Paragraph 250.34–1(b)(3), delete "significantly" from line 3.

* * * * *

Subsection 250.34–1(g), "The" in line 5 and "Through" in line 8 should be "the" and "through," respectively.

* * * * *

Subsection 250.34–1(k), the first sentence is clarified to read:

In order to ensure that activities to be carried out under a proposed exploration plan and activities being carried out under an approved exploration plan are carried out in a safe and environmentally acceptable manner, the Director may authorize or direct the lessee to conduct geological, geophysical, or other surveys that the Director determines are necessary for the evaluation of such activities.

* * * * *

Subparagraph 250.34–2(a)(1)(ii), "the" in line 1 should be "any" and the four "(s)" in lines 2 and 3 should be deleted.

* * * * *

Subparagraph 250.34–2(a)(3)(i), line 2, should read:

* * * (a)(3)(ii), of this section, at the same time * * *

* * * * *

Subparagraph 250.34–2(a)(3)(i), line 10, should read:

* * * plan; however, the report will * * *

* * * * *

Subparagraph 250.34–2(a)(3)(ii), "(2)" in line 4 should be "(3)"; "had" in line 6 should be "has"; and "the" should be inserted at the end of line 15 following "make."

* * * * *

Subparagraph 250.34–2(a)(6)(ii), lines 5, 6, and 7, should read:

* * * affect any land use or water use in the coastal zone of any State with a coastal zone * * *

* * * * *

Subparagraph 250.34–2(c)(3)(i), "significantly" should be deleted from line 3.

* * * * *

Subsection 250.34–2(h), "§ 250.34–2(c)(1)" should be "paragraph (c)(1) of this section."

* * * * *

Paragraph 250.34–2(i)(2), "The" in line 7 and "Through" in line 10 should be "the" and "through"; "and" should be inserted before "(2)" in line 9; and "§ 250.34–2(c)(1)" in line 23 should be "paragraph (c)(1) of this section."

* * * * *

Subsection 250.34–2(o), the first sentence is clarified to read:

In order to ensure that activities to be carried out under a proposed development and production plan and activities being carried out under an approved development and production plan are carried out in a safe and environmentally acceptable manner, the Director may authorize or direct the lessee to conduct geological, geophysical, or other surveys that the Director determines are necessary for evaluation of such activities.

* * * * *

Subsection 250.36(a), line 6, should read:

* * * submitted. Except as provided in section 250.13 of this Part, written approval must be * * *

* * * * *

Subsection 250.37(a), "Markings" in line 2 should be "markings."

* * * * *

Subsection 250.38(a), "Production" in line 6 should be "production."

* * * * *

Paragraph 250.41(a)(1), "of" in line 5 should be "to"

* * * * *

Paragraph 250.45(a)(1), the last line should read:

* * * work for 72 or more hours.

* * * * *

Section 250.50, delete "[Reserved]" and insert "* * * * *"

* * * * *

Section 250.51, delete "[Reserved]" and insert "* * * * *"

* * * * *

Subsection 250.71(6), "The" in line 8 should be "the."

* * * * *

Subsection 250.80(d), "Request" in line 4 should be "request."

* * * * *

Subparagraph 250.80–2(a)(2)(i), line 3 should read:

* * * section 250.80–2(a)(2)(ii) will be assessed on any * * *

* * * * *

Subparagraph 250.80–2(a)(i)(D), "data or information" should be "information and data."

* * * * *

Subsection 250.93(d), "on" in line should be "in".

* * * * *

[FR Doc. 80-9392 Filed 3-27-80; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 151

[DoD Directive 5525.1][1]

Status of Forces, Policies, and Information Regarding Trials by Foreign Courts and Treatment in Foreign Prisons of U.S. Personnel

AGENCY: Office of the Secretary of Defense

ACTION: Final rule.

SUMMARY: This rule establishes DoD policy, prescribes procedures, assigns responsibilities, and provides uniform reporting regarding trials by foreign courts and treatment in foreign prisons of U.S. personnel. The effect of this rule is to reflect DoD policy which is to protect, to the maximum extent possible, the rights of U.S. personnel who may be subject to criminal trials by foreign courts and imprisonment in foreign prisons.

EFFECTIVE DATE: August 7, 1979.

FOR FURTHER INFORMATION CONTACT: Miss Margaret Olson, Office of the General Counsel, Department of Defense, Washington, D.C. 20301, telephone 202–697–8343.

SUPPLEMENTARY INFORMATION: In FR Doc. 67–2812, appearing in the Federal Register on April 7, 1967 (32 FR 5682), the Office of the Secretary of Defense published Part 151 effective January 20, 1966, to implement the Senate Resolution of ratification as agreed to by the Senate on July 15, 1953 (§ 151.6). This document updates the previously published Part 151.

Accordingly, 32 CFR, Chapter I, is amended by revising Part 151, reading as follows:

PART 151—STATUS OF FORCES POLICIES AND INFORMATION

Sec.

Authority: 1 U.S.C. 133, 75 Stat. 517.

§ 151.1 Reissuance and purpose.

This part is reissued to update

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120, attention: Code 301.

established DoD policy and procedures on trial by foreign courts and treatment in foreign prisons of United States military personnel, nationals of the United States serving with, employed by, or accompaning the Armed Forces of the United States, and the dependents of both (hereafter referred to as United States personnel); and provides uniform reporting on the exercise of foreign criminal jurisdiction.

§ 151.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, and the Unified and Specified Commands. As used herein, the term "Military Services" refers to the Army, Navy, Air Force, and Marine Corps.

§ 151.3 Policy.

It is the policy of the Department of Defense to protect, to the maximum extent possible, the rights of United States personnel who may be subject to criminal trail by foreign courts and imprisonment in foreign prisons.

§ 151.4 Procedures and responsibilities.

(a) *Application of Senate resolution on status of forces.* This Directive implements the Senate Resolution accompanying the Senate's consent to ratification of the North Atlantic Treaty (NATO) Status of Forces Agreement (§ 151.6). Although the Senate Resolution applies only to countries where the NATO Status of Forces Agreement is in effect, the same procedures for safeguarding the interests of United States personnel subject to foreign jurisdiction shall be applied insofar as practicable in overseas areas where United States forces are regularly stationed.

(b) *Orientation of personnel.* The Military Services shall issue uniform regulations establishing an information and education policy on the laws and customs of the host country for personnel assigned to foreign areas.

(c) *Designated commanding officer.* Formal invocation of the Senate Resolution procedure shall be the responsibility of a single military commander in each foreign country where United States forces are stationed. Attache personnel and other military personnel serving under a chief of a diplomatic mission shall not be considered United States forces in this Part.

(1) In the geographical areas for which a unified command exists, the commander shall designate within each country the "Commanding Officer" referred to in the Senate Resolution (§ 151.6).

(2) In areas where a unified command does not exist, a commanding officer in each country shall be nominated by the Military Departments. These recommendations shall be forwarded by the Judge Advocate General of the Army to the Secretary of Defense, for implementation through the Office of the Assistant Secretary of Defense (International Security Affairs). In designating the commanding officer to act for all the Military Departments, consideration must be given to the availability of legal officers and readiness of access to the seat of the foreign government. Such an officer may also be appointed by the Military Departments for countries where no United States forces are regularly stationed.

(d) *Country law studies.* (1) For each foreign country where United States forces are subject to the criminal jurisdiction of foreign authorities, the designated commanding officer for such country shall make and maintain a current study of the laws and legal procedures in effect. Studies of the laws of other countries shall be made when directed. This study shall be a general examination of the substantive and procedural criminal law of the foreign country, and shall contain a comparison thereof with the procedural safeguards of a fair trial in the State courts of the United States.

