

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Kansas City, Mo., on September 18, 1978.

JOHN E. SHAW,
Acting Director, Central Region.

[FR Doc. 78-27448 Filed 9-29-78; 8:45 am]

[4910-13]

[Airspace Docket No. 77-AL-11]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Designation of Area High Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates two area high routes over the Gulf of Alaska to provide additional routings between Anchorage, Alaska, and Seattle, Wash. This action will increase the efficiency of airspace use by permitting uninterrupted climb/descent for air traffic between Anchorage and Seattle.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone 202-426-8525.

SUPPLEMENTARY INFORMATION:

HISTORY

On July 20, 1978, the FAA proposed to amend subpart D of part 75 of the Federal Aviation Regulations (14 CFR Part 75) to designate two area high routes southeast of Anchorage to provide additional routings for air traffic operating between Anchorage and Seattle (43 FR 31163). Interested persons were invited to participate in the rule-making proceeding by submitting written comments on the proposal to the FAA. The comment received expressed no objection. This amendment is that proposed in the notice. Section 75.400 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 730).

THE RULE

This amendment to part 75 of the Federal Aviation Regulations (14 CFR Part 75) designates J-886R and J-997R southeast of Anchorage to provide better air traffic handling between Anchorage and Seattle. Aircraft departing/landing Anchorage via current routings are frequently stair-stepped during climb/descent until conflicting traffic is no longer a factor. Designation of these routes will provide lateral airspace for uninterrupted climb/descent to/from cruising altitudes.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart D of part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (43 FR 730) is amended, effective 0901 G.m.t., December 28, 1978, as follows:

§ 75.400 [Amended]

Under § 75.400, the following is added:

J-886R Anchorage, Alaska, to Yakutat, Alaska:

Waypoint, Name, Location, and Reference Facility

NOWEL, 60°29'01" N., 148°38'01" W., Anchorage, Alaska.

ARISE, 60°00'02" N., 146°09'06" W., Middleton Island, Alaska.

KONKS, 59°33'04" N., 144°00'00" W., Middleton Island, Alaska.

KILLA, 58°45'00" N., 140°35'00" W., Yakutat, Alaska.

J-997R Anchorage, Alaska, to Annette Island, Alaska:

Waypoint Name, Location, and Reference Facility

NOWEL, 60°29'01" N., 148°38'01" W., Anchorage, Alaska.

TONTS, 59°51'06" N., 146°18'00" W., Middleton Island, Alaska.

DUNKS, 57°58'07" N., 140°14'00" W., Yakutat, Alaska.

HOLLI, 56°40'00" N., 137°00'00" W., Blorka Island, Alaska.

MOCHA, 54°29'05" N., 133°00'02" W., Annette Island, Alaska.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

NOTE.—The FAA has determined that this document involves a regulation which is not significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines (43 FR 9582; Mar. 8, 1978).

Issued in Washington, D.C., on September 21, 1978.

WILLIAM E. BROADWATER,
Chief, Airspace and Air
Traffic Rules Division.

[FR Doc. 78-27690 Filed 9-29-78; 8:45 am]

[4110-07]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. No. 4]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Subpart K—Employment—Wages—Self—Employment—Self—Employment Income

DEEMED FILING OF WAIVER OF TAX EXEMPTION BY RELIGIOUS, CHARITABLE, OR OTHER ORGANIZATION DESCRIBED IN SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE

AGENCY: Social Security Administration, HEW.

ACTION: Final regulation.

SUMMARY: Certain religious, charitable, educational, or other organizations are excluded from social security coverage unless they file a waiver certificate of tax exemption from taxes under the Federal Insurance Contributions Act (FICA). Some of these organizations did not file a waiver certificate but nevertheless paid social security taxes under the Federal Insurance Contributions Act (FICA) on the wages paid to their employees. These amendments add a provision which reflects legislation allowing these organizations, under certain circumstances, to be deemed to have elected to cover the services of their employees under social security even though the organization failed to file the waiver certificate or was granted a refund of the taxes paid on the reported wages.

EFFECTIVE DATE: The regulations are effective October 2, 1978.

