping requirements of prior contracts and proposed a new paragraph (b) to clarify that contracts awarded on or after August 20, 1990, shall be subject to the reporting and recordkeeping requirements of the new Act, pursuant to section 494 of the Act. Revised § 223.48 of the proposed rule was specifically written to maintain the distinction between contracts awarded prior to enactment of this Act and those awarded on or after enactment.

Comment. Two respondents stated that the regulations (both interim and proposed) provide that all contracts awarded on or after August 20, 1990, are subject to the Act, yet the Act provides that the old substitution rules govern until the regulations regarding substitution are finalized.

Response. Section 494 of the Act states that, unless otherwise stated, the Act is effective upon enactment. Subsection (a)(2)(A) of section 490 of the Act provides, with regard to direct substitution, that contracts entered into on or after August 20, 1990, but before the regulations implementing the Act are issued, are governed by the substitution rules in effect before the new regulations are issued (36 CFR part 223, subpart D). Subsection (b)(2)(D) of section 490 states, with regard to indirect substitution, that contracts entered into for timber from NFS lands in Washington State are governed by the substitution rules in effect before the new regulations are issued. Read together, sections 494 and 490 clearly indicate that the Act's provisions apply to contracts entered into on or after August 20, 1990, except with regard to the substitution provisions; with regard to direct substitution, contracts entered into between August 20, 1990, and the date that final regulations are issued are governed by the substitution rules in effect prior to issuance of the new regulations. Likewise, with regard to indirect substitution, contracts for timber on NFS lands in Washington State that are entered into between August 20, 1990, and the date that final regulations are issued are governed by the substitution rules in effect prior to issuance of the new regulations.

Comment. One respondent commented that timber sale contracts should be governed by rules which applied at the auction date, rather than

the award date, because bidders presumably are familiar with and rely on rules in effect on the auction date. The respondent also stated that inequities might occur if new rules are adopted between the bid and award dates, particularly where there is a significant delay between the auction and award, or where new rules contain significant departures from prior rules.

Response. As noted above, subsection (a)(2)(A) of section 490 of the Act states that the old rules governing substitution apply to "a contract entered into between the purchaser and the Secretary" before the date final rules regarding substitution are issued. Subsection (b)(2)(D) of section 490 states that the old rules governing substitution apply to a "contract entered into between the purchaser and the Secretary" concerning the Forest Service timber purchased in Washington State before the date that final rules regarding indirect substitution are issued. A bid is not a "contract entered into between a purchaser and the Secretary." Rather, a bid is an offer by the purchaser, which may be accepted or rejected by the Secretary. A contract is "entered into" when the Secretary accepts the bid in the award letter. Therefore, in accordance with the statutory language, the award date remains the date on which the new rules regarding substitution apply. For example, if a purchaser bid on a timber sale prior to August 20, 1990, but was not awarded the sale until after that date, the sale would be governed by the rules in effect after August 20, 1990.

Having considered the comments, the Department is adopting § 223.48 as proposed.

Section 223.191 Sourcing Area Disapproval and Review Procedures

General comments. Section 490(c) of the Act provides a limited exemption from the prohibitions against substitution for owners or operators of manufacturing facilities. If a person has a sourcing area approved by the Secretary, it is possible to purchase Federal timber from within the sourcing area and export private timber originating from outside of the sourcing area without violating the prohibitions against substitution. The procedures for submitting sourcing area applications are outlined in § 223.190 of the interim rule, published November 20, 1990 (55 FR 48579). Section 223.191 of the interim rule outlined the disapproval and review procedures (55 FR 48580). The proposed rule proposed to amend § 223.191 of the interim rule to provide more detail in the disapproval and review process for sourcing areas (56 FR 3376).

Comment: One respondent stated that there is confusion as to what constitutes a sourcing area. The respondent suggested that no sourcing area applications be acted upon until after the final rule is published and that the period for comment be extended until a clear meaning is published in a public notice.

Response. The definition of a sourcing area is found in § 490(c) of the Act. Section 223.190 of the interim rule (55 FR 48579) provided additional guidance with regard to the definition of a sourcing area. The Department believes that these provisions adequately address what constitutes a sourcing area.

Comment: One respondent expressed some confusion over the options available to an applicant whose applications has been disapproved. This respondent asked that these options be more clearly stated.

Response. The proposed rule provided an applicant whose sourcing area has been disapproved for failure to meet the geographically and economically separate test with the following phase out options: (1) Cease purchasing Federal timber from within the area disapproved within 15 months of the disapproval notice, as provided in the Act, and continue private log exporting from west of the 100th meridian; or (2) cease exporting private timber from within the sourcing area that would have been approved and continue purchasing Federal timber from within the area that was disapproved, subject to the 125 percent volume limitations provided by the Act during the first 15 months following the disapproval decision. An applicant whose sourcing area is disapproved, who chooses the second option, may begin purchasing Federal timber within the area when the choice is documented by a signed certification as described in paragraph (a)(2)(i).

In the final rule, paragraphs (a) and (b) of § 223.191 of the proposed rule have been consolidated into paragraphs (a) (1) and (2) and edited slightly to clarify these options. Paragraphs (a) (1) and (2) have been modified slightly from that in § 223.191 in the proposed rule to clarify the requirements for the phase-out of private timber exporting. Paragraph (a)(2)(i) is discussed later under "Certifications." Paragraphs (c) (1) and (2) of § 223.191 of the proposed rule have been redesignated as paragraphs (b)(1) (i) and (ii).

The interim rule (55 FR 48572), published November 20, 1990, and the proposed rule addressed in general the disposition of disapproved applications

for sourcing areas that are submitted after December 20, 1990, or the disapproval upon review of previously disapproved applications. It is clear that section 490(c) of the Act is intended to provide for a reasonable transition period for persons purchasing unprocessed timber originating from Federal lands and also exporting unprocessed timber originating from private lands to modify their business practices to conform with the Act. Several statutory procedures tied to specific dates support this conclusion. Section 490(c) of the Act states that the prohibition against substitution shall not apply within a sourcing area approved by the Secretary if either a person has not exported unprocessed private timber from within the sourcing area in the previous 24 months or the 24-month requirement is waived by the Secretary based on certification by the person that export from within the area would cease by February 20, 1991. Section 490(c)(1) requires that the certification be submitted by November 20, 1990. The Act also states that the general prohibition against direct substitution during the application process does not apply to a person submitting an application within one month after the Secretary prescribed the procedures, or, by December 20, 1990. In other words, the exemptions from the prohibition against substitution apply only to initial applicants.

The choice for disapproved applicants provided in § 490(c)(4), either to export private timber and phase out of Federal timber purchasing, or to purchase Federal timber and phase out of exporting private timber from within the sourcing area that the Secretary would approve, flows from the initial exemptions from substitution. Because the exemptions from substitution do not apply to future applicants, neither would the phase-out process. With regard to the phase out of purchasing Federal timber, future applicants would not be exempted from the general prohibition against direct substitution, and so they would be in violation of the prohibition against substitution if phased out were granted. With regard to the phase out of exporting private timber within the area that would have been approved, not only would applicants not be exempted from the general prohibition against direct substitution, but also they could not receive a waiver from the prohibition against exporting in the sourcing area in the previous 24 months. These applicants would be in violation of both the general substitution provision and the provision prohibiting export within the sourcing area in the

previous 24 months if a phase out period were granted. To allow either phase-out option to continue after the initial application period would contradict the express language of the Act to prohibit substitution. Phase-out options also will not be available to persons requesting review of a disapproved sourcing area. Providing a phase out in this instance also contradicts the intent of the Act and could result in a person attempting to extend the 15-month phase-out period by requesting a review of the disapproval. Accordingly, a new paragraph (a)(3) has been added to § 223.191 of the final rule to reflect this clarification. Future applicants or applicants for a sourcing area review will not be provided with an area that would have been approved by the Secretary. The determination of an area that would have been approved is included in the phase-out process in section 490(c)(4)(B) of the Act. Since the phase-out process does not apply to future applicants for a sourcing area or applicants requesting a review of a sourcing area, as explained previously, neither does the determination to the area that would have been approved.

