

random sampling without a case examination will only identify the case as a random sample case.

(d) *Appeals Council's action.* If the Appeals Council decides to review a decision or dismissal on its own motion, it will mail a notice of review to all the parties as provided in § 404.973. The Appeals Council will include with that notice a copy of any written referral it has received under paragraph (c) of this section. The Appeals Council's decision to review a case is established by its issuance of the notice of review. If it is unable to decide within the applicable 60-day period whether to review a decision or dismissal, the Appeals Council may consider the case to determine if the decision or dismissal should be reopened pursuant to §§ 404.987 and 404.988. If the Appeals Council decides to review a decision on its own motion or to reopen a decision as provided in §§ 404.987 and 404.988, the notice of review or the notice of reopening issued by the Appeals Council will advise, where appropriate, that interim benefits will be payable if a final decision has not been issued within 110 days after the date of the decision that is reviewed or reopened, and that any interim benefits paid will not be considered overpayments unless the benefits are fraudulently obtained.

#### **PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

20 CFR Part 416, Subpart N, is amended as follows:

1. The authority citation for subpart N continues to read as follows:

**Authority:** Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

2. Section 416.1469 is revised to read as follows:

##### **§ 416.1469 Appeals Council initiates review.**

(a) *General.* Anytime within 60 days after the date of a decision or dismissal that is subject to review under this section, the Appeals Council may decide on its own motion to review the action that was taken in your case. We may refer your case to the Appeals Council for it to consider reviewing under this authority.

(b) *Identification of cases.* We will identify a case for referral to the Appeals Council for possible review under its own-motion authority before we effectuate a decision in the case. We will identify cases for referral to the Appeals Council through random and selective sampling techniques, which we may use in association with

examination of the cases identified by sampling. We will also identify cases for referral to the Appeals Council through the evaluation of cases we conduct in order to effectuate decisions.

(1) *Random and selective sampling and case examinations.* We may use random and selective sampling to identify cases involving any type of action (i.e., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of benefits (i.e., benefits based on disability and benefits not based on disability). We will use selective sampling to identify cases that exhibit problematic issues or fact patterns that increase the likelihood of error. Neither our random sampling procedures nor our selective sampling procedures will identify cases based on the identity of the decisionmaker or the identity of the office issuing the decision. We may examine cases that have been identified through random or selective sampling to refine the identification of cases that may meet the criteria for review by the Appeals Council.

(2) *Identification as a result of the effectuation process.* We may refer a case requiring effectuation to the Appeals Council if, in the view of the effectuating component, the decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim; the decision is clearly inconsistent with the Social Security Act, the regulations, or a published ruling; or the decision is unclear regarding a matter that affects the claim's outcome.

(c) *Referral of cases.* We will make referrals that occur as the result of a case examination or the effectuation process in writing. The written referral based on the results of such a case examination or the effectuation process will state the referring component's reasons for believing that the Appeals Council should review the case on its own motion. Referrals that result from selective sampling without a case examination may be accompanied by a written statement identifying the issue(s) or fact pattern that caused the referral. Referrals that result from random sampling without a case examination will only identify the case as a random sample case.

(d) *Appeals Council's action.* If the Appeals Council decides to review a decision or dismissal on its own motion, it will mail a notice of review to all the parties as provided in § 416.1473. The Appeals Council will include with that notice a copy of any written referral it has received under paragraph (c) of this section. The Appeals Council's decision to review a case is established by its

issuance of the notice of review. If it is unable to decide within the applicable 60-day period whether to review a decision or dismissal, the Appeals Council may consider the case to determine if the decision or dismissal should be reopened pursuant to §§ 416.1487 and 416.1488. If the Appeals Council decides to review a decision on its own motion or to reopen a decision as provided in §§ 416.1487 and 416.1488, the notice of review or the notice of reopening issued by the Appeals Council will advise, where appropriate, that interim benefits will be payable if a final decision has not been issued within 110 days after the date of the decision that is reviewed or reopened, and that any interim benefits paid will not be considered overpayments unless the benefits are fraudulently obtained.

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## **DEPARTMENT OF STATE**

### **22 CFR Part 140**

[Public Notice 2840]

#### **Bureau for International Narcotics and Law Enforcement Affairs; Prohibition on Assistance to Drug Traffickers**

**AGENCY:** Department of State (Bureau for International Narcotics and Law Enforcement Affairs).

**ACTION:** Final rule.

**SUMMARY:** The Department of State issues these regulations to implement Section 487 of the Foreign Assistance Act of 1961, as amended ("FAA") (22 U.S.C. 2291f).

Section 487(a) directs the President to take all reasonable steps to ensure that assistance provided under the Foreign Assistance Act or the Arms Export Control Act is not provided to or through any individual or entity that the President knows or has reason to believe has been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating to narcotic or psychotropic drugs or other controlled substances; or is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking of any such substance. This rule establishes a single government-wide enforcement mechanism for Section 487. The regulations seek to achieve rigorous statutory enforcement in a

manner consistent with efficient foreign assistance program administration. They also seek to ensure protection of the procedural rights and interests of assistance recipients.

**DATES:** Effective date: October 5, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Office of Policy, Planning and Coordination, Bureau for International Narcotics and Law Enforcement Affairs, Department of State, 202-647-0457, or Office of Law Enforcement and Intelligence, Office of the Legal Adviser, Department of State, 202-647-7324.

