Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 9, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–18468 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. This index is developed by the Bureau of Labor Statistics (BLS).

The base year for railroads is 1991. The inflation index factors are presented as follows:

RAILROAD FREIGHT INDEX

	Index	Deflator percent
1991	409.5	[1] 100.00
1992	411.8	99.45
1993	415.5	98.55
1994	418.8	97.70
1995	418.17	97.85
1996	417.46	98.02

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201,* 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also revised to reflect a rebasing from $10 million (1978 dollars) to $20 million (1991 dollars).

Effective Date: January 1, 1996.

For Further Information Contact: Scott Decker (202) 565–1531. (TDD for the hearing impaired: (202) 565–1695).

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 97–18542 Filed 7–14–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32963]

Steuben County Industrial Development Agency—Acquisition Exemption—Line of Bath and Hammondsport Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts from the prior approval requirements of 49 U.S.C. 10902, the acquisition by Steuben County Industrial Development Agency of 7.83 miles of rail line belonging to Bath and Hammondsport Railroad Company, between milepost 0.85 at Bath, NY, and milepost 8.68 at Hammondsport, NY.

DATES: This exemption will be effective on August 14, 1997. Petitions to stay must be filed by July 30, 1997, and petitions to reopen must be filed by August 11, 1997.

ADDRESSES: Send pleadings referring to STB Finance Docket No. 32963 to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Petitioner's representative: John F. Leyden, Sullivan & Leyden, P.C., 110 North Main St., Wayland, NY 14572.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

Decided: July 1, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–18543 Filed 7–14–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of

the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 11–97

Questions Presented

a. Do any of the amendments to the Department of Veterans Affairs (VA) Schedule for Rating Disabilities pertaining to ratings for mental disorders, which became effective November 7, 1996, contain liberalizing criteria?

b. Must the Board of Veterans' Appeals (Board) remand claims involving ratings for mental disorders which were pending on November 7, 1996, to permit the agency of original jurisdiction (AOJ) to consider the effect of the amended regulations in the first instance?

Held

a. Questions as to whether any of the recent amendments to VA's rating schedule pertaining to mental disorders are more beneficial to claimants than the previously-existing provisions must be resolved in individual cases where those questions are presented. The determination as to whether a particular amended regulation is more favorable to a claimant than the previously-existing regulation may depend upon the facts of the particular case.

b. Where a regulation is amended during the pendency of an appeal to the Board of Veterans' Appeals (Board), the Board must first determine whether the amended regulation is more favorable to the claimant than the prior regulation, and, if it is, the Board must apply the more favorable provision. Under VAOPGCPREC 16–92 (O.G.C. Prec. 16–92) and *Bernard* v. *Brown*, 4 Vet. App. 384, 393–94 (1993), the Board may consider regulations not considered by the agency of original jurisdiction if the claimant will not be prejudiced by the Board's action in applying those regulations in the first instance. With respect to claims pending on November 7, 1996, which involve ratings for mental disorders, the Board may determine whether the amended regulations, which became effective on that date, are more favorable to the claimant and may apply the more favorable regulation, unless the claimant will be prejudiced by the Board's actions in addressing those questions in the first instance. The Board is free to adopt a rule requiring notice to a claimant when a pertinent change in a statute or regulation occurs prior to a final Board decision on a claim and permitting the claimant to waive the opportunity for a remand to the agency of original jurisdiction for initial consideration of the new statute or regulation.

Effective Date: March 25, 1997.

VAOPGCPREC 12–97

Question Presented

a. Whether an attorney representing a successful claimant before the Department of Veterans Affairs (VA) may collect attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and from past-due benefits under 38 U.S.C. § 5904(d), without refunding to the claimant the amount of the smaller fee?

b. If an attorney may not collect both an EAJA fee and a section 5904(d) fee without refunding to the claimant the smaller fee, what action must the Board of Veterans' Appeals (Board) take where the attorney is otherwise eligible for attorney fees under both the EAJA and 38 U.S.C. § 5904(d)?

c. Where a case has been remanded or reversed by the United States Court of Veterans Appeals (CVA), must the Board, as a matter of practice, in making its determination as to either payment of attorney fees from past-due benefits under 38 U.S.C. § 5904(d) or reasonableness of fee under 38 U.S.C. § 5904(c)(2) determine whether the attorney has received fees under the EAJA?