Comment. One respondent asked that the rule clearly state that the deciding official must present the applicant with a map showing the area that would have been approved.

Response. The Department agrees. A new paragraph (c) has been added to § 223.191 of the final rule which states that the area determined by the deciding official which would have been approved shall be drawn on a map and presented to the applicant by the deciding official with the notice of disapproval of the area requested in the application.

Certifications. Subsection (c)(4) of section 490 of the Act permits a person whose sourcing area application has been disapproved, to phase out purchases of unprocessed Federal timber. Subsection (c)(4) also provides procedures for avoiding such purchasing phase-out if a person certifies that he/she will cease exporting private timber originating from within the sourcing area that would have been approved by the Secretary. Accordingly, the applicant has 90 days after receipt of the disapproved application to submit the certificate to cease exporting private timber in order to avoid the required phase-out of Federal timber purchases, pursuant to subsection (c)(4) of section 490 of the Act. The format for the certificate was presented in the proposed rule. In addition, paragraphs (b) (2) and (3) of § 223.191 of the proposed rule proposed to amend

§ 223.191 of subpart F, published in the interim rule on November 20, 1990 (55 FR 48572), to provide a detailed process for submission of the certificate. These paragraphs have been redesignated as (a)(2) (ii) and (iii) in the final rule.

Comment. Several respondents commented that the certification language should be modified to reflect that the individual signing the certification on behalf of a corporation is doing so in the capacity as an officer or agent of that corporation, not in a personal capacity. In addition, several respondents commented that a corporation's chief executive officer (CEO) should not necessarily be required to sign the certification, since the CEO may have limited detailed knowledge concerning the operation's acquisition and disposition of unprocessed timber. These respondents suggested that an officer or agent of the corporation delegated such authority be permitted to sign the certification on behalf of the corporation, within his or her official capacity.

Response. The certification language does not mean that the corporate officer signing the certification may be held personally liable for violations of the certification. The corporate officer, signing in his or her corporate capacity, would be held liable in that capacity and in accordance with the applicable laws and regulations governing liability of corporate officers.

The certificate must be signed by someone with authority to bind the corporation. Rather than consider a variety of delegations of authority, the Department prefers to have the signature of the official with clear authority to bind the corporation, the CEO. The Department believes that the assurance and administrative convenience of requiring the CEO's signature outweigh the possible inconvenience of obtaining that signature. This requirement is similar to the requirement in 36 CFR 223.171(b)(6) (1990), issued pursuant to the Federal Timber Contract Payment Modification Act (16 U.S.C. 618) (also known as the "Buy Out Act"), with which participating timber purchasers complied. In that regulation, the CEO was required to sign a statement for a corporation certifying to the accuracy of information submitted. The signatory may not have personal knowledge of the information to which he or she is certifying. The signatory must ascertain, however, that the information is true, complete, and accurate to the best of his or her knowledge and belief. The Department has added a statement to the certification to paragraph (a)(2)(i)

(A) and (B) of § 223.191 of the final rule to reflect this clarification.

The certification has been revised to include the agreement to maintain records of all transactions involving acquisition and disposal of unprocessed logs from both private and Federal lands within the area involved in the certification, for 3 years and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated. The proposed rule provided for this agreement in paragraph (b)(4) of § 223.191 which will not be retained in the final rule.

The certification also has been revised to provide specific notice that the signatory is signing under penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).

Comment. Several respondents questioned the priority of disapproved applicants being able to both purchase Federal timber and export private timber from the same area during the phase-out process.

Response. Section 490(c) of the Act specifically provides for a person to purchase Federal timber and to export private timber simultaneously during a transition period. Paragraph (c)(2) provides for an exemption from substitution for initial applicants until the Secretary approves or disapproves the application. Paragraph (c)(4)(B) provides a 15-month period to cease export of unprocessed timber originating from private lands from the geographic area determined by the Secretary for which the application would have been approved. Section 223.191(a) of the final rule provides for this phase-out process.

Comment. One respondent asked how the certification to cease exporting from within the sourcing area in six months (in return for the waiver of the 24-month prohibition against exporting) squares with the certification for disapproved applicants to cease exporting from within the sourcing area that would have been approved in 15 months.

Response. The statutory language and Congressional intent to prevent substitution indicate that the certification to cease exporting from within the sourcing area applies both when the sourcing area is approved and when the applicant whose sourcing area is disapproved participates in the phase-out process.

Section 490(c)(1) of the Act requires the applicant to cease exporting unprocessed private timber originating from private lands "within the sourcing area" for not less than three years in order to be exempt from the 24-month prohibition against exporting from

within the sourcing area. This language most likely refers to the sourcing area requested, since the Act requires the certificate to have been submitted before the sourcing areas were adjudicated. If the sourcing area requested is also approved, the certificate becomes redundant because exporting of private timber originating from within an approved sourcing area is prohibited by 490(c)(1)(B) of the Act. The certificate is also inconsistent with the intent of the Act after the sourcing area is approved, since the certificate lasts for three years, whereas a sourcing area (and the attendant prohibition against exporting from within it) may be valid for up to five years before a review.

Paragraph (b)(2) of § 223.191 clarifies that the prohibition against exporting private timber originating from the approved sourcing area shall be in effect as long as the sourcing area remains approved.

The certificate to cease exporting from within the requested sourcing area also applies to a requested sourcing area that is disapproved and whose applicant is participating in either phase-out process. If the certificate did not apply during the phase-out process, the applicant could export private timber and purchase Federal timber that originates from the same area (the requested sourcing area). Congressional intent expressed throughout the Act is to prohibit a person from purchasing Federal timber and exporting private timber from within the same area. Therefore, the prior certification remains in full force and effect through the 15-month phase-out process described in paragraphs (a) and (b) of § 223.191. In the final rule, paragraph (d) has been added to § 223.191 to clarify this point.

If an applicant whose sourcing area is disapproved chooses to phase out of Federal timber purchasing, pursuant to Section 490(c)(4)(A) of the Act, the person may submit a request to rescind the certificate after the 15-month phase-out period elapses. The certificate is necessary during the 15-month period in order to comply with Congressional intent to prevent substitution. After the 15 month phase-out period, the applicant will no longer be purchasing Federal timber within the requested sourcing area.

If an applicant chooses to phase out of exporting, pursuant to Section 490(c)(4)(B) of the Act, the certificate applies as written. The certification for disapproved applicants who choose to phase out of exporting requires a phase-out of exporting in 15 months in the area that would have been approved. Often this area will include all or a portion of

the sourcing area requested in the application. Rules of statutory construction require that each part of the statute be given meaning. When the certifications are read together, the three-year prohibition against exporting, which begins six months after enactment, applies to the sourcing area requested in the application. Further, the certificate is necessary during the 15-month period in order to prevent purchasing of Federal timber and exporting of private timber from within the same area (the requested sourcing area). The certification concerning the phase-out of exporting in the area that would have been approved applies to the sourcing area that would have been approved, excluding the area requested in the application. Therefore, the certifications and the phase-out process are retained in the final rule.

Sourcing areas that would have been approved. It became apparent during the analysis of the comments received that several respondents were unclear as to the status of the area that would have been approved if the disapproved applicant elected to phase-out of exporting from that area.

Section 490(c)(4) of the Act provides for a person whose application has been disapproved to phase out of exporting from the area that would have been approved and to continue purchasing Federal timber from the area requested in the application, subject to stated volume limitations, during the export phase-out period.