COMMENTS DUE: Consideration will be given to any comments submitted in writing on or before December 1, 1978.

ADDRESSES: Send comments to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203. Copies of all comments received in response to the regulations will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth J. Dyer, Legal Assistant, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7454.

SUPPLEMENTARY INFORMATION: Services performed as an employee of a religious, charitable, educational, or other organization that is exempt from income taxes under section 501(c)(3) of the Internal Revenue Code of 1954 (IRC), are excluded from social security coverage. However, the employing organization may file a certificate (see sec. 3121(k) of the IRC) waiving its tax exempt status from social security taxes. A study by the General Accounting Office in 1975 revealed that a substantial number of these organizations had not filed waiver certificates with the Internal Revenue Service. The study further showed that these organizations were nevertheless reporting wages and paying social security taxes on them. Pub. L. 94-563, approved on October 19, 1976, made it possible for employees of such organizations to receive social security coverage for the reported wages.

Pub. L. 94-563 amended both the Social Security Act and the IRC. It provides that if the organization failed to file the waiver certificate but paid social security taxes under the Federal Insurance Contribution Act on wages paid its employees for three or more consecutive calendar quarters after 1972, it will be deemed to have filed the certificate. Section 312 of Pub. L. 95-216, further amended only section 3121(k) of the IRC, to change social security tax provisions in light of Pub. L. 94-563.

Public Law 94-563 and Pub. L. 95-216 are discussed only in general terms since the provisions relating to the filing of a waiver certificate, the collection and refund of social security taxes and coverage of organizations and their employees' taxes, are contained in the Internal Revenue Code of 1954 and are the responsibility of the Internal Revenue Service. Consequently, the regulations refer the user to the appropriate IRC provisions. The regulations are being published as final regulations since a notice of proposed rulemaking is unnecessary in that the regulations merely reflect the provisions of statutes already in effect.

Accordingly, the amendments are adopted as set forth below.

(Secs. 205, and 1102 of the Social Security Act, as amended, 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 42 U.S.C. 405 and 1302 as amended.)

(1977 Catalog of Federal Domestic Assistance Program Nos. 13.802, Social Security—Disability Insurance, 13.803, Social Security—Retirement Insurance; 13.804, Social Security—Special Benefits for Persons Age 72 and Over; and 13.805, Social Security—Survivors Insurance.)

Dated: August 15, 1978.

DON WORTMAN,
Acting Commissioner
of Social Security.

Approved: September 27, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health,
Education, and Welfare.

Part 404 of title 20 of the Code of Federal Regulations is amended as set forth below:

1. In § 404.1016 the heading and paragraph (a) are revised to read as follows:

§ 404.1016 Election of coverage by religious, charitable, educational, or other organizations exempt from income tax.

(a) General. Services performed by an employee in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from income tax under section 501(a) of the Internal Revenue Code of 1954 (sec. 101(6) of the Internal Revenue Code of 1939) are excepted from employment. This exception does not apply to services performed during the period for which a form SS-15, Certificate Waiving Exemption From Taxes Under the Federal Insurance Contributions Act, is filed under paragraph (a)(1) of this section, or an organization is deemed to have filed a waiver certificate under paragraph (a)(2) of this section.

(1) Formal election of coverage—Filing of form SS-15, Certificate Waiving Exemption From Taxes Under the Federal Insurance Contributions Act, and form SS-15a, List of Concurring Employees. Form SS-15 and form SS-15a, filed under section 3121(k) of the Internal Revenue Code of 1954, have the effect of covering services performed by an employee:

(i) Whose signature appears on the form SS-15a, List of Concurring Employees (or a supplemental list); or

(ii) Who became an employee of the organization after the calendar quarter in which the form SS-15 was filed; or

(iii) Who became a member of a group of employees as described in section 3121(k)(1)(E) of the Internal Revenue Code of 1954 after the calendar quarter in which the form SS-15 was filed with respect to that group.

