For these reasons, I dissent.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 91-4026 Filed 2-20-91; 8:45 am]

BILLING CODE 6717-01-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 302 and 348

RIN 3220-AA71

Qualified Employee; Miscellaneous

AGENCY: Railroad Retirement Board.

ACTION: Final Rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations under the Railroad Unemployment Insurance Act (RUIA) by adding a new part 302 to explain when an employee is qualified for benefits under that Act. This new part is necessary in light of amendments to the RUIA made by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988. In addition, the Board is moving the two sections now contained in part 348 to this new part and is then removing part 348.

EFFECTIVE DATE: February 21, 1991.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: Pursuant to the Railroad Unemployment Insurance Act (RUIA), the Railroad Retirement Board pays unemployment and sickness benefits to railroad employees who are not working because of unemployment or sickness, including sickness resulting from injury. Only "qualified employees" may receive benefits. Under section 3 of the RUIA, as amended by section 7202 of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Title VII of Pub. L. 100-647, 102 Stat. 3776), an employee is a "qualified employee" if the Board finds that he or she had the required earnings and service in railroad employment during the base year prior to the beginning of the benefit year. Prior to the amendment, section 3 of the RUIA required base year earnings of at least $1,500.00, not counting earnings in excess of $600.00 in any month during the base year. As amended, section 3 increases the amount of base year earnings needed to qualify for benefits on the basis of railroad employment during 1989 from $1,500.00 to $1,775.00, not counting more than $710.00 per month for any month in 1989. For base year 1990, the amount of eanings needed to qualify for benefits is $1,862.50, not counting more than $745.00 per month for any month in 1990.

In this final rule, the Board explains how it will compute the amount of base year earnings that an employee must have in order to be a "qualified employee' (§§ 302.2 through 302.4). Also, this rule defines the terms "base year" and "benefit year"; explains how an employee with at least 10 years of railroad service may be eligible for benefits even though he or she is not a "qualified employee" for the benefit year current at the time of application (§ 302.5); and explains how an employee may establish that he or she had sufficient base year earnings and service to qualify for benefits (§ 302.7).

The two sections presently found in part 348 (Miscellaneous) of this chapter should more appropriately be in part 302. Thus, § 348.14 has been moved to § 302.6(b), and § 348.15 has been moved to § 302.7(c). Part 348 is therefore removed from this chapter.

On July 26, 1990, the Board published this rule as a proposed rule (55 FR 30470), inviting comments on or before August 27, 1990. No comments were received.

The Board has determined that this is not a major rule under Executive Order 12291; therefore, no regulatory impact analysis is required. The information collections imposed by this part have been approved by the Office of Management and Budget under control numbers 3220-0025 and 3220-0070.

List of Subjects in 20 CFR Part 302

Railroad employees, Railroad unemployment insurance, Reporting and record keeping requirements.

1. Title 20 chapter II, of the Code of Federal Regulations is amended by adding a new part 302 to read as follows:

PART 302—QUALIFIED EMPLOYEE

Sec.

Authority: 45 U.S.C. 362(1).

§ 302.1 Introduction.

This part sets forth the base year service and compensation required of an employee to qualify for benefits under the Railroad Unemployment Insurance Act with respect to a benefit year. Under the Act, only employees who satisfy the qualifying conditions of section 3 of the Act may be paid benefits. No provision is made for payment of dependents benefits for an employee's spouse or children. A qualified employee who claims benefits must demonstrate that he or she is eligible for benefits in accordance with the other provisions of the Act and this chapter. However, a qualified employee who is disqualified under any of the provisions of section 4 of the Act does not forfeit his or her status as a qualified employee.

§ 302.2 Definitions.

Base year. The term "base year" means the completed calendar year immediately preceding the beginning of the benefit year.

Benefit year. The term "benefit year" means the 12-month period beginning July 1 of any year and ending June 30 of the next year. If a registration period begins in June and ends in July, the benefit year ending date is deemed to be the last day of such registration period. If an employee is eligible for payment of extended benefits, the benefit year ending date for such employee will be June 30, or the last day of his or her extended benefit period, whichever date is later.

Compensation. The term "compensation" means generally any form of earnings or money remuneration earned on the basis of railroad employment during any month, excluding any amount in excess of the monthly compensation base for that month and also excluding payments of the character described in § 302.4 of this part.