The Act is silent regarding the fate of the sourcing areas that would have been approved after the phase-out period. The Department intends to give meaning to the Act's requirement that the Secretary determine which area would have been approved and to the phase-out provisions of Section 490(c)(4). In deciding to choose the export phase-out option, the applicant has chosen to accept the area that the deciding official stated would have been approved as the person's approved sourcing area. If an applicant whose sourcing area is disapproved does not wish to accept the Secretary's sourcing area that would have been approved and does not phase out of Federal timber purchases, the applicant is in the same position as someone who did not apply for a sourcing area.

The certification to cease exporting in the sourcing area requested will not be approved in this instance. Therefore, in the final rule, paragraph (a)(2)(iv) has been added to § 223.191, stating that when an applicant whose sourcing area has been disapproved submits the certificate to cease exporting within the

sourcing area in the 15-month phase-out period, the sourcing area that would have been approved becomes an approved sourcing area. Upon certification, the person may begin purchasing Federal timber within the approved sourcing area.

The prohibition against exporting private timber originating from within the area shall be in full force and effect until the area is disapproved through the review process set forth in paragraph (e) of this section.

Disapproval Process

Comment. Several respondents questioned whether the phase out of exporting private timber in the disapproval process (§ 223.191(b) of the proposed rule) applies to someone who has not exported from the area that would have been approved by the Secretary. One of the respondents also asked whether such a person could reapply for a sourcing area that would have been approved if the export phase-out period is inapplicable.

Response. Section 490(c)(4)(B) of the Act provides for a phase out of exporting of unprocessed private timber, "from the geographic area determined by the Secretary for which the application would have been approved." Therefore, the phase out of exporting from the area that the Secretary would have approved does not apply to persons who have not exported from that area.

However, persons who have purchased Federal timber west of the 100th meridian in the 48 contiguous states, but have not exported from the area that would have been approved by the Secretary will be allowed to have the sourcing area that the Secretary would have approved.

Section 490 of the Act is clear that a person who has exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 states must have a sourcing area approved by the Secretary in order to purchase timber originating from Federal lands west of the 100th meridian in the contiguous 48 states. Paragraph (a) of section 490 exempts only sourcing areas from the prohibition against direct substitution. Paragraph (b) prohibits the indirect purchase of Federal timber by persons who are prohibited from purchasing Federal timber directly.

Section 490(c)(4), through the phase out of exporting within the sourcing area, provides a transition for persons who have been exporting private timber and purchasing Federal timber west of the 100th meridian in the contiguous 48 states, as discussed previously. Within

this phase out provision is the provision regarding the Secretary's determination of the sourcing area that would have been approved. Since the sourcing area applicants who have been exporting outside of a sourcing area must have a sourcing area to continue purchasing Federal timber, it would be inconsistent to deny such applicants a sourcing area that would have been approved in this transition period.

Section 490(c)(4)(B) also requires persons who have exported from within the sourcing area that would have been approved by the Secretary to sign a certification to cease exporting from within that area. It would not be appropriate for persons who have not exported from that area to sign the certificate, since exporting from that area has not occurred.

Section 223.191(a)(2)(i) has been rewritten in the final rule to provide a process whereby an applicant may continue to purchase unprocessed timber originating from Federal lands within the disapproved sourcing area by certifying that he or she will cease exporting unprocessed timber from private lands located within the area that would have been approved (§ 223.191(a)(2)(i)(A) in the final rule); or by certifying that he or she accepts the area that the Secretary would have approved as his or her sourcing area (§ 223.191(a)(2)(i)(B) in the final rule).

Comment. One respondent objected to the requirement that applicants whose applications are disapproved must maintain records of all transactions of both Federal and private timber for three years following receipt of the disapproval notice. The respondent stated that the Act does not have such a requirement, and that this requirement creates unnecessary paperwork.

Response. The maintenance of acquisition and disposition records is necessary for the Department to fulfill its responsibilities to implement and enforce the Act with regard to National Forest System lands. Timber is traded over a several-year period. Time is also needed to track the timber when monitoring for compliance. Given the amount of time that may accrue while timber is traded and being monitored, the Department requested and was granted the maximum amount of time for requiring recordkeeping. The Act provides for the Secretary to draft such regulations as may be necessary to implement the Act. In the final rule, proposed paragraph (b)(4) of § 223.191 has been added to the certification statement in § 223.191(a)(2)(i)(A), maintaining this recordkeeping requirement for those applicants who have been disapproved and choose one

of the phase-out options. For those disapproved applicants who do not choose one of the phase-out options, the maintenance of records requirement does not apply.

Review of sourcing areas. Subsection 490(c)(5) of the Act requires that review of approved sourcing areas will occur not less often than every 5 years. Section 223.191(d) of the proposed rule outlined the procedures for review of approved sourcing areas. These proposed procedures for review provided that a tentative date for review would be included in the approval notice. The proposed rule stated that 60 days prior to the tentative review date, the Regional Forester would notify the person of the pending review. The proposed rule also stated that the person must request the review in writing to the Regional Forester not less than 30 days prior to the tentative review date. If the person did not request a review of the sourcing area in accordance with the procedures proposed in § 223.191(d), the sourcing area would terminate on the review date. In addition, the proposed rule stated that the Department would reserve the right to schedule a review at any time during the 5-year period, with 60 days notice.

Comment. Some respondents objected to the termination of an approved sourcing area if the person failed to request a review within 30 days of the tentative review date listed in the approval notice. Several respondents stated that the sourcing area should remain in effect until a review determined otherwise.

Response. The Department agrees with the comments and has eliminated the automatic sourcing area termination provision in the final rule. Paragraph (d) of § 223.191 of the proposed rule has been redesignated as paragraph (e) in the final rule and revised to eliminate the requirement that purchasers must request a review within 30 days of the tentative review date. The purpose of this procedure was to eliminate review of a sourcing area no longer being used without resorting to a formalized review process. The Department has instituted an informal process before the formal review, which is discussed later in this document, so there is no longer any reason for the automatic termination. The final rule provides that sourcing areas being reviewed will continue in full force and effect pending the final review determination.

Comment. One respondent recommended that the Forest Service simply publish notice of the sourcing areas coming up for review and invite

comments from persons (including the applicant) who believe that the existing sourcing area should be reapproved, modified, or revoked. Several respondents asked about the timeframe for the review and about the criteria that would be used.

Response. In the final rule, a new paragraph (e)(1) has been added to § 223.191 establishing an informal review procedure that will help expedite review decisions while keeping the public informed of the status of a particular sourcing area.

Subsection 490(c)(5) of the Act requires a review of sourcing areas "in accordance with the procedures prescribed in this title." The relevant procedures in the title are the sourcing area procedures. These procedures envision a formal decision, made "on the record and after an opportunity for a hearing." A formal adjudicatory process normally requires a case or controversy that is ripe for review. If there is no change in the sourcing area, or no disagreement among the parties regarding changes to be made, there is no case or controversy. Therefore, the Forest Service will utilize an informal process unless the parties cannot reach a consensus.

The informal system adopted in § 223.191(e)(1) requires the Regional Forester or other such reviewing official to notify parties of the review date by publication in newspapers of general circulation within the sourcing area. The Forest Service shall review the sourcing area record and provide comment to the reviewing official within the 30-day period following publication of the notice of review. All interested parties may review the sourcing area record and comment within the 30-day period. For 10 working days after the review period, any person submitting comments and the person holding the sourcing area may review the comments. If there is disagreement among those who comment regarding the proper sourcing area, the Forest Service will hold a meeting convenient to the parties that all interested parties may attend. If there is still no agreement among the parties as to the proper sourcing area, then a formal adjudicatory process will occur, in accordance with 5 U.S.C. 554 of the Administrative Procedure Act. Upon institution of a formal adjudicatory process, all written comments submitted in the 30 day period for comments shall become part of the administrative record.

