

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on May 14, 1970.

EDWARD C. MARSH,
Director, Central Region.

In § 71.181 (35 F.R. 2134), the following transition area is amended to read:

PARK RAPIDS, MINN.

That airspace extending upward from 700 feet above the surface within a 6½-mile radius of Park Rapids Municipal Airport (latitude 46°53'55" N., longitude 95°04'15" W.); and within 3 miles each side of the 132° bearing from Park Rapids Municipal Airport, extending from the 6½-mile radius area to 8 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within 4½ miles southwest and 9½ miles northeast of the 132° and 312° bearings from Park Rapids Municipal Airport, extending from 6 miles northwest to 18½ miles southeast of the airport, excluding the portion north of latitude 47°00'00" N.; and within 5 miles each side of the 307° bearing from Park Rapids Municipal Airport, extending from the airport to 12 miles northwest of the airport.

[F.R. Doc. 70-6732; Filed, June 1, 1970; 8:47 a.m.]

[Airspace Docket No. 70-EA-12]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On page 5045 of the FEDERAL REGISTER for March 25, 1970, the Federal Aviation Administration published a proposed rule which would alter the Elyria, Ohio, transition area.

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulation have been received.

In view of the foregoing, the proposed regulation is hereby adopted effective 0901 G.m.t., July 23, 1970.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on May 14, 1970.

GEORGE M. GARY,
Director, Eastern Region.

Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Elyria, Ohio, 700-foot transition area and insert the following in lieu thereof: "That airspace extending upward from 700 feet above the surface within a 9-mile radius of the center, 41°20'40" N., 82°10'40" W., of Lorain County Regional Airport and within 3.5 miles each side of the Cleveland VORTAC 300° radial, extending from the 9-mile radius area to 9.5 miles northwest of the VORTAC, excluding the portion that coincides with the Cleveland Ohio 700-foot transition area."

[F.R. Doc. 70-6733; Filed, June 1, 1970; 8:47 a.m.]

[Airspace Docket No. 70-EA-15]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

On page 5044 of the FEDERAL REGISTER for March 25, 1970, the Federal Aviation Administration published a proposed rule which would alter the Hyannis, Mass., control zone.

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulation have been received.

In view of the foregoing, the proposed regulation is hereby adopted effective 0901 G.m.t., July 23, 1970.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on May 14, 1970.

GEORGE M. GARY,
Director, Eastern Region.

Amend § 71.171 of Part 71 of the Federal Aviation Regulations by inserting in the description of the Hyannis, Mass., control zone, after the words, "Barnstable Municipal Airport, Hyannis, Mass.," the following: "and within 2 miles each side of the Hyannis VORTAC 227° radial, extending from the 5-mile radius zone to 10.5 miles southwest of the VORTAC".

[F.R. Doc. 70-6734; Filed, June 1, 1970; 8:47 a.m.]

[Airspace Docket No. 70-SW-31]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate the Clinton, Okla., control zone and transition area.

On January 8, 1970, a final rule was published in the FEDERAL REGISTER (35 F.R. 310) revoking the Clinton, Okla., control zone and that portion of the Hobart, Okla., transition area pertaining to the Clinton-Sherman Air Force Base. That action was taken because Clinton-Sherman AFB was closed December 12, 1969, and the Clinton-Sherman TACAN and ILS and the Burns Flat VOR were decommissioned.

The Federal Aviation Administration has an urgent need to utilize the facilities of this airport, renamed the Clinton-Sherman Airport, beginning July 1, 1970, for the training of the agency's air crews and field office inspectors. Use of this airport will expedite the flight training program through unrestricted access to its navigation facilities. This action has been necessitated by increased traffic congestion in the Oklahoma City terminal area and national requirements for additional flight inspection personnel.

It is desirable that IFR operations at the Clinton-Sherman Airport be provided controlled airspace protection. It is agency policy that a control zone shall be designated where an FAA control tower is in operation. The agency will operate a control tower at Clinton-Sherman Airport during those hours that it is conducting flight training operations. Action is taken herein to designate a control zone and transition area to provide controlled airspace for aircraft executing special approach/departure procedures which will serve the Clinton-Sherman Airport.

Normally, a notice of proposed rule making would be issued; however, there is not sufficient time for normal processing to meet charting requirements and to implement the training program July 1, 1970.

For the reasons stated above, it is found that a situation exists requiring immediate action in the interest of the public and that notice and public procedure hereon are impractical and that good cause exists for making this amendment effective July 1, 1970.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., July 1, 1970, as hereinafter set forth.

(1) In § 71.171 (35 F.R. 2054), the following control zone is added:

CLINTON, OKLA.

Within a 5-mile radius of Clinton-Sherman Airport (lat. 35°20'25" N., long. 99°12'00" W.), and within 2 miles each side of the extended centerline of Clinton-Sherman Runways 17 and 35 extending from 7 miles north to 6 miles south of the ends of the runways. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

(2) In § 71.181 (35 F.R. 2134), the following transition area is added:

CLINTON, OKLA.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Clinton-Sherman Airport (lat. 35°20'25" N., long. 99°12'00" W.), and within 8 miles west and 5 miles east of the extended centerline of Clinton-Sherman Runways 17 and 35 extending from the 8-mile radius area to 20 miles north and 18 miles south of the ends of the runways excluding the portion within the Hobart, Okla., transition area. This transition area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Fort Worth, Tex., on May 20, 1970.

A. L. COULTER,
Acting Director, Southwest Region.

[F.R. Doc. 70-6735; Filed, June 1, 1970; 8:47 a.m.]

[Airspace Docket No. 70-SO-30]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS**Designation of Transition Area**

On April 16, 1970, a notice of proposed rule making was published in the *FEDERAL REGISTER* (35 F.R. 6189), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Savannah, Tenn., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

Subsequent to publication of the notice, the geographic coordinate (lat. 35°10'15" N., long. 88°13'00" W.) for Savannah Municipal Airport was obtained from Coast and Geodetic Survey. It is necessary to alter the transition area description by inserting the geographic coordinate for the airport. Since this amendment is editorial in nature, notice and public procedure hereon are unnecessary and action is taken herein to amend the description accordingly.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., July 23, 1970, as hereinafter set forth.

In § 71.181 (35 F.R. 2134), the following transition area is added:

SAVANNAH, TENN.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Savannah Municipal Airport (lat. 35°10'15" N., long. 88°13'00" W.).

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in East Point, Ga., on May 20, 1970.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 70-6736; Filed, June 1, 1970; 8:47 a.m.]

Title 21—FOOD AND DRUGS**Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare****SUBCHAPTER B—FOOD AND FOOD PRODUCTS****PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES****Subpart D—Exemptions From Tolerances****EXEMPTION OF CERTAIN INERT INGREDIENTS USED IN PESTICIDE FORMULATIONS**

No comments and no requests for referral to an advisory committee were received in response to the notice pub-

lished in the *FEDERAL REGISTER* of February 20, 1970 (35 F.R. 3234), in which the Commissioner of Food and Drugs proposed exemption of certain compounds used as adjuvants in pesticide formulations from requirement of a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act. The Commissioner concludes that the proposal should be adopted without change.

Therefore, pursuant to provisions of the act (sec. 408 (c), (e), 68 Stat. 512, 514; 21 U.S.C. 346a (c), (e)) and under authority delegated to the Commissioner (21 CFR 2.120), § 120.1001 is amended as set forth below.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the *FEDERAL REGISTER* file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the *FEDERAL REGISTER*.

(Sec. 408 (c), (e), 68 Stat. 512, 514; 21 U.S.C. 346a (c), (e))

Dated: May 22, 1970.

SAM D. FINE,
Acting Associate Commissioner
for Compliance.

Section 120.1001 is amended by alphabetically inserting new items in paragraphs (c) and (d), as follows:

§ 120.1001 Exemptions from the requirement of a tolerance.

(c) * * *

Inert ingredients	Limits	Uses
Bentonite.....	***	Solid diluent carrier.
Calcium hydroxide.....	***	Solid diluent.
Calcium oxide.....	***	Do.
Dipropylene glycol.....	***	Solvent, cosolvent.
Iron oxide.....	***	Solid diluent, carrier.
Lauryl alcohol.....	***	Surfactant.
Methylcellulose.....	***	Thickener.
Oleic acid.....	***	Diluent.
Petroleum hydrocarbons, light odorless, conforming to § 121.1182 of this chapter.	***	Solvent, diluent.