(2) Copies of these studies shall be forwarded by the designated commanding officer to each of the Judge Advocates General of the Military Services. Principal emphasis is to be placed on those safeguards that are of such a fundamental nature as to be guaranteed by the Constitution of the United States in all criminal trials in State courts of the United States. See § 151.7 for enumeration of safeguards considered important. These country law studies shall be subject to a continuing review. Whenever there is a significant change in any country's criminal law, the change shall be forwarded by the designated commanding officer to each of the Military Service's Judge Advocates General.

(e) *Waivers of local jurisdiction—military personnel.* (1) In cases where it appears probable that release of jurisdiction over United States military personnel will not be obtained and the accused may not obtain a fair trial, the commander exercising general court-martial jurisdiction over the accused shall communicate directly with the designated commanding officer, report the full facts of the case, and supply a recommendation.

(2) The designated commanding officer shall determine, in the light of legal procedures in effect in that country, whether there is danger that the accused will not receive a fair trial. A trial shall not be considered unfair merely because it is not identical with trials held in the United States. Due regard, however, should be given to those United States trial rights listed in § 151.7 that are relevant to the facts and circumstances of the trial in question.

(3) If the designated commanding officer determines there is risk of an unfair trial, the commanding officer shall decide, after consultation with the chief of the diplomatic mission, whether to press a request for waiver of jurisdiction through diplomatic channels. If the commanding officer so decides, the recommendation shall be submitted through the unified commander, if any, and The Judge Advocate General of the accused's service, to the Office of the Secretary of Defense. The objective in each case is to see that United States military personnel obtain a fair trial in the receiving state under all circumstances.

(f) *Request to foreign authorities not to exercise their criminal jurisdiction over civilians and dependents.* The following procedures shall be followed when it appears that foreign authorities may assume criminal jurisdiction over dependents of United States military personnel, civilian personnel, and their dependents:

(1) When the designated commanding officer determines, after a careful consideration of all the circumstances, that suitable corrective action can be taken under existing administrative regulations, the commanding officer may request the local foreign authorities to refrain from exercising their criminal jurisdiction.

(2) When it appears possible that release of jurisdiction will not be obtained and that the accused may not obtain a fair trial, the commander exercising general court-martial jurisdiction over the command in which such personnel are located shall communicate directly with the designated commanding officer, reporting the full facts of the case and supplying a recommendation.

(3) The designated commanding officer shall then determine, in the light of legal procedures in effect in that country, whether there is danger that the accused will not receive a fair trial.

(4) If it is determined that there is such danger, the designated commanding officer shall decide, after consultation with the chief of the diplomatic mission, whether a request should be submitted through diplomatic channels to foreign authorities seeking their assurances of a fair trial for the accused or, in appropriate circumstances, that they

forego their right to exercise jurisdiction over the accused. If the designated commanding officer so decides, a recommendation shall be submitted through the unified commander, if any, and The Judge Advocate General of the Military Service concerned, to the Office of the Secretary of Defense.

(g) *Trial observers and trial observer report.* (1) The designated commanding officer shall submit to the chief of the diplomatic mission a list of persons qualified to serve as United States observers at trials before courts of the receiving state. Nominees shall be lawyers, and shall be selected for maturity of judgment. The list shall include, where possible, representatives of all Military Services whose personnel are stationed in that country to enable the chief of the diplomatic mission to appoint an observer from the same Military Service as the accused. The requirement that nominees shall be lawyers may be waived in cases of minor offenses. Incidents that result in serious personal injury or that would normally result in sentences to confinement, whether or not suspended, shall not be considered minor offenses.

(2) Trial observers shall attend and prepare formal reports in all cases of trials of United States personnel by foreign courts or tribunals, except for minor offenses. In cases of minor offenses, the observer shall attend the trial at the discretion of the designated commanding officer, but shall not be required to make a formal report. These reports need not be classified, but shall be treated as For Official Use Only documents. They shall be forwarded intact to the designated commanding officer through such agencies as the designated commanding officer may prescribe for transmission to the Judge Advocate General of the accused's service, with any comments of the appropriate Military Service commander. These reports shall be forwarded immediately upon the completion of the trial in the lower court, and shall not be delayed because of the possibility of a new trial, rehearing or appeal, reports of which shall be forwarded in the same manner. Copies shall also be forwarded to the unified commander, if any, and to the chief of the diplomatic mission.

(3) The trial observer report shall contain a factual description or summary of the trial proceedings. It should enable an informed judgment to be made regarding (i) whether there was any failure to comply with the procedural safeguards secured by a pertinent status of forces agreement, and (ii) whether the accused received a fair trial under all the circumstances. The report shall specify the conclusions of the trial observer with respect to paragraph (g)(3)(i) of this section, and shall state in detail the basis for the conclusions. Unless the designated commanding officer directs otherwise, the report shall not contain conclusions with respect to paragraph (g)(3)(ii) of this section.

(4) The designated commanding officer, upon receipt of a trial observer report, shall be responsible for determining (i) whether there was any failure to comply with the procedural safeguards secured by the pertinent status of forces agreement, and (ii) whether the accused received a fair trial under all the circumstances. Due regard should be given to those fair trial rights listed in § 151.7 that are relevant to the particular facts and circumstances of the trial. However, a trial shall not be found unfair merely because it is not identical with trials held in the United States. If the designated commanding officer is of the opinion that the procedural safeguards specified in pertinent agreements were denied or that the trial was otherwise unjust, the commanding officer shall submit to the Office of the Secretary of Defense, through the unified commander and the Judge Advocate General of the Military Service concerned, a recommendation as to appropriate action to rectify the trial deficiencies and otherwise to protect the rights or interests of the accused. This shall include a statement of efforts taken or to be taken at the local level to protect the right of the accused. An information copy of the recommendation of the designated commanding officer shall be forwarded to the diplomatic or consular mission in the country concerned.

(h) *Counsel fees and related assistance.* When the Secretary of the Military Department concerned or designee considers such action to be in the best interests of the United States, representation by civilian counsel and other assistance described under 10 U.S.C. 1037 may be furnished at Government expense to United States personnel tried in foreign countries.

(i) *Treatment of United States personnel confined in foreign penal institutions.* (1) Insofar as practicable and subject to the laws and regulations of the country concerned and the provisions of any agreement therewith, the Department of Defense seeks to ensure that United States military personnel (i) when in the custody of foreign authorities are fairly treated at all times and (ii) when confined (pretrial and post-trial) in foreign penal institutions are accorded the treatment and are entitled to all the rights, privileges, and protections of personnel confined in United States military facilities. Such rights, privileges, and protections are enunciated in present Military Service directives and regulations, and include, but are not limited to, legal assistance, visitation, medical attention, food, bedding, clothing, and other health and comfort supplies.

(2) In consonance with this policy, United States military personnel confined in foreign penal institutions shall be visited at least every 30 days, at which time the conditions of confinement and other matters relating to their health and welfare shall be observed. The Military Services shall maintain, on a current basis, records of these visits as reports by their respective commands. Records of each visit should contain the following information:

(i) Names of personnel conducting visit and date of visit.

(ii) Name of each prisoner visited, serial number, and sentence.

(iii) Name and location of prison.

(iv) Treatment of the individual prisoner by prison warden and other personnel (include a short description of the rehabilitation program, if any, as applied to the prisoner).

(v) Conditions existing in the prison, such as light, heat, sanitation, food, recreation, and religious activities.

(vi) Change in status of prisoner, conditions of confinement or transfer to another institution.

(vii) Condition of prisoner, physical and mental.

(viii) Assistance given to prisoner, such as legal, medical, food, bedding, clothing, and health and comfort supplies.