(2) No certificate filed—deemed

filing of waiver certificate. Under certain conditions, an organization which has never filed a waiver certificate but has reported wages and paid social security taxes for its employees shall be deemed: (i) To have filed a waiver certificate waiving its social security tax exemption, and (ii) to have elected to cover the services of its employees under social security. Each employee listed on the filed wage reports shall be deemed to have concurred in the filing of the certificate and/or having his or her services covered. The authority and conditions with respect to the deemed filing of a waiver certificate and employee coverage for social security purposes are found in section 3121(k) of the Internal Revenue Code of 1954.

(3) Coverage of individual employees. In order for the remuneration for services performed by employees of organizations described in paragraph (a)(2) of this section to be considered wages from covered employment as defined in § 404.1026(a)(2), the employee (or his or her representative) must:

(i) Request that the remuneration be considered wages from covered employment when a deemed filed certificate is not effective for certain periods because of section 3121(k)(4)(C) of the Internal Revenue Code; or

(ii) Request that the remuneration be considered wages from covered employment when, for periods between March 31, 1972, and the date a deemed filed certificate is effective, the remuneration was reported for social security purposes and the employer has obtained a refund or credit for the social security taxes paid on that remuneration.

The request must be in writing and filed with either the Social Security Administration or the Internal Revenue Service on or before April 15, 1980. The written request should identify the employer or employers, the periods in which the services were performed and the approximate amount of wages paid in these periods. The employee must show that he has paid to the Internal Revenue Service his share of the social security taxes due on his wages or that he has made arrangements with the Internal Revenue Service to make the required payment.

[FR Doc. 78-27794 Filed 9-29-78; 8:45 am]

[8320-01]

**Title 38—Pensions, Bonuses and
Veterans' Relief
CHAPTER 1—VETERANS
ADMINISTRATION
PART 3—ADJUDICATION**

**Subpart A—Pension, Compensation,
and Dependency and Indemnity
Compensation**

**RATING CONSIDERATIONS RELATIVE TO
SPECIFIC DISEASES**

AGENCY: Veterans Administration.
ACTION: Final regulations.

SUMMARY: The Veterans Administration is amending its regulations governing service connection for tuberculosis. The law currently provides that active tuberculosis developing within 3 years from the date of separation from active service may be presumptively service connected. The Veterans Administration, by regulation, added additional presumptive periods of 6 months for minimally advanced tuberculosis, 9 months for moderately advanced tuberculosis, and 12 months for far advanced tuberculosis. This was done on the advice of medical authorities on the theory that those degrees of advancement indicated preexistence of the disease by the specified periods. This theory is no longer tenable. "Diagnostic Standards and Classification of Tuberculosis and Other Mycobacterial Diseases" published by the American Lung Association has discontinued classification of tuberculosis as minimal, moderate, or far advanced and such classifications are no longer taught or used in modern medical practice. The major effect of this change is to remove the regulatory presumptions of 6, 9, and 12 months which are in addition to the 3-year statutory presumption. This brings the regulation into accord with the statute and current medical standards.

EFFECTIVE DATE: September 19, 1978.

**FOR FURTHER INFORMATION
CONTACT:**

T. H. Spindle, 202-389-3005.

SUPPLEMENTARY INFORMATION: On pages 28824-28826 of the FEDERAL REGISTER of July 3, 1978, there was published a notice of proposed regulatory development to amend §§ 3.307, 3.370, 3.371, 3.374, 3.375, and 3.378 relative to abrogating the presumptions that tuberculosis manifest during the fourth year after service may be considered to be service connected.

Interested persons were given 30 days to submit comments, suggestions, or objections to the proposed regulatory changes. Four comments were received. The first commentator favored

retaining the 4-year presumptive period but offered no evidence or argument to support her position. The second commentator wanted the "change in time limit to also be related to all other diseases * * *" but did not explain what was meant by that comment. The third commentator wanted the 4-year presumptive period extended to 10 years but cited no medical evidence to warrant adoption of his proposal. The fourth commentator suggested that the Veterans Administration use Mantoux skin tests to determine whether a case of tuberculosis was service connected. The procedure would require that the test be given at induction and then 90 days after discharge. This suggestion cannot be adopted because the Mantoux skin test has not been universally given at induction and the Veterans Administration has no authority to require a former service member to report for such a test 90 days after discharge.