Comment. One respondent said that for long-term planning, the review at less than five years should be for good cause only.

Response. The Act places no restriction on the Department as to when the review will occur; it simply requires a review at least every five years. Likewise, the Act places no standard, such as "good cause," on the occurrence of a review. To assure that sourcing areas accurately reflect purchasing patterns, pursuant to the Act, the Department needs the flexibility to review sourcing areas at any time due to changed circumstances. A new paragraph (e)(3) has been added to § 223.191 in the final rule to clarify that the Department may review a sourcing area at any time prior to the tentative review date at the request of the Forest Service or the person holding the sourcing area. This provision was included as a part of paragraph (d) of § 223.191 in the proposed rule.

Comment. One respondent stated that there should be a presumption in favor of the earlier decision regarding a sourcing area.

Response. There is nothing in the Act regarding a presumption that the current sourcing area remains in effect; in fact, since the Act requires the sourcing area review procedures to be in accordance with the procedures in the Act that were utilized in the initial determination, the statutory language indicates that the review is a *de novo* review (i.e., the review would be conducted as if no prior proceedings have been conducted and evidence in addition to the existing record would be allowed). Therefore, the Department will treat the sourcing area review as a *de novo* review in which all of the elements of a sourcing area must be established.

Comment. Several respondents asked if disapproved sourcing area applications would also be reviewed.

Response. The Act provides only for review of approved sourcing areas pursuant to section 490(c)(5). Paragraph (5) refers to paragraph (3), entitled, Grant of Approval, which discusses the factors used by the Secretary in approving sourcing areas. Therefore, the review will involve all approved sourcing areas and those areas that would have been approved that become approved sourcing areas through the applicant's certification to cease exporting from within that area or certification accepting the area that would have been approved as their sourcing area.

Paragraph (e) of § 223.191 in the proposed rule stated that the reporting and recordkeeping procedures constitute information collection requirements as defined in 5 CFR part 1320 and that the requirements have been approved by the Office of Management and Budget.

This information has been redesignated as paragraph (f) and included in the final rule without change. This is a structural change to improve clarity.

Section 223.203 Indirect Substitution Exception for National Forest System Timber From the State of Washington

Section 490 of the Act places limitations on the direct and indirect substitution of unprocessed Federal timber for unprocessed timber exported from private lands. Subsection (b)(2) of section 490 of the Act provides for a limited exception to the prohibition against indirect substitution for unprocessed timber originating from National Forest System lands in the State of Washington. Section 490(b)(2)(i) and (ii) of the Act provide that such limit shall equal:

(i) The amount of such timber acquired by such person, based on the higher of the applicant's actual timber purchasing receipts or the appropriate Federal Agency's records, during fiscal years 1988, 1989, and 1990, divided by three; or

(ii) 15 million board feet, whichever is less, except that such limit shall not exceed such person's proportionate share of 50 million board feet.

Proposed procedures for implementing section 490(b)(2) were set forth in paragraph (b) of 223.203 of the proposed rule, which addressed procedures for applying for a proportionate share of the 50 million board feet purchase limit. These procedures stated that any person who exceeds his/her share of these purchase rights, in any fiscal year, will be in violation of the substitution prohibitions of the Act.

Comments. One respondent objected to the language in the proposed rule that provided for annual renewal of the limited indirect substitution exception, for National Forest System timber originating from within Washington State. This respondent stated that the Act and the Congressional Conference Committee Report are silent concerning the application of the limit, and, therefore, the Act must be interpreted to provide a one-time opportunity to phase out of indirect substitution, and not an annual, indirect substitution quota.

Response. Subsection (b)(2) of section 490 of the Act does not specifically address this issue. Therefore, in accordance with the rules of statutory construction, the Department reviewed the language in this provision of the Act to determine Congressional intent. The trading rights indicate an annual, rather than a one-time apportionment. Subsection (b)(2)(C) of section 490 of the

Act permits any person holding a portion of this limited exception to "sell, trade, or otherwise exchange with any other person" such limited rights, "except that such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights obtained under subparagraph (A)." There would be no reason to provide for transfer of rights if they were a one-time opportunity. Thus, a one-time apportionment in the rule would render this trading provision nearly meaningless and of little value because of the small amount of timber volume involved. The general intent of the Act to grant persons trading rights for their proportionate shares of this exception supports the Department's interpretation that this is an annual exception. Therefore, the final rule retains this provision in the certification in 223.203.

Comment. Several timber purchasers commented that some of the specific data required to be submitted in the application for a proportionate share of these limited rights was either irrelevant or not readily available, would be very difficult to reconstruct, and would constitute an unreasonable paperwork burden because records of this type were not required to be kept under the prior rules in the detail being requested. For example, the respondents stated that from whom the Federal timber was acquired is unnecessary information and that it may be difficult to determine from which National Forest within Washington State that timber originated after the fact. These respondents maintained that much of their Federal timber purchases consisted of acquiring specific species and/or grades of logs in large batches or sorts intermixed with State and private logs and not accounted for separately by origin. One respondent suggested that because of the difficulty of reconstructing such records of origin, the applicants should be required to simply certify that, based on available records, it appears that they purchased at least the volumes so specified. Some of these respondents also asked that acquisition records be presented by calendar year instead of by fiscal year, as most businesses maintain their records by calendar year.

Response. The Department agrees with these respondents and has modified the information requested in the final rule to be used in determining proportionate shares of the limited rights. The Department believes that such modification will be adequate to meet the statutory requirements. Accordingly, the information requirements of paragraph (b)(5)(ii) of

§ 223.203 of the proposed rule will not be adopted in the final rule.

Subsection 490(b)(2)(i) of the Act requires that the Department establish a limited amount of unprocessed timber originating from National Forest System lands from within Washington State which equals the amount of such timber acquired by that person based on the higher of "actual timber purchase receipts" or government records. The Department will determine the applicant's proportionment based on government records. The final rule provides that a person may review the purchase records of the Forest Service prior to the deadline for submission of applications for the exemption. Applicants may voluntarily submit actual timber purchasing receipts if they believe that the actual purchase receipts will result in a higher amount than would result from using government records. The determination will then be based on the purchase receipts, if provided, or government records, whichever is higher. The Department agrees that the reconstruction of purchase records may be difficult. Accordingly, the Department will provide in the final rule that a person's actual timber receipts may be in the form of a certification by a certified public accountant that the records of the person reflect that the specified volumes are accurate. The volumes to report are harvest volumes, except where sales are still open. In the case of open sales, the volumes to report are advertised volumes.

In the final rule, paragraph (b)(5) of § 223.203 of the proposed rule has been redesignated as paragraph (b)(3) and revised to reflect these changes.

A new paragraph (b)(5) has been added to § 223.203 in the final rule, stating that purchasers may voluntarily submit, through verification by a certified public accountant, a summary of total volume and average volume for each of the three fiscal years (1988, 1989 and 1990). Paragraph (b)(5)(i)(C) has been added to provide for the certificate that the certified public accountant must sign to attest to the accuracy of the records reviewed. Paragraph (b)(5)(ii)(D) has been added to state that the accountant's certification must be notarized, must be on company letterhead, and must accompany the applicant's application. The certification in paragraph (b)(3)(ii) of § 223.203 must accompany the application regardless of the use of a certified public accountant to verify the records.

Subsection 490(b)(2)(i) of the Act specifically asks for the amount of timber "during fiscal years 1988, 1989,

and 1990." Accordingly, the Department must retain the use of "fiscal year" in the final rule.

