

amount is increased from \$545.09 (26×\$2,995×.007) to \$571.73 (27×\$3,025×.007), effective with the date of annuity reinstatement, March 1, 1993.

**§ 226.92 Effect of recomputation on spouse and divorced spouse annuity.**

The annuity of a spouse or divorced spouse is recomputed to use the employee's recomputed tier I PIA and tier II rate, if the recomputation results in a lump-sum payment of more than \$5 or an increase in the spouse or divorced spouse annuity rate of more than \$1 a month. The spouse or divorced spouse annuity rate is recomputed beginning with the same date the employee's annuity rate is recomputed.

**PART 232—SPOUSES' ANNUITIES—[REMOVED]**

2. For the reasons set out in the preamble, Part 232—Spouses' Annuities, is proposed to be removed.

Dated: February 1, 1995.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 95-3278 Filed 2-8-95; 8:45 am]

BILLING CODE 7905-01-P

**DEPARTMENT OF STATE**

**Bureau of International Narcotics Matters**

**22 CFR Part 140**

[Public Notice 2159]

**Prohibition on Assistance to Drug Traffickers**

**AGENCY:** Bureau of International Narcotics Matters, Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of International Narcotics Matters plans to issue regulations to implement Section 487 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. Sec. 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: (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 of any such substance. The law further directs that regulations be issued to carry out the section and be submitted to Congress before they take effect. The proposed regulation will be set forth in a new part of the Code of Federal Regulations, 22 CFR part 140, which will establish a single governmentwide enforcement mechanism for Section 487. The proposed 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:** Comments due: April 10, 1995.

**ADDRESSES:** Send comments to: Bureau of International Narcotics and Law Enforcement Affairs, Room 7334, 2201 C Street NW., Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** William R. Brownfield, Office of International Narcotics and Law Enforcement Affairs, Department of State, 202-647-0457, or Jo Brooks, Office of the Legal Adviser, Department of State, 202-647-7324.

**SUPPLEMENTARY INFORMATION:** This rule will implement 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 procedures prescribed by these regulations apply to assistance under the Foreign Assistance Act of 1961 and the Arms Export Control Act. The regulations are set up in three Subparts: General (Subpart A, §§ 140.1-140.3); Applicability (Subpart B, § 104.4); 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(b)), money laundering (§ 140.3(c)), and narcotics offense (§ 140.3(d)), which are intended to be comprehensive. As noted in the definition of drug trafficking, it encompasses drug-related money laundering.

Two of the key terms defined in the regulations are "covered country" (§ 140.3(e)) and "covered assistance" (§ 140.3(f)). 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, determined annually by the President and transmitted to the appropriate Congressional committees as required by Chapter 8 of Part I of the Foreign Assistance Act. 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. These definitions are intended to ensure rigorous application of the statutory prohibition on assistance to drug traffickers, while fostering efficient program administration.

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 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." However, the regulations have been drafted carefully to ensure they are given their full statutory scope, i.e., that they are applied whenever an affected agency 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 (see § 140.4(c); see also §§ 140.3(f)(2), 140.7(a), 140.9(a), and 140.11). They are also applicable where a government agency providing covered assistance has specifically designated a recipient beyond the first tier (see §§ 140.4(c), 140.7(b)). Additionally, the regulations 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 Enforcement Subpart (Subpart C) contains an overview (§ 140.5), which outlines the Subpart's scope. The applicable review 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); non-governmental entities (§ 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 organization.)

The review procedures set forth in the regulations are applied by the Country Narcotics Coordinator (as defined in § 140.3(a)), who is responsible in the first instance for reviewing available information to determine whether a proposed assistance recipient is to be denied assistance or whether other measures are to be taken as a result of Section 487 of the Foreign Assistance Act (see § 140.6(a)). 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)).

The regulations provide a two-week period, extendable if necessary for another two weeks, within which the Country Narcotics Coordinator, in consultation with the head of the agency proposing assistance or the agency head's designee, is to make a final

determination whether to provide or withhold assistance or take other measures. Section 140.6(b) outlines the factors to be considered in determining whether to withhold assistance or take other measures.

Section 140.6(b)(4) further provides that it is the Assistant Secretary for International Narcotics Matters (rather than the Country Narcotics Coordinator), in consultation with affected bureaus and agencies, who shall 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 (§ 140.6(b)(4)). Personal involvement at the Assistant Secretary level is appropriate in such a case because it involves inherently sensitive foreign policy issues.

The enforcement procedures applicable to recipients of scholarships, fellowships, and participant training (§ 140.8) and U.S. and foreign non-governmental entities (§ 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. Sec. 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, §§ 140.11–140.14, establish notification and appeal procedures. Special care has been taken to ensure that notification will not be done in a manner that would interfere with any criminal investigation that may be ongoing (§ 140.13(b)). A Country

Narcotics Coordinator's decision to withhold assistance or take other measures may be appealed by the agency proposing such assistance (§ 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 Matters for review and action. An adverse decision affecting a U.S. entity, U.S. citizen, or permanent U.S. resident may be contested in accordance with applicable agency regulations regarding governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants).