Inert ingredients	Limits	Uses
Petroleum hydrocarbons, synthetic isoparaffinic, conforming to § 121.1154 of this chapter.	***	Solvent, diluent.
Phosphoric acid.....	***	Buffer.
Phosphorus oxychloride.....	***	Catalyst.
Potassium aluminum silicate.....	***	Solid diluent, carrier.
Potassium hydroxide.....	***	Neutralizer.
Propylene glycol.....	***	Solvent, cosolvent.
Silica, hydrated silica.....	***	Solid diluent, carrier.
Soapstone.....	***	Solid diluent.
Sodium aluminum silicate.....	***	Solid diluent, carrier.
Sodium benzoate.....	***	Anticaking agent.
Sodium hydroxide.....	***	Neutralizer.

(d) * * *

Inert ingredients	Limits	Uses
Ethylene glycol monobutyl ether.....	***	Solvent, cosolvent.
Xylene.....	***	Do.

[F.R. Doc. 70-6719; Filed, June 1, 1970; 8:46 a.m.]

Title 26—INTERNAL REVENUE**Chapter I—Internal Revenue Service, Department of the Treasury**

[T.D. 7043]

TAX TREATMENT OF CERTAIN REDUCED UNIFORMED SERVICES RETIREMENT PAY AND FOREIGN SERVICE DISABILITY RETIREMENT ANNUITIES

On January 23, 1970, notice of proposed rule making with respect to amendment of the regulations which relate to treatment of certain reduced uniformed services retirement pay and Foreign Service disability retirement annuities was published in the *FEDERAL REGISTER* (35 F.R. 981). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments so proposed are adopted without change.

[SEAL] **RANDOLPH W. THROWER,**
Commissioner of Internal Revenue.

Approved: May 26, 1970.

JOHN S. NOLAN,
Acting Assistant Secretary
of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1), the Estate Tax Regulations (26 CFR Part 20), and the Gift Tax Regulations (26 CFR Part 25), to the amendments made by (1) section 51 of the Foreign Service Act Amendments of 1960 (74 Stat. 847) and

(2) the Act of March 8, 1966 (Public Law 89-365, 80 Stat. 32), such regulations are amended as follows:

SUBCHAPTER A—INCOME TAX

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

PARAGRAPH 1. Section 1.72 is amended by redesignating subsection (o) of section 72 as subsection (p), by inserting after subsection (n) a new subsection (o), and by revising the historical note. Such amended and added provisions read as follows:

§ 1.72 Statutory provisions; annuities, certain proceeds of endowment and life insurance contracts.

SEC. 72. Annuities; certain proceeds of endowment and life insurance contracts. * * *

(o) Annuities Under Retired Serviceman's Family Protection Plan. Subsections (b) and (d) shall not apply in the case of amounts received after December 31, 1965, as an annuity under chapter 73 of title 10 of the United States Code, but all such amounts shall be excluded from gross income until there has been so excluded (under section 122(b)(1), or this section, including amount excluded before Jan. 1, 1966) an amount equal to the consideration for the contract (as defined by section 122(b)(2)), plus any amount treated pursuant to section 101(b)(2)(D) as additional consideration paid by the employee. Thereafter all amounts so received shall be included in gross income.

[Sec. 72 as amended by sec. 4 (a), (b), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 821); sec. 11(b), Rev. Act 1962 (76 Stat. 1005); sec. 232(b), Rev. Act 1964 (78 Stat. 110); sec. 809(d)(2), Excise Tax Reduction Act of 1965 (79 Stat. 167); sec. 106(d)(2), Social Security Amendments 1965 (79 Stat. 337); sec. 1(b), Act of Mar. 8, 1966 (Public Law 89-365, 80 Stat. 32)]

PAR. 2. Paragraph (a)(1)(i) of § 1.72-4 is amended to read as follows:

§ 1.72-4 Exclusion ratio.

(a) General rule. (1)(i) To determine the proportionate part of the total amount received each year as an annuity which is excludable from the gross income of a recipient in the taxable year of receipt (other than amounts received under (a) certain employee annuities described in section 72(d) and § 1.72-13, or (b) certain annuities described in section 72(o) and § 1.122-1), an exclusion ratio is to be determined for each contract. In general, this ratio is determined by dividing the investment in the contract as found under § 1.72-6 by the expected return under such contract as found under § 1.72-5. Where a single consideration is given for a particular contract which provides for two or more annuity elements, an exclusion ratio shall be determined for the contract as a whole by dividing the investment in such contract by the aggregate of the expected returns under all the annuity elements provided thereunder. However, where the provisions of paragraph (b)(3) of § 1.72-2 apply to payments received under such a contract, see paragraph (b)(3) of § 1.72-6.

PAR. 3. Paragraph (e) of § 1.72-13 is amended to read as follows:

§ 1.72-13 Special rule for employee contributions recoverable in three years.

(e) Inapplicability of section 72(d) and this section. Section 72(d) and this section do not apply to:

(1) Amounts received as proceeds of a life insurance contract to which section 101(a) applies, nor to

(2) Amounts paid to a surviving annuitant under a joint and survivor annuity contract to which paragraph (b)(3) of § 1.72-5 applies, nor to

(3) Amounts paid to an annuitant under chapter 73 of title 10 of the United States Code with respect to which section 72(o) and § 1.122-1 apply.

See also paragraph (d) of § 1.72-14.

PAR. 4. Section 1.101 is amended by revising subparagraph (D) of section 101(b)(2) and by revising the historical note. These amended provisions read as follows:

§ 1.101 Statutory provisions; certain death benefits.

SEC. 101. Certain death benefits. * * *

(b) Employees' death benefits. * * *

(2) Special rules for paragraph (1). * * *

(D) Other annuities. In the case of any amount to which section 72 (relating to annuities, etc.) applies, the amount which is excludable under paragraph (1) (as modified by the preceding subparagraphs of this paragraph) shall be determined by reference to the value of such amount as of the day on which the employee died. Any amount so excludable under paragraph (1) shall, for purposes of section 72, be treated as additional consideration paid by the employee. Paragraph (1) shall not apply in the case of an annuity under chapter 73 of title 10 of the United States Code if the individual who made the election under such chapter died after attaining retirement age.

[Sec. 101 as amended by sec. 23(d), Technical Amendments Act 1958 (72 Stat. 1822); sec. 7(c), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 829); sec. 1(c), Act of Mar. 8, 1966 (Public Law 89-365, 80 Stat. 32)]

PAR. 5. Paragraph (a)(2) of § 1.101-2 is amended to read as follows:

§ 1.101-2 Employees' death benefits.

(a) In general. * * *

(2) The exclusion does not apply to amounts constituting income payable to the employee during his life as compensation for his services, such as bonuses or payments for unused leave or uncollected salary, nor to certain other amounts with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living (see section 101(b)(2)(B) and paragraph (d) of this section). Further, the exclusion does not apply to amounts received as an annuity under a joint and survivor annuity obligation where the employee was the primary annuitant and the annuity starting date occurred before the death of the employee (see section 101(b)(2)(C) and paragraph (e)(1)(ii) of this

section). In the case of amounts received by a beneficiary as an annuity (but not as a survivor under a joint and survivor annuity with respect to which the employee was the primary annuitant), the exclusion is applied indirectly by means of the provisions of section 72 and the regulations thereunder (see section 101(b)(2)(D) and paragraph (e)(1)(iii) and (iv) of this section). Thus, for example, the exclusion applies to amounts which are received by a survivor of an employee retired on disability under the provisions of the Civil Service retirement law (5 U.S.C. 8301 or any former corresponding provisions of law) or the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431), provided such employee dies before attaining retirement age (as defined in § 1.79-2(b)(3)).

PAR. 6. Section 1.104 is amended by revising section 104(a)(4) and the historical note at the end thereof. These amended and added provisions read as follows:

§ 1.104 Statutory provisions; compensation for injuries or sickness.

SEC. 104. Compensation for injuries or sickness—(a) In general. * * *

(4) Amounts received as a pension, annuity or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, (or as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081; 80 Stat. 1021).)