Monthly compensation base. The term "monthly compensation base" means the greater of $600, or the amount calculated using the following formula:

$$MCB=600\left(1+\frac{A-37{,}800}{56{,}700}\right)$$

For the purpose of this formula, "MCB" is the dollar amount of the monthly compensation base, and "A" is the amount of the Tier I tax base under section 3231(e)(2) of the Internal Revenue Code for the calendar year for which the monthly compensation base is being computed. If the dollar amount computed under this formula is not a multiple of $5, it shall be rounded to the nearest multiple of $5. If the dollar amount is computed is equidistant between two multiples of $5, it shall be rounded up the nearest multiple of $5.

Registration period. With respect to unemployment benefits, the term "registration period" has the meaning given in § 325.1(c) of this chapter. With respect to sickness benefits, the term "registration period" has the meaning given in § 335.1(d) of this chapter.

§ 302.3 Qualifying conditions.

(a) *Basic requirements.* To qualify for benefits with respect to a benefit year, an employee: (1) Must have earned compensation in an amount equal to at least 2.5 times the amount of the monthly compensation base during his or her base year; and

(2) If such employee has earned no compensation prior to such base year, he or she must have earned compensation in at least five months during his or her base year.

(b) *Deemed service months disregarded.* For purposes of paragraph (a) of this section, service months deemed under § 210.3 of this chapter shall be disregarded.

§ 302.4 Nonqualifying earnings or payments.

The following types of earnings or payments do not count as compensation for the purpose of determining whether an employee has satisfied the base year qualifying conditions:

(a) Compensation earned as an employee representative, as defined in part 205 of this chapter, or as an employee of a local lodge or division of a railroad labor organization;

(b) Tips;

(c) Payments under nongovernmental plans for unemployment, maternity or sickness insurance;

(d) Personal inquiry settlements or judgments, unless a portion thereof represents pay for time lost;

(e) Wages from employment that is subject to the Federal Unemployment Tax Act;

(f) Earnings from self-employment or investments;

(g) Pay for military service;

(h) Remuneration for service which is performed by a nonresident alien individual for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be; and

(i) Any payment that is not subject to contributions under section 8 of the Railroad Unemployment Insurance Act.

§ 302.5 Accelerated benefit year.

(a) *Eligibility conditions.* An employee who is not a qualified employee with respect to the benefit year in effect at the time of his or her application for benefits may be eligible for an "accelerated" benefit year if he or she meets all of the following conditions.

(1) The employee has 10 or more years of service, as defined in part 210 of this chapter, prior to the beginning of his or her current period of unemployment or sickness;

(2) The employee has satisfied the qualifying conditions as defined in § 302.3 of this part with respect to the next succeeding benefit year;

(3) The employee's current period of unemployment or sickness includes at least 14 consecutive days of unemployment or 14 consecutive days of sickness; and

(4)(i) If the applicant is claiming unemployment benefits, he or she did not voluntarily leave work without good cause or did not voluntarily retire, or

(ii) If the applicant is claiming sickness benefits, he or she has not attained age 65 or has not voluntarily retired.

(b) *Beginning date of benefit year.* An accelerated benefit year begins on the first day of the month during which the employee's period of 14 consecutive days of unemployment or 14 consecutive days of sickness begins. Thus, for example, if an eligible employee has 14 consecutive days of unemployment from May 29–June 11, his or her benefit year beginning date is May 1, that is, he or she does not have to wait until July 1 to begin receiving benefits. If such employee also had a claim for the period May 15 to May 28, such claim may then be compensable or may serve as the waiting period even though the claim did not consist of 14 days of unemployment. His or her benefit year ends June 30 of the following year.

(c) *Effect of attaining age 65.* If a benefit year begins early for the purpose of paying sickness benefits and the employee attains age 65 before July 1 of the general benefit year, sickness benefits may not be paid for any day from the day on which the employee attained age 65 up to and including June 30, but unemployment benefits may be paid in this interim period if the employee is otherwise eligible. Sickness benefits may be paid for days of sickness beginning July 1 or later. If a benefit year begins early for the purpose of paying unemployment benefits, attainment of age 65 will have no effect on the employee's rights to sickness benefits, other than extended sickness benefits, in the accelerated benefit year. An employee is deemed to attain age 65 on the day before his or her sixty-fifth birthday.