Comment. Two respondents questioned the need to provide "substantial evidence" that the prohibition against indirect substitution applies to them as a qualification for a proportionate share of this limited exception. These respondents felt that it should be sufficient for a company to certify that it has indirectly substituted within the three years by having exported timber originating from private lands located west of the 100th meridian in the 48 contiguous States and acquired timber originating from National Forest System lands within Washington State during the same period.

Response. After review of the Act, the Department has concluded that such substantial evidence is not necessary. Accordingly, § 223.203(b)(4) of the proposed rule is not adopted in the final rule. In lieu of substantial evidence, language has been added to the certification accompanying the application (§ 223.203(b)(3)(ii)) that requires an applicant to certify that the prohibition against substitution contained in section 490(b) of the Act applies to such applicant, and that the applicant has purchased NFS timber during fiscal years 1988, 1989 and/or 1990. The certification language also has been reviewed to provide for retaining records of all transactions involving the acquisition of unprocessed timber from Federal lands within the area and to make such records available for inspection upon request by appropriate officials. Further, the certification has been revised to provide specific notice to the signatory that false, incomplete, or incorrect certifications may subject the signatory to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).

Comment. One respondent stated that the confidentiality of information submitted in an application should be determined in accordance with the Freedom of Information Act.

Response. All requests for information submitted pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990, will be handled according to the Freedom of Information Act, as amended (5 U.S.C. 552), with full consideration of available exemptions from disclosure. The Freedom of Information Act is specific in describing the types of information exempt from public disclosure. Applicants need to be aware that some of the information submitted may be available to the public upon request. The language regarding the confidentiality of the application in

paragraph (b)(5) of § 223.203 of the proposed rule has been removed. Any public disclosure of the information provided in an application shall be governed by the provisions of the Freedom of Information Act, the Department's implementing regulations at 7 CFR 1.11, and Executive Order 12600 (June 23, 1987).

Comment. Several respondents voiced concerns on proposed § 223.203, similar to those expressed on § 223.191, over the wording of the certification relating to personal liability of corporate officers and the requirement that it be signed only by the chief executive officer of the corporation.

Response. As noted in response to the comment concerning the certification required in § 223.191(a)(2)(i), corporate officers signing in a corporate capacity would be held liable in that capacity and in accordance with all other applicable laws or regulations governing liability of corporate officers. The signatory may not have personal knowledge of the information to which he or she is certifying. The signatory must ascertain, however, that the information is true, complete, and accurate to the best of his or her knowledge and belief. The Department has added a statement to the certification in paragraph (b)(3)(ii) of § 223.203 of the final rule to reflect this clarification. In addition, as at § 223.191(a)(2)(i), the certification language has been revised to provide specific notice of the possibility of the penalty of perjury under the False Statements Act (18 U.S.C. 1001).

Further, the provision of § 223.203(b)(5)(iv) of the proposed rule has been included as a part of the specific certification language in § 223.203(b)(3)(ii) that must be provided by the signatory.

Comment. One respondent urged the Agency to proceed rapidly to receive applications for indirect substitution of proportional shares not to exceed 50 million board feet, if the statutory deadline for limiting indirect substitution is to be met.

Response. Paragraph (b)(6) of § 223.203 of the proposed rule stated that there would be a 20-day period following publication of the final rule in the *Federal Register* for submitting applications. This requirement has been redesignated as § 223.203(b)(4), in the final rule. The Department believes that the 20-day period is the minimum amount of time needed to complete and submit an application. The Department will apportion the 50 million board feet of timber as soon as possible after receipt of the applications.

Comment. One respondent requested that the language of the proposed rule be revised to clarify that a person acquiring rights under this section from a person selling such rights need not submit an application to the Forest Service to acquire these rights.

Response. Subsection 490(b)(2)(C) of the Act requires that a person acquiring these rights may not already be in possession of such rights. Further, the Conference Report (page 252) states that the 15 million board feet limit applies to the acquiring party. The Department does not intend to require prospective purchasers of these rights to apply to the Forest Service for permission prior to making the acquisition. However, the Forest Service must be informed of such transactions in order to monitor compliance with the Act.

Paragraph (b)(3) of § 223.203 of the proposed rule addressed the issue of acquiring this right. This paragraph has been redesignated in the final rule as § 223.203(c) and revised to include the following provision to address this issue: "Any person selling, trading, or exchanging any or all of the rights obtained under this rule shall advise the Regional Forester of the amount being traded and the name(s) of the person(s) acquiring such rights."

In the final rule, paragraph (c) of § 223.203 of the proposed rule has been redesignated as paragraph (d).

Comment. One respondent suggested the Forest Service maintain a cumulative record for each person holding a portion of this indirect substitution exception to assure that the person does not exceed the allotted shares and to notify the person when the remaining unused shares drop below 100 thousand board feet.

Response. The Department declines to adopt this suggestion. The responsibility to comply with provisions of this Act, including this limited indirect substitution exception, lies with the person holding such exception. The role of the Forest Service is to monitor compliance through the information provided and through regular field surveillance. The Department intends to monitor the transfer of such limited share rights for compliance with the Act.

Comment. One respondent asked whether the Forest Service intended to simply approve or disapprove applications, or whether the Forest Service would approve allocations of the exception which may be different from the amount requested.

Response. The Forest Service intends to apportion the 50 million board feet exception in relation to the amounts supported by the data provided in the applications and the agency's own

records. No revision of the proposed rule is needed to address this comment.

General Comments

Comment. One respondent commented that no export of unprocessed timber originating from National Forest System lands within the State of Washington should be allowed.

Response. Except for the provision permitting the exporting of unprocessed Federal timber found to be surplus to domestic processing needs, the Act prohibits such exporting. No revision of the proposed rule is necessary to respond to this comment.

Comment. One respondent commented that the Department should undertake an Environmental Impact Statement to disclose the impact of log exports on forests and forest-dependent communities.

The respondent stated that, "[p]art of the growing demand for National Forest timber results from large corporations that export private timber and then compete against smaller mills for public timber." The respondent's example of this demand is a company competing for public timber on the Colville National Forest. The respondent further stated that timber demand is a factor in the allowable sale quantity in the Forest Service's Land and Resource Management Plan for the Colville National Forest. The respondent recommended that log exports be curtailed or the exporters forego the ability to export logs and purchase timber from NFS lands.

Response. With regard to the comment about increased competition, the intent of the National Environmental Policy Act (NEPA) is to require an analysis of the physical environment *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772 (1983). The National Environmental Policy Act requires no particularized assessment of non-environmental factors *Public Utilities Commission of the State of California v. Federal Energy Regulatory Commission*, 900 F.2d 269, 282 (DC Cir. 1990), citing NEPA section 102, 42 U.S.C. 4332 "(requiring the agency to consider a variety of environmental, not economic factors)."

With regard to the comment about allowable sale quantity, even if these regulations affected public timber demand, projections for demand would be accounted for through long term monitoring and evaluation done as a part of Forest Plans. Further, the decision to sell timber and the assessment of the impacts of such decisions are made through Forest Plans

and project decisions, not in these regulations.

As noted later in this document, based on an environmental assessment, there is a Finding of No Significant Impact on the quality of the human environment, individually or cumulatively, as a result of these regulations. The environmental assessment is available as a separate document.

Comment. In relation to the regulatory impact of the rule, two respondents commented that the proposed rule imposes significant new requirements on small business timber sale purchasers and other entities.

Response. The proposed rule in and of itself does not impose significant new requirements. The Act establishes these requirements, and this rule is simply implementing the provisions of the Act. The Department has sought to minimize the impact wherever possible in the rules as evidenced by several changes made based on the comments received.

Summary

Having fully considered the comments received on the proposed rule, the Department is adopting a final rule, with the modifications previously described in response to the comments in the preceding paragraphs. This rule supercedes certain provisions of the interim rule published in the Federal Register on November 20, 1990, and supplements those sections still in effect.