[Sec. 104 as amended by sec. 51, Foreign Service Act Amendments 1960 (74 Stat. 847); sec. 7(d), Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat. 829)]

PAR. 7. Paragraph (e) of § 1.104-1 is amended to read as follows:

§ 1.104-1 Compensation for injuries or sickness.

(e) Amounts received as pensions, etc., for certain personal injuries or sickness.

(1) Section 104(a)(4) excludes from gross income amounts which are received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country, or in the Coast and Geodetic Survey, or the Public Health Service. For purposes of this section, that part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of 10 U.S.C. 1401, or under 10 U.S.C. 1402(d), on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury or sickness, resulting from active service in the armed forces of any country, or in the Coast and Geodetic Survey, or the Public Health Service (see 10 U.S.C. 1403 (formerly 37 U.S.C. 272(h)), section 402(h) of the Career Compensation Act of 1949). See paragraph (a)(3)(i)(a) of § 1.105-4 for the treatment of retired pay in excess of the part computed on the

basis of percentage of disability as amounts received through a wage continuation plan. For the rules relating to certain reduced uniformed services retirement pay, see paragraph (c) (2) of § 1.122-1. For rules relating to a waiver by a member or former member of the uniformed services of a portion of disability retired pay in favor of a pension or compensation receivable under the laws administered by the Veterans Administration (38 U.S.C. 3105), see § 1.122-1(c) (3). For rules relating to a reduction of the disability retired pay of a member or former member of the uniformed services under the Dual Compensation Act of 1964 (5 U.S.C. 5531) by reason of Federal employment, see § 1.122-1(c) (4).

(2) Section 104(a)(4) excludes from gross income amounts which are received by a participant in the Foreign Service Retirement and Disability System in a taxable year of such participant ending after September 8, 1960, as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081; 60 Stat. 1021). However, if any amount is received by a survivor of a disabled or incapacitated participant, such amount is not excluded from gross income by reason of the provisions of section 104(a)(4).

(3) Section 104(a)(4) excludes from gross income amounts which are received by a participant in the Retired Serviceman's Family Protection Plan as a disability annuity payable under the provisions of 10 U.S.C. 1431. However, if any amount is received by a survivor of a disabled or incapacitated participant, such amount is not excluded from gross income by reason of the provisions of section 104(a)(4).

PAR. 8. Paragraph (a) (3) (i) (a) of § 1.105-4 is amended to read as follows:

§ 1.105-4 Wage continuation plans.

(a) *In general.* * * *

(3) (i) (a) Section 105(d) applies only to amounts attributable to periods during which the employee would be at work were it not for a personal injury or sickness. Thus, an employee is not absent from work if he is not expected to work because, for example, he has reached retirement age. If a plan provides that an employee, who is absent from work on account of a personal injury or sickness, will receive a disability pension or annuity as long as he is disabled, section 105(d) is applicable to any payments which such an employee receives under this plan before he reaches retirement age as defined in (b) of this subdivision, but section 105(d) does not apply to the payments which such an employee receives after he reaches such retirement age. The disability retired pay received by a member on the retired list pursuant to section 402 of the Career Compensation Act of 1949 (63 Stat. 802) or chapter 61 of title 10, United States Code (10 U.S.C. 1201 et seq.) which is in excess of the amounts excludable under section 104(a)(4) and paragraph (e) of § 1.104-1 shall be excluded from gross

income subject to the limitations of section 105(d) and this section, if such pay is received before the member reaches retirement age. See § 1.72-15 for additional rules relating to the tax treatment of disability pensions. For the rules relating to certain reduced uniformed services retirement pay, see paragraph (c) (2) of § 1.122-1. For rules relating to a waiver by a member or former member of the uniformed services of a portion of disability retired pay in favor of a pension or compensation receivable under the laws administered by the Veterans Administration (38 U.S.C. 3105), see § 1.122-1(c) (3).

PAR. 9. Section 1.122 is amended by revising the section number in the title, the section number in the statutory material, and by revising the historical note. These amended provisions read as follows:

§ 1.123 Statutory provisions, cross references to other acts.

SEC. 123. Cross references to other acts.

[Sec. 123 as amended by section 501(t), Servicemen's and Veteran's Survivor Benefits Act (70 Stat. 885); Sec. 2201(25), Veterans' Benefits Act of 1957 (71 Stat. 160); sec. 13(t), Act of Sept. 2, 1958 (Public Law 85-857, 72 Stat. 1266); as renumbered by sec. 206(a), Rev. Act 1964 (78 Stat. 38); as renumbered by sec. 1(a) (2), Act of Mar. 8, 1966 (Public Law 89-365, 80 Stat. 32)]

PAR. 10. There are inserted immediately following § 1.121-5 the following new sections:

§ 1.122 Statutory provisions; certain reduced uniformed services retirement pay.

SEC. 122. Certain reduced uniformed services retirement pay—(a) *General rule.* In the case of a member or former member of the uniformed services of the United States who has made an election under chapter 73 of title 10 of the United States Code to receive a reduced amount of retired or retainer pay, gross income does not include the amount of any reduction after December 31, 1965, in his retired or retainer pay by reason of such election.

(b) *Special rule—(1) Amount excluded from gross income.* In the case of any individual referred to in subsection (a), all amounts received after December 31, 1965, as retired or retainer pay shall be excluded from gross income until there has been so excluded an amount equal to the consideration for the contract. The preceding sentence shall apply only to the extent that the amounts received would, but for such sentence, be includable in gross income.

(2) *Consideration for the contract.* For purposes of paragraph (1) and section 72(o), the term "consideration for the contract" means, in respect of any individual, the sum of—

(A) The total amount of the reductions before January 1, 1966, in his retired or retainer pay by reason of an election under chapter 73 of title 10 of the United States Code, and

(B) Any amounts deposited at any time by him pursuant to section 1438 of such title 10.

[Sec. 122 as added by sec. 1(a) (1), Act of Mar. 8, 1966 (Public Law 89-365, 80 Stat. 32)]

§ 1.122-1 Applicable rules relating to certain reduced uniformed services retirement pay.

(a) *Rule applicable prior to January 1, 1966.* In the case of a member or former member of the uniformed services of the United States (as defined in 37 U.S.C. 101(3)) who has made an election under chapter 73 of title 10 of the United States Code (also referred to in this section as the Retired Serviceman's Family Protection plan (10 U.S.C. 1431)) to receive a reduced amount of retired or retainer pay, gross income shall include the amount of any reduction made in his retired or retainer pay before January 1, 1966, by reason of such election, unless such reduction, or portion thereof, is otherwise excluded from gross income under part III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 or any other provision of law.

(b) *Rule applicable after December 31, 1965.* (1) In a case of a member or former member of the uniformed services of the United States (as defined in 37 U.S.C. 101(3)) who has made an election under chapter 73 of title 10 of the United States Code to receive a reduced amount of retired or retainer pay, gross income shall not include the amount of any reduction made in his retired or retainer pay after December 31, 1965, by reason of such election.

(2) (i) In a case where a member or former member of the uniformed services has, pursuant to the election described in paragraph (a) of this section, received before January 1, 1966, a reduced amount of retired or retainer pay, he shall, after December 31, 1965, exclude from gross income under section 122(b) and this subdivision all amounts received as uniformed services retired or retainer pay until there has been so excluded an amount of retired or retainer pay equal to the "consideration for the contract" (as described in subdivision (iii) of this subparagraph).

(ii) Upon the death of a member or former member of the uniformed services, where the "consideration for the contract" (as described in subdivision (iii) of this subparagraph) has not been excluded in whole or in part from gross income under section 122(b) and subdivision (i) of this subparagraph, the survivor of such member who is receiving an annuity under chapter 73 of title 10 of the United States Code shall, after December 31, 1965, exclude from gross income under section 72(o) and this subdivision such annuity payments received after December 31, 1965, until there has been so excluded annuity payments equalling the portion of the "consideration for the contract" not previously excluded under subdivision (i) of this subparagraph.