This amendment involves a foreign affairs function of the United States. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. It is also excluded from the procedures of 5 U.S.C. Secs. 553 and 554.

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

Drug traffic control, Foreign aid.

For the reasons set out in the preamble, 22 CFR subchapter N is proposed to be amended by adding part 140 to read as follows:

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

#### Subpart A—General

- 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 Non-governmental entities.
- 140.10 Intermediate credit institutions.
- 140.11 Minimum enforcement procedures.
- 140.12 Interagency appeal procedures.
- 140.13 Notification to foreign entities and individuals.
- 140.14 Notification to and opportunity to contest for U.S. entities and individuals.

Authority: 22 U.S.C. 2651a.

#### Subpart A—General

##### § 140.1 Purpose.

(a) These regulations implement 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 assister, 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 for International Narcotics Matters by Delegation of Authority No. 145, dated Feb. 4, 1980 (45 FR 11655), as amended.

#### § 140.3 Definitions.

The following definitions shall apply for purposes of these regulations:

(a) Country Narcotics Coordinator. The individual assigned by the chief of mission in each foreign country to coordinate United States government policies and activities within a country related to counternarcotics efforts. As determined by the State Department's Bureau of International Narcotics Matters, these responsibilities may, as necessary, be performed by another person.

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

(c) 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 legally acquired.

(d) 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.

(e) 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 maintained by the State Department's Bureau of International Narcotics matters.

(f) 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, including:

(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 an amount less than \$100,000, 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 has reasonable grounds to suspect that a covered individual or entity may be or may have been involved in drug trafficking; or

(3) Assessed contributions to an international organization.

#### Subpart B—Applicability

##### § 140.4 Applicability.

(a) Except as otherwise provided herein or as otherwise determined by the Secretary of State or the Secretary's designee, the procedures prescribed by these regulations apply to any "covered individual or entity," i.e., any individual or entity, including any foreign government entity and any U.S. or foreign non-governmental entity, that is:

(1) (i) Receiving or providing covered assistance under a direct or first-tier grant, loan, guarantee, cooperative agreement, contract, or other direct agreement with an agency of the United States; or

(ii) Receiving covered assistance in the form of a scholarship, fellowship, or participant training, except as provided in § 140.7(c); and

(2) Located in or providing assistance within a covered country.

#### Examples:

(1) Under a \$500,000 project grant agreement with the Agency for International Development providing covered assistance, Government A enters into a \$150,000 contract with Corporation X. Government A 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. Corporation B is a covered entity and the 12 individuals receiving participant training are covered individuals. University Y is *not* a covered entity.

(3) University C receives a \$1 million regional assistance research project grant from the Agency for International Development, but only \$80,000 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, then University C would be a covered entity.)

(b) For purposes of § 140.4(a), where a government agency providing covered assistance specifically designates a recipient of such assistance, the recipient shall be deemed a covered individual or entity.

(c) Unless otherwise determined by the Secretary of State or the Secretary's designee, these regulations do not apply to assistance to or through individuals and entities in non-covered countries. However, an affected agency shall apply these regulations if the agency has reasonable grounds to suspect that an individual or entity located in or providing covered assistance in a non-covered country may be or may have been involved in drug trafficking or may have been convicted of a narcotics offense.

#### 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) *Review 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(b)(4), 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 assistance to or through a proposed recipient, the head of the agency providing the assistance, or the agency head's designee, 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 these regulations.

(3) In each case, the agency proposing the assistance shall provide to the Country Narcotics Coordinator the name of each key individual within the 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 head of the agency providing the assistance, or the agency head's designee, shall consult with the Country Narcotics Coordinator, and the final decision shall be made by the Country Narcotics Coordinator.

(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 these regulations, 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 these regulations, then the Country Narcotics Coordinator shall have another fourteen calendar days to make a final determination whether to provide or withhold the assistance or take such other measures.

(b) *Criteria to be applied.* (1) A decision to withhold assistance or take other measures shall be based on knowledge or a reasonable belief that the proposed recipient individual or entity, or one or more key individuals within a proposed recipient entity, during the past ten years, has:

(i) Been *convicted* of a narcotics offense as defined in these regulations; 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 the belief that the proposed recipient has been engaged in drug trafficking during 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 with an unexplained failure to prosecute by the local government;

(iii) Several reliable and corroborative reports.

(3) If the Country Narcotics Coordinator determines 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 these regulations, the Country Narcotics Coordinator must then decide whether withholding assistance or taking other measures in connection with the entity itself is warranted. This decision shall be made in consultation with the head of the agency proposing the assistance, or the agency head's designee. 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) The degree to which financial or other resources of the entity itself have been used to support drug trafficking; and

(iv) Whether such individual has acted alone or in collaboration with others associated with the entity.