This rule is effective upon publication. Rulemakings are exempt from the rulemaking procedures of the Administrative Procedures Act in certain circumstances, including matters relating to agency management public property, or contracts (5 U.S.C. 553(a)(2)). The Department did not waive this exemption with regard to the effective date of a rulemaking (36 FR 13894 (July 24, 1971)). This rulemaking relates to agency management, public property and contracts, and therefore is exempt from the 30-day delay between publication of a rule and its effective date. Further, a delayed effective date is not required if a rule is a substantive rule which grants or recognizes an exemption (5 U.S.C. 553(d)(1)). This rule provides certain exemptions from the restrictions on substitution, and therefore may be effective immediately. In addition, a delayed effective date is not required if good cause is found and published with the rule (5 U.S.C. 553(d)(3)). Good cause exists to make this rulemaking effective upon publication due to the many deadlines in the statute requiring monitoring and enforcement.

Environmental Impact

Based on both experience and environmental analysis, this final rule will have no significant effect on the quality of the human environment, individually or cumulatively, and the Forest Service has made a Finding of No Significant Impact (40 CFR 1508.27). This rule only establishes certain administrative procedures to limit the persons qualified to purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States. It does not affect the amount of timber to be sold, where the sales will be located, when they will be operated, the contract period, the contract size, resource protection requirements, or any aspect of on-the-ground contract performance. This rule does not alter the requirement that each timber sale must be analyzed and documented in compliance with the National Environmental Policy Act and its implementing regulations. Copies of the Environmental Assessment and Finding of No Significant Impact may be obtained by writing or calling the person or office listed earlier in this document under **FOR FURTHER INFORMATION CONTACT**.

Controlling Paperwork Burdens on the Public

The application and reporting procedures in §§ 223.48, 223.191, and 223.203 of this rule contain new recordkeeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, impose additional paperwork burdens on the affected public. The Office of Management and Budget (OMB) has approved these requirements for use through March 31, 1994, and assigned them Control Numbers 0596-0021 and 0596-0115.

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this is not a major rule. The rule will not have an annual effect of \$100 million or more on the economy, substantially increase prices, costs for consumers, individual industries, Federal, State or local governments, or geographic regions. Furthermore, the rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule will not limit the amount of National Forest System timber to be offered for sale, restrict

competition, or reduce market demand for such timber.

This rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that the action will not have a significant economic impact on a substantial number of small entities. Economic impacts associated with implementation of this rule result directly from the Forest Resources Conservation and Shortage Relief Act and not from the rule itself. The rule imposes no additional requirements on small business timber sale purchasers or other small entities beyond that required by the Forest Resources Conservation and Shortage Relief Act of 1990.

This rule also has been analyzed in accordance with the principles and criteria contained in Executive Order 12830 and it has been determined that the rule does not pose the risk of a taking of constitutionally-protected private property.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National Forests, Reporting and recordkeeping requirements, and Timber sales.

Therefore, for the reasons set forth in the preamble, part 223 of Chapter II of title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 is revised to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 96 Stat. 2213, 16 U.S.C. 618, 104 stat. 714-726, 16 U.S.C. 620-620h, unless otherwise noted.

Subpart B—Timber Sale Contracts [Amended]

2. Revise § 223.48 to read as follows:

§ 223.48 Restrictions on export and substitution of unprocessed timber.

(a) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States and Alaska, awarded before August 20, 1990, shall include provisions implementing the Secretary's timber export and substitution regulations at subpart D of this part in effect prior to that date. Such contracts shall also require purchasers to:

(1) Submit annually, until all unprocessed timber is accounted for, a certified report on the disposition of any unprocessed timber harvested from the sale including a description of unprocessed timber which is sold,

exchanged or otherwise disposed of to another person and a description of the relationship with the other person;

(2) Submit annually, until all unprocessed timber from the sale is accounted for, a certified report on the sale of any unprocessed timber from private lands in the tributary area which is exported or sold for export; and

(3) Maintain records of all such transactions involving unprocessed timber and to make such records available for inspection and verification by the Forest Service for up to three (3) years after the sale is terminated.

(b) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States, awarded on or after August 20, 1990, shall include provisions implementing the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*).

(c) The reporting and recordkeeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596-0021.

Subpart F—The Forest Resources Conservation and Shortage Relief Act of 1990 Program [Amended]

3. Revise § 223.191 and add a new § 223.203 to read as follows:

§ 223.191 Sourcing area disapproval and review procedures.

(a) Notwithstanding any other provision of law, an applicant whose sourcing area application was submitted by December 20, 1990, and is disapproved may either phase out of purchasing Federal timber or phase out of exporting unprocessed timber originating from private lands within the sourcing area that would have been approved, as follows:

(1) *Phase-out of Federal timber purchasing.* The applicant may purchase, in the 9-month period after receiving the application disapproval, unprocessed timber originating from Federal lands in the disapproved sourcing area, in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed Federal timber in such area during the 5 full fiscal years immediately prior to the date of submission of the application. In the 6-month period immediately following the 9-month period, such person may purchase not more than 25 percent of such annual

average, after which time the prohibitions against direct substitution, set forth in § 223.189 of this subpart, shall apply; or

(2) *Phase-out of private timber exporting.* The applicant may continue to purchase unprocessed timber originating from Federal lands within the disapproved sourcing area without being subject to the phase-out of Federal timber purchasing procedures described in paragraph (a) of this section, if the following requirements are met:

(i) The applicant certifies to the Regional Forester or the approving official to whom such authority has been delegated, within 90 days after receiving the disapproval decision, as follows:

(A) An applicant that has exported unprocessed timber originating from private lands from the geographic area that would have been approved will provide a signed certification that reads as follows:

"I have engaged in the exporting of unprocessed private timber originating from private lands located within the geographic area the approving official would have approved as a sourcing area for my manufacturing facility. I desire to continue purchasing unprocessed Federal timber from within such area. I hereby certify that I will cease all exporting of unprocessed timber from private lands located within the area that would have been approved by [the applicant shall insert date 15 months from date of receipt of the disapproval decision]. I agree to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area involved in the certification, for a period of three (3) years beginning on the date of receipt of the disapproval notification, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated. I make this certification with full knowledge and understanding of the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and do fully understand that failure to cease such exporting as certified will be a violation of the Act and may subject me to the penalties and remedies for such violation. Further, I fully understand that such violation may subject me to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001). I certify that the information in this certificate is true, complete, and accurate to the best of my knowledge and belief."

or,

(B) An applicant who has not exported unprocessed timber originating from private lands from the geographic area that the Secretary would have approved will provide a signed certification that reads as follows:

"I have not exported timber originating from private lands within both the sourcing area

that the Secretary would have approved and the disapproved sourcing area in the past 24 months, pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), and I am accepting the area that the Secretary would have approved as my sourcing area. I certify that the information in this certificate is true, complete, and accurate to the best of my knowledge and belief."

(ii) Each certification statement set forth in paragraph (a)(2)(i) of this section must be signed by the person making such certification or, in the case of a corporation, by its chief executive officer; must be on company letterhead; and must be notarized.

(iii) The person signing such certification set forth in paragraph (a)(2)(i)(A) must provide to the Regional Forester the annual volume of timber exported by that person during the five (5) full fiscal years immediately preceding submission of the application, originating from private lands in the geographic area for which the application would have been approved.

(iv) When the applicant submits the certificate, the area the Secretary would have approved, as shown on the sourcing area map provided by the Secretary, because an approved sourcing area. If the certificate is not submitted, the sourcing area that would have been approved does not become an approved sourcing area.