(ix) Action taken to have any deficiencies corrected, either by the local commander or through diplomatic or consular mission.

(x) Designation of command responsible for prisoner's welfare and reporting of visits.

(xi) Information as to discharge of a prisoner from the Military Service or termination of confinement.

(3) When it is impracticable for the individual's commanding officer or representative to make visits, the designated commanding officer should be requested to arrange that another unit be responsible for such visits or to request that the appropriate diplomatic or consular mission assume responsibility therefor. When necessary, a medical officer should participate in the visits and record the results of medical examinations. If reasonable

requests for permission to visit United States military personnel are arbitrarily denied, or it is ascertained that the individual is being mistreated or that the conditions of custody or confinement are substandard, the case should be referred to the diplomatic or consular mission concerned for appropriate action.

(4) To the extent possible, military commanders should seek to conclude local arrangements whereby United States military authorities may be permitted to accord United States military personnel confined in foreign institutions the treatment, rights, privileges, and protection similar to those accorded such personnel confined in United States military facilities. The details of such arrangements should be submitted to the Judge Advocates General of the Military Services.

(5) The military commanders shall make appropriate arrangements with foreign authorities whereby custody of individuals who are members of the Armed Forces of the United States shall, when they are released from confinement by foreign authorities, be turned over to United States military authorities. In appropriate cases, diplomatic or consular officers should be requested to keep the military authorities advised as to the anticipated date of the release of such persons by the foreign authorities.

(6) In cooperation with the appropriate diplomatic or consular mission, military commanders shall, insofar as possible, ensure that dependents of United States military personnel, nationals of the United States serving with, employed by or accompanying the armed forces, and dependents of such nationals when in the custody of foreign authorities, or when confined (pretrial and post-trial) in foreign penal institutions receive the same treatment, rights, and support as would be extended to United States military personnel in comparable situations pursuant to the provisions of § 151.4(i).

(j) *Discharge.* United States military personnel confined in foreign prisons shall not be discharged from military service until the completion of the term of imprisonment and the return of the accused to the United States, except that in unusual cases such discharges may be accomplished upon prior authorization of the Secretary of the Military Department concerned.

(k) *Information Policy.* It is the basic policy of the Department of Defense that the general public and the Congress must be provided promptly with the maximum information concerning status of forces matters that are consistent with the national interest. Information shall be coordinated and furnished to the public and the Congress in accordance with established procedures, including DoD Directive 5122.5,[1] "Assistant Secretary of Defense (Public Affairs)," July 10, 1961, and Parts 286 and 286a of this title.

§ 151.5 Reports on the exercise of foreign criminal jurisdiction.

The following reporting system, which has been implemented by the Military Departments, shall be continued after revision in accordance with the provisions herein. The Department of the Army is designated as executive agent within the Department of Defense for maintaining and collating information received on the basis of the reports submitted.

(a) *Annual reports.* Annual reports, based on information furnished by the Military Departments covering the period December 1 through November 30 shall be prepared by the Department of the Army and submitted within such time as may be required but not later than 120 days after the close of the reporting period. The reports shall be submitted in one reproducible copy to the Office of the General Counsel, DoD, in accordance with departmental implementation of this part. The reporting content of this requirement shall be as follows:

(1) A statistical summary (DD Form 838) by country and type of offense of all cases involving United States personnel.

(2) A report signed by the appropriate Military Service commander in each country for which DD Form 838 is prepared, concerning the commander's personal evaluation of the impact, if any, the local jurisdictional arrangements have had upon accomplishment of the mission and upon the discipline and morale of the forces, together with specific facts or other information, where appropriate, substantiating the commanders' opinion.

(3) A report of the results of visits made and particular actions taken by appropriate military commanders under § 151.4(i).

(4) A report of the implementation of 10 U.S.C. 1037 showing by country and Military Service:

(i) The total number of cases in which funds were expended and

(ii) Total expenditures in each of the following categories:

(A) Payment of counsel fees,

(B) Provision of bail,

(C) Court costs and other expenses.

[1] See footnote, page 20465.

(b) *Quarterly reports.* (1) Quarterly reports for the periods ending November 30, February 28, May 31, and August 31, consisting of lists of United States personnel imprisoned and released, shall be submitted, in accordance with departmental implementation of this Part to the Department of the Army and by the Department of the Army, as executive agent, to the Director, Washington Headquarters Services, in four copies, on or before the 15th day following the report quarter as follows:

(i) An alphabetical list of U.S. personnel who were imprisoned during the reporting period under sentence of confinement imposed by a foreign country, indicating the individual's home address, grade, and serial number (where applicable), offense of which found guilty, date and place of confinement, length of sentence to confinement imposed, and estimated date of release from confinement.

(ii) A similar list of the names of prisoners released during the reporting period.

(2) An information copy of these lists shall be furnished by the appropriate Military Service commander to the diplomatic or consular mission in the country concerned.

(c) *Other reports.* (1) Each Military Department shall maintain, on a current basis, and submit monthly to the Director, Washington Headquarters Service, in four copies, a list of the most important cases pending, with a brief summary of the salient facts in each case. Selection of the cases to be included shall be left to the judgment of the appropriate officials of each Military Department. Instances of deficiency in the treatment or conditions of confinement in foreign penal institutions or arbitrary denial of permission to visit such personnel shall be considered important cases. Lists covering the previous month shall be submitted on the 6th day of the month following.

(2) Important new cases or important developments in pending cases shall be reported informally and immediately to the Office of the General Counsel, DoD.

§ 151.6 Resolution of ratification, with reservations, as agreed to by the Senate on July 15, 1953.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of Executive T, Eighty-second Congress, second session, an agreement between the parties to the North Atlantic Treaty Regarding the Status of their Forces, signed at London on June 19, 1951. It is the understanding of the Senate, which understanding inheres in its advise and consent to the

ratification of the Agreement, that nothing in the Agreement diminishes, abridges, or alters the right of the United States of America to safeguard its own security by excluding or removing persons whose presence in the United States is deemed prejudicial to its safety or security, and that no person whose presence in the United States is deemed prejudicial to its safety or security shall be permitted to enter or remain in the United States. In giving its advise and consent to ratification, it is the sense of the Senate that:

(a) The criminal jurisdication provisions of Article VII do not constitute a precedent for future agreements;

(b) Where a person subject to the military jurisdiction of the United States is to be tried by the authorities of a receiving state, under the treaty the Commanding Officer of the armed forces of the United States in such state shall examine the laws of such state with particular reference to the procedural safeguards contained in the Constitution of the United States;

(c) If, in the opinion of such Commanding Officer, under all the circumstances of the case, there is danger that the accused will not be protected becase of the absence or denial of constitutional rights the accused would enjoy in the United States, the Commanding Officer shall request the authorities of the receiving State to waive jurisdiction in accordance with the provisions of paragraph 3(c) of Article VII (which requires the receiving State to give "sympathetic consideration" to such request) and if such authorities refuse to waive jurisdiction, the commanding officer shall request the Department of State to press such request through diplomatic channels and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives;

(d) A representative of the United States to be appointed by the Chief of Diplomatic Mission with the advice of the senior United States military representative in the receiving State will attend the trail of any such person by the authorities of a receiving State under the agreement, and any failure to comply with the provisions of paragraph 9 of Article VII of the Agreement shall be reported to the commanding officer of the Armed Forces of the United States in such State who shall then request the Department of State to take appropriate action to protect the rights of the accused, and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives.

§ 151.7 Fair trial guarantees.

The following is a listing of "fair trial" safeguards or guarantees that are considered to be applicable to U.S. State court criminal proceedings, by virtue of the 14th Amendment as interpreted by the Supreme Court of the United States. The list is intended as a guide for the preparation of country law studies prescribed by § 151.4 and for the determinations made by the designated commanding officer under § 151.4(e) through § 151.4(g). Designated commanding officers should also consider other factors that could result in a violation of due process of law in State court proceedings in the United States.