(iii) The term "consideration for the contract" as used in this subparagraph means—

(a) The total amount of the reductions, if any, before January 1, 1966, in retired or retainer pay by reason of an election under chapter 73 of title 10 of the United States Code, plus

(b) The total amount, if any, deposited by the serviceman at any time pursuant to the provisions of section 1438 of title 10 of the United States Code, plus

(c) The total amount, if any, excludable from income under section 101(b) (2)(D) and paragraph (a)(2) of § 1.101-2 with respect to a survivor annuity provided by such retired or retainer pay, minus

(d) The total amount, if any, excluded from income before January 1, 1966, pursuant to the provisions of section 72 (b) and (d) with respect to a survivor annuity provided by such retired or retainer pay.

(iv) In determining whether there has been a recovery of the "consideration for the contract" under subdivision (i) of this subparagraph, the exclusion of retired pay from income after December 31, 1965, under sections 104(a)(4) and 105(d) shall not be considered as recovery of all or part of the "consideration for the contract."

(c) *Special rules.* In any of the following situations, the computation of the excludable portion of disability retired pay received by the member or former member of the uniformed services shall be governed by the following rules:

(1) An exclusion under section 122(a) and paragraph (b) (1) of this section is applicable only in the taxable year in which a reduction in retired pay is made under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431).

(2) Where the member or former member of the uniformed services is entitled to exclude the whole or a portion of his retired pay under the provisions of section 104(a)(4) or section 105(d) and under section 122(a) and paragraph (b) (1) of this section, the exclusion under section 122(a) and paragraph (b) (1) of this section shall be applied prior to the exclusions under sections 104(a)(4) and 105(d).

(3) Where the member or former member of the uniformed services waives a portion of his disability retired pay, or such retired pay reduced under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431), in favor of a non-taxable pension or compensation receivable under laws administered by the Veterans Administration (38 U.S.C. 3105), the waived amount of such disability retired pay, or reduced amount thereof, shall first be subtracted from any amounts which are excludable under the provisions of sections 104(a)(4) or 105(d) so as to reduce the amounts otherwise excludable under those sections.

(4) Where the member or former member of the uniformed services receives (before any forfeiture) disability retired pay (whether or not reduced under the Retired Serviceman's Family Protection Plan) which is partially excludable under section 104(a)(4), and also forfeits a portion of such disability retired pay under the Dual Compensation Act of 1964 (5 U.S.C. 5531 or any

former corresponding provision of law), the amount of the forfeiture under such Act shall be applied against disability retired pay (before any forfeiture) in the same proportion that the excludable portion of such pay under section 104(a)(4) bears to the total amount of such pay after subtraction of any reduction under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431)).

(5) The exclusion provided by section 122(b) and paragraph (b) (2) (i) of this section shall be available with respect to repayments made upon removal from the temporary disability retired list even though such repayments were previously excluded from gross income under section 104(a)(4) or 105(d).

However, the exclusion permitted by the prior sentence will apply only to the extent the repaid amount has not been previously excluded under section 122(b) and paragraph (b) (2) (i) of this section.

(d) *Examples.* The rules discussed in paragraph (a) of this section may be illustrated by the following examples:

Example (1). A, a member of the uniformed services, retires on January 1, 1963, and receives nondisability retired pay computed to be 60 percent of his active duty pay of \$10,000 per year, or \$6,000 per year, based upon 24 years of service. He elects, under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431), to provide his survivor with an annuity equal to one-fourth of his reduced retired pay. His retired pay of \$6,000 is reduced by \$600, to \$5,400, in order to provide a survivor annuity of \$1,350 per year or \$112.50 per month. For 1963, 1964, and 1965, A must include in gross income the unreduced amount of retired pay, or \$6,000. For 1966 and subsequent years, he may exclude under section 122(a) and paragraph (b) (1) of this section the \$600 total annual reductions to provide the survivor annuity, and may, for 1966, further exclude from gross income under section 122(b) and paragraph (b) (2) (i) of this section the \$1,800 "consideration for the contract," i.e., the total reductions which were made in 1963, 1964, and 1965, to provide the survivor annuity. Accordingly, A will include \$3,600 of retired pay in gross income for 1966 (\$6,000 minus the sum of \$600 and \$1,800).

Example (2). Assume the facts in Example (1) except that A retires on disability resulting from active service and his disability is rated at 40 percent. The entire amount of disability retirement pay, prior to and including 1966, is excludable from gross income under sections 104(a)(4) and 105(d), and in 1966, section 122(a). Assume further that A attains retirement age on December 31, 1966, dies on January 1, 1967, and his widow then begins receiving a survivor annuity under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431). A's widow may exclude from gross income in 1967 and 1968 under section 72(o) and paragraph (b) (2) (ii) of this section, the \$1,800 of "consideration for the contract," i.e., the reductions in 1963, 1964, and 1965 to provide the survivor annuity. Thus, A's widow will exclude all of the survivor annuity she receives in 1967 (\$1,350) and \$450 of the \$1,350 annuity received in 1968. In addition, if A had not attained retirement age at the time of his death, his widow would, under section 101 and paragraph (a) (2) of § 1.101-

2, exclude up to \$5,000 subject to the limitations of paragraph (b) (2) (ii) of this section.

Example (3). Assume, in the previous example, that A dies on January 1, 1965, and his widow then begins receiving a survivor annuity. Assume further that A's widow is entitled to exclude under section 72(b) \$1,000 of the \$1,350 she received in 1965. Under section 72(o) and paragraph (b) (2) (ii) of this section, A's widow for 1966 will exclude the \$200 remaining consideration for the contract (\$1,200-\$1,000) and will include \$1,150 of the survivor annuity in gross income.

Example (4). B, a member of the uniformed services, retires on January 1, 1966, after 32 years of active military service, and receives disability retirement pay under section 1401 of title 10, limited to 75 percent of his active duty pay of \$15,000 per year, or \$11,250. His disability rating is 30 percent. B has not reached retirement age (as defined in § 1.79-2(b)(3)). He elects under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431) to provide his survivor with an annuity equal to one-half of his reduced retired pay and, for that purpose, his retired pay of \$11,250 is reduced by \$1,250 to provide an annuity of \$5,000 per year. B also elects to waive retired pay in the amount of \$1,000 in order to receive disability compensation in like amount under laws administered by the Veterans Administration. In addition, B is required to forfeit \$4,088 of his retired pay under the Dual Compensation Act of 1964, 5 U.S.C. 5532, (\$11,250-\$1,000=\$10,250 less one-half of excess thereof over \$2,074) and by reason of his Federal employment is not entitled to an exclusion of his retired pay under section 105(d). B's taxable retired pay for 1963 is \$3,002, computed as follows:

Gross retired pay-----	\$11,250
Less: Section 122(a) exclusion--	(1,250)
Reduced retired pay-----	10,000
Less: Retired pay waived to receive V.A. compensation----	(1,000)
Adjusted retired pay-----	9,000
Less:	
(i) Excludable retired pay computed under section 104 (a)(4) as limited by 10 U.S.C. 1403-----	\$4,500
(ii) Less: Retired pay, not to exceed (i), waived to receive V.A. compensation -----	(1,000)
(iii) Net disability exclusion--	(3,500)
Taxable retired pay before adjustment for Dual Compensation forfeiture -----	5,500
Less:	
Adjustment for Dual Compensation forfeiture of \$4,088	
5500	
-----x \$4.088=\$2,498 (rounded) --	(2,498)
9000	
Net taxable retired pay----	3,002

Example (5). C, a member of the uniformed services, retires on January 1, 1966, and receives disability retirement pay of \$11,250 per year, which is reduced by \$1,250 to provide a survivor annuity, and \$1,000 of which is waived in order to receive disability compensation in like amount under laws administered by the Veterans Administration. C has not reached retirement age (as defined in § 1.79-2(b)(3)) for purposes of section 105(d) and is not employed by the Federal

Government. C's taxable disability retirement pay for 1966 is \$300 computed as follows:

Adjusted retired pay-----	\$9,000
Less:	
(i) Excludable retired pay under section 104 (a) (4) as limited by 10 U.S.C. 1403-----	\$4,500
(ii) Excludable retired pay under section 105 (d)-----	5,200
(iii) Total-----	9,700
(iv) Less: Retired pay, not to exceed (iii), waived to receive V.A. compensation-----	(1,000)
(v) Net disability and "sick pay" exclusion-----	(8,700)
Net taxable retired pay-----	300

Example (6). D, a member of the uniformed services, retires for physical disability resulting from active service on January 1, 1966, after 35 years of service and with a disability rated at 20 percent. His active duty pay is \$4,000 per year and he attained retirement age prior to retirement. He had an election in effect under the Retired Serviceman's Family Protection Plan to provide his survivor with an annuity and his retired pay is reduced therefor by \$500 per year. He waives \$1,300 of his retired pay in order to receive compensation from the Veterans Administration in like amount. His taxable retired pay for 1966 is \$1,200 computed as follows:

Gross retired pay (75% x \$4,000)---	\$3,000
Less: Section 122(a) exclusion---	(500)
Reduced retired pay-----	2,500
Less: V.A. waiver-----	(1,300)
Adjusted retired pay-----	1,200
Less:	
(i) Section 104(a) (4) exclusion-----	\$800
(ii) Less: Retired pay, not to exceed (i), waived to receive V.A. compensation-----	(800)
(iii) Net disability exclusion-----	0
Net taxable retired pay---	1,200

SUBCHAPTER B—ESTATE AND GIFT TAXES

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

PAR. 11. Section 20.2039 is amended by revising section 2039(c), and by revising the historical note. These amended provisions read as follows:

§ 20.2039 Statutory provisions; annuities.