(4) 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 for International Narcotics Matters in consultation with the affected bureaus and other interested agencies. For purposes of these regulations, "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. In making the decision whether to withhold assistance or take other measures because of information or allegations that a senior government official of the host nation has engaged in drug trafficking, the criteria set forth in §§ 140.6(b)(2) and (3) shall apply.

(c) *Violations identified subsequent to obligation.* The foregoing procedures require a review before funds are obligated. If, however, subsequent to an obligation of funds an assistance 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 these regulations 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 agency shall apply the provisions of § 140.6.

(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 agency shall apply the provisions of these regulations that would apply 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, these regulations do not apply to such recipients of assistance, except that 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.

*Example:*

The State Department provides \$600,000 to the United Nations for the United Nations Drug Control Program, specifically designating that Government D receive \$150,000 and Corporation E receive \$60,000 for 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)(i); 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. Participant trainees are not covered individuals because they fall under the exception contained in § 140.7(c) (see also § 140.4(a)(1)(ii)).

**§ 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 are subject to the review procedures, criteria, and procedures concerning violations identified subsequent to obligation set forth in § 140.6. Such review of recipient individuals is in addition to the provisions applicable to the 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 these regulations.

**§ 140.9 Non-governmental entities.**

(a) Procedures. Section 140.9 applies to private voluntary agencies, educational institutions, for-profit firms, or any other non-governmental entity. 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 affected agency shall follow such procedures 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, within the last ten years, 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 found to have been engaged in drug trafficking, as defined in these regulations, shall be subject to refund.

(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 for International Narcotics Matters or the Assistant Secretary's designee, in consultation with the head of the agency proposing the assistance or the agency head's designee, shall determine (consistent

with the definition of "foreign state" set forth in the Foreign Sovereign Immunities Act, 28 U.S.C. Sec. 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 to an individual or entity found to have been convicted of a narcotics offense or engaged in drug trafficking, as defined in these regulations, 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 is required to apply in order to implement FAA Section 487. Under individual circumstances, however, additional measures may be appropriate. In those cases, agencies are encouraged to take additional steps, as necessary, to ensure that the statutory restrictions are enforced.

**§ 140.12 Interagency appeal procedures.**

If the agency proposing the assistance disagrees with a determination by the Country Narcotics Coordinator to withhold assistance or take other measures, the head of the agency, or the agency head's designee, may request that the determination be reviewed by the Assistant Secretary of State for International Narcotics Matters in coordination with other affected bureaus and agencies. The assistance shall continue to be withheld pending resolution of the appeal.

**§ 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 these regulations, the agency administering such assistance shall so inform the affected entity or individual. Except as the agency administering such assistance and the Country Narcotics Coordinator may otherwise determine, the entity or individual shall be notified solely of the statutory basis for withholding assistance.

(b) Before such notification, the Country Narcotics Coordinator shall be responsible for determining that notification would not interfere with an on-going criminal investigation. If an

investigation is underway, the Country Narcotics Coordinator, in consultation with the investigating agency, shall determine whether notification is appropriate or whether other action should be taken.

**§ 140.14 Notification to and opportunity to contest for U.S. entities and individuals.**

(a) If the Country Narcotics Coordinator makes a preliminary decision that evidence exists to justify withholding 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 Matters for appropriate action, to be taken in coordination with the agency proposing the assistance.

(b) If a determination has been made that assistance is to be withheld, suspended, or terminated under these regulations, the Assistant Secretary of State for International Narcotics Matters, 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 contest the action in accordance with the provisions of applicable agency regulations regarding governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants) (for example, regulations set forth in 22 CFR part 137 (State Department) or 22 CFR part 208 (Agency for International Development)).

Dated: February 1, 1995.

**Robert S. Gelbard,**

*Assistant Secretary for International Narcotics Matters.*

[FR Doc. 95-3279 Filed 2-8-95; 8:45 am]

BILLING CODE 4710-17-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[TN-118-1-6083b; TN-101-1-5718b; TN-110-2-6569b; FRL-5151-7]

**Approval and Promulgation of Implementation Plans: Approval of Revisions to Tennessee Regulations**

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the state implementation plan (SIP) revision submitted by the State of Tennessee for the purpose of adding Stage II vapor recovery regulations to the Nashville nonattainment area. In the

final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** To be considered, comments must be received by March 13, 1995.

**ADDRESSES:** Written comments should be addressed to:

Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243.

Nashville-Davidson County Bureau of Environmental Health Services, Metropolitan Health Department, 311-23rd Avenue, North, Nashville, Tennessee 37203.

**FOR FURTHER INFORMATION CONTACT:** Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The