§ 302.6 Publication requirements.

(a) *Publication of base year compensation requirement.* On or before December 1 of each year, the Railroad Retirement Board will compute the amount of base year compensation that an employee must have during the following calendar year in order to be a qualified employee on the basis of such compensation. Within 10 days of such computation, the Board will publish a notice in the **Federal Register** of the amount so computed and will notify each employer of that amount. Information as to such qualifying amount may also be obtained from any district or regional office of the Railroad Retirement Board or from the Bureau of Unemployment and Sickness Insurance.

(b) *Notices.* The Board will provide employers with notices of their employees' rights to benefits under the Railroad Unemployment Insurance Act. The Board will arrange with employers to post such notices in such numbers and in such places as may be necessary to ensure that they will be seen by the greatest number of employees.

§ 302.7 Establishing base year service and compensation.

(a) *Employer reports.* In determining whether an applicant for benefits is a qualified employee, the Board will rely initially upon reports of base year service and compensation provided by employers in accordance with part 209 of this chapter.

(b) *No employer report located.* If the Board cannot locate the employer's report of base year service and compensation for an applicant, the applicant will be afforded an opportunity, by completing the form prescribed by the Board, to provide such other statement, information, evidence or documentation to establish his or her status as a qualified employee. An employee's claim for credit for service or compensation that is not shown in the Board's records of service and compensation shall be verified in accordance with § § 210.7 and 211.14 of this chapter.

(c) *Employer fails to report.* When an employer has failed or refuses to file a report under part 209 of this chapter, an employee may establish his or her base year service and compensation by submitting:

(1) Statements, under oath or otherwise, signed by an official or duly authorized employee of a Federal or State governmental agency, based upon

reports to the agency by the employer; or

(2) Statements, under oath or otherwise, signed by an officer or a duly authorized employee of the employer, or if not so signed, on forms prepared by the employer.

(Approved by the Office of Management and Budget under control numbers 3220-0025 and 3220-0070.)

PART 348—MISCELLANEOUS [REMOVED]

2. Part 348, Miscellaneous, is hereby removed and reserved.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-4017 Filed 2-20-91; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 89F-0121]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Flavoring Agents and Related Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of DL-alanine as a flavor enhancer for sweeteners in pickling mixtures. This action is in response to a petition filed by Musashino Chemical Laboratory, Ltd.

DATES: Effective February 21, 1991; written objections and requests for a hearing by March 25, 1991.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of May 22, 1989 (54 FR 22019), FDA announced that a food additive petition (FAP 8A4106) had been filed by Musashino Chemical Laboratory, Ltd., 1-1 Kyobaski 1-Chome, Chuo-Ku, Tokyo 104, Japan, proposing that the food additive regulations be amended to provide for the safe use of DL-alanine as a flavor enhancer for sweeteners in pickling mixtures.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe and that the regulations should be amended by adding 21 CFR 172.540 to Subpart F as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 25, 1991 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, 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 Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.540 is added to subpart F to read as follows:

§ 172.540 DL-Alanine.

DL-Alanine (a racemic mixture of D- and L-alanine; CAS Reg. No. 302-72-7) may be safely used as a flavor enhancer for sweeteners in pickling mixtures at a level not to exceed 1 percent of the pickling spice that is added to the pickling brine.

Dated: February 13, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-4042 Filed 2-20-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice 1299]

Access to Information—Privacy Provisions

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State has amended part 171 of title 22 of the Code of Federal Regulations by exempting portions of a record system from certain provisions of the Privacy Act of 1974 (5 U.S.C. 552a). Certain portions of the Records of the Inspector General and Automated Individual Cross-Reference System (STATE-53) are exempt from the requirements of any part of the Act, except subsections (b), (c) (1) and (2),

(e)(4) (A) through (F), (a) (6), (7), (9), (10), and (11), and (i).

EFFECTIVE DATE: February 21, 1991.

