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PART XI



**DEPARTMENT OF
LABOR**

**Employment and Training
Administration**

■

**CLASSIFYING LABOR
SURPLUS AREAS**

Preference in Federal Procurement

[4510-30-M]

Title 20—Employees' Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR**PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM****PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM****Preference in Federal Procurement Under Defense Manpower Policy DMP-4A and Executive Orders 12073 and 10582****MODIFICATION OF RULES FOR CLASSIFYING LABOR SURPLUS AREAS**

NOTE.—This document originally appeared in the FEDERAL REGISTER for January 3, 1979. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Labor Department. (See OFR notice 41 FR 32914, August 6, 1976.)

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is modifying its rules for classifying labor surplus areas under Defense Manpower Policy DMP-4A and Executive Order 10582 to reflect the promulgation of Executive Order 12073 and changes being made as a result of comments received.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

BACKGROUND

Defense Manpower Policy No. 4A (DMP-4A), 32A CFR Part 134, became effective November 3, 1977. The purpose of DMP-4A is to encourage the purchase of goods and services by the Federal Government and the placement of Federal facilities in areas of labor surplus. Under DMP-4A the Secretary of Labor is required to classify labor surplus areas and disseminate this information for the use of all Federal agencies in directing procurement activity and locating new plants or facilities. Firms which agree to perform most of the work in labor surplus areas are eligible for preference in the award of procurement contracts and

grants and the execution of agreements.

On March 3, 1978, the Department of Labor published in the FEDERAL REGISTER final regulations for classifying labor surplus areas under Defense Manpower Policy DMP-4A and Executive Order 10582. In order to implement DMP-4A as rapidly as possible, the Department shortened the period for comment on the proposed regulations and accepted comment during the 60 day period subsequent to the publication date of the final regulations.

On August 16, 1978 the President signed Executive Order 12073—Federal Procurement in Labor Surplus Areas. This executive order strengthened DMP-4A and provided additional authority for the Department's implementing regulations in 20 CFR Part 654.

At this time the Department is making revisions and corrections to these regulations primarily as a result of the comments which were received and the promulgation of the executive order. The changes also reflect the Department's experience under these regulations.

SUMMARY OF CHANGES

The primary objective of these changes is to more effectively accomplish the purpose of DMP-4A to target Federal procurement to areas of greatest need. Effective targeting is a goal of the strengthened procedures in E.O. 12073 and a central concern of the comments received on the Department's regulations.

A review of operating data indicates that the present criteria used for classifying labor surplus areas are too broad for the effective targeting of Federal funds. Based on comments received and internal analysis, the Department of Labor has concluded that the criteria for classifying labor surplus areas should be focused more sharply on communities with problems of chronically high unemployment which have the greatest need of the labor surplus set aside program. To accomplish this objective the following changes are being made in the system for defining program eligibility.

1. In order to focus programs more sharply on the community level, labor surplus will no longer be defined in terms of broad geographic areas in which there is a concentration of economic activity or labor demand and in which workers can generally change jobs without changing their residences. Instead, the conditions for defining labor surplus will be in terms of discrete civil jurisdictions, i.e., counties, county equivalents, and cities with a population of at least 50,000. In this way, funds will be directed to specific localities with high unemploy-

ment rather than to all jurisdictions in any given metropolitan area, not all of which suffer from the same degree of unemployment.

2. In order to target procurement contracts to localities with the greatest degree of unemployment, eligibility will be limited to those jurisdictions which have an average unemployment rate which is 120 percent of the national unemployment rate or higher during the reference period.

3. The reference period used in making the classifications will be an average of the previous two calendar years. By using an average of 24 months of unemployment data in place of the present 12 months, it should be possible to target contracts into communities experiencing high structural unemployment.

4. Eligibility status will be determined annually (rather than quarterly) effective each May 1. The purpose of this change is to provide more stability in the contracting process.