SEC. 2039. Annuities. * * *

(c) *Exemption of annuities under certain trust and plans.* Notwithstanding the provisions of this section or of any provision of law, there shall be excluded from the gross estate the value of an annuity or other payment receivable by any beneficiary (other than the executor) under—

(1) An employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 401(a);

(2) A retirement annuity contract purchased by an employer (and not by an employee's trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the plan if earlier, was a plan described in section 403(a);

(3) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 503(b) (1), (2), or (3), and which is exempt from tax under section 501(a); or

(4) Chapter 73 of title 10 of the United States Code.

If such amounts payable after the death of the decedent under a plan described in paragraph (1) or (2), under a contract described in paragraph (3), or under chapter 73 of title 10 of the United States Code are attributable to any extent to payments or contributions made by the decedent, no exclusion shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bears to the total payments or contributions made. For purposes of this subsection, contributions or payments made by the decedent's employer or former employer under a trust or plan described in paragraph (1) or (2) shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in paragraph (3) shall, to the extent excludable from gross income under section 403(b), not be considered to be contributed by the decedent. This subsection shall apply to all decedents dying after December 31, 1953. For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c) (1) made under a trust or plan described in paragraph (1) or (2) shall be considered to be contributions or payments made by the decedent. For purposes of this subsection, amounts payable under chapter 73 of title 10 of the United States Code are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by him pursuant to section 1438 of such title 10.

[Sec. 2039 as amended by secs. 23(e), 67(a), Technical Amendments Act 1958 (72 Stat. 1622, 1658); sec. 7(1), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 830); sec. 2(a), Act of Mar. 8, 1966 (Public Law 89-365, 80 Stat. 33)]

PAR. 12. Section 20.2039-2 is amended by amending paragraph (b) by revising subparagraphs (2) and (3), and by adding a new subparagraph (4) after subparagraph (3); and by revising paragraph (c) (1). These amended and added provisions read as follows:

§ 20.2039-2 Annuities under "qualified plans" and section 403(b) annuity contracts.

(b) *Plans and annuity contracts to which section 2039(c) applies.* * * *

(2) A retirement annuity contract purchased by an employer (and not by an employee's trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of the earlier termination of the plan, was a plan described in section 403(a);

(3) In the case of a decedent dying after December 31, 1957, a retirement annuity contract purchased for an em-

ployee by an employer which, for its taxable year in which the purchase occurred, is an organization referred to in section 503(b) (1), (2), or (3), and is exempt from tax under section 501(a); or

(4) In the case of a decedent dying after December 31, 1965, an annuity under chapter 73 of title 10 of the United States Code (10 U.S.C. 1431, et seq.), also referred to as the Retired Serviceman's Family Protection Plan.

(c) *Amount excludable from the gross estate.* (1) The amount to be excluded from a decedent's gross estate under section 2039(c) is an amount which bears the same ratio to the value at the decedent's death of the annuity or other payment receivable by the beneficiary as the employer's contribution (or a contribution made on his behalf) on the employee's account to the plan or towards the purchase of the annuity contract bears to the total contributions on the employee's account to the plan or towards the purchase of the annuity contract. In applying the ratio set forth in the preceding sentence, payments or contributions made by the employer (or on its behalf) toward the purchase of an annuity contract described in paragraph (b) (3) of this section shall be considered to include only such payments or contributions as are, or were, excludable from the employee's gross income under section 403(b). For purposes of this ratio, contributions or payments made under a plan described in subparagraph (1) or (2) of paragraph (b) of this section on behalf of the decedent while he was an employee within the meaning of section 401(c) (1) with respect to such plan shall be considered to be contributions or payments made by the decedent and not by the employer. For purposes of this paragraph, amounts payable under subparagraph (4) of paragraph (b) of this section are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by him pursuant to section 1438 of title 10 of the United States Code. In applying this ratio, the value at the decedent's death of the annuity or other payment is determined in accordance with the rules set forth in §§ 20.2031-1, 20.2031-7, 20.2031-8, and 20.2031-9.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

PAR. 13. Section 25.2517 is amended by revising section 2517(a) (2) and (3), by adding a paragraph (4) to section 2517(a), by revising the first sentence of section 2517(b), and by revising the historical note. These amended and added provisions read as follows:

§ 25.2517 Statutory provisions; certain annuities under qualified plans.

SEC. 2517. *Certain annuities under qualified plans—(a) General rule.* * * *

(2) A retirement annuity contract purchased by an employer (and not by an employee's trust) pursuant to a plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if

earlier, was a plan described in section 403(a):

(3) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 503(b) (1), (2), or (3), and which is exempt from tax under section 501(a); or

(4) Chapter 73 of title 10 of the United States Code.

(b) *Transfers attributable to employee contributions.* If the annuity or other payment referred to in subsection (a) (other than paragraph (4)) is attributable to any extent to payments or contributions made by the employee, then subsection (a) shall not apply to that part of the value of such annuity or other payment which bears the same proportion to the total value of the annuity or other payment as the total payments or contributions made by the employee bear to the total payments or contributions made. * * *

[Sec. 2517 as added by sec. 68 and as amended by sec. 23(f), Technical Amendments Act 1958 (72 Stat. 1659); sec. 7(j), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 830); sec. 2(b), Act of Mar. 8, 1966 (Public Law 89-365, 80 Stat. 73)]

PAR. 14. Section 25.2517-1 is amended by amending paragraph (b) (1) by revising subdivisions (ii) and (iii), and by adding a new subdivision (iv) after subdivision (iii); and by revising that part of paragraph (c) (1) that precedes example (1). These amended and added provisions read as follows:

§ 25.2517-1 Employees' annuities.

(b) *Annuities or other payments to which section 2517 applies.* (1) * * *

(ii) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, was a plan described in section 403(a);

(iii) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 503(b) (1), (2), or (3), and which is exempt from tax under section 501(a); or

(iv) With respect to calendar years after 1965, an annuity under chapter 73 of title 10 of the United States Code (10 U.S.C. 1431, et seq.), also referred to as the Retired Serviceman's Family Protection Plan.

(c) *Amount excludable from gift.* (1) If an annuity or other payment described in paragraph (a) (1) of this section (other than an annuity or other payment referred to in paragraph (b) (1) (iv) of this section) is attributable to payments or contributions made by both the employee and the employer, the exclusion is limited to that proportion of the value on the date of the gift (see paragraph (a) (1) of this section) of the annuity or other payment which the employer's contribution (or a contribution made on the employer's behalf) to the plan on the employee's account bears to the total contributions to the plan on the employee's account. In applying the ratio set forth in the preceding sentence, payments or contributions made by the

employer toward the purchase of an annuity contract described in paragraph (b) (1) (iii) of this section are considered to be contributions made by the employee (and not by the employer) to the extent that such contributions are, or were, not excludable from the employee's gross income under section 403(b). For purposes of this ratio, payments or contributions made to a plan described in subdivision (i) or (ii) of paragraph (b) (1) of this section on behalf of an individual while he was an employee within the meaning of section 401(c) (1) with respect to such plan shall be considered to be payments or contributions made by the employee. The application of this paragraph may be illustrated by the following examples, none of which involves employees within the meaning of section 401(c) (1);

[P.R. Doc. 70-6743; Filed, June 1, 1970; 8:48 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 207—NAVIGATION REGULATIONS

Tolomato River, Fla., Intracoastal Waterway

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 207.167 governing the use and navigation of a seaplane restricted area in Tolomato River, St. Augustine, Fla., is hereby revoked, effective upon publication in the FEDERAL REGISTER, as follows:

§ 207.167 Tolomato River (Intracoastal Waterway), St. Augustine, Fla.; seaplane restricted and operating area. [Revoked]

[Regs., May 15, 1970, ENGOW-ON] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

For the Adjutant General.