(a) Criminal statute alleged to be violated must set forth specific and definite standards of guilt.

(b) Accused shall not be prosecuted under an *ex post facto* law.

(c) Accused shall not be punished by bills of attainder.

(d) Accused must be informed of the nature and cause of the accusation and have a reasonable time to prepare a defense.

(e) Accused is entitled to have the assistance of defense counsel.

(f) Accused is entitled to be present at the trial.

(g) Accused is entitled to be confronted with hostile witnesses.

(h) Accused is entitled to have compulsory process for obtaining favorable witnesses.

(i) Use of evidence against the accused obtained through unreasonable search or seizure or other illegal means is prohibited.

(j) Burden of proof is on the Government in all criminal trials.

(k) Accused is entitled to be tried by an impartial court.

(l) Accused may not be compelled to be a witness against him or herself; and shall be protected from the use of a confession obtained by torture, threats, violence, or the exertion of any improper influence.

(m) Accused shall not be subjected to cruel and unusual punishment.

(n) Accused is entitled to be tried without unreasonable (prejudicial) delay.

(o) Accused is entitled to a competent interpreter when the accused does not understand the language in which the trial is conducted and does not have counsel proficient in the language both of the court and of the accused.

(p) Accused is entitled to a public trial.

(q) Accused may not be subjected to consecutive trials for the same offense that are so vexatious as to indicate fundamental unfairness.

O. J. Williford,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

March 24, 1980.

[FR Doc. 80-9893 Filed 3-27-80; 8:45 am]

BILLING CODE 3810-70-M

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32 CFR Part 164

[DOD Instruction 7000.10 and Change 1][1]

Contract Cost Performance, Funds Status and Cost/Schedule Status Reports

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule is reissued to revise the three standard reporting formats for the collection of contract cost and schedule status and funding data: (a) the Cost Performance Report which contains cost data for measuring contractors' cost and schedule performance; (b) the Contract Funds Status Report which is designed to supply funding data about Defense contracts to system managers; and (c) the Cost/Schedule Status Reports which provides cost and schedule performance information. Utilization of these reports will achieve essential management control.

EFFECTIVE DATE: December 3, 1979.

FOR FURTHER INFORMATION CONTACT: R. Kemps, Office of the Deputy Assistant Secretary of Defense (Management Systems), Washington, D.C. 20301; Telephone: 202-695-0706.

SUPPLEMENTARY INFORMATION: In FR Doc. 67-1580, appearing in the **Federal Register** (32 CFR 2772) on February 10, 1967, the Office of the Secretary of Defense published Part 164, effective December 23, 1966, which assisted DoD Components in the management of contract funding. In FR Doc. 73-6339, appearing in the **Federal Register** on April 3, 1973 (38 FR 8509), the Office of the Secretary of Defense published an amendment to Part 164. This document revises the existing Part 164 of this title.

Accordingly, 32 CFR Chapter I, is amended by revising Part 164, reading as follows:

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[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

PART 164—CONTRACT COST PERFORMANCE, FUNDS STATUS AND COST/SCHEDULE STATUS REPORTS

Authority: The provisions of this Part 164 issued under 5 U.S.C. 301, and Defense Acquisition Regulation (1976)), Section 3-404.2.

PART 164—CONTRACT COST PERFORMANCE, FUNDS STATUS AND COST/SCHEDULE STATUS REPORTS

§ 164.1 Reissuance and purpose.

This Part:

(a) Reissues Part 164 to revise the Cost Performance Report (CPR), the Contract Funds Status Report (CFSR), and the Cost/Schedule Status Report (C/SSR);

(b) Assigns responsibilities and provides uniform guidance for implementation of the CPR, the CFSR, and the C/SSR; and

(c) Provides procedures for collecting summary level cost, and schedule performance and funding data from contractors for program management purposes, pursuant to DoD Directives 7000.1,[1] "Resource Management Systems of the Department of Defense"; 5000.1,[1] "Major Systems Acquisitions"; DoD Instruction 5000.2,[1] "Major System Acquisition Process," and for responding to requests for program status information on major system acquisitions, primarily by DoD Instruction 7000.3,[1] "Selected Acquisition Reports."

§ 164.2 Applicability and scope.

The provisions of this Part apply to the Office of the Secretary of Defense, the Military Departments, the Defense Agencies, and the Unified and Specified Commands (hereafter referred to as "DoD Components") responsible for (a) managing acquisition contracts falling within the scope of § 164.3, and (b) determining fund requirements for contracts and managing the flow of such funds. Application of the provisions of this Part to construction contracts is encouraged where appropriate.

§ 164.3 Policies.

(a) In concert with the policies established in DoD Directive 5000.2, utilization of the CPR, CFSR, and C/SSR shall be limited by system managers to that necessary to achieve essential management control.

(1) Contractors are encouraged to substitute internal reports for CPR, CFSR, and C/SSR provided that (i) data elements and definitions used in the reports are comparable to CPR, CFSR and C/SSR requirements, and (ii) the reports are in forms suitable for management use.

(2) As applicable, provisions of DoD Directive 5000.19,[1] "Policies for the Management and Control of Information Requirements," March 12, 1976, concerning the tailoring of management systems may be employed by system managers in the implementation of CPR, CFSR, and C/SSR.

(b) Instructions regarding levels of detail and frequencies of reporting are contained in the Data Item Descriptions (DD Forms 1664) in enclosures 1, 2, and 3 of this Part. Local reproduction of formats contained in these enclosures is authorized.

(c) The Cost Performance Report (CPR):

(1) Provides (i) contract cost/schedule status information for use in making and validating management decisions, (ii) early indicators of contract cost/schedule problems, and (iii) effects of management actions taken to resolve problems affecting cost/schedule performance.

(2) Applies to selected contracts within those programs designated as major system acquisitions in accordance with the criteria of DoD Directive 5000.1. CPRs will be applied to all contracts which require compliance with the Cost/Schedule Control Systems Criteria (C/SCSC) of Part 206 of this title.

(3) Will not be required on firm fixed-price contracts (as defined in Section 3-404.2 of the Defense Acquisition Regulation (1976)), unless those contracts represent the development or production of a major defense system or a major component thereof and circumstances require cost/schedule visibility.

(4) Applies to ongoing contracts only in those cases where the procuring agencies consider it necessary to support program management needs and DoD requirements for information. Some of the factors which may affect applications to ongoing contracts are anticipated time to contract completion, anticipated program deferrals, and the relative importance of subcontracts.

(5) Is assigned OMB Approval No. 22-R0280.

(d) The Contract Funds Status Report (CFSR):

(1) Supplies funding data that, with other related inputs, provides DoD management with information to assist in (i) updating and forecasting contract fund requirements, (ii) planning and decisionmaking on funding changes, (iii) developing fund requirements and budget estimates in support of approved programs, and (iv) determining funds in excess of contract needs and available for deobligation.

(2) Applies to all contracts greater than $500,000.

(3) Will not apply to firm fixed-price contracts unless the contract represents the development or production of a major defense system or a major component thereof and specific funding visibility is required. CFSR may be applied to unpriced portions of firm fixed-price contracts that individually or collectively are estimated by the Government to be in excess of 20 percent of the initial contract value. In such cases, the contract will delineate the specific CFSR requirements, if any, to be imposed on the contractor to fit the circumstances of each particular case.

(4) May be implemented at a reduced level of reporting for (i) those contracts with a dollar value between $100,000 and $500,000; (ii) time and material contracts; and (iii) contractual effort for which the entire CFSR report is not required by the procuring activity, but limited funding requirements information is needed.

