#### **Explanation of Provisions**

#### I. General Background

Section 217(g) of the Code provides that a member of the Armed Forces on active duty who moves pursuant to a military order and incident to a permanent change of station does not include in income reimbursements or allowances for moving or storage expenses, or the value of moving and storage services furnished in kind. For purposes of section 217(g), moving expenses are defined in section 217(b). OBRA 1993 amended section 217(b) by narrowing the definition of deductible moving expenses.

As a result of this amendment, questions arose concerning the federal tax treatment of certain allowances provided by the Department of Defense and by the Department of Transportation under title 37 of the United States Code to members of the Armed Forces in connection with a transfer to a new permanent duty station. Those allowances include: (1) a dislocation allowance, intended to partially reimburse expenses (e.g., lease forfeitures, temporary living charges in hotels, and breakage of household goods in transit) incurred in relocating a household; (2) a temporary lodging expense, intended to partially offset the added living expenses of temporary lodging (up to 10 days) within the United States (other than Hawaii or Alaska); (3) a temporary lodging allowance, intended to help defray higher than normal living costs (for up to 60 days) outside the United States or in Hawaii or Alaska; and (4) a move-in housing allowance, intended to defray costs (e.g., rental agent fees, homesecurity improvements, and supplemental heating equipment) associated with occupying leased quarters outside the United States.

Section 1.61–2(b) of the Income Tax Regulations provides, in part, that subsistence and uniform allowances granted to members of the Armed Forces, Coast and Geodetic Survey (now known as the National Oceanic and Atmospheric Administration), and Public Health Service, and amounts received by them as commutation of quarters, are to be excluded from gross income. Similarly, the value of quarters or subsistence furnished to such persons is excluded from gross income. These exclusions from gross income of quarters and subsistence allowances paid to members of the uniformed services are ones of long standing, dating back to 1925. See Jones v. United States, 60 Ct. Cl. 552 (1925).

The Treasury Department and the IRS have determined that the four above-

referenced allowances, to the extent not excluded under other provisions of the Code (such as section 217(g) or section 132(g)), are to be treated as quarters or subsistence allowances. Section 1.61-2(b) is revised to provide that these allowances are excluded from the gross income of members of the uniformed services. Section 1.61-2(b)(2) and section 1.217-2(g)(6) clarify that no deduction is allowed for any expenses incurred in connection with a transfer to a new permanent duty station to the extent the expenses are reimbursed by an excluded allowance. However, any expense that meets the definition of a moving expense as defined in section 217(b) and is not reimbursed continues to be deductible under current law.

#### II. Public Comments

The National Oceanic and Atmospheric Administration (NOAA) requested that the regulations provide active duty officers of the NOAA Corps with an exclusion for the allowances covered by these regulations. The commissioned corps of NOAA, the commissioned corps of the Public Health Service (PHS), and the Armed Forces collectively comprise the uniformed services. 10 U.S.C. 101(a)(5) (Supp. IV 1992). The Armed Forces consist of the Army, Navy, Air Force, Marine Corps, and Coast Guard. 10 U.S.C. 101(a)(4) (1988).

The pay and allowance provisions of title 37 apply to all members of the uniformed services. In particular, the allowances that are the subject of these regulations are the same for the NOAA commissioned corps and the PHS commissioned corps as for the Armed Forces. The Department of Treasury historically has extended the holdings of Jones v. United States to all members of the uniformed services. I.T. 2232, IV-2 C.B. 144 (1925); Mim. 3413, V-1 C.B. 29 (1926). Accordingly, the final regulations under section 1.61-2(b) provide that the four earlier-referenced allowances are quarters or subsistence allowances and are excluded from gross income for members of the uniformed services.

#### III. Effective Date

The final regulations are effective with respect to allowances for expenses incurred after December 31, 1993.

#### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### **Drafting Information**

The principal author of these regulations is Marilyn E. Brookens of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.61–2 is amended by: 1. Removing the language "Coast and Geodetic Survey" from the second sentence of paragraph (a)(1) and adding in its place the language "National Oceanic and Atmospheric Administration".

2. Revising paragraph (b) to read as follows:

# § 1.61–2 Compensation for services, including fees, commissions, and similar items.

(b) Members of the Armed Forces, National Oceanic and Atmospheric Administration, and Public Health Service. (1) Subsistence and uniform allowances granted commissioned officers, chief warrant officers, warrant officers, and enlisted personnel of the Armed Forces, National Oceanic and Atmospheric Administration, and Public Health Service of the United States, and amounts received by them as commutation of quarters, are excluded from gross income. Similarly, the value of quarters or subsistence furnished to such persons is excluded from gross

(2) For purposes of this section, quarters or subsistence includes the following allowances for expenses

income.