The proposed regulatory changes are adopted without amendment.

Approved: September 19, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

1. In § 3.307, paragraph (c) is revised to read as follows:

§ 3.307 Presumptive service connection for chronic, tropical, or prisoner of war related disease; wartime and service on or after January 1, 1947.

(c) *Prohibition of certain presumptions.* No presumptions may be invoked on the basis of advancement of the disease when first definitely diagnosed for the purpose of showing its existence to a degree of 10 percent within the applicable period. This will not be interpreted as requiring that the disease be diagnosed in the presumptive period, but only that there be then shown by acceptable medical or lay evidence characteristic manifestations of the disease to the required degree, followed without unreasonable time lapse by definite diagnosis. Symptomatology shown in the prescribed period may have no particular significance when first observed, but in the light of subsequent developments it may gain considerable significance. Cases in which a chronic condition is shown to exist within a short time following the applicable presumptive period, but without evidence of manifestations within the period, should be developed to determine whether there was symptomatology which in retrospect may be identified and evaluated as manifestation of the chronic disease to the required 10-percent degree. The consideration of service incurrence provided for chronic diseases will not

be interpreted to permit any presumption as to aggravation of a preservice disease or injury after discharge.

2. In § 3.370, paragraph (b) is revised to read as follows:

§ 3.370 Pulmonary tuberculosis shown by X-ray in active service.

(b) *Inactive disease.* Where the veteran was examined at time of entrance into active service but X-ray was not made, or if made, is not available and there was no notation or other evidence of active or inactive reinfection type pulmonary tuberculosis existing prior to such entrance, it will be assumed that the condition occurred during service and direct service connection will be in order for inactive pulmonary tuberculosis shown by X-ray evidence during service in the manner prescribed in paragraph (a) of this section, unless lesions are first shown so soon after entry on active service as to compel the conclusion, on the basis of sound medical principles, that they existed prior to entry on active service.

3. In § 3.371, paragraphs (a) and (c) are revised to read as follows:

§ 3.371 Presumptive service connection for tuberculous disease; wartime and service on or after January 1, 1947.

(a) *Pulmonary tuberculosis.* (1) Evidence of activity on comparative study of X-ray films showing pulmonary tuberculosis within the 3-year presumptive period provided by § 3.307(a)(3) will be taken as establishing service connection for active pulmonary tuberculosis subsequently diagnosed by approved methods but service connection and evaluation may be assigned only from the date of such diagnosis or other evidence of clinical activity.

(2) A notation of inactive tuberculosis of the reinfection type at induction or enlistment definitely prevents the grant of service connection under § 3.307 for active tuberculosis, regardless of the fact that it was shown within the appropriate presumptive period.

(c) *Tuberculous pleurisy and endobronchial tuberculosis.* Tuberculous pleurisy and endobronchial tuberculosis fall within the category of pulmonary tuberculosis for the purpose of service connection on a presumptive basis. Either will be held incurred in service when initially manifested within 36 months after the veteran's

separation from service as determined under § 3.307(a)(2).

4. In § 3.374, paragraph (d) is revoked.

§ 3.374 Effect of diagnosis of active tuberculosis.

(d) [Revoked]

5. In § 3.375, paragraph (a) is revised to read as follows:

§ 3.375 Determination of inactivity (complete arrest) in tuberculosis.

(a) *Pulmonary tuberculosis.* A veteran shown to have had pulmonary tuberculosis will be held to have reached a condition of "complete arrest" when a diagnosis of inactive is made.

6. Section 3.378 is revised to read as follows:

§ 3.378 Changes from activity in pulmonary tuberculosis pension cases.

A permanent and total disability rating in effect during hospitalization will not be discontinued before hospital discharge on the basis of a change in classification from active. At hospital discharge, the permanent and total rating will be discontinued unless (a) the medical evidence does not support a finding of complete arrest (§ 3.375), or (b) where complete arrest is shown but the medical authorities recommend that employment not be resumed or be resumed only for short hours (not more than 4 hours a day for a 5-day week). If either of the two aforementioned conditions is met, discontinuance will be deferred pending examination in 6 months. Although complete arrest may be established upon that examination, the permanent and total rating may be extended for a further period of 6 months provided the veteran's employment is limited to short hours as recommended by the medical authorities (not more than 4 hours a day for a 5-day week). Similar extensions may be granted under the same conditions at the end of 12 and 18 months periods. At the expiration of 24 months after hospitalization, the case will be considered under § 3.321(b) if continued short hours of employment is recommended or if other evidence warrants submission.