(5) Will not be required on:

(i) Contracts with a total value of less than $100,000, or

(ii) Contracts expected to be completed within 6 months.

(6) Is assigned OMB Approval No. 22-R0180.

(e) The Cost/Schedule Status Report (C/SSR):

(1) Provides summarized cost and schedule performance status information on contracts where application of the CPR is not appropriate.

(2) Applies to contracts of $2,000,000 or over and 12 months' duration or more which do not use the CPR. (DoD Instruction 7000.11,[1] "Contractor Cost Data Reporting (CCDR)," September 5, 1973 provides for application of Contractor Cost Data Reporting (CCDR) to Category II contracts. To avoid the possibility of duplicative reporting, those elements of cost which are provided by the C/SSR will not be required by CCDR.)

[2] Enclosures 1, 2, and 3 are filed as part of the original document. Copies may be obtained from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

[1] See footnote, page 20469.

(3) Will not be required on firm fixed-price contracts unless those contracts represent the development or production of a critical component of a major defense system, and circumstances require cost/schedule visibility.

(4) Is assigned OMB Approval No. 22-R0327.

§ 164.4 Responsibilities.

(a) The Heads of DoD Components will assure that:

(1) Contractor reports are timely and submitted in accordance with the instructions contained in DD Form 1664, DI Number DI-F-6000C, Cost Performance Report (CPR); DD Form 1664, DI Number DI-F-6004B, Contract Funds Status Report (CFSR); DD Form 1664, DI Number DI-F-6010A, Cost/Schedule Status Report (C/SSR).[3]

(2) Submitted data are checked for discrepancies and necessary corrections are furnished by contractors.

(3) Application of the CPR, CFSR, and C/SSR to ongoing programs or firm fixed-price contracts is held to the minimum essential to support program management needs and DoD requirements for information.

(4) Appropriate members of the Performance Measurement Joint Executive Group provide a forum to arbitrate misapplications of CPR or C/SSR requirements that cannot be resolved amicably through focal points established in the headquarters of the procuring commands.

(b) The Director of the cognizant Defense Contract Audit Agency (DCAA) office shall:

(1) At the request of a DoD Component, provide advice at the time of preaward evaluations as to whether the contractor's accounting and control systems are adequate and reliable for CPR, CFSR, and C/SSR reporting purposes.

(2) Review selected CPR, CFSR, and C/SSR reports when it is considered necessary to assure the continuing adequacy and reliability of procedures and the validity of reported data.

(3) Review selected individual CPR, CFSR, and C/SSR reports when requested by the Procuring Contracting Officer (PCO) or Administrative Contracting Officer (ACO) and submit a report thereon.

Enclosure 1—DD Form 1664, DI Number DI-F-6000C, Cost Performance Report (CPR)[3]

Enclosure 2—DD Form 1664, DI Number DI-F-6004B, Contract Funds Status Report (CFSR)[3]

Enclosure 3—DD Form 1664, DI Number DI-F-6010A, Cost/Schedule Status Report (C/SSR)[3]

O. J. Williford,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 80-9421 Filed 3-27-80; 8:45 am]

BILLING CODE 3810-70-M

[3] These forms are filed as part of the original document. Copies may be obtained from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

[3] These forms are filed as part of the original document. Copies may be obtained from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissible Rate on New Guaranteed, Insured, and Direct Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is finalizing regulations to establish a separate interest rate for loans for energy-conserving home improvements including solar equipment or other home improvement loans for alterations, improvements or repairs. The Administrator has determined that an interest rate for home improvement loans higher than that permitted for home loans is necessary. This higher rate is required because liens associated with these types of loans are of lesser dignity and therefore subject lenders to a greater risk of loss. It is hoped that this separate interest rate for home improvement loans will increase lender and investor participation in this program.

Technical amendments are also being made to add the definition of an energy conservation home improvement loan to the guaranteed home loan and direct loan regulations, to revise the lien requirements for direct home improvement loans to make them similar to the guaranteed home loan lien requirements, and to specify in the direct loan regulations that energy conservation home improvement loans are an eligible purpose.

EFFECTIVE DATE: March 21, 1980. Comments requested by April 28, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, 202-389-3042.

SUPPLEMENTARY INFORMATION: The VA is authorized by section 1810(a)(7) of title 38, United States Code, to guarantee home improvement loans for energy conservation purposes. These loans may include funds for installation of a solar heating system, solar hot water heating system, other solar improvements or application of a residential energy conservation measure. The VA also has authority under section 1810(a)(4) of title 38, United States Code, to guarantee home improvement loans for other alterations, improvements or repairs. The Veterans' Housing Benefits Act of 1978 (Pub. L. 95-476, 92 Stat. 1497) authorizes the Administrator to establish a separate maximum interest rate or rates for home improvement loans for energy conservation purposes and home improvement loans for other alterations, improvements or repairs. Previously, the maximum interest rate for both types of home improvement loans has been limited to the maximum rate for the purchase of a home or condominium. Home improvement loans, however, are similar to second mortgage financing and installment financing. As such, the VA maximum allowable rate of interest for home and condominium loans has proven inadequate to attract lenders and investors into the home improvement loan program.

Comments received from lending industry sources in response to the advance notice published on March 22, 1979 (44 FR 17531), recommended the establishment of an interest rate in excess of the maximum rate authorized for the purchase or acquisition of homes. A higher rate was recommended because liens associated with these types of loans offer less security to lenders and therefore subject them to a greater risk of loss.

The Administrator has concluded that VA's past experience in its home improvement loan program is indicative of the need for greater lender and investor support, and that the greater risk associated with such loans warrants the establishment of a separate and higher interest rate than the rate authorized for home loans. This higher rate is established for the energy conservation home improvement loan program and the home improvement loan program for alterations, improvements or repairs. For consistency, the rate of interest for VA direct home improvement loans in rural and credit shortage areas also is being increased. This increase in the interest rate for guaranteed and direct home improvement loans is effected through the establishment of a separate interest rate for such loans in sections 36.4311(b) and 36.4503(a).

Sections 36.4301(jj) and 36.4501(p) are incorporated into the guaranteed and direct loan regulations, respectively, to add the definition of "Energy Improvement Loan." Section 36.4519 is amended to expand eligible direct loan purposes to include energy conservation home improvement loans. Section 36.4516 also is amended to liberalize the lien requirements on VA direct loans for home improvement purposes. Previously the lien requirements for guaranteed home improvement loans contained in § 36.4351 were liberalized (43 FR 51015, November 2, 1978). This amendment inserts conforming lien requirements into VA's direct loan regulations (§ 36.4500 series). Finally, sections 36.4515 and 36.4516 are amended to reflect the agency policy of using precise terms to denote gender.

Compliance with the provisions of § 1.12 of this chapter which requires publication of proposed regulations prior to final adoption is waived in this instance because the issue of establishing a separate interest rate for home improvement loans was previously published in the **Federal Register** (44 FR 17531, March 22, 1979) with comments requested. Comments received were carefully considered. In addition, the increase in the interest rate for home improvement loans is authorized by statute. Other amendments of technical or liberalizing nature are being made for the purpose of making energy conservation home improvement loans or home improvement loans for alterations, improvements or repairs more available on a guaranteed and direct loan basis. We have determined that these regulations are non-significant pursuant to Executive Order 12044 (43 FR 12661) and the VA Final Report implementing Executive Order 12044 published in the **Federal Register** (44 FR 7026). Publication of these regulations in proposed form would not be in the public interest because such publication would unnecessarily delay the implementation of liberalizing amendments.