**SUPPLEMENTARY INFORMATION:** This rule implements Section 487 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. Sec. 2291f). The requirements of Section 487 are described in the Summary, above. The law further directs that regulations be issued to carry out the section and be submitted to Congress before they take effect. The responsibilities of the President under Section 487 have been delegated to the Secretary of State (E.O. 12163). The Secretary of State is issuing these regulations and has delegated the responsibility for their implementation to the Assistant Secretary for International Narcotics and Law Enforcement Affairs. The regulations are set forth in a new part of the Code of Federal Regulations, 22 CFR Part 140. Proposed regulations were published for comment on Feb. 9, 1995 (60 FR 7737) and modifications have been made in light of comments received. The regulations have been submitted to Congress, as required by Section 487(c).

The procedures prescribed by these regulations apply to assistance under the Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act. The regulations are set up in three Subparts: General (Subpart A, §§ 140.1-140.3); Applicability (Subpart B, § 140.4); and Enforcement (Subpart C, §§ 140.5-140.14).

The General Subpart (Subpart A) provides a statement of the regulations' purpose (§ 140.1), based upon the language of Section 487 of the Foreign Assistance Act; identifies the authorities for issuance of the regulations (§ 140.2); and defines key terms used in the regulations (§ 140.3). The broad coverage of the regulations is reflected in the definitions of drug trafficking (§ 140.3(e)), money laundering (§ 140.3(f)), and narcotics offense (§ 140.3(g)), which are intended to be comprehensive. As noted in the definition of drug trafficking, it encompasses drug-related money laundering. One commenting agency asked for further definition of the terms "illicit," "illicitly," and "criminal."

That comment was not adopted because we believe such definitions are not necessary. We note that the terms encompass activities that are illicit or illegal under the laws applicable to such activities.

Two of the key terms defined in the regulations are "covered country" (§ 140.3(d)) and "covered assistance" (§ 140.3(c)). The term "covered country" corresponds to those countries listed on the "majors list," i.e., the list of major illicit drug producing countries and major drug-transit countries, as determined annually by the President and transmitted to the appropriate Congressional committees as required by section 490(h) of the FAA.

The term "covered assistance" is defined broadly, while excluding assessed contributions to an international organization and assistance that by operation of law is not subject to Section 487. The definition further provides that assistance in amounts less than \$100,000 is excluded unless it pertains to: recipients of scholarships, fellowships, or participant training; or a covered individual or entity reasonably suspected of being or having been involved in drug trafficking by the agency providing assistance. These definitions are intended to ensure rigorous application of the statutory prohibition on assistance to drug traffickers, while fostering efficient program administration. Several comments requested a more complete listing of assistance that would be excluded from the term "covered assistance" by operation of other laws. Because such a list depends on specific statutory exemptions and is subject to change, we have concluded that further guidance in this area is more appropriately left to the implementing regulations of the relevant agency, which will be in a better position to keep the guidance current.

One agency recommended the addition of a definition of the term "convicted;" that definition has been added as § 140.3(a).

For ease of reference, the term "covered individual or entity" is defined in § 140.4, where it is used, rather than in the definition section. Likewise, the term "key individual" is described in § 140.6(a)(3), where it is introduced.

The term "Country Narcotics Coordinator" is defined in section 140.3(b). Comments from one agency acknowledged that the definition is drafted to preserve flexibility by not specifying particular positions at U.S. posts abroad but recommended further clarification to ensure that a designated CNC would be qualified to handle

sensitive law enforcement information. The definition has not been changed, but we note that the CNC is a key position often held by the Deputy Chief of Mission at a U.S. diplomatic post. In the event that another person were assigned to exercise these functions, that person would necessarily have equally appropriate clearances to handle sensitive law enforcement information.

The Applicability Subpart (Subpart B) explains the scope of the regulations. Their applicability is keyed primarily to "covered individuals and entities" that receive or provide direct or first-tier "covered assistance" and are located or providing assistance within a "covered country." Concerns were raised that the definition of a "covered country" as one on the list of major illicit drug producing or drug-transit countries issued annually pursuant to section 490(h) of the Foreign Assistance Act of 1961, as amended, would preclude action concerning assistance to a portion of a country or to another country on which relevant information is developed after issuance of the list. In response, § 104.4(b) has been rewritten to include coverage of assistance within any other country, or portion thereof, that the Secretary of State or the Secretary's designee may at any time determine should be treated as if it were a covered country in order to fulfill the purpose of the regulations (§ 140.4(b)(1)). Furthermore, the regulations have been drafted carefully to ensure they are given their full statutory scope, i.e., that they are applied whenever an agency providing covered assistance has reasonable grounds to suspect that a proposed recipient individual or entity may be or may have been involved in drug trafficking or may have been convicted of a narcotics offense regardless of the country involved (§ 140.4(b)(2)); see also §§ 140.3(c)(2), 140.7(a), 140.9(a) and 140.11).

The regulations are also applicable where a government agency providing covered assistance within a covered country has specifically designated a recipient beyond the first tier (see §§ 140.4(a), 140.7(b)). Additionally, they apply to individuals who receive a scholarship, fellowship, or participant training (unless the assistance is provided through a multilateral institution or international organization and the recipient has not been designated by the agency providing assistance). Further assurance that drug traffickers will not receive assistance is provided by the requirement that where an agency providing covered assistance to a multilateral institution or international organization does not

designate the assistance recipient, the agency's agreement with the multilateral institution or international organization shall stipulate that such entity is to make reasonable efforts to ensure that the assistance is not diverted in support of drug trafficking (§ 140.7(c)).