HAROLD SHARON,
Legislative and Precedent
Officer, Plans Office, TAGO.

[P.R. Doc. 70-6707; Filed, June 1, 1970; 8:45 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 153—MAIL DEPOSIT AND COLLECTION

Mail Chutes and Receiving Boxes

In the daily issue of August 23, 1969 (34 F.R. 13601), the Department published a notice of proposed rule making consisting of an amendment to § 153.6 (d) (4) of Title 39, Code of Federal Regulations. The amendment proposed

to require that, effective after July 1, 1970, mail receiving boxes installed in public buildings, hotels, office buildings, etc., be equipped with a pulldown inlet door having an opening 7 by 11½ inches, so that the boxes could accommodate bundled letter mail. It was proposed that the opening be fully protected by inside baffle plates.

Interested persons were given 30 days within which to submit comments on the proposed regulations. After full consideration of comments received the Department has determined to adopt the proposed regulations, with a change in effective date from July 1, 1970, to July 1, 1971; and a further change for clarification to the effect that the inlet door to the receiving box shall be so located as to not cause a mail chute blockage.

Accordingly, the following amendment to the Department's regulations is hereby made, to be effective after July 1, 1971.

In § 153.6 *Mail chutes and receiving boxes*, amend paragraph (d) (4) to read as follows:

§ 153.6 Mail chutes and receiving boxes.

(d) *Specifications for construction of receiving boxes.* * * *

(4) *Mail slots, markings, and display frames.* Boxes must be provided with mail openings 1¼ inches wide by 11 inches long, protected by inside hood. Openings shall be not more than 5 feet 10 inches above the floor level and protected by inside hinge flaps, and legibly inscribed "Letters". Boxes must be distinctly marked "U.S. Mail Letter Box" and must be provided with suitable and convenient frames to display collection schedule cards 3¼ by 5½ inches in size. (Receiving boxes installed after July 1, 1971, shall be equipped with a pulldown inlet door having an opening 7 by 11½ inches inscribed "Letters and Letter Mail Tied in Bundles." The opening shall be fully protected by inside baffle plates so as to prevent pilfering of mail, and the inlet door shall be so located that it will not cause a mail chute blockage.)

NOTE: The corresponding Postal Manual section is 153.644.

(5 U.S.C. 301, 39 U.S.C. 501, 6003)

DAVID A. NELSON,
General Counsel.

[P.R. Doc. 70-6748; Filed, June 1, 1970; 8:48 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 1—Federal Procurement Regulations

LABOR SURPLUS AREAS

This amendment of the Federal Procurement Regulations prescribes revised preferences for labor surplus area

concerns which are to apply to contract awards. The revised preferences reflect the amendment of the Department of Labor regulations in 29 CFR Part 8, February 3, 1970, which is based on the provisions of Defense Manpower Policy 4 (Revised), October 16, 1967 (32A CFR Chapter I). In addition, an appropriate reference to the Trust Territory of the Pacific Islands has been included in order to reflect an amendment of the Small Business Act by Public Law 90-448, August 1, 1968.

PART 1-1—GENERAL

Subpart 1-1.7—Small Business Concerns

1. Section 1-1.700 is amended to include a reference to the Trust Territory of the Pacific Islands in paragraph (b).

§ 1-1.700 General.

(b) This subpart applies only in the United States. As used in this subpart the term United States means the States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

2. Section 1-1.706-5 is amended so that the Notice of Partial Small Business Set-Aside in paragraph (c) reads as follows:

§ 1-1.706-6 Partial set-asides.

(c) * * *

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more small business concerns. Negotiations for award of this set-aside portion will be conducted only with responsible small business concerns who have submitted responsive bids on the non-set-aside portion at a unit price within 130 percent of the highest award made on the non-set-aside portion. (For the purpose of this paragraph (a), such "unit price" in the case of award of the non-set-aside portion to a foreign bidder or the supplier of a foreign product shall be the evaluated unit price established under applicable Buy American Act procedures. See 41 CFR 1-6.104-4.) Negotiations shall be conducted with such small business concerns in the following order of priority:

Group 1. Small business concerns which are also certified-eligible concerns with a first preference.

Group 2. Small business concerns which are also certified-eligible concerns with a second preference.

Group 3. Small business concerns which are also persistent or substantial labor surplus area concerns.

Group 4. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion. The partial set-aside of this procure-

ment for small business concerns is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs, or in the interest of ensuring that a fair proportion of Government procurement is placed with small business concerns.

(b) *Definitions.* (1) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (13 CFR 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia, by small business concerns. *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

(2) The term "labor surplus area" means a geographical area which is either a section of concentrated unemployment or underemployment, a persistent labor surplus area, or a substantial labor surplus area, as defined below:

(i) "Section of concentrated unemployment or underemployment" means appropriate sections of States or "labor areas" so classified by the Secretary of Labor.

(ii) "Persistent labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Trends in Employment and Unemployment," or (B) is certified as an area of substantial and persistent labor surplus by the appropriate State Employment Security Agency or the Department of Labor pursuant to a request by a prospective contractor.

(iii) "Substantial labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Trends in Employment and Unemployment," or (B) is certified as an area of substantial labor surplus by the appropriate State Employment Security Agency or the Department of Labor pursuant to a request by a prospective contractor.

(3) The term "labor surplus area concern" includes certified-eligible concerns with a first preference, certified-eligible concerns with a second preference, and persistent or substantial labor surplus area concerns as defined below:

(i) "Certified-eligible concern with a first preference" means a concern (located in or near a section of concentrated unemployment or underemployment or in an area of persistent or substantial labor surplus) which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) and 8.9(c) with respect to the employment of disadvantaged individuals residing within such sections or areas, and which will agree to perform, or cause to be performed by certified concerns with a first preference, a substantial proportion of a contract in or near such sections or in such areas; it includes a concern which, though not so certi-

fied, agrees to have a substantial proportion of a contract performed by certified concerns with a first preference in or near such sections or in such areas. A concern shall be deemed to perform a substantial proportion of a contract in or near such sections or in such areas if the costs that the concern will incur on account of manufacturing or production in or near such sections or in such areas (by itself, if a certified concern, or by certified concerns with a first preference acting as first-tier subcontractors) amount to more than 25 percent of the contract price.

(ii) "Certified-eligible concern with a second preference" means a concern (located in any area) which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(c) and 8.9(d) with respect to the employment of disadvantaged individuals and which will agree to perform, or cause to be performed by certified concerns with first or second preference, a substantial proportion of a contract; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by such certified concerns. A concern shall be deemed to perform a substantial proportion of a contract if the costs that the concern will incur on account of manufacturing or production (by itself, if a certified concern, or by certified concerns with a first or second preference acting as first-tier subcontractors) amount to more than 25 percent of the contract price.

(iii) "Persistent or substantial labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent or substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent or substantial labor surplus areas if the costs that will be incurred by the concern on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) or in any area (by itself if a certified concern or its first-tier certified subcontractors) amount to more than 50 percent of the contract price.

(c) *Identification of Areas of Performance.* Each bidder desiring to be considered for award as a small business labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform: *Provided*, That he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(d) *Eligibility Based on Certification.* Where eligibility for preference is based upon the status of the bidder, or bidder's subcontractors, as a "certified-eligible concern," the bidder shall furnish with his bid evidence of certification by the Secretary of Labor.

(e) *Agreement.* The bidder agrees that: (1) If awarded a contract as a certified-eligible small business concern with a first preference under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas; and in the performance of such contract will employ, or require certified first-tier subcontractors with first preferences to employ, a proportionate number of disadvantaged

individuals, as defined by the Department of Labor in 29 CFR 8.2(d), residing within such sections or areas in accordance with plans approved by the Secretary of Labor.