These amendments are adopted under authority granted the Administrator by sections 210(c), 1803(c), 1810(a)(4) and (7), and 1811(b) and (d)(1) of title 38, United States Code.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the regulations to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. All material received will be considered, and appropriate regulatory revisions will be published if necessary. These amendments, however, shall remain effective until further amended. All written comments received will be available for public inspection at the above address only between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until May 8, 1980. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: March 21, 1980.

By direction of the administrator.

Rufus H. Wilson,

Deputy Administrator.

1. In § 36.4301, paragraph (jj) is added to read as follows:

§ 36.4301 Definitions.

* * * * *

(jj) *Energy conservation improvement.* An improvement to an existing dwelling or farm residence through the installation of a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system or through application of a residential energy conservation measure as prescribed in 38 U.S.C. 1810(d) or by the Administrator. (38 U.S.C. 1810(a)(7))

2. Section 36.4311 is revised to read as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration which specify an interest rate in excess of 13 per centum per annum, effective February 28, 1980, the interest rate on any home or condominium loan guaranteed or insured wholly or in part on or after such date may not exceed 13 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Effective March 21, 1980, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs which is guaranteed or insured wholly or in part on or after such date may not exceed 15 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(c) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default: *Provided,* That a late charge not in excess of an amount equal to a 4 percent on any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

3. In § 36.4501, paragraph (p) is added to read as follows:

§ 36.4501 Definitions.

* * * * *

(p) *Energy conservation improvement.* An improvement to an existing dwelling or farm residence through the installation of a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system, or through application of a residential energy conservation measure as prescribed in 38 U.S.C. 1810(d) or by the Administrator. (38 U.S.C. 1810(a)(7))

4. In § 36.4503, paragraph (a) is revised to read as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1978, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $25,000. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the Veterans Administration shall bear interest at the rate of 13 percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 15 percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

§ 36.4515 [Amended]

5. Section 36.4515 is amended by deleting the words "his price" and inserting the words "the price" in paragraph (b)(5)(iii).

6. Section 36.4516 is amended as follows:

(a) By deleting the words "he determines" and inserting the words "the Administrator determines" in the next to the last sentence of paragraph (c).

(b) By revised paragraph (b) to read as follows:

§ 36.4516 Lien requirements.

* * * * *

(b) Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall be secured in the following manner:

(1) Loans for $1,500 or less need not be secured, and in lieu of the title

examination a statement may be accepted from the borrower that he or she has an interest in the property not less than that prescribed in § 36.4515(a).

(2) Loans for more than $1,500 but 40 percent or less of the prior to the improved reasonable value of the property shall be secured by a lien reasonable and customary in the community for the type of alteration, improvement, or repair financed.

(3) Loans for more than $1,500 and for more than 40 percent of the prior to the improved reasonable value of such property shall be secured by a first lien on the property or estate. However, such a home improvement loan may be secured by a lien immediately subordinate to the lien securing the previous loan extended by the Administrator, if the Veterans Administration is the holder of all liens of superior priority on the property. (38 U.S.C. 1811(d)(1))

* * * * *

7. In § 36.4519, paragraph (a)(5) is added to read as follows:

§ 36.4519 Eligible purposes and reasonable value requirements.

(a) A loan may be made only for the purpose hereinafter set forth in this paragraph, and the loan may not exceed the reasonable value of the property as established by the Veterans Administration:

* * * * *

(5) To make energy conservation improvements to a dwelling owned and occupied by the veteran as his or her home. (38 U.S.C. 1811(b))

* * * * *

[FR Doc. 80-9512 Filed 3-27-80; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62004A (PCB/RR-4); FRL 1450-2]

Polychlorinated Biphenyls (PCBs); Final Amendment to the Disposal Requirements for PCB Capacitors in Chemical Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 21, 1979 EPA requested comment on a proposed amendment modifying the disposal provisions of the PCB regulation (43 FR 7150, February 17, 1978; superseded by 44 FR 31514, May 31, 1979). The November amendment proposed to extend the deadline for allowing disposal of large PCB capacitors in chemical waste landfills from January 1, 1980 to thirty days after EPA announced that an Annex I incinerator was approved and operational for disposal of PCB capacitors. That amendment is being promulgated by this notice with certain modifications. First, EPA is treating small PCB capacitors owned by manufacturers of PCB capacitors or equipment the same as large PCB capacitors for purposes of disposal. Second, EPA will permit disposal of capacitors in chemical waste landfills until March 1, 1981. Third, the Assistant Administrator for Pesticides and Toxic Substances (hereinafter referred to as the Assistant Administrator) may authorize the reopening of chemical waste landfills after March 1, 1981, for disposal of PCB capacitors under specified conditions. Fourth, EPA will require all PCB capacitors to be containerized and packed with absorbent material prior to their disposal in a chemical waste landfill.

EFFECTIVE DATE: Effective March 28, 1980.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office TS-799, US Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, Toll free: 800-424-9065, Local to Washington, DC: 554-1404.

SUPPLEMENTARY INFORMATION: The PCB rule (43 FR 7150, February 17, 1978 superseded by 44 FR 31514, May 31, 1979) permits disposal, until January 1, 1980, of (1) large PCB capacitors and (2) small PCB capacitors that are in the possession of a manufacturer of small PCB capacitors or PCB equipment in Annex II chemical waste landfills. (See § 761.10(b)(2) of the regulation at 44 FR 31547). After January 1, 1980 all capacitors in either of those categories must be disposed of in an incinerator that complies with Annex I of the PCB rule.

EPA proposed in the **Federal Register** of November 21, 1979 (44 FR 66851) to extend the date through which PCB large capacitors could be disposed of in chemical waste landfills until thirty days after EPA announces that one incinerator with the capability of destroying PCB large capacitors was approved and operational. EPA had anticipated at the times the PCB rule and its predecessor were promulgated that Annex I incinerators would be available by January of 1980. Since that time, unforeseen problems have delayed the approval of an incinerator capable of destroying PCB capacitors. Further, with the expiration of the date for landfill disposal of their PCB capacitors, industry is storing capacitors which might otherwise be disposed of, and thereby confronting the possibility that large amounts of additional suitable storage space will have to be built. Evidence was presented both at the hearing held on the proposed amendment on January 3, 1980 and in the written comments that many of the facilities would exhaust their existing storage space within 6 months if they were required to store the large capacitors. This confirmed EPA's understanding that many of the users of PCB capacitors had not anticipated that they would need to store their capacitors after January 1980 and therefore did not construct sufficient storage space. According to information in the comments, the cost to construct new storage facilities would range from $10,000 to $50,000 per storage facility depending upon the individual need. In light of the delays in approving incinerators, the limited amount of storage space, the cost to construct new storage space, and the relatively low risks associated with disposal of PCB capacitors in chemical waste landfills as compared to storage, EPA is adopting an extension of the deadline for such disposal.

This final amendment differs from the proposed amendment in several ways. First, this final amendment responds to evidence presented at the hearing and in the comments questioning the ability of the first approved incinerator to dispose of PCB capacitors at the rate they will be generated for disposal. Commentors also pointed out the difficulties of relying on a single incinerator for all disposal. The incinerator could experience technical difficulties which might lead to the need to temporarily shut down or operate at reduced capacity. Industry again would be faced with the prospect of having no available means of disposal. EPA was reminded that mechanical problems do occur and that this scenario is quite feasible. Other comments stressed that priority should be given to the incineration of liquid PCBs. Commentors suggested liquid PCBs pose a greater health and environmental hazard than non-liquids. These commentors argued that capacitors should not compete with PCB liquids for disposal in incinerators until there is no longer a shortage of incineration capacity.