5. In classifying labor surplus areas for those jurisdictions in standard metropolitan statistical areas for which the current population surveys (CPS) were used to determine the annual unemployment data prior to January 1, 1978, the Assistant Secretary shall make determinations of the average unemployment rates in such jurisdictions. The purpose of this change is to prevent these areas from being penalized by the change in the unemployment estimating procedures involving the discontinuation of separate CPS estimates for these areas.

Since these regulations involve a matter relating to "public property, loans, grants, benefits, or contracts" they are exempt from the rulemaking requirements of the Administrative Procedure Act. (5 U.S.C. § 553(a)(2)). Moreover, the Secretary of Labor has determined that it is in the public interest to publish these regulations in final form so that program implementation may move more rapidly without disruption of the Federal procurement process. This finding constitutes a waiver of the Department's regulation in 29 CFR 2.7. These rules will therefore become effective January 1, 1979.

Accordingly, Parts 651 and 654, Chapter V, Title 20 of the Code of Federal Regulations are amended as follows:

PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

1. The table of contents for Part 654—Special Responsibilities of the Employment Service System is amended to read as follows:

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§ 651.6 Consolidated table of contents for Parts 651-658.

SUBPART A—RESPONSIBILITIES UNDER DEFENSE MANPOWER POLICY NO. 4A (32A CFR PART 134) AND EXECUTIVE ORDER 12073

- 654.1 Purpose of subpart.
- 654.2 Description of DMP-4A.
- 654.3 Description of Executive Order 12073.
- 654.4 Definitions.
- 654.5 Classification of labor surplus areas.
- 654.6 Termination of classification.
- 654.7 Publication of area classifications.
- 654.8 Services to firms and individuals in labor surplus areas.
- 654.9 Filing of employment service-related complaints.

SUBPART B—RESPONSIBILITIES UNDER EXECUTIVE ORDER 10582

- 654.11 Purpose of subpart.
- 654.12 Description of Executive Order 10582.
- 654.13 Determination of areas of substantial unemployment.
- 654.14 Filing of employment service-related complaints.

SUBPART C—TRANSITION PROVISIONS

- 654.21 Interim classifications.

PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM

2. Part 654, in its entirety, is amended to read as follows:

SUBPART A—RESPONSIBILITIES UNDER DEFENSE MANPOWER POLICY NO. 4A (32A CFR PART 134) AND EXECUTIVE ORDER 12073

- 654.1 Purpose of subpart.
- 654.2 Description of DMP-4A.
- 654.3 Description of Executive Order 12073.
- 654.4 Definitions.
- 654.5 Classification of labor surplus areas.
- 654.6 Termination of classification.
- 654.7 Publication of area classifications.
- 654.8 Services to firms and individuals in labor surplus areas.
- 654.9 Filing of employment service-related complaints.

SUBPART B—RESPONSIBILITIES UNDER EXECUTIVE ORDER 10582

- 654.11 Purpose of subpart.
- 654.12 Description of Executive Order 10582.
- 654.13 Determination of areas of substantial unemployment.
- 654.14 Filing of employment service-related complaints.

SUBPART C—TRANSITION PROVISIONS

- 654.21 Interim classifications.

AUTHORITY: Pub. L. 95-89; 50 U.S.C. App. 2061, et seq.; 41 U.S.C. 10a et seq.; 29 U.S.C. 49 et seq.; E.O. 12073; E.O. 11725; E.O. 11051, as amended; E.O. 10582; E.O. 10480; 32A CFR Part 134.

Subpart A—Responsibilities Under Defense Manpower Policy No. 4A (32A CFR Part 134) and Executive Order 12073

§ 654.1 Purpose of subpart.

This subpart implements the responsibilities of the Secretary of Labor in classifying labor surplus areas in accordance with Defense Manpower Policy No. 4A of the Federal Preparedness Agency, General Services Administration (32A CFR Part 134—Preservation of the Mobilization Base Through the Placement of Procurement and Facilities in Labor Surplus Areas (DMP-4A)), and Executive Order 12073 (Federal Procurement in Labor Surplus Areas). The Secretary of Labor has delegated responsibilities to the Assistant Secretary, Employment and Training Administration.

§ 654.2 Description of DMP-4A.