(3) The phase-out of Federal timber purchasing and the phase-out of private timber exporting procedures provided by paragraphs (a)(1) and (a)(2) do not apply to persons submitting sourcing area applications after December 20, 1990, or to persons requesting review of disapproved sourcing areas.

(b) *Limits on purchases and exports.* (1) During the 15-month period following disapproval of a sourcing area, a person who elects to phase-out of private timber exporting as described in paragraph (a)(2) of this section, may not:

(i) Purchase more than 125 percent of the person's annual average purchases of unprocessed timber originating from Federal lands within the person's disapproved sourcing area during the five (5) full fiscal years immediately prior to submission of the application; and,

(ii) Export unprocessed timber originating from private lands in the geographic area determined by the approving official for which the application would have been approved, in amounts that exceed 125 percent of the annual average of that person's exports of unprocessed timber from such private land during the five (5) full years

immediately prior to submission of the application.

(2) At the conclusion of the 15-month export phase-out period, the prohibition against exporting private timber originating from within the area shall be in full force and effect as long as the sourcing area remains approved, pursuant to subpart F of part 223.

(c) *Presentation of map to applicant whose sourcing area is disapproved.* The area determined by the deciding official that would have been approved shall be drawn on a map and presented to the applicant by the deciding official with the notice of disapproval of the application.

(d) *Effect of prior certification to cease exporting.* An applicant's previous certification to cease exporting beginning February 20, 1991, for a period of three (3) years from within the disapproved sourcing area pursuant to paragraphs (f) and (g) in § 223.189 of this subpart shall remain in full force and effect for persons with approved and disapproved sourcing areas.

(e) *Review process and frequency.* (1) Approved sourcing areas shall be reviewed not less often than every five (5) years. A tentative date for a review shall be included in the deciding official's determination or stated in writing by the Regional Forester following the determination. At least 60 days prior to the tentative review date, the Regional Forester or other such reviewing official shall notify the person holding the sourcing area of the pending review, publish notice of such review in newspapers of general circulation within the sourcing area, and invite comments, to be received no later than 30 days from date of notice, from all interested persons, including the person holding the sourcing area. For 10 working days following the comment period, any person submitting a written comment and the person with the sourcing area may review the comments. If there is disagreement among the persons who submitted written comments regarding the proper sourcing area, the reviewing official shall convene an informal meeting convenient to the persons that all interested persons may attend. If an agreement cannot be reached among the persons, formal administrative adjudication shall occur. The deciding official shall, on the record and after opportunity for a hearing, approve or disapprove the sourcing area being reviewed.

(2) Disapproved sourcing areas shall be reviewed using the process described in paragraph (e)(1) of this section upon resubmission of an application, provided the applicant has accepted the area the

Secretary would have approved as a sourcing area pursuant to paragraph (a)(2) of this section.

(3) The Department reserves the right to schedule a review, at the request of the Forest Service or the person holding the sourcing area, at any time prior to the scheduled tentative review date, with 60 days notice.

(4) Sourcing areas being reviewed shall continue in full force and effect pending the final review determination.

(f) *Reporting and recordkeeping procedures.* The reporting and recordkeeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596-0115.

§ 223.203 Indirect substitution exception for National Forest System timber from within Washington State.

(a) *Indirect substitution restrictions.* No person may purchase from any other person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if such person would be prohibited from purchasing such timber directly from a department or agency of the United States, pursuant to § 490(b) of the Forest Resources Conservation and Shortage Relief Act of 1990.

(b) *Indirect substitution exception for National Forest System timber from within Washington State.* A limited amount of unprocessed National Forest System timber originating from within Washington State may be acquired by a person otherwise covered by the prohibition against indirect substitution, pursuant to section 490(b) of the Act.

(1) The amount of such unprocessed timber shall be limited to whichever is less:

(i) The higher of the applicant's actual purchase receipts for unprocessed timber originating from National Forest System lands within Washington State or the Department's records, during fiscal years 1988, 1989, and 1990, divided by 3; or

(ii) 15 million board feet.

(2) Such limit shall not exceed such person's proportionate share of 50 million board feet; and

(3) To obtain a share of the 50 million board feet exempted from the prohibition against indirect substitution in § 490(b) of the Act, a person must submit an application. Applications shall include at least the following:

(i) The amount of volume exception being requested, in thousand board feet (MFB);

(ii) A signed certification that reads as follows:

"I certify that, except for an approved share of unprocessed Federal timber, in accordance with 36 CFR 223.203, the prohibition contained in section 490(b) of the Act (16 U.S.C. 620b) applies to me. I have exported unprocessed timber originating from private lands from west of the 100th meridian in the 48 contiguous States and have acquired unprocessed timber from National Forest System lands located within Washington State in 1988, 1989 and/or 1990. I certify that the information provided in support of this application is a true, accurate, current and complete statement, to the best of my knowledge and belief. I agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber from Federal lands within the area involved in this application for a period of 3 years beginning on the date the application is approved, and to make such records available for inspection upon the request of the Regional Forester or other official to whom such authority has been delegated. I make this certification with full knowledge and understanding of the requirements of the Act and do fully understand that if this application is approved, the amount of exception granted under this approval may not be exceeded in any one fiscal year, and do fully understand that if such exception is exceeded I will be in violation of the Act (16 U.S.C. 620 *et seq.*), and I may be subject to the penalties and remedies provided for such violation. Further, I do fully understand that such violation may subject me to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).";

and

(iii) The application listed under this section must be signed by the person making such application or, in the case of a corporation, by its chief executive officer. The application must be on the company's letterhead and must be notarized.

(4) The application made under this section must be mailed to the Regional Forester in Portland, Oregon, no later than January 8, 1992. The applicant will be notified of the approving official's decision by letter. If approved, the amount of the exception will become effective upon publication in the Federal Register.

(5) Prospective applicants may review Department records upon request prior to the deadline for submitting applications. An applicant may voluntarily submit information documenting the amount of purchases of unprocessed timber originating from National Forest System lands within Washington State. The Department will then determine which amount is higher, verified by either the Department's records or the applicant's records. The Department will then determine the applicant's portion of the 50 million

board feet by determining the lesser of the amount verified by the records or 15 million board feet. The applicant may submit the information documenting the amount of purchases in the following manner:

(i) Actual receipts for purchasing unprocessed timber from National Forest System lands within Washington State; or

(ii) A statement by a certified public accountant of:

(A) A summary by fiscal year for 1988, 1989 and 1990 of the applicant's acquisitions of timber originating from NFS lands in the State of Washington, listing total volume for each of the three fiscal years; and

(B) The average volume for the three fiscal years. The volumes to be reported are the harvest volumes, except in the case of open sales. Advertised volumes must be reported for open sales.

(C) The certified public accountant must certify to the following:

"I certify that under the penalties and remedies provided in § 492 of the Act (16 U.S.C. 620d) and the penalty of perjury provided in the False Statements Act (18 U.S.C. 1001) that the information provided in support of this application is, to the best of my knowledge and belief, a true, accurate, current, and complete statement of [applicant's company's name] National Forest System timber acquisitions originating from within the State of Washington for fiscal years 1988, 1989 and/or 1990."

(D) The certified public accountant's statement and certification must be on the accountant's company letterhead, must be notarized, and must accompany the applicant's application.

(c) The purchase limit right obtained under this rule may be sold, traded, or otherwise exchanged with any other person subject to the following conditions:

(1) Such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights;

(2) Any person selling, trading, or exchanging any or all of the rights obtained under this rule shall advise the Regional Forester of the amount being traded and the name(s) of the person(s) acquiring such rights within 15 days of the transaction; and

(3) No person may have or acquire more than 15 million board feet in one fiscal year.

(d) The application procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596-0115.

Dated: September 30, 1991.