(2) If awarded a contract as a certified-eligible small business concern with a second preference under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the contract in certified facilities, and in the performance of such contract will employ, or require certified first-tier subcontractors with first or second preferences to employ disadvantaged individuals in accordance with plans approved by the Secretary of Labor.

(3) If awarded a contract as a small business persistent or substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the contract (i) in areas classified at the time of the award, or at the time of performance of the contract, as persistent or substantial labor surplus areas or (ii) in any area (by himself if certified or by first-tier certified subcontractors).

Subpart 1-1.8—Labor Surplus Area Concerns

1. Section 1-1.800 is revised to read as follows:

§ 1-1.800 Scope of subpart.

This subpart sets forth policies and procedures with respect to aiding sections classified as having concentrated unemployment or underemployment and areas of persistent or substantial labor surplus hereinafter referred to as labor surplus areas, in the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. This subpart implements Defense Manpower Policy 4 (Revised), October 16, 1967 (32A CFR ch. 1), and U.S. Department of Labor regulations, as amended, February 3, 1970 (29 CFR Part 8).

2. Section 1-1.801 is amended to read as follows:

§ 1-1.801 Definitions.

§ 1-1.801-1 Labor surplus area concern.

The term "labor surplus area concern" includes certified-eligible concerns with a first preference, certified-eligible concerns with a second preference, and persistent or substantial labor surplus area concerns as defined in this § 1-1.801-1.

(a) "Certified-eligible concern with a first preference" means a concern (located in or near a section of concentrated unemployment or underemployment or in an area of persistent or substantial labor surplus) which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) and 8.9(c) with respect to the employment of disadvantaged individuals residing within such sections or areas, and which will agree to perform, or cause to be performed by, certified concerns with first preferences, a substantial proportion of a contract in or near such sections or in such areas; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by certified concerns with first preferences in or near such sections or in such areas. A concern shall be deemed to perform a

substantial proportion of a contract in or near such sections or in such areas if the costs that the concern will incur on account of manufacturing or production in or near such sections or in such areas (by itself, if a certified concern, or by certified concerns with a first preference acting as first-tier subcontractors) amount to more than 25 percent of the contract price.

(b) "Certified-eligible concern with a second preference" means a concern (located in any area) which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(c) and 8.9 (d) with respect to employment of disadvantaged individuals and which will agree to perform or cause to be performed by certified concerns with first or second preferences, a substantial proportion of a contract; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by such certified concerns. A concern shall be deemed to perform a substantial proportion of a contract, if the costs that the concern will incur on account of manufacturing or production (by itself, if a certified concern, or by certified concerns with first or second preferences acting as first-tier subcontractors) amount to more than 25 percent of the contract price.

(c) "Persistent or substantial labor surplus area concern" means a concern which will perform, or cause to be performed, a substantial proportion of a contract in persistent or substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent or substantial labor surplus areas if the costs that will be incurred by the concern on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) or in any areas (by itself if a certified concern or its first-tier certified subcontractors) amount to more than 50 percent of the contract price.

§ 1-1.801-2 Labor surplus area.

The term "labor surplus area" means a geographical area which at the time of award is either a section of concentrated unemployment or underemployment, a persistent labor surplus area, or a substantial labor surplus area, as defined in this § 1-1.801-2.

(a) "Section of concentrated unemployment or underemployment" means appropriate sections of States or labor areas so classified by the Secretary of Labor.

(b) "Persistent labor surplus area" means an area which (1) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Trends in Employment and Unemployment" or (2) is certified as an area of substantial and persistent labor surplus by the appropriate State Employment Security Agency or the Department of

Labor pursuant to a request by a prospective contractor.

(c) "Substantial labor surplus area" means an area which (1) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Trends in Employment and Unemployment" or (2) is certified as an area of substantial labor surplus by the appropriate State Employment Security Agency or the Department of Labor pursuant to a request by a prospective contractor.

3. Section 1-1.802-2 is amended so that paragraphs (b) (2) and (c) read as follows:

§ 1-1.802-2 Specific policies.

(b) (2) In order to accommodate both labor surplus area and small business policies, labor surplus area set-aside awards shall be made in accordance with the following order of priority: (i) Certified-eligible concerns with a first preference which are also small business concerns; (ii) other certified-eligible concerns with a first preference; (iii) certified-eligible concerns with a second preference which are also small business concerns; (iv) other certified-eligible concerns with a second preference; (v) persistent or substantial labor surplus area concerns which are also small business concerns; (vi) other persistent or substantial labor surplus area concerns; and (vii) small business concerns which are not labor surplus area concerns.

(c) Procurement agencies shall disseminate promptly to appropriate procurement personnel available publications and other information identifying certified concerns and sections of concentrated unemployment and underemployment and other labor surplus areas and the production capabilities therein.

4. Section 1-1.804-2 is amended so that the Notice of Labor Surplus Area Set-Aside in paragraph (b) reads as follows:

§ 1-1.804-2 Notice to bidders or offerors.

NOTICE OF LABOR SURPLUS AREA SET-ASIDE

(a) General. A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more labor surplus area concerns and, to a limited extent, to small business concerns which do not qualify as labor surplus area concerns. Negotiations for award of the set-aside portion will be conducted only with responsible labor surplus area concerns (and small business concerns to the extent indicated below) which have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 130 percent of the highest award made on the non-set-aside portion. (For the purpose of this paragraph (a), such "unit price" in the case of award of the non-set-aside portion to a foreign bidder or the supplier of a foreign product shall be the evaluated unit price established under applicable Buy

American Act procedures. See 41 CFR 1-6.104-4.) Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

Group 1. Certified-eligible concerns with a first preference which are also small business concerns.

Group 2. Other certified-eligible concerns with a first preference.

Group 3. Certified-eligible concerns with a second preference which are also small business concerns.

Group 4. Other certified-eligible concerns with a second preference.

Group 5. Persistent or substantial labor surplus area concerns which are also small business concerns.

Group 6. Other persistent or substantial labor surplus area concerns.

Group 7. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside portion shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(b) **Definitions.** (1) The term "labor surplus area" means a geographical area which is either a section of concentrated unemployment or underemployment, a persistent labor surplus area, or a substantial labor surplus area, as defined below:

(i) "Section of concentrated unemployment or underemployment" means appropriate sections of States or labor areas so classified by the Secretary of Labor.

(ii) "Persistent labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Trends in Employment and Unemployment" or (B) is certified as an area of substantial and persistent labor surplus by the appropriate State Employment Security Agency or the Department of Labor pursuant to a request by a prospective contractor.

(iii) "Substantial labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and is listed as such by that Department in conjunction with its publication "Area Trends in Employment and Unemployment" or (B) is certified as an area of substantial labor surplus by the appropriate State Employment Security Agency or the Department of Labor pursuant to a request by a prospective contractor.

(2) The term "labor surplus area concern" includes certified-eligible concerns with a first preference, certified-eligible concerns with a second preference, and persistent or substantial labor surplus area concerns as defined below:

(i) "Certified-eligible concern with a first preference" means a concern (located in or near a section of concentrated unemployment or underemployment or in an area of persistent or substantial labor surplus) which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) and 8.9(c) with respect to the employment of disadvantaged individuals residing within such sections or areas, and which will agree to perform, or cause to be performed by

certified concerns with first preferences, a substantial proportion of a contract in or near such sections or in such areas; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by certified concerns with first preferences in or near such sections or in such areas. A concern shall be deemed to perform a substantial proportion of a contract in or near such sections or in such areas if the costs that the concern will incur on account of manufacturing or production in or near such sections or in such areas (by itself, if a certified concern, or by certified concerns with first preferences acting as first tier subcontractors) amount to more than 25 percent of the contract price.

(ii) "Certified-eligible concern with a second preference" means a concern (located in any area) which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(c) and 8.9(d) with respect to employment of disadvantaged individuals, and which will agree to perform, or cause to be performed by certified concerns with first or second preferences, a substantial proportion of a contract; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by such certified concerns. A concern shall be deemed to perform a substantial proportion of a contract if the costs that the concern will incur on account of manufacturing or production (by itself, if a certified concern, or by certified concerns with first or second preferences acting as first-tier subcontractors) amount to more than 25 percent of the contract price.