Held

a. The claimant's attorney is permitted to seek recovery of attorney fees under both 38 U.S.C. § 5904 and 28 U.S.C. § 2412. Section 506(c) of the Federal Courts Administration Act of 1992 expressly provides that, where the claimant's attorney receives fees for the same work under both 38 U.S.C. § 5904(d) and 28 U.S.C. § 2412, the claimant's attorney must refund to the claimant the amount of the smaller fee. The attorney may keep the larger of the fees recovered, but must return the amount of the smaller fee to the claimant.

b. There is no authority for the Board to take any action, such as offset of the amount of the EAJA fees, to ensure that the attorney fulfills his responsibility to refund the smaller fee to the claimant.

c. Where the case has been remanded or reversed by the CVA, the Board does not have to first determine whether the attorney has received fees under the EAJA to determine whether attorney fees are payable directly by VA from past-due benefits under section 5904(d). Where the attorney fee agreement does not require direct payment by VA from past-due benefits under section 5904(d), the Board's review of the agreement under 38 U.S.C. § 5904(c)(2), to determine whether the fee is excessive or unreasonable, may require the Board to determine whether the attorney has received fees under the EAJA and if so, the impact of the EAJA fees on the reasonableness of the agreed-upon fee. Thus, where a case has been remanded or reversed by the CVA, the Board, in making its determination as to whether the attorney fee is excessive or unreasonable under 38 U.S.C. § 5904(c)(2), must determine on a case-by-case basis the impact of any attorney fees received under the EAJA.

Effective Date: March 26, 1997.

VAOPGCPREC 13–97

Question Presented

May a total disability rating based on individual unemployability be reduced based solely on a veteran's removal from the ''work possible environment''?

Held

There is no statutory or regulatory authority for VA to reduce a total disability rating based on individual unemployability, as authorized by 38 C.F.R. §§ 3.340(a), 3.341(a), 4.16(a), based solely on a veteran's removal from a ''work possible environment.'' Such reduction of a total disability rating based on individual unemployability would be inconsistent with the requirement of 38 C.F.R. § 3.343(c)(1) that, in order to reduce such a rating, actual employability be established by clear and convincing evidence.

Effective Date: April 7, 1997.

VAOPGCPREC 14–97

Question Presented

May a work related injury sustained by a veteran who is receiving employment services as part of a ''vocational rehabilitation program'' under chapter 31 of title 38, United States Code, be considered the result of ''pursuit of a course of vocational rehabilitation under chapter 31,'' for purposes of entitlement to compensation under 38 U.S.C. § 1151?

Held

An individual participating in a chapter 31 ''vocational rehabilitation program'' (as defined in 38 U.S.C. § 3101(9)) is not, solely by virtue of that status, considered in ''pursuit of a course of vocational rehabilitation'' for purposes of 38 U.S.C. § 1151. The intent of the section 1151 provisions pertinent

to this matter is to provide compensation for injuries sustained only as a result of pursuing vocational rehabilitation training to achieve employability, not as a result of engaging in post-training employment. Thus, a chapter 31 ''vocational rehabilitation program'' participant who is receiving only a period of employment services while engaged in post-training employment is not pursuing ''a course of vocational rehabilitation'' within the meaning of section 1151 so as to qualify for disability compensation benefits under that section.

Effective Date: April 7, 1997.

VAOPGCPREC 15–97

Questions Presented

a. Are interest payments received from bonds issued by Menominee Enterprises, Inc. countable as income for purposes of determining entitlement to improved pension?

b. Are interest payments received from such bonds countable as income under the section 306 pension program, the old law pension program, or the parents' dependency and indemnity compensation program?

Held

a. Interest payments received by individuals based upon their status as holders of bonds issued by Menominee Enterprises, Inc., a corporation formed upon termination of Federal supervision of the Menominee Indian Tribe, must be included in annual income for purposes of determining eligibility for improved pension.

b. Interest payments received by individuals based on their status as holders of bonds issued by Menominee Enterprises, Inc. are likewise countable as income for purposes of determining entitlement under the section 306 pension, old law pension, and parents' dependency and indemnity compensation programs.

Effective Date: April 10, 1997.