James R. Moseley,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 91-30228 Filed 12-18-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE42

Finality of Decisions

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations on finality of decisions. The intended effect of the amendment is to define the point at which VA decisions become final and binding.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John Bissett, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.104(a) and 3.105(a) in the *Federal Register* of July 10, 1990 (55 FR 28234-5). Interested persons were invited to submit written comments, suggestions or objections on or before August 9, 1990. Comments were received from the American Legion, the National Veterans Legal Services Project on behalf of Vietnam Veterans of America, Inc., and a private individual.

One commenter noted that the proposed rule indicated decisions would be binding on all "VA offices", whereas the current rule specifies "VA field offices". He noted there was no explanation for dropping the word "field" from the new rule. The word was inadvertently omitted when the proposed rule was published and has been restored in the final regulation.

Another commenter felt that the regulations should require VA to fully advise the claimant of the decision as well as his or her due process rights, and a third suggested that the proposed regulation violates the provisions of 38 U.S.C. 5104 (formerly 3004) by implying that by granting a claim VA is absolved of its duty to send the claimant written notice. That commenter suggested that the phrase "or when such decision

results in payment of monetary benefits" be deleted.

Section 115 of the Veterans' Benefits Amendments of 1989, Public Law 101-237, 103 STAT. 2062 (1989) added section 5104 to title 38, United States Code. That new section requires VA to provide notice to a claimant of any decision affecting provision of benefits; it further establishes certain requirements regarding the content of the notice. VA regulations at 38 CFR 3.103(f) require that VA notices contain certain elements, including notice of procedural and appellate rights. We believe that those provisions adequately address the concerns the commenters raised regarding the content of VA notices. The current rulemaking cannot, nor is it intended to, relieve VA of its statutory and regulatory obligations to advise claimants of its decisions.

The purpose of the current rulemaking is to establish by regulation the point at which a decision becomes final and binding upon all VA field offices. That point is reached when VA issues written notification on any issues for which it is required that VA provide notice to the claimant in accordance with 38 U.S.C. 5104. Once VA issues such notice, the decision may be changed only upon a showing of clear and unmistakable error upon review by duly constituted appellate authorities.

Upon further consideration, VA believes that the language in the proposed rule concerning the content of the notification is unnecessary and that it could mislead anyone attempting to determine the point at which a VA decision is final and binding. Consequently, we have amended the rule by deleting any reference to the content of the written notice as well as the phrase "or when such decision results in payment of monetary benefits." We have substituted language which focuses on the moment that a VA decision becomes final rather than the content of the notice.

One commenter, noting that under VA regulations "sending" notification is synonymous with "receiving" it, and that the period during which the claimant must perfect a claim or challenge an adverse decision begins on the date that notice is sent, expressed concern that without some provision for mitigating circumstances related to delayed receipt or non-receipt of the notification, this regulation could be restrictively applied. VA does not concur with that assessment. The rules regarding time limits, extension of time limits and the computation of time limits are found at 38 CFR 3.109 and 3.110. We believe that amendments to those

regulations published in the **Federal Register** of April 11, 1990, pages 13522-9, provide adequate remedies and protection for the rights of claimants in the event that notification of a VA decision is not received or receipt is delayed.

The same commenter, concerned over the position taken by VA's General Counsel on an appeal filed with the United States Court of Veterans Appeals (COVA), asked whether sending notification of a decision to the claimant's representative constitutes notification to the claimant.

A claimant must file an appeal of a decision by the Board of Veterans Appeals (BVA) with COVA within 120 days of the BVA decision being appealed (38 U.S.C. 7266(a) (formerly 4066(a))). In the COVA case cited (No. 90-316), BVA mailed notice of an adverse decision to the veteran at a previous address, and at the same time mailed a copy to his representative. Several weeks later, the BVA decision was mailed to the veteran's correct address. The veteran filed an appeal with COVA more than 120 days after the notice was mailed to his old address, but within 120 days of the date it had been mailed to his correct address. VA's General Counsel moved to dismiss the appeal on the grounds that the Court lacked jurisdiction because the appeal was not timely filed. COVA, noting that 38 U.S.C. 7104(e) (formerly 4004(e)) requires BVA to "mail a copy of its written decision to the claimant and the claimant's authorized representative (if any) at the last known address" of each, ruled that the appeal was timely filed and dismissed General Counsel's motion. Since there is a similar statutory requirement at 38 U.S.C. 5104(a) concerning notice of VA decisions, sending notice of a VA decision to a claimant's representative, does not constitute notice to the claimant.

It appears that the commenter's concern arise from what he perceives to be an uncompromising position adopted by VA in that court proceeding. VA would point out, however, that proceedings before VA and before a court are fundamentally different in concept. VA's procedures for handling benefit claims are, by tradition and regulation, non-adversarial; proceedings before any court are by nature and design adversarial. VA arguments presented in the COVA case cited addressed the issue of COVA's jurisdiction in a specific case based on the unique circumstances in that individual claim. Those arguments should not be construed as representing in any manner a position VA would

adopt toward benefit claims in the nonadversarial environment of claims processing.

VA appreciates the comments and suggestions submitted in response to the proposed rule, which is now adopted with the amendments noted above.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic 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 reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulatory, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of \$100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

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

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.104, paragraph (a) is revised to read as follows:

§ 3.104 Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions

based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 3004. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 3.105 of this part.

3. In § 3.105, the first sentence of paragraph (a) is revised to read as follows:

§ 3.105 Revisions of decisions.

(a) *Error.* Previous determinations which are final and binding, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. * * *

[FR Doc. 91-30277 Filed 12-18-91; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 3

RIN 2900-AF25

Exclusions From Income

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning exclusions from countable income under the Improved Pension Program. This change is necessary because current regulations inappropriately exclude payments from a specific federal program from countable income for VA purposes. The intended effect of this change is to correct that error.

EFFECTIVE DATE: This amendment is effective January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.272(k) in the *Federal Register* of May 31, 1991 (56 FR 24764-5). Interested persons were invited to submit written comments, suggestions or objections on or before July 1, 1991. As no comments were received, the proposed amendment is adopted without change.

The Secretary hereby certifies that this regulatory amendment will not have

a significant economic 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 reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of \$100 million or more.
(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

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

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.272 [Amended]

2. In § 3.272(k), introductory text, remove the words "and Older American Community Service Program".

[FR Doc. 91-30275 Filed 12-18-91; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 3

RIN 2900-AF05

Adjudication; Pension, Compensation, and Dependency and Indemnity Compensation Renoucement

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs has amended its adjudication regulations to establish a specific effective date of discontinuance when compensation, pension, or dependency and indemnity compensation benefits are renounced. This amendment is necessary because variations in workload between regional offices caused some claims to be processed less expeditiously than others, resulting, under the previous rules referring to termination as of date of last payment, in different termination dates. The intended effect of this amendment is to establish a uniform termination date when monetary benefits are renounced.

EFFECTIVE DATE: This amendment is effective January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.500(q) in the *Federal Register* of June 25, 1991 (56 FR 28849). Interested persons were invited to submit written comments, suggestions or objections on or before July 25, 1991. As no comments were received, the proposed amendment is adopted with a minor technical amendment.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic 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 reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of \$100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.108 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is 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, is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.500 [Amended]

2. In § 3.500(q), remove the words "Date of last payment." and add, in their place, the words "Last day of the month in which the renoucement is received."

[FR Doc. 91-30278 Filed 12-18-91; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 3

RIN 2900-AF42

Active Military Service Certified Under Section 401 of Public Law 95-202

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulations concerning persons who are included as having served on active duty. The need for this action results from recent decisions of the Secretary of the Air Force that the World War II service of members of the following two groups constitutes active military service in the Armed Forces of the United States for purposes of all laws administered by VA: "Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945" and the "Honorably Discharged Members of the American