(iii) "Persistent or substantial labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent or substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent or substantial labor surplus areas if the costs that will be incurred by the concern on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) or in any areas (by itself if a certified concern or its first-tier certified subcontractors) amount to more than 50 percent of the contract price.

(3) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in the regulations of the Small Business Administration (13 CFR 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

(c) **Identification of Areas of Performance.** Each bidder desiring to be considered for award as a labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform, provided that he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated pro-

duction areas as of the time of the proposed award.

(d) **Eligibility Based on Certification.** Where eligibility for preference is based upon the status of the bidder or bidder's subcontractors as a "certified-eligible concern," the bidder shall furnish with his bid evidence of certification by the Secretary of Labor.

(e) **Agreement.** The bidder agrees that: (1) If awarded a contract as a certified-eligible concern with a first preference under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas; and in the performance of such contract will employ, or require certified first-tier subcontractors with first preferences to employ, a proportionate number of disadvantaged individuals residing within such sections or areas in accordance with plans approved by the Secretary of Labor.

(2) If awarded a contract as a certified-eligible concern with a second preference under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the contract in certified facilities, and in the performance of such contract will employ, or require certified first-tier subcontractors with first or second preferences to employ, disadvantaged individuals in accordance with plans approved by the Secretary of Labor.

(3) If awarded a contract as a persistent or substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the contract (i) in areas classified at the time of the award, or at the time of performance of the contract, as persistent or substantial labor surplus areas or (ii) in any area (by himself if certified or by first-tier certified subcontractors).

5. Section 1-1.805-3 is amended so that the text and the clauses in paragraphs (a) and (b) read as follows:

§ 1-1.805-3 Required clauses.

(a) The "Utilization of Labor Surplus Area Concerns" clause, set forth below, shall be inserted in all contracts in amounts which may exceed \$5,000, except:

(1) Contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia;

(2) Contracts for services which are personal in nature; and

(3) Contracts for construction.

UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(The following clause is applicable if this contract exceeds \$5,000.)

(a) It is the policy of the Government to award contracts to labor surplus area concerns that (1) have been certified by the Secretary of Labor (hereafter referred to as certified-eligible concerns with first or second preferences) regarding the employment of a proportionate number of disadvantaged individuals and have agreed to perform substantially (i) in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas or (ii) in other areas of the United States, respectively, or (2) are noncertified concerns which have agreed to perform sub-

stantially in persistent or substantial labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns" the Contractor in placing his subcontracts shall observe the following order of preference: (1) Certified-eligible concerns with a first preference which are also small business concerns; (2) other certified-eligible concerns with a first preference; (3) certified-eligible concerns with a second preference which are also small business concerns; (4) other certified-eligible concerns with a second preference; (5) persistent or substantial labor surplus area concerns which are also small business concerns; (6) other persistent or substantial labor surplus area concerns; and (7) small business concerns which are not labor surplus area concerns.

(b) * * *

LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

(b) A "labor surplus area concern" is a concern that (1) has been certified by the Secretary of Labor (hereafter referred to as a certified-eligible concern) regarding the employment of a proportionate number of disadvantaged individuals and has agreed to perform substantially in or near sections of concentrated unemployment or underemployment, in persistent or substantial labor surplus areas, or in other areas of the United States or (2) is a noncertified concern which has agreed to perform a substantial proportion of a contract in persistent or substantial labor surplus areas. A certified-eligible concern shall be deemed to have performed a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment, in persistent or substantial labor surplus areas, or in other areas if the costs that the concern will incur on account of manufacturing or production in or near such sections or in such areas (by itself, if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 25 percent of the contract price. A concern shall be deemed to have performed a substantial proportion of a contract in persistent or substantial labor surplus areas (by itself or its first-tier subcontractors) if the costs that the concern will incur on account of production or manufacturing in such areas amount to more than 50 percent of the contract price.

PART 1-2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 1-2.4—Opening of Bids and Award of Contract

Section 1-2.407-6 is amended to read as follows:

§ 1-2.407-6 Equal low bids.

(a) In furtherance of the small business and labor surplus area policies set forth in Subparts 1-1.7 and 1-1.8, award shall be made in accordance with the following order of priority when two or more low bids are equal in all respects (taking into consideration cost of transportation, cash discounts, and any other factors properly to be considered):

(1) Certified-eligible concerns with a first preference (as defined in § 1-1.801-1(a)) that are also small business concerns (as defined in Subpart 1-1.7).

(2) Other certified-eligible concerns with a first preference.

(3) Certified-eligible concerns with a second preference (as defined in § 1-1.801(b)) that are also small business concerns.

(4) Other certified-eligible concerns with a second preference.

(5) Persistent or substantial labor surplus area concerns (as defined in § 1-1.801-1(c)) that are also small business concerns.

(6) Other persistent or substantial labor surplus area concerns.

(7) Other small business concerns.

(8) Other concerns.

PART 1-16—PROCUREMENT FORMS

Section 1-16.101 is amended to change the provisions of paragraph (c) to read as follows:

§ 1-16.101 Contract forms.

(c) General Provisions (Supply Contract) (Standard Form 32, November 1969 edition). Pending the publication of a new edition of the form, the Utilization of Labor Surplus Area Concerns clause prescribed in § 1-1.805-3(a) shall be substituted for the present provisions of Article 22, Utilization of Concerns in Labor Surplus Areas.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective June 1, 1970.

Dated: May 27, 1970.

ROBERT L. KUNZIG,
Administrator of General Services.

[F.R. Doc. 70-6816; Filed, June 1, 1970; 8:50 a.m.]

Chapter 8—Veterans Administration
MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter 8 is amended as follows:

PART 8-16—PROCUREMENT FORMS

1. In § 8-16.401, paragraph (a) is amended to read as follows:

§ 8-16.401 Forms prescribed.

(a) In contracting for repairs to homes acquired by the Veterans Administration through the operation of the Loan Guaranty Program, VA Form 26-6724, Invitation, Bid and/or Acceptance or Authorization, will be used. This form may also be used in negotiating contracts.

PART 8-95—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND EDUCATION PROGRAMS

2. Section 8-95.101 is revised to read as follows:

§ 8-95.101 Policy.

It is the policy of the Veterans Administration that all procurement effected by formal advertising or negotiation pertaining to the expenditure of funds for the repair and maintenance of Veterans Administration property acquired under chapter 37, title 38, United States Code, be made in accordance with those regulations as set forth in FPR 1-2, 1-3, and 1-16 as supplemented or implemented by Parts 8-2, 8-3, and 8-16 of this chapter and otherwise authorized by this Subpart 8-95.1 and specific subparts or sections as stated in this subpart.

3. In § 8-95.102, paragraphs (a) and (b) are amended to read as follows:

§ 8-95.102 Authorization for repairs to properties.

(a) Except as provided in this subpart, Managers are authorized to purchase supplies and services for the repair to any Veterans Administration property acquired under chapter 37, title 38, United States Code, where the cost does not exceed \$3,000 on any single transaction.

(b) In those cases where the expenditure is known or estimated to exceed \$3,000, the request, together with the loan guaranty folder, will be forwarded to the Chief Benefits Director for approval.

(Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114; 38 U.S.C. 210(c))

These regulations are effective immediately.

Approved: May 25, 1970.

By direction of the Administrator.

[SEAL] FRED B. RHODES,
Deputy Administrator.

[F.R. Doc. 70-6777; Filed, June 1, 1970; 8:50 a.m.]

Chapter 101—Federal Property Management Regulations

SUBCHAPTER D—PUBLIC BUILDINGS AND SPACE

PART 101-17—CONSTRUCTION AND ALTERATION OF PUBLIC BUILDINGS

Intergovernmental Consultation on Federal Projects

Section 401(b) of the Intergovernmental Cooperation Act of 1968, 82 Stat. 1103, requires that all viewpoints, national, regional, State, and local, shall be fully considered to the extent possible and shall be taken into account in planning Federal or federally assisted development programs and projects. This amendment to Part 101-17 implements Bureau of the Budget Circular A-95, which was issued in partial implementation of the cited Act.

The requirement to consult with Governors, regional and metropolitan planning agencies, and local elected officials expands the previous practice of coordinating site selection and other aspects