VAOPGCPREC 16–97

Questions Presented

a. Whether, under Section 502 of the Veterans' Benefits Improvements Act of 1996, which added section 38 U.S.C. § 5313A, the period for which the clothing allowance of certain incarcerated veterans is to be reduced begins on the first day of incarceration or on the sixty-first day of incarceration.

b. Whether the amendment made to 38 U.S.C. § 5121(a) by section 507 of the Veterans' Benefits Improvements Act of 1996, which increased from one year to two years the period for which accrued benefits may be paid, applies only in claims involving deaths which occur on or after October 9, 1996, the date of enactment of the amendment.

Held

a. Section 5313A of title 38, United States Code, as added by section 502 of the Veterans' Benefits Improvements Act of 1996, requires that the Department of Veterans Affairs reduce the annual clothing allowance payable under 38 U.S.C. § 1162 to certain incarcerated veterans by 1/365th for each day on which the veteran was incarcerated during the twelve-month period preceding the date on which the payment of the allowance would be due, beginning with the sixty-first day of the period of incarceration.

b. Section 5121(a) of title 38, United States Code, as amended by section 507 of the Veterans' Benefits Improvements Act of 1996, which authorizes payment of accrued benefits for a period of two years prior to the death of an individual entitled to periodic monetary benefits at death under existing ratings or decisions or based on evidence on file at the date of death, is applicable in claims for accrued benefits based on deaths which occurred prior to the October 9, 1996, date of enactment of the amending statute which were not finally decided prior to that date.

Effective Date: April 17, 1997.

VAOPGCPREC 17–97

Questions Presented

a. Under what circumstances may a veteran attending school as part of a vocational rehabilitation program under chapter 31 of title 38, United States Code, be paid directly for ''tuition, fees, and miscellaneous expenses, etc.''?

b. Can such payment for ''tuition, fees, and miscellaneous expenses, etc.'' be withheld to satisfy an existing account receivable for overpayment of subsistence allowance under the chapter 31 program?

Held

1. When VA, in its discretion, determines the facts and equities of the individual circumstances so warrant, it may directly reimburse an eligible veteran for the costs of tuition and fees, necessary supplies, and services paid by the veteran which VA retroactively approves as a required part of a vocational rehabilitation program under chapter 31 of title 38, United States Code.

2. VA may deduct the amount of a veteran's existing VA benefits program debt from the amount due the veteran as a retroactive chapter 31 reimbursement payment.

Effective Date: May 2, 1997.

VAOPGCPREC 18–97

Question Presented

Does the presumption of service connection established in 38 U.S.C. § 1116 and 38 CFR §§ 3.307(a)(6) and 3.309(e) for diseases associated with herbicide exposure apply to both primary cancers and cancers resulting from metastasis?

Held

Presumptive service connection may not be established under 38 U.S.C. § 1116 and 38 CFR 3.307(a) for a cancer listed in 38 CFR 3.309(e) as being associated with herbicide exposure, if the cancer developed as the result of metastasis of a cancer which is not associated with herbicide exposure. Evidence sufficient to support the conclusion that a cancer listed in section 3.309(e) resulted from metastasis of a cancer not associated with herbicide exposure will constitute ''affirmative evidence'' to rebut the presumption of service connection for purposes of 38 U.S.C. § 1113(a) and 38 CFR 3.307(d). Further, evidence that a veteran incurred a form of cancer which is a recognized cause, by means of metastasis, of a cancer listed in 38 CFR 3.309(e) between the date of separation from service and the date of onset of the cancer listed in section 3.309(e) may be sufficient, under 38 U.S.C. § 1113(a) and 38 CFR 3.307(d), to rebut the presumption of service connection.

Effective Date: May 2, 1997

VAOPGCPREC 19–97

Question Presented

Under what circumstances may service connection be established for tobacco-related disability or death on the basis that such disability or death is secondary to nicotine dependence which arose from a veteran's tobacco use during service?

Held

a. A determination as to whether service connection for disability or death attributable to tobacco use subsequent to military service should be established on the basis that such tobacco use resulted from nicotine dependence arising in service, and therefore is secondarily service connected pursuant to 38 CFR § 3.310(a), depends upon whether nicotine dependence may be considered a disease for purposes of the laws governing veterans' benefits, whether the veteran acquired a dependence on nicotine in service, and whether that dependence may be considered the

proximate cause of disability or death resulting from the use of tobacco products by the veteran. If each of these three questions is answered in the affirmative, service connection should be established on a secondary basis. These are questions that must be answered by adjudication personnel applying established medical principles to the facts of particular claims.

b. On the issue of proximate cause, if it is determined that, as a result of nicotine dependence acquired in service, a veteran continued to use tobacco products following service, adjudicative personnel must consider whether there is a supervening cause of the claimed disability or death which severs the causal connection to the service-acquired nicotine dependence. Such supervening causes may include sustained full remission of the service-related nicotine dependence and subsequent resumption of the use of tobacco products, creating a de novo dependence, or exposure to environmental or occupational agents.