The factual circumstances that give rise to application of the regulations are highly varied and may, on occasion, have potentially serious or sensitive foreign relations, national security, or law enforcement consequences. In rare circumstances, such potential consequences may require that, in fulfilling the statutory requirements of Section 487, the procedures set forth in the regulations be expanded, modified, utilized in a different manner or not utilized. This necessary flexibility is provided in the initial clause of § 140.4. In response to comments by one agency raising concerns about possible disclosure of law enforcement investigatory information, however, that section has been amended to provide that §§ 140.13 and 140.14 will apply in all cases.

The Enforcement Subpart (Subpart C) contains an overview (§ 140.5), which outlines the Subpart's scope. The applicable determination procedures, criteria to be applied in deciding whether to withhold assistance or take other measures, and procedures concerning violations identified subsequent to the obligation of funds are set forth in the Enforcement Subpart. The applicability of these procedures varies depending on the nature of the proposed recipient. The general framework is set forth in § 140.6, in the context of covered assistance to foreign government entities. Variations of that framework are set forth in separate sections for: multilateral institutions and international organizations (§ 140.7); recipients of scholarships, fellowships, and participant training (§ 140.8); other non-governmental entities and individuals (§ 140.9); and intermediate credit institutions (§ 140.10). (Note: In § 140.9 the use of the phrase "non-governmental entity" is meant to encompass a broader category of organizations than might be encompassed by the term "non-governmental organization" or its acronym, "NGO." As explained in § 140.9, it includes not only private voluntary agencies and educational institutions, but also for-profit firms and any other non-governmental organizations.)

The determination procedures set forth in the regulations are applied by the Country Narcotics Coordinator (as defined in § 140.3(b)), who is responsible in the first instance for

reviewing available information to determine whether a proposed assistance recipient is to be granted or denied assistance or whether other measures are to be taken to structure the provision of the assistance in such a way as to meet the requirements of Section 487 of the Foreign Assistance Act (§ 140.6(a)). Comments from one agency pointed out that agencies providing information that will be used for this purpose have a strong interest in how the system for reviewing information as required under § 140.6(a)(1) is developed and suggested that parameters of such a system be included in the regulations. We have decided not to change the regulations on this point although we will provide guidance to CNCs separately on this matter in order to preserve flexibility in developing and adjusting such a system over time. Nevertheless, the State Department will consult with agencies that supply information in developing that guidance. An agency proposing assistance is responsible for providing the Country Narcotics Coordinator with the name of each key individual within a prospective recipient entity who may be expected to control or benefit from assistance as well as other relevant information that is readily available (§ 140.6(a)(3)). Questions as to who should be included in the group of key individuals will be resolved by the CNC, with review by the Assistant Secretary for INL at the request of the agency.

Section 140.6(a)(6) further provides that it is the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs (rather than the Country Narcotics Coordinator), in consultation with appropriate bureaus and agencies, who ordinarily will make any decision to withhold assistance or take other measures based on information or allegations that a key individual who is a senior government official of a foreign government has been convicted of a narcotics offense or has been engaged in drug trafficking. Personal involvement at or above the Assistant Secretary of State level is appropriate in such a case because it involves inherently sensitive foreign policy issues.

The regulations provide a two-week period, extendable if necessary for another two weeks, within which the Country Narcotics Coordinator, in consultation with the agency proposing the assistance and other appropriate bureaus and agencies, is to make a determination whether assistance is to be provided or withheld, or other measures are to be taken to meet the requirements of section 487. The reference to other appropriate bureaus

and agencies was added in response to a comment from one agency noting that the decision would need to be made on the basis of information supplied by other, often law enforcement, agencies. Section 140.6(b) outlines the factors to be considered in determining whether to withhold assistance or take other measures. In response to comments from one agency requesting additional guidance concerning the standard "reasonable belief," we have changed that term as used in 140.6(b) to the exact words of the statute, "reason to believe" that a proposed recipient has been engaged in drug trafficking activities. When there is evidence that might lead to such a finding, the CNC will decide whether reports are credible and sources reliable, thus providing a reason to believe rather than merely raising a suspicion.

In response to comments requesting further guidance on implementation, a new subsection (b)(3)(v) has been added to make clear that measures other than denial of assistance may be appropriate in certain cases where a negative determination is made as to one or more key individuals.

The enforcement procedures applicable to recipients of scholarships, fellowships, and participant training (§ 140.8) and to other non-governmental entities and individuals (§ 140.9) include a pre-approval certification process. The regulations specify that false certification may subject the signatory to U.S. criminal prosecution under 18 U.S.C. 1001. (See §§ 140.8(b), 140.9(c).) Although this penalty is described in the regulations, it is established independently by the referenced statute. The identification of a penalty in the regulations is not meant to limit the application of any criminal or civil penalty otherwise applicable.

Section 140.10 concerns the procedures applicable to intermediate credit institutions. Such institutions are to be treated as either foreign government entities or non-governmental entities, depending on the nature of the particular institution. Section 140.10 also requires that agreements with such intermediate credit institutions include a contract clause concerning a refund procedure applicable to loans exceeding \$1,000 made by any intermediate credit institution.

Section 140.11 clarifies that the enforcement procedures established by §§ 140.6–140.10 are not exhaustive, but represent only the minimum applicable procedures implementing Section 487 of the Foreign Assistance Act.