EPA acknowledges the legitimacy of these concerns and has modified the rule in two ways to address them. Instead of permitting disposal of PCB capacitors in chemical waste landfills until thirty days after EPA announces that the first approved incinerator is

available, EPA will allow landfilling until March 1, 1981. In addition, EPA is aware that it is possible that on or after March 1, 1981 adequate capacitor incineration capacity may not be available for a variety of reasons. EPA has concluded that it would be prudent to provide a mechanism for expeditiously reopening chemical waste landfills for PCB capacitor disposal subsequent to March 1, 1981 without the necessity of a further rulemaking. To allow such reopening, EPA has incorporated a second new provision into the rule which gives the Assistant Administrator the authority to reopen chemical waste landfills for PCB capacitors for whatever time period he deems appropriate.

In determining if it is appropriate to reopen landfills the Assistant Administrator must consider the following factors which reflect concerns drawn from the comments. First, is there adequate incineration capability? Second, will required incineration of capacitors significantly interfere with the disposal of liquids with PCB concentrations of greater than 500 parts per million (ppm)? Third, are there any other mitigating factors that would impact unreasonably upon the ability to incinerate PCB capacitors? As part of this evaluation, the Assistant Administrator will consider the impact of his decision on the incentives to construct or expand PCB incinerators. EPA is concerned about the small number of applications which have been received requesting approval of incinerators for disposal of PCBs and PCB capacitors and does not want to undercut or discourage through this rulemaking, or any other later action, the construction or expansion of incinerators to destroy PCB capacitors.

Part of this provision to the amendment provides the Assistant Administrator with the authority to reopen chemical waste landfills on a conditional basis. For example, he may restrict the reopening: (1) to large or small capacitors, (2) to certain segments of the country, and/or (3) for a specified period of time.

A third substantive change was included in the amendment to permit disposal of small capacitors, as well as large capacitors, in chemical waste landfills. EPA received a number of comments from persons requesting that the landfill option be extended to manufacturers of small capacitors and capacitor equipment. At the time of proposal, EPA had no information that small capacitor manufacturers or their users faced the same types of storage problems that large capacitor disposers faced. EPA was not aware that significant numbers of small PCB capacitors remained to be landfilled by manufacturers. In view of this information and for reasons of equity between owners of small and large capacitors, EPA has decided to permit landfilling of small PCB capacitors owned by manufacturers of PCB capacitors and PCB equipment. EPA considers an extension of the landfill option for small PCB capacitors in the possession of manufacturers to be within the scope of this rulemaking. Storage and disposal of both small and large PCB capacitors are closely related. Further, the number of comments received on the disposal of small capacitors also indicate that commentors assumed disposal of large and small capacitors to be within the scope of this rulemaking.

Fourth, EPA has decided to require (1) all large PCB capacitors and (2) all small PCB capacitors owned by manufacturers of small PCB capacitors and PCB equipment to be packed in Department of Transportation (DOT) drums with absorbent material prior to their disposal in chemical waste landfills. Capacitors larger than a DOT 55-gallon drum may be packed in a container with strength and durability comparable to that of the DOT specification containers. Considerable evidence was presented in comments that a significant number of capacitors were leaking by the time they wer received for disposal at the landfill. In fact, two commentors acknowledged the added risk of leaking PCB capacitors and suggested that EPA consider requiring leaking PCB capacitors to be packed in containers with absorbent material. One person suggested that PCB capacitors, packed in drums with absorbent material, will be more secure than the original capacitor.

The requirement for containerization of PCB capacitors in drums with absorbent material is within the scope of this rulemaking. EPA announced in the preamble to the proposed amendment that the Agency would "consider in this rulemaking whether the amendment should permit continued disposal of leaking large PCB capacitors in chemical waste landfills" (44 FR 66851, May 31, 1979). As earlier noted, information presented at the hearing indicated that a significant number of capacitors are leaking at time of disposal. Accordingly, to ensure adequate protection against leaking capacitors EPA has adopted a uniform procedure for all PCB capacitors subject to the rule which requires them to be placed in containers with absorbent material prior to disposal. This requirement will result in a maximum expenditure of $4,000,000 the first year.[1] The actual impact may be considerably less since some utilities and chemical waste landfills may have already undertaken this practice.

For small PCB capacitors, the total expenditure will be, at the most, $37,500.[2] This cost estimate also is likely to be higher than the actual cost since the estimate is based upon the assumption that all small capacitors are the same size. This, in fact, is not the case. Many small capacitors are extremely small. It would therefore take substantially more of these "smaller" capacitors to fill a 55 gallon drum.[3]

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these rules "specialized". This rule has been reviewed and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

The public record for this rulemaking is located in room 447, East Tower, EPA, 401 M Street, S.W., Washington, D.C. 20460. It is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

EPA has prepared a support document responding to the major comments received in this rulemaking. This support document is available upon request from the Industry Assistance Office at the address previously given.

Pursuant to 5 U.S.C. § 553(d), this amendment is made effective upon publication. The amendment extends PCB disposal provisions that have previously expired. Failure to make the rule immediately effective would prolong the PCB capacitor storage which this amendment is intended to avoid. Accordingly, it is in the public interest to make the rule immediately effective, and

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[1] Using the numbers provided in the comments provided by the Utility Solid Waste Activities Group (USWAG) that 26,000 large capacitors are removed for disposal per month and dividing by 2 (which is the average numbers of capacitors one can fit into a 55 gallon drum) and then multiplying by $25 (the approximate cost per drum) results in a total cost of $4,000,000. This assumes no cost for the absorbent material used to fill the drums.

[2] Using numbers provided in the testimony of the Ad Hoc Committee on Liquid Dielectrics (AHCLD) that between 50,000 and 150,000 small PCB capacitors are covered by the scope of this amendment and dividing by 100 (which is the fewest number of small capacitors that can fit in a 55 gallon drum) and then multiplying by the average cost per drum results in a total additional cost to containerize PCB small capacitors in drums of between $30,000 and $37,000.

[3] AHCLD found that it would take 5,000 of the "smaller" capacitors to fill a 55 gallon drum.

the Agency finds that there is good cause for doing so.

Dated: March 25, 1980.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

Authority: Section 6(e) of TSCA (15 U.S.C. 2605). The preamble of the Manufacturing, Processing, Distribution in Commerce, and Use Prohibition Rule published in the **Federal Register** of May 31, 1979, 44 FR 31514 delegates authority to amend or modify this rule to the Assistant Administrator.

EPA is amending 40 CFR 761.10(b) by revising (b)(2)(iii)(B) and (iv)(B) and by adding new paragraphs (v) and (vi) to read as follows:

§ 761.10 Disposal requirements.

* * * * *

(b) * * *

(2) PCB Capacitors. * * *

(iii) Any PCB Large High or Low Voltage Capacitor owned by any person shall be disposed of in accordance with either of the following:

* * * * *

(B) Until March 1, 1981, disposal in a chemical waste landfill that complies with Annex II.

(iv) Any PCB Small Capacitor owned by any person who manufactures or at any time manufactured PCB Capacitors or PCB Equipment and acquired the PCB Capacitors in the course of such manufacturing shall be disposed of in accordance with either of the following:

* * * * *

(B) Until March 1, 1981, disposal in a chemical waste landfill that complies with Annex II.

(v) Notwithstanding the restrictions imposed by § 761.10(b)(2)(iii)(B) or (b)(2)(iv)(B), PCB capacitors may be disposed of in PCB chemical waste landfills that comply with Annex II subsequent to March 1, 1981, if the Assistant Administrator for Pesticides and Toxic Substances publishes a notice in the **Federal Register** declaring that those landfills are available for such disposal and explaining the reasons for the extension or reopening. An extension or reopening for disposal of PCB capacitors that is granted under this subsection shall be subject to such terms and conditions as the Assistant Administrator may prescribe and shall be in effect for such period as the Assistant Administrator may prescribe. The Assistant Administrator may permit disposal of PCB capacitors in EPA approved chemical waste landfills after March 1, 1981, if in his opinion,

(*1*) Adequate incineration capability for PCB capacitors is not available, or

(*2*) The incineration of PCB capacitors will significantly interfere with the incineration of liquid PCBs, or

(*3*) There is other good cause shown.