ADDRESSES: Director, Office of Freedom of Information, Privacy, and Classification Review; room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Frank M. Machak (202) 647-7740, Director, Office of Freedom of Information, Privacy, and Classification Review.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the Federal Register (46 FR 30649, June 10, 1981) inviting interested persons to submit comments concerning the proposed regulations. While no comments were received, the amendments to the Privacy Provisions of the Department of State's Access to Information regulations were not formally adopted due to administrative oversight. Since that time, organizational changes have resulted in corresponding nomenclature changes.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Classified information, Confidential business information, Freedom of information, Privacy.

1. The authority citation for 22 CFR part 171 continues to read as follows:

Authority: The Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the Administrative Procedure Act, 5 U.S.C. 551, et seq.; the Ethics in Government Act, 5 U.S.C. App. 201; Executive Order 12356, 47 FR 14874; and Executive Order 12600, 52 FR 23781.

2. Section 171.32 of part 171 of title 22 is amended to read as follows:

§ 171.32 [Amended]

a. In § 171.32 paragraph (h) is amended by adding "and by the Inspector General" between "Security" and "may";

b. In § 171.32, paragraph (i) is amended by adding "Records of the Inspector General and Automated Individual Cross-Reference System. STATE-53" after "Munitions Control Records. STATE-42";

c. In § 171.32, paragraph (j)(1) is amended by adding "Records of the Inspector General and Automated Individual Cross-Reference System. STATE-53" after "Munitions Control Records. STATE-42";

d. In § 171.32, paragraph (j)(2) is amended by adding "Records of the Inspector General and Automated Individual Cross-Reference System. STATE-53" after "Munitions Control Records. STATE-42" and;

e. In § 171.32, paragraph (j)(5) is amended by adding "Records of the Inspector General and Automated Individual Cross-Reference System. STATE-53" after "Senior Personnel. Appointment Records. STATE-47."

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 91-4033 Filed 2-20-91; 8:45 am]

BILLING CODE 4710-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8333]

RIN 1545-A095

Imposition of Penalty for Failure to Comply With Information Reporting Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 6721, which imposes a penalty for failure to file correct information returns, section 6722, which imposes a penalty for failure to furnish correct payee statements, section 6723, which imposes a penalty for failure to comply with other information reporting requirements and section 6724, which provides that such penalties may be waived for reasonable cause. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1989. The temporary regulations affect all persons that are subject to these information reporting requirements and are necessary to provide them with guidance needed to comply with these changes. The text of the temporary regulations set forth in this document also served as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

DATES: The temporary regulations contained in § 301.6721-0T through § 301-6724-T are effective February 21, 1991, and are applicable to information returns and payee statements the due date for which (without regard to extensions) is after December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Renay France (202) 377-9344 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) that provide rules under sections 6721 through 6724 of the Internal Revenue Code of 1986, as amended (the "Code"), relating to the imposition of penalties for failure to comply with certain information reporting requirements. Sections 6721 through 6724 were amended by the Omnnibus Budget Reconciliation Act of 1989 ("OBRA 1989") (Pub. L. No. 101-239, 103 Stat. 2106) and are effective for information returns, payee statements, and certain other documents the due date for which (determined without regard to extensions) is after December 31, 1989. A special transitional rule is provided for information returns, payee statements, and certain other documents required to be filed after December 31, 1989 (without regard to extensions), and on or before April 22, 1991.

Explanation of Provisions

In General

OBRA 1989 substantially revised the civil penalty provisions of the Code. As part of this revision, certain of the information reporting penalty provisions were reorganized and modified. The penalty for failure to include correct information on information returns, formerly found in section 6723, was made a part of the penalty for failure to timely file correct information returns found in section 6721. The penalty for failure to include correct information on payee statements, formerly found in section 6723, was made a part of the penalty for failure to timely furnish correct payee statements found in section 6722. Section 6723 was amended to impose a penalty for failing to comply with certain specified information reporting requirements not covered by sections 6721 and 6722. Penalties relating to these specified information reporting requirements were formerly found in sections 6672 and 6676 (a), (c) and (d). The effect of these amendments was to consolidate the information reporting penalty provisions and thereby avoid the imposition of multiple penalties for failures relating to a single information return.

Rules Relating to Information Returns

Section 6721 imposes a penalty of $50 for every information return for which there is a failure to timely file or a failure to include complete and correct information. If an information return is filed both late and with incorrect or missing information, no more than one