The remaining provisions of the regulations establish notification and

review procedures. One agency commented that only the law enforcement agency whose investigation may be affected by disclosure of information is in a position to make a determination regarding the appropriateness of notifications and any decision to provide additional information. In response to these comments, § 140.13(a) has been amended to ensure that no information beyond the statutory basis for withholding, suspending or terminating assistance to a foreign government or entity will be provided without the agreement of the originating agency. Special care has also been taken to minimize the risk that notification will interfere with an ongoing criminal investigation (§ 140.13(b)). An agency proposing covered assistance may request review of a Country Narcotics Coordinator's decision that the assistance must be withheld or other measures taken to comply with section 487 (§ 140.12). In addition, where the prospective assistance recipient is a U.S. entity, U.S. citizen, or permanent U.S. resident, a Country Narcotics Coordinator's preliminary decision to withhold assistance is referred to the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs for final determination (§ 140.14). As with § 140.13, in response to comments, § 140.14(a) has been revised to provide that decisions on appropriate action concerning U.S. entities and individuals will be taken in consultation not only with the agency proposing the assistance but also the agency or agencies that provided information reviewed or relied upon in making the preliminary decision. One agency expressed concerns that procedures previously anticipated for review of denials of assistance under this section could be viewed as introducing a standard of proof inconsistent with section 487 and could lead to disclosure of classified materials or law enforcement investigative information. The section has been amended to remove references to pre-existing review procedures which would not ordinarily be applicable in the context of assistance grants. Section 140.14(b) also now states explicitly that the regulations shall not be interpreted to create a right to classified information or law enforcement investigatory information by such entity or individual.

This amendment involves a foreign affairs function of the United States, as well as public grants, benefits and contracts, and is accordingly not subject to the requirements of the Regulatory

Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. It is also exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof.

#### List of Subjects in 22 CFR Part 140

Drug traffic control, Foreign aid.

For the reasons set out in the preamble, 22 CFR 140 is added to subchapter N as follows:

### PART 140—PROHIBITION ON ASSISTANCE TO DRUG TRAFFICKERS

#### Subpart A—General

Sec.

140.1 Purpose.

140.2 Authorities.

140.3 Definitions.

#### Subpart B—Applicability

140.4 Applicability.

#### Subpart C—Enforcement

140.5 Overview.

140.6 Foreign government entities.

140.7 Multilateral institutions and international organizations.

140.8 Recipients of scholarships, fellowships, and participant training.

140.9 Other non-governmental entities and individuals.

140.10 Intermediate credit institutions.

140.11 Minimum enforcement procedures.

140.12 Interagency review procedures.

140.13 Notification to foreign entities and individuals.

140.14 Special procedures for U.S. entities and individuals.

Authority: 22 U.S.C. 2651a(a)(4).

#### Subpart A—General

##### § 140.1 Purpose.

(a) This part implements Section 487 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. Sec. 2291f).

(b) Section 487(a) directs the President to "take all reasonable steps" to ensure that assistance under the Foreign Assistance Act of 1961 (FAA) and the Arms Export Control Act (AECA) "is not provided to or through any individual or entity that the President knows or has reason to believe":

(1) has been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating [to] narcotic or psychotropic drugs or other controlled substances; or

(2) is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking in any such substance.

##### § 140.2 Authorities.

Authority to implement FAA Section 487 was delegated by the President to the Secretary of State by E.O. 12163, as amended, and further delegated by the Secretary to the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs by Delegation of Authority No. 145, dated Feb. 4, 1980 (45 FR 11655), as amended.

##### § 140.3 Definitions.

The following definitions shall apply for the purpose of this part:

(a) Convicted. The act of being found guilty of or legally responsible for a criminal offense, and receiving a conviction or judgment by a court of competent jurisdiction, whether by verdict or plea, and including convictions entered upon a plea of nolo contendere.

(b) Country Narcotics Coordinator. The individual assigned by the Chief of Mission of a U.S. diplomatic post, in consultation with the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, in each foreign country to coordinate United States government policies and activities within a country related to counternarcotics efforts.

(c) Covered assistance. Any assistance provided by an agency of the United States government under the FAA or AECA, except that it does *not* include:

(1) Assistance that by operation of the law is not subject to FAA Section 487, such as:

(i) Disaster relief and rehabilitation provided under Chapter 9 of Part I of the FAA; and

(ii) Assistance provided to small farmers when part of a community-based alternative development program under Part I or Chapter 4 of Part II of the FAA;

(2) Assistance in a total amount less than \$100,000 regarding a specific activity, program, or agreement, except that the procedures in § 140.8 for recipients of scholarships, fellowships, and participant training shall apply regardless of amount. However, assistance shall be deemed covered assistance regardless of amount if the agency providing assistance has reasonable grounds to suspect that a covered individual or entity may be or may have been involved in drug trafficking; or

(3) Payments of dues or other assessed contributions to an international organization.

(d) Covered country. A country that has been determined by the President to be either a "major illicit drug producing" or "major drug-transit" country under Chapter 8 of Part I of the

FAA. The list of covered countries is submitted to Congress annually and set forth in the International Narcotics Control Strategy Report.

(e) Drug trafficking. Any activity undertaken illicitly to cultivate, produce, manufacture, distribute, sell, finance or transport, or to assist, abet, conspire, or collude with others in illicit activities, including money laundering, relating to narcotic or psychotropic drugs, precursor chemicals, or other controlled substances.