As part of this evaluation, the Assistant Administrator will consider the impact of his action on the incentives to construct or expand PCB incinerators.

(vi) Prior to disposal in an Annex II chemical waste landfill, all large PCB capacitors, and all small PCB capacitors described in § 761.10(b)(2)(iv), shall be placed in one of the Department of Transportation specification containers identified in § 761.42(c)(6) or in containers that comply with 49 CFR 178.118 (specification 17H containers). Large PCB capacitors which are too big to fit inside one of these containers shall be placed in a container with strength and durability equivalent to the DOT specification containers. In all cases, interstitial space in the container shall be filled with sufficient absorbent material (such as sawdust or soil) to absorb any liquid PCBs remaining in the capacitors.

[FR Doc. 80-9500 Filed 3-27-80; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF AGRICULTURE

41 CFR Part 4-12

Procurement; EEO Contract Compliance

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule amends the Agriculture Procurement Regulations by revising the subpart covering Equal Opportunity in Employment. It is for the purpose of updating or deleting obsolete procedures used by agency procuring offices prior to consolidation of EEO contract compliance functions into the Department of Labor. The intended effect of the amendment is to eliminate coverage which is in conflict with Department of Labor regulations.

EFFECTIVE DATE: March 28, 1980.

FOR FURTHER INFORMATION CONTACT: Douglas I. Metzger, Procurement Division, Office of Operations and Finance, U.S. Department of Agriculture, Washington, D.C. 20250, Phone: (202) 447-7527.

SUPPLEMENTARY INFORMATION: This amendment involves matters relating to agency contracting and is therefore not subject by law to the notice and public rulemaking procedures under 5 USC 553, nor the policy on improving Government regulations under Executive Order 12044. This amendment is subject to the Secretary's Statement of Policy (36 FR 13804) of July 20, 1971. As this amendment corrects or clarifies existing procurement policy, no useful purpose would be served by public participation. Therefore, in accordance with the Secretary's Policy Statement, it is found for good cause that notice and other public rulemaking procedures are impracticable and unnecessary.

PART 4-12—LABOR

1. The Table of Contents of Part 4-12—Labor, is amended by revising Subpart 4-12.8 to read as follows:

Subpart 4-12.8—Equal Opportunity in Employment

Subpart 4-12.8—Equal Opportunity in Employment

§ 4-12.800 Scope of subpart.

This subpart implements executive Order 11246, as amended by Executive Order 11375; the rules and regulations of the Secretary of Labor (41 CFR Chapter 60); and the Federal Procurement Regulations (41 CFR Part 1-12).

§ 4-12.803 Basic requirements.

§ 4-12.803-2 Equal opportunity clause.

Form AD-369, Equal Opportunity, is prescribed for use to incorporate the Equal Opportunity clause when it is not included in standard or other preprinted contract forms being used.

§ 4-12.803-10 Elimination of segregated facilities.

Form AD-560, Certification of Nonsegregated Facilities, is prescribed for use as the certification required by § 1-12.803-10.

§ 4-12.805 Administration.

§ 4-12.805-3 Notices to be posted.

The poster "Equal Opportunity Is the Law," OFCCP-1420, may be ordered from GSA pursuant to 1-12.805-3 or requisitioned through Central Supply.

§ 4-12.810 Affirmative action programs.

Form AD-425a, Contractor's Affirmative Action Plan for Equal Employment Opportunity Under Executive Order 11246 and Executive Order 11375, is prescribed for use in contracts for personal property and nonpersonal services, to assist

contractors in the development of a satisfactory affirmative action program. The form provides guidelines and specific steps for achievement of full and equal employment opportunity. It should accompany the notice of award of the contract.

Form AD–425b is an adaptation of the AD–425a and is prescribed for use in contracts for construction.

Authority: This amendment is made under the authority of 5 USC 301, 40 USC 486(c).

Done at Washington, D.C., this 17th day of March 1980.

Dean K. Crowther,

Director, Office of Operations and Finance.

[FR Doc. 80-9519 Filed 3-27-80; 8:45 am]

BILLING CODE 3410-98-M

41 CFR Part 4–16

Procurement; Standard Form 37

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule amends the Agriculture Procurement Regulations by deleting the subpart which prescribes agency procedures for submitting Standard Form 37, Report on Procurement by Civilian Executive Agencies. The report will now be submitted to the General Services Administration by the Office of Operations and Finance based on data retrieved from the Department's procurement data reporting system. The intended effect of this amendment is to relieve the Department's procuring agencies of the SF–37 reporting requirement.

EFFECTIVE DATE: March 28, 1980.

FOR FURTHER INFORMATION CONTACT: Douglas I. Metzger, Procurement Division, Office of Operations and Finance, U.S. Department of Agriculture, Washington, D.C. 20250, Phone: (202) 447–7527.

SUPPLEMENTARY INFORMATION: This amendment involves matters relating to agency management and contracting and is therefore not subject by law to the notice and public rulemaking procedures under 5 USC 553 nor the policy on improving Government regulations under Executive Order 12044.

This amendment is subject to the Secretary's Statement of Policy (36 FR 13804) of July 20, 1971. As this amendment involves internal agency procedures, no useful purpose would be served by public participation. Therefore, in accordance with the Secretary's Policy Statement, it is found for good cause that notice and other public rulemaking procedures are impracticable and unnecessary.

PART 4–16—PROCUREMENT FORMS

1. The Table of Contents of Part 4–16 is amended to delete Subpart 4–16.8, Miscellaneous Forms.

§ Subpart 4–16.8 [Deleted].

2. Subpart 4–16.8, Miscellaneous Forms, is deleted.

Authority: This amendment is made under the authority of 5 USC 301, 40 USC 486(c).

Done at Washington, D.C., this 17th day of March 1980.

Dean K. Crowther,

Director, Office of Operations and Finance.

[FR Doc. 80-9518 Filed 3-27-80; 8:45 am]

BILLING CODE 3410-98-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[Circular No. 2458]

Execution and Filing of Forms; Office Hours

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends 43 CFR 1821.2–1 to reflect new office hours during which applicants can inspect records and file applications and other documents under this title. The revised hours will increase the time available for public use.

EFFECTIVE DATE: March 28, 1980.

ADDRESS: Any suggestions or inquiries should be sent to: Director (650), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Cecil R. Feeney (202) 343–7424.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Cecil R. Feeney of the Office of Legislation and Regulatory Management, Bureau of Land Management, Washington, D.C.

It is hereby determined that publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] is required.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The customary 30-day period between the publication date and effective date of final rules is hereby waived because this rulemaking does not initiate change, but is an administrative action reflecting changes.

Under the authority of section 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740), Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

James W. Curlin,

Secretary of the Interior.

March 24, 1980.

1. Section 1821.2–1 is amended to read as follows:

PART 1820—APPLICATION PROCEDURES

§ 1821.2–1 Office hours; place for filing.

(a) The offices listed in paragraph (d) of this section are open to the public for the filing of applications and other documents and inspection of records on Monday through Friday during the regular business hours of each office, with the exception of those days when the office may be closed because of a national holiday or by Presidential or other administrative order.

* * * * *

[FR Doc. 80-9428 Filed 3-27-80; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5795]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, DC 20410.