Effective Date: May 13, 1997.

VAOPGCPREC 20–97

Questions Presented

a. What is the meaning of the term ''constitutionally psychopathic'' as used in 38 CFR § 3.354(a)?

b. Does the definition of insanity in 38 CFR § 3.354(a) exclude behavior which is due to a personality disorder or a substance-abuse disorder, except where a psychosis is also present?

c. What are the intended parameters of the types of behavior which are defined as insanity in 38 CFR § 3.354(a)?

(1) Does the definition of insanity include behavior involving a minor episode, or episodes, of disorderly conduct or eccentricity, if the behavior is due to a disease?

(2) How significantly must an individual's behavior deviate from his or her ''normal method of behavior'' for the person to be considered insane under 38 CFR § 3.354(a)? Is this a purely subjective standard?

(3) What is the meaning of the phrase ''interferes with the peace of society,'' and to what extent must an individual ''interfere'' with society's peace to meet the definition of insane?

(4) What is the meaning of the phrase ''become antisocial'' as used in 38 CFR § 3.354(a)?

(5) Are the ''accepted standards of the community to which by birth and education he belongs,'' as referred to in 38 CFR § 3.354(a), necessarily identical with the ''social customs of the community in which he resides?'' If not, must an individual both deviate from the standards of his community of ''birth and education'' as well as be unable to adapt in order to further adjust ''to the social customs of the community in which he resides,'' in order to meet the regulatory definition of insanity? What evidence, if any, would be necessary to establish either or both such community standards?

Held

a. The term ''constitutionally psychopathic'' in 38 CFR § 3.354(a) refers to a condition which may be described as an antisocial personality disorder.

b. Behavior which is attributable to a personality disorder does not satisfy the definition of insanity in section 3.354(a). Assuming that a particular substance-abuse disorder is a disease for disability compensation purposes, behavior which is generally attributable to such disorders does not exemplify the severe deviation from the social norm or the gross nature of conduct which is generally considered to fall with the scope of the term insanity and therefore does not constitute insane behavior under section 3.354(a).

c.(1) Behavior involving a minor episode or episodes of disorderly conduct or eccentricity does not fall within the definition of insanity in section 3.354(a).

c.(2) Determination of the extent to which an individual's behavior must deviate from his or her normal method of behavior for purposes of section 3.354(a) may best be resolved by adjudicative personnel on a case-by-case basis in light of the authorities defining the scope of the term insanity.

c.(3) The phrase ''interferes with the peace of society'' in 38 CFR § 3.354(a) refers to behavior which disrupts the legal order of society. Determination of the extent to which an individual must interfere with the peace of society so as to be considered insane for purposes of section 3.354(a) may be resolved by adjudicative personnel on a case-by-case basis in light of the authorities defining the scope of the term insanity.

c.(4) The term ''become antisocial'' in 38 CFR § 3.354(a) refers to the development of behavior which is hostile or harmful to others in a manner which deviates sharply from the social norm and which is not attributable to a personality disorder.

c.(5) Reference in 38 CFR § 3.354(a) to ''accepted standards of the community to which by birth and education'' an individual belongs requires consideration of an individual's ethnic and cultural background and level of education. The regulatory reference to ''social customs of the community'' in which an individual resides requires assessment of an individual's conduct with regard to the contemporary values and customs of the community at large.

Effective Date: May 22, 1997.

VAOPGCPREC 21–97

Question Presented

Are amounts received as per capita distributions of revenues from gaming activity on tribal trust property considered income for purposes of improved pension, section 306 pension, old-law pension, or parent's dependency and indemnity compensation (DIC)?

Held

Amounts received by an individual pursuant to a per capita distribution of proceeds from gaming on Indian trust lands pursuant to the Indian Gaming Regulatory Act are considered income for purposes of Department of Veterans Affairs income-based benefits.

Effective Date: May 23, 1997.

By Direction of the Secretary.

Mary Lou Keener,

General Counsel.

[FR Doc. 97–18495 Filed 7–14–97; 8:45 am]

BILLING CODE 8320–01–P