(f) Money laundering. The process whereby proceeds of criminal activity are transported, transferred, transformed, converted, or intermingled with legally acquired funds, for the purpose of concealing or disguising the true nature, source, disposition, movement, or ownership of those proceeds. The goal of money laundering is to make funds derived from or associated with illicit activity appear to have been acquired legally.

(g) Narcotics offense. A violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating to narcotic or psychotropic drugs or other controlled substances.

## Subpart B—Applicability

### § 140.4 Applicability.

Except as otherwise provided herein or as otherwise specially determined by the Secretary of State or the Secretary's designee (except that decisions on notification and/or disclosure shall in all cases be subject to the provisions of §§ 140.13 through 140.14), the procedures prescribed by this part apply to any "covered individual or entity," i.e., any individual or entity, including a foreign government entity, a multilateral institution or international organization, or a U.S. or foreign non-governmental entity: (a)(1) That is receiving or providing covered assistance as a party to a grant, loan, guarantee, cooperative agreement, contract, or other direct agreement with an agency of the United States (a "first-tier" recipient); or

(2) That is receiving covered assistance

(A) Beyond the first tier if specifically designated to receive such assistance by a U.S. government agency; or

(B) In the form of a scholarship, fellowship, or participant training, except certain recipients funded through a multilateral institution or international organization, as provided in § 140.7(c); and

(b)(1) That is located in or providing covered assistance within a covered

country or within any other country, or portion thereof, that the Secretary of State or the Secretary's designee may at any time determine should be treated, in order to fulfill the purpose of this part, as if it were a covered country; or

(2) As to which the agency providing assistance or any other interested agency has reasonable grounds to suspect current or past involvement in drug trafficking or conviction of a narcotics offense, regardless of whether the assistance is provided within a covered country.

#### Examples:

(1) Under a \$500,000 bilateral grant agreement with the Agency for International Development providing covered assistance, Ministry Y of Government A, the government of a covered country, enters into a \$150,000 contract with Corporation X. Ministry Y is a covered entity. However, Corporation X is *not* a covered entity because the contract is *not* a direct contract with an agency of the United States.

(2) Under a \$1,000,000 grant from the Department of State providing covered assistance, Corporation B makes a \$120,000 subgrant to University Y for the training of 12 individuals. If Corporation B is located in or providing assistance within a covered country, it is a covered entity and the 12 individuals receiving participant training are covered individuals. University Y is *not* a covered entity.

(3) University C, which is not located in a covered country, receives a \$1 million regional assistance research project grant from the Agency for International Development, \$80,000 of which is provided for research in covered countries. University C is *not* a covered entity. (However, if \$100,000 or more were provided for research in a covered country or countries, or if University C were located in a covered country, then University C would be a covered entity.)

## Subpart C—Enforcement

### § 140.5 Overview.

This subpart sets forth the enforcement procedures applicable pursuant to § 140.4 to the various types of covered individuals and entities with respect to covered assistance. Section 140.6 establishes the procedures applicable to foreign government entities, including any such entity that is covered by the definition of a "foreign state" set forth in the Foreign Sovereign Immunities Act, 28 U.S.C. Sec. 1603(a). Section 140.7 establishes the procedures applicable to multilateral institutions and international organizations. Section 140.8 establishes the procedures applicable to recipients of scholarships and fellowships and participant trainees. Section 140.9 establishes the procedures applicable to non-governmental entities. Section 140.10 sets forth additional procedures

applicable to intermediate credit institutions. Sections 140.11 through 140.14 contain general provisions related to the enforcement process.

### § 140.6 Foreign government entities.

(a) *Determination Procedures.* (1) The Country Narcotics Coordinator shall be responsible for establishing a system for reviewing available information regarding narcotics offense convictions and drug trafficking of proposed assistance recipients under this section and, except under the circumstances described in § 140.6(a)(6), determining whether a proposed recipient is to be denied such assistance or other measures are to be taken as a result of the application of FAA Section 487.

(2) Prior to providing covered assistance to or through a proposed recipient, the agency providing the assistance shall provide the Country Narcotics Coordinator in the country in which the proposed recipient is located or, as appropriate, where assistance is to be provided, the information specified in § 140.6(a)(3) in order that the Country Narcotics Coordinator may carry out his or her responsibilities under this part.

(3) In each case, the agency proposing the assistance shall provide to the Country Narcotics Coordinator the name of each key individual within the recipient entity who may be expected to control or benefit from assistance as well as other relevant identifying information (e.g., address, date of birth) that is readily available. If a question arises concerning who should be included within the group of key individuals of an entity, the agency providing the assistance shall consult with the Country Narcotics Coordinator, and the decision shall be made by the Country Narcotics Coordinator. If the agency proposing the assistance disagrees with the Country Narcotics Coordinator's decision regarding who should be included within the group of key individuals, the agency may request that the decision be reviewed by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs in consultation with other appropriate bureaus and agencies. Any such review undertaken by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs shall be completed expeditiously.

(4) Within fourteen calendar days after receiving the name of a proposed recipient and other relevant information, the Country Narcotics Coordinator shall determine whether any available information may warrant withholding assistance or taking other measures under this part, based on the

criteria set forth in § 140.6(b). If, during that period, the Country Narcotics Coordinator determines that available information does not so indicate, he or she shall notify the proposing agency that the assistance may be provided to the proposed recipient.