(a) Defense Manpower Policy No. 4A (DMP-4A) consists of the Federal regulations at 32A CFR Part 134—Preservation of the Mobilization Base Through the Placement of Procurement and Facilities in Labor Surplus Areas.

(b) The DMP-4A regulations were issued pursuant to Pub. L. 95-89; Executive Order 10480; Executive Order 11051, as amended; and Executive Order 11725. Implementation of the regulations is the responsibility of the Federal Preparedness Agency of the General Services Administration.

(c) The purpose of DMP-4A is to encourage the purchase of goods and services by the Federal Government and the placement of Federal facilities in areas of labor surplus.

(d) Under DMP-4A, the Secretary of Labor is required to:

(1) Classify labor surplus areas and disseminate this information on a timely basis to Federal departments and agencies.

(2) In cooperation with State and local authorities and the Secretary of Commerce, provide labor-market data and related economic information in efforts to assist in the initiation of industrial expansion programs in labor surplus areas.

(3) Identify occupations and skills which are in surplus supply within labor surplus areas and make this information available to firms requiring such occupations and skills and interested in establishing new plants and facilities.

(4) Identify occupations and skills for which labor will be needed by new or expanding industries and industries that expand during a mobilization; and, in collaboration with other Government agencies, make assistance available to labor surplus area institutions and users in developing on-the-job, apprentice, or other training programs for developing skills of the work force.

(5) Through the affiliated State employment services, receive job openings on a voluntary basis and/or under the mandatory listing program provided for by section 2012

of Title 38 of the United States Code and by Executive Order 11701, and refer qualified unemployed workers to concerns in labor surplus areas.

(e) Under DMP-4A, all Federal agencies are required to:

(1) Use their best efforts to award all procurement contracts and grants, and execute agreements, greater than \$2,500 to concerns that will perform a substantial proportion of the manufacturing, production, or appropriate services on those contracts within labor surplus areas, to the extent that procurement objectives will permit.

(2) Ensure that firms in labor surplus areas that are on appropriate bidders mailing lists are given the opportunity to submit offers on all procurements for which they are qualified. Whenever the number of firms on a bidders mailing list is excessive in relation to size and type of procurement, a representative number of firms from labor surplus areas shall be given the opportunity to submit offers.

(3) Establish programs to encourage prime contractors to award subcontracts to firms that agree to perform a substantial proportion of the production, manufacturing or appropriate services on those subcontracts in labor surplus areas.

(4) Cooperate with other Federal departments and agencies in achieving the objectives of this policy.

(f) Under DMP-4A, the Secretary of Commerce is required to:

(1) In cooperation with State economic development agencies, the Secretary of the Defense, the Administrator of General Services, and the Administrator of the Small Business Administration, assist concerns which have agreed to perform contracts in labor surplus areas in obtaining Government procurement business by: (A) Providing such concerns with timely information on proposed Government procurements; and (B) maintaining current information on the manufacturing capabilities of such concerns with respect to Government procurement and disseminating such information to Federal departments and agencies.

(2) Urge concerns planning new production facilities to consider the advantages of locating in labor surplus areas.

(3) Provide technical advice and counsel to groups and organizations in labor surplus areas on planned industrial parks, industrial development organizations, expanding tourist business, and available Federal aids.

(g) Under DMP-4A, the Administrator of the Small Business Administration is required to make available to small business concerns in labor surplus areas all of its services, endeavor to ensure opportunity for maximum participation by such concerns in Government procurement, and give consideration to the needs of these concerns in the making of joint small business set-asides with Government procurement agencies.

(h) Under DMP-4A, there is continued in operation within the Federal Preparedness Agency the Surplus Manpower Committee. The Committee is chaired by the Director of the Federal Preparedness Agency or the Director's designee. The Committee

includes representation from the Office of Federal Procurement Policy; Department of Defense; Department of Commerce; Department of Labor; General Services Administration; Small Business Administration; Department of Health, Education, and Welfare; Department of Housing and Urban Development; Department of Energy; and other interested departments and agencies. The Committee advises the Director, Federal Preparedness Agency, on policies, procedures, and activities in existence or needed to carry out the purpose of DMP-4A.