[FR Doc. 78-27288 Filed 9-29-78; 8:45 am]

[8320-01]

PART 4—SCHEDULE FOR RATING DISABILITIES

Updating the Schedule for Rating Disabilities

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is amending its regulations to provide additional ratings for prosthetic implants to both the upper and lower extremities, to redefine the criteria for the 100-percent evaluation for rheumatic, hypertensive, and arteriosclerotic heart disease and to include a rating for coronary artery bypass. Also, the degrees of advancement of tuberculosis have been eliminated and instructions for continuing the total rating for malignant growths of the brain and spinal cord for 2 years following cessation of treatment have been included. These changes were made to conform to advances in medical science and surgery and to make the evaluations for the various heart diseases more realistic. Also additional charts for rating multiple losses of extremities, and loss of vision due to concentric contraction of field vision have been included. In compliance with Pub. L. 94-168, the "Metric Conversion Act of 1975," all measurements on the rating schedule have been metricated.

EFFECTIVE DATE: September 22, 1978. An amendment to appendix A, table of amendments and effective dates since 1946, is added to include effective dates.

FOR FURTHER INFORMATION CONTACT:

Robert C. Macomber, Chief, Rating Policy Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, 202-389-2635.

SUPPLEMENTARY INFORMATION: On pages 28826 through 28840 of the FEDERAL REGISTER of July 3, 1978, the Veterans Administration published a notice of proposed regulatory development to amend 38 CFR part 4 to include the additional material summarized above.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations. Three written comments were received. The first commentator requested information relative to the discontinuance of the various degrees of advancement of pulmonary tuberculosis, particularly how this change would affect claims pending adjudication. The inquirer was informed that all claims pending on the effective date of approval of the change will be adjudicated under the

criteria in effect prior to the change. Only those claims received after the effective date of this change will be adjudicated under the new criteria; and, all claims adjudicated under the old criteria and properly on the rolls will remain undisturbed insofar as service connection is concerned. The second comment was complimentary in nature, took no exception to the proposed changes but objected to the fact that the Veterans Administration did not grant service connection for his several claimed disabilities. The third comment was received from the American Optometric Association requesting that the requirement of an ophthalmologist to conduct the muscle function test described in § 4.77 of the rating schedule be changed since optometrists are qualified to conduct that examination. We are in agreement with the suggestion and have changed ophthalmologist to examiner.

In conformity with Pub. L. 94-168, the "Metric Conversion Act of 1975," diagnostic code 7802 has been included to metricate the measurement of 1 square foot, which was inadvertently omitted in the proposed change of July 3, 1978. Also the heading immediately preceding codes 6701 through 6724 has been changed to read "Ratings for Pulmonary Tuberculosis Entitled on August 19, 1978," and put in abbreviated language to conform to a similar heading for pulmonary tuberculosis entitled after August 19, 1978.

Approved: September 22, 1978.

MAX CLELAND,

Administrator of
Veterans Affairs.

1. Section 4.17 is revised to read as follows:

§ 4.17 Total disability ratings for pension based on unemployability and age of the individual.

All veterans who are basically eligible and who are unable to secure and follow a substantially gainful occupation by reason of disabilities which are likely to be permanent shall be rated as permanently and totally disabled. For the purpose of pension, the permanence of the percentage requirements of § 4.16 is a requisite. The percentage requirements, however, are reduced on the attainment of age 55 to a 60 percent rating for one or more disabilities, with no percentage requirements for any one disability. The requirement at age 60 through 64 will be a 50 percent rating for one or more disabilities. A veteran who has become 65 years of age or older, or became unemployable after age 65, is conclusively presumed to be permanently and totally disabled by statute; hence, rating action for this purpose is unnecessary. When the reduced percentage require-