(5) If, during the initial fourteen-day period, the Country Narcotics Coordinator determines that information exists that may warrant withholding assistance or taking other measures under this part, then the Country Narcotics Coordinator shall have another fourteen calendar days to make a final determination whether the assistance shall be provided or withheld or such other measures taken.

(6) A decision to withhold assistance or to take other measures based on information or allegations that a key individual who is a senior government official of the host nation has been convicted of a narcotics offense or has been engaged in drug trafficking shall be made by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, or by a higher ranking official of the Department of State, in consultation with other appropriate bureaus and agencies. For the purpose of this part, "senior government official" includes host nation officials at or above the vice minister level, heads of host nation law enforcement agencies, and general or flag officers of the host nation armed forces.

(b) *Criteria to be Applied.* (1) A decision to withhold assistance or take other measures shall be based on knowledge or reason to believe that the proposed recipient, within the past ten years, has:

- (i) Been *convicted* of a narcotics offense as defined in this part; or
- (ii) Been *engaged* in drug trafficking, regardless of whether there has been a conviction.

(2) Factors that may support a decision to withhold assistance or take other measures based on reason to believe that the proposed recipient has been engaged in drug trafficking activities within the past ten years when there has been no conviction of such an offense may include, but are not limited to, the following:

- (i) Admission of participation in such activities;
  - (ii) A long record of arrests for drug trafficking activities with an unexplained failure to prosecute by the local government;
  - (iii) Adequate reliable information indicating involvement in drug trafficking.
- (3) If the Country Narcotics Coordinator knows or has reason to

believe that a key individual (as described in § 140.6(a)(3)) within a proposed recipient entity has been convicted of a narcotics offense or has been engaged in drug trafficking under the terms of this part, the Country Narcotics Coordinator must then decide whether withholding assistance from the entity or taking other measures to structure the provision of assistance to meet the requirements of section 487 is warranted. This decision shall be made in consultation with the agency proposing the assistance and other appropriate bureaus and agencies. In making this determination, the Country Narcotics Coordinator shall take into account:

- (i) The extent to which such individual would have control over assistance received;
- (ii) The extent to which such individual could benefit personally from the assistance;
- (iii) Whether such individual has acted alone or in collaboration with others associated with the entity;
- (iv) The degree to which financial or other resources of the entity itself have been used to support drug trafficking; and
- (v) Whether the provision of assistance to the entity can be structured in such a way as to exclude from the effective control or benefit of the assistance any key individuals with respect to whom a negative determination has been made.

(c) *Violations Identified Subsequent to Obligation.* The foregoing procedures provide for a determination before funds are obligated. If, however, subsequent to an obligation of funds an assistance recipient or a key individual of such recipient is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking (e.g., the head of a recipient entity changes during the course of an activity and the new head is found to have been engaged in drug trafficking), appropriate action should be taken, including, if necessary, termination of the assistance. Agreements shall be written to permit termination of assistance in such circumstances.

#### **§ 140.7 Multilateral institutions and international organizations.**

Assistance provided to or through multilateral institutions or international organizations is subject to this part as follows:

- (a) Where the government agency providing assistance has reasonable grounds to suspect that a recipient multilateral institution or international organization may be or may have been

involved in drug trafficking, the provisions of § 140.6 shall apply.

(b) Where the government agency providing assistance designates the recipient of assistance from the multilateral institution or international organization and the designated recipient is a covered individual or entity, the provisions of this part shall apply as if the assistance were provided directly to the designated recipient.

(c) Where the government agency providing assistance does not designate the recipient of assistance from the multilateral institution or international organization, this part do not apply, other than as provided in paragraph (a) of this section, except that the agency's agreement with the multilateral institution or international organization shall stipulate that such entity is to make reasonable efforts, as necessary, to ensure that the assistance is not diverted in support of drug trafficking.

#### *Example:*

The State Department provides \$600,000 to the United Nations for the United Nations Drug Control Program, specifically designating that Government D of a covered country receive \$150,000 and Corporation E receive \$60,000 for training programs in a covered country. Individuals who will receive training are not specifically designated by the State Department. The United Nations is a covered entity based on § 140.4(a)(1); Government D is a covered entity based on §§ 140.4(b) and 140.7(b); Corporation E is not a covered entity under §§ 140.4(b) and 140.7(b) because it has been designated to receive less than \$100,000 in assistance (§ 140.3(c)(2)). Participant trainees are not covered individuals because they fall under the exception contained in § 140.7(c) (see also § 140.4(a)(2)).

#### **§ 140.8 Recipients of scholarships, fellowships, and participant training.**

(a) *Procedures.* Individuals who are located in a covered country and who are proposed recipients of scholarships, fellowships, or participant training, except those falling under the exception contained in § 140.7(c), are subject to the review procedures, criteria, and procedures concerning violations identified subsequent to obligation of funds set forth in § 140.6. Such review of recipient individuals is in addition to the provisions applicable to the recipient entity providing the assistance.

(b) *Certifications.* Individuals who are located in a covered country and who are proposed recipients of scholarships, fellowships, or participant training shall also be required to certify prior to approval that, within the last ten years, they have not been convicted of a narcotics offense, have not been engaged in drug trafficking, and have not knowingly assisted, abetted, conspired,

or colluded with others in drug trafficking. False certification may subject the assistance recipient to U.S. criminal prosecution under 18 U.S.C. Sec. 1001 and to withdrawal of assistance under this part.