(i) When an entire industry that sells a significant portion of its production to the Government is generally depressed or has a significant proportion of its production units located in a labor surplus area, the Committee may make appropriate recommendations relative to that industry in lieu of recommendations relative to specific geographical areas. In such cases, after notice and hearing of interested parties, the Director, Federal Preparedness Agency, gives consideration to appropriate measures applicable to the entire industry.

(j) Under DMP-4A, all Federal agencies are required to give consideration to labor surplus areas in the selection of sites for Government-financed facilities, including expansion, to the extent that such selection is consistent with existing law and essential economic and strategic factors that must also be taken into account.

§ 654.3 Description of Executive Order 12073.

Executive Order 12073 also requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under this order for classifying and designating labor surplus areas.

§ 654.4 Definitions.

(a) "Assistant Secretary" shall mean Assistant Secretary for Employment and Training, U.S. Department of Labor.

(b) "Civil jurisdiction" shall mean:

(1) Cities of 50,000 or more population on the basis of the most recently available Bureau of the Census estimates; or

(2) Towns and townships in the States of New Jersey, New York, Michigan, and Pennsylvania of 50,000 or more population and which possess powers and functions similar to cities; or

(3) All counties, except those counties which contain any of the types of political jurisdictions defined in (1) and (2) above.

(4) All other counties are defined as "balance of county" (i.e., total county

less component cities and townships identified in (1) and (2) above).

(5) County equivalents which are towns in the States of Massachusetts, Rhode Island and Connecticut.

(c) "Labor surplus area" shall mean a civil jurisdiction that, in accordance with the criteria specified in § 654.5, has been classified as a labor surplus area for purposes of Defense Manpower Policy No. 4A.

(d) "Reference period" shall mean the two year period ending December 31 of the year prior to the May 1 annual date of eligibility determination.

§ 654.5 Classification of labor surplus areas.

(a) *Basic criteria.* The Assistant Secretary shall classify a civil jurisdiction as a labor surplus area whenever, as determined by the Bureau of Labor Statistics, the average unemployment rate for the civilian labor force in the civil jurisdiction for the reference period is (1) 120 percent of the national average unemployment rate or higher for the reference period as determined by the Bureau of Labor Statistics, or (2) 10 percent or higher: *Provided, however,* That no civil jurisdiction shall be classified as a labor surplus area if the average unemployment rate for the reference period is less than 6.0 percent.

(b) In classifying civil jurisdictions within those standard metropolitan statistical areas and for central cities for which current population surveys (CPS) were used to determine annual unemployment data prior to January 1, 1978, the Assistant Secretary shall, until the end of Fiscal Year 1981, make determinations of the average unemployment rates in such jurisdictions so as to assure that eligibility is not denied by the termination of the use of such surveys.

(c) *Criteria for exceptional circumstances.* The Assistant Secretary, upon petition submitted by the appropriate State employment security agency, may classify a civil jurisdiction as a labor surplus area without regard to the reference period, whenever the civil jurisdiction meets or is expected to meet the unemployment tests established under § 654.5 (a) or (b) as a result of exceptional circumstances. For purposes of this paragraph, "exceptional circumstances" shall mean catastrophic events such as natural disasters, plant closings, and contract cancellations expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

§ 654.6 Termination of classification.

(a) *Basic procedure.* The Assistant Secretary shall terminate the classification of a civil jurisdiction as a labor

surplus area after any year in which the Assistant Secretary determines that the criteria established under § 654.5 (a) and (b) are no longer met.

(b) *Procedure for exceptional circumstances.* The Assistant Secretary shall terminate the classification of a civil jurisdiction classified as a labor surplus area pursuant to the provisions of § 654.5(c) after any year in which the Assistant Secretary determines that the exceptional circumstances criteria of that paragraph are no longer met.

§ 654.7 Publication of area classifications.

The Assistant Secretary shall publish annually a list of labor surplus areas together with geographic descriptions thereof.

§ 654.8 Services to firms and individuals in labor surplus areas.

To carry out the purposes and policy objectives of Defense Manpower Policy No. 4A and Executive Order 10582, the Assistant Secretary shall cooperate with and assist the State employment service agencies and the Secretary of Commerce, as appropriate to:

(a) Provide relevant labor market data and related economic information to assist in the initiation of industrial expansion programs in labor surplus areas;

(b) Identify upon request the skills and numbers of unemployed persons available for work in labor surplus areas, providing such information to firms interested in establishing new plants and facilities or expanding existing plants and facilities in such areas;

(c) Identify the occupational composition and skill requirements of industries contemplating locating in labor surplus areas and make such information available to training and apprenticeship agencies and resources in the community for purposes of appropriate training and skill development;

(d) Identify unemployed individuals in need of, and having the potential for, training in occupations and skills required by new or expanding industries and refer such individuals to appropriate training opportunities;

(e) Receive job openings on a voluntary basis and/or under the mandatory listing program provided by 38 U.S.C. 2012 and Executive Order 11701 and refer qualified unemployed workers to such openings, making appropriate efforts to refer to such openings qualified individuals who reside in the labor surplus area.

§ 654.9 Filing of employment service-related complaints.

Employment service-related complaints arising under Subpart A of this Part may be filed directly with the ap-

appropriate Department of Labor regional office in accordance with the provisions at 20 CFR § 658.420-423. For purpose of § 658.421, a complainant filing a complaint under this subsection shall be deemed to have exhausted the State agency administrative remedies set forth at 20 CFR § 658.410-416.

Subpart B—Responsibilities Under Executive Order 10582

§ 654.11 Purpose of subpart.

This subpart implements the responsibilities of the Secretary of Labor in determining areas of substantial unemployment in accordance with Executive Order 10582 issued pursuant to the Buy American Act, 41 U.S.C. 10a et seq.

§ 654.12 Description of Executive Order 10582.

(a) Under the Buy American Act, heads of executive agencies are required to determine, as a condition precedent to the purchase by their agencies of materials of foreign origin for public use within the United States, (1) that the price of like materials of domestic origin is unreasonable, or (2) that the purchase of like materials of domestic origin is inconsistent with the public interest.

(b) Section 3(c) of Executive Order 10582 issued pursuant to the Buy American Act permits executive agencies to reject a bid or offer to furnish materials of foreign origin in any situation in which the domestic supplier, offering the lowest price for furnishing the desired materials, undertakes to produce substantially all of the materials in areas of substantial unemployment, as determined by the Secretary of Labor.

§ 654.13 Determination of areas of substantial unemployment.

An area of substantial unemployment, for purposes of Executive Order 10582, shall be any area classified as a labor surplus area at § 654.5 of this Part pursuant to the procedures set forth at Subpart A of this Part.

§ 654.14 Filing of employment service-related complaints.

Employment service-related complaints arising under Subpart B of this Part may be filed directly with the appropriate Department of Labor regional office in accordance with the provisions at 20 CFR § 658.420-423. For purposes of § 658.421, a complainant filing a complaint under this subsection shall be deemed to have exhausted the

State agency administrative remedies set forth at 20 CFR § 658.410-416.

Subpart C—Transition Provisions

§ 654.21 Interim classifications

The transition from the quarterly classification of the March 3, 1978 regulations to the new annual classification system will not be fully accomplished until May 1, 1979. During the interim period, from January 1, 1979 through April 30, 1979, the list of labor surplus areas will be derived as follows:

(a) the list of labor surplus areas under the March 3, 1978 regulations for the quarter ending December 31, 1978 will remain in effect;

(b) the list will be supplemented by any additional labor surplus areas which would have qualified under the March 3, 1978 regulations for the first quarter of calendar year 1979; and

(c) upon petition submitted by the appropriate State employment security agency the Assistant Secretary may classify any civil jurisdiction which meets the basic provisions of § 654.5, as amended, based on the most recent satisfactory 12 months unemployment data.

Signed at Washington, D.C. on 29 December, 1978.

RAY MARSHALL,
Secretary of Labor.

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