**§ 140.9 Other non-governmental entities and individuals.**

(a) *Procedures.* Section 140.9 applies to private voluntary agencies, educational institutions, for-profit firms, other non-governmental entities and private individuals. A non-governmental entity that is not organized under the laws of the United States shall be subject to the review procedures and criteria set forth in § 140.6(a) and (b). A non-governmental entity that is organized under the laws of the United States shall not be subject to such review procedures and criteria. However, an agency providing assistance shall follow such review procedures and criteria, as modified by section § 140.14, if the agency has reasonable grounds to suspect that a proposed U.S. non-governmental entity or a key individual of such entity may be or may have been involved in drug trafficking or may have been convicted of a narcotics offense. Procedures set forth in § 140.6(c) concerning violations identified subsequent to obligation shall apply to both U.S. and foreign non-governmental entities.

*Examples:*

(1) A \$100,000 grant to a covered U.S. university for participant training would not be subject to the review procedures and criteria in § 140.6(a) and (b). However, a proposed participant would be subject to the review procedures and criteria in § 140.6(a) and (b) as part of the agency's approval process.

(2) A \$100,000 grant to a covered foreign private voluntary agency for participant training would be subject to the review procedures and criteria in § 140.6(a) and (b). In addition, each proposed participant would be subject to the review procedures and criteria in § 140.6(a) and (b) as part of the agency's approval process.

(b) *Refunds.* A clause shall be included in grants, contracts, and other agreements with both U.S. and foreign non-governmental entities requiring that assistance provided to or through such an entity that is subsequently found to have been engaged in drug trafficking, as defined in this part, shall be subject to refund or recall.

(c) *Certifications.* Prior to approval of covered assistance, key individuals (as described in § 140.6(a)(3)) in both U.S. and foreign non-governmental entities shall be required to certify that, within the last ten years, they have not been convicted of a narcotics offense, have not been engaged in drug trafficking and

have not knowingly assisted, abetted, conspired, or colluded with others in drug trafficking. False certification may subject the signatory to U.S. criminal prosecution under 18 U.S.C. Sec. 1001.

**§ 140.10 Intermediate credit institutions.**

(a) Treatment as Non-Governmental Entity or as a Foreign Government Entity. Intermediate credit institutions ("ICIs") shall be subject to either the procedures applicable to foreign government entities or those applicable to non-governmental entities, depending on the nature of the specific entity. The Assistant Secretary of State for International Narcotics and Law Enforcement Affairs or the Assistant Secretary's designee, in consultation with the agency proposing the assistance and other appropriate bureaus and agencies, shall determine (consistent with the definition of "foreign state" set forth in the Foreign Sovereign Immunities Act, 28 U.S.C. 1603(a) and made applicable by § 140.5) whether the ICI will be treated as a non-governmental entity or a foreign government entity.

(b) *Refunds.* In addition to measures required as a consequence of an ICI's treatment as a non-governmental entity or a foreign government entity, a clause shall be included in agreements with all ICIs requiring that any loan greater than \$1,000 provided by the ICI to an individual or entity subsequently found to have been convicted of a narcotics offense or engaged in drug trafficking, as defined in this part, shall be subject to refund or recall.

**§ 140.11 Minimum enforcement procedures.**

Sections 140.6 through 140.10 represent the minimum procedures that each agency providing assistance must apply in order to implement FAA Section 487. Under individual circumstances, however, additional measures may be appropriate. In those cases, agencies providing assistance are encouraged to take additional steps, as necessary, to ensure that the statutory restrictions are enforced.

**§ 140.12 Interagency review procedures.**

If the agency proposing the assistance disagrees with a determination by the Country Narcotics Coordinator to withhold assistance or take other measures, the agency may request that the determination be reviewed by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs in coordination with other appropriate bureaus and agencies. Unless otherwise determined by the Assistant Secretary of State for

International Narcotics and Law Enforcement Affairs, the assistance shall continue to be withheld pending resolution of the review.

**§ 140.13 Notification to foreign entities and individuals.**

(a) Unless otherwise determined under § 140.13(b), if a determination has been made that assistance to a foreign entity or individual is to be withheld, suspended, or terminated under this part, the agency administering such assistance shall so inform the affected entity or individual. Except as the agency administering such assistance, the Country Narcotics Coordinator, and the agency or agencies that are the source of information that formed the basis for withholding, suspending, or terminating assistance may otherwise agree, the entity or individual shall be notified solely of the statutory basis for withholding, suspending, or terminating assistance.

(b) Before such notification, the Country Narcotics Coordinator shall be responsible for ascertaining, in coordination with the investigating agency, that notification would not interfere with an on-going criminal investigation. If the investigating agency believes that there is a significant risk of such interference, the Country Narcotics Coordinator, in coordination with the investigating agency, shall determine the means of compliance with this statute that best minimizes such risk.

**§ 140.14 Special procedures for U.S. entities and individuals.**

(a) If the Country Narcotics Coordinator makes a preliminary decision that evidence exists to justify withholding, suspending, or terminating assistance to a U.S. entity, U.S. citizen, or permanent U.S. resident, the matter shall be referred immediately to the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs for appropriate action, to be taken in consultation with the agency proposing the assistance and the agency or agencies that provided information reviewed or relied upon in making the preliminary decision.

(b) If a determination is made that assistance is to be withheld, suspended, or terminated under this part, the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, or the Assistant Secretary's designee, shall notify the affected U.S. entity, U.S. citizen, or permanent U.S. resident and provide such entity or individual with an opportunity to respond before action is taken. In no event, shall this part be interpreted to create a right to classified



information or law enforcement investigatory information by such entity or individual.

Dated: May 31, 1998.

**Madeleine K. Albright,**  
*Secretary of State.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[SIPTRAX NO. DC-25-2010a; FRL-6120-3]

#### Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; 15 Percent Plan for the Metropolitan Washington, D.C. Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is granting conditional approval of a State Implementation Plan (SIP) revision submitted by the District of Columbia (the District) to meet the 15 percent reasonable further progress implementation plan (15% plan) requirements of the Clean Air Act (the Act) for the District's portion of the Metropolitan Washington, D.C. ozone nonattainment area. EPA is granting conditional approval because the District's enhanced inspection maintenance (I/M) program, which is one of the many control measures adopted by the District to achieve the 15% reduction in volatile organic compounds (VOC), has only been conditionally approved, the 15% plan must also be conditionally approved. The intended effect of this action is to conditionally approve the 15% plan submitted by the District of Columbia in accordance with the Clean Air Act.

**DATES:** This direct final rule is effective on September 8, 1998 without further notice, unless EPA receives adverse comment by August 6, 1998. If adverse comment is received, EPA will publish a timely document withdrawing the rule.

**ADDRESSES:** Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street,

Philadelphia, Pennsylvania 19103. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the District of Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Ave, S.E., Washington, DC 20020.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, Ozone and Mobile Sources Branch (3AP21), U.S. EPA—Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, or by telephone at (215) 814-2179. Questions may also be addressed via e-mail, at: [cripps.christopher@epamail.epa.gov](mailto:cripps.christopher@epamail.epa.gov) [Please note that only written comments can be accepted for inclusion in the docket.]

**SUPPLEMENTARY INFORMATION:** On April 16, 1998 the District of Columbia Department of Health (DoH) submitted a revision to its State Implementation Plan (SIP) for the Washington, D.C. ozone nonattainment area. The revision consists of a plan to achieve a fifteen percent reduction from 1990 base year levels in volatile organic compound (VOC) emissions. During the summertime months, VOC emissions contribute significantly to the formation of ground level ozone, and many volatile organic compounds are also toxic or hazardous air pollutants.

#### I. Background

The Washington, D.C. metropolitan area is classified as a serious ozone nonattainment area. Section 182(b)(1) of the Act requires ozone nonattainment areas classified as moderate or above to develop plans to meet specific reasonable further progress, also known as rate-of-progress (ROP), for the reduction of VOC emissions. Specifically, section 182(b)(1) requires a SIP revision to reduce by 1996 VOC emissions by fifteen percent from 1990 baseline levels in the area while accounting for growth in VOC emissions from 1990 to 1996. These "15% plans" were due to be submitted to EPA by November 15, 1993, with the reductions to occur within 6 years (i.e., November 15, 1996). The Act sets limitations on the creditability of certain control measures towards reasonable further progress. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g., new car emissions standards) promulgated prior to 1990; or for reductions stemming from regulations promulgated pursuant to section 211(h) of the Act to lower the

volatility [i.e., Reid Vapor Pressure (RVP)] of gasoline. Furthermore, section 182(b)(1) of the Act does not allow credit towards reasonable further progress for post-1990 corrections to existing motor vehicle inspection and maintenance (I/M) programs or corrections to reasonably available control technology (RACT) rules, since these programs were required to be in-place prior to 1990. In addition to these restrictions, a creditable measure must be either in the SIP, result from a national rule promulgated by EPA or be contained in a permit issued under Title V of the Act. Any measure must result in real, permanent, quantifiable and enforceable emission reductions to be creditable toward the 15% goal.

The Washington, D.C. ozone nonattainment area consists of the entire District of Columbia, five counties in Northern Virginia and five counties in Maryland. Virginia, Maryland and the District all must demonstrate reasonable further progress for the Washington, D.C. nonattainment area. The Commonwealth of Virginia, State of Maryland and the District of Columbia in conjunction with municipal planning organizations collaborated on a coordinated 15% plan for the entire Metropolitan Washington, D.C. nonattainment area (regional 15% plan). This was done under the auspices of the regional air quality planning committee, the Metropolitan Washington Air Quality Committee (MWAQC), and with the assistance of the local municipal planning organization, the Metropolitan Washington Council of Governments (MWCOC), to ensure coordination of air quality and transportation planning.<sup>1</sup>

Although the plan was developed by a regional approach, each jurisdiction is required to submit its 15% plan to EPA as a revision to its SIP.

Because the reasonable further progress requirements such as the 15% plan affect transportation improvement plans, municipal planning organizations have historically been heavily involved in air quality planning in the

<sup>1</sup>The Act addresses interstate coordination for inter-state nonattainment areas (42 U.S.C. 7504) mainly for nonattainment planning. Because the interstate air quality planning organization involved, the MWAQC, meets the requirements of section 174 of the Act, EPA believes all interstate coordination requirements have been fulfilled. In the absence of an agreement to prepare a nonattainment area-wide plan, each state could have developed and submitted a SIP revision to obtain the 15% reasonable further progress requirement independently of the others. The MWAQC process also ensures that the consultation between air quality and transportation planning agencies is performed as required under the Act (42 U.S.C. 7506(c)) and under EPA's transportation conformity final rule (40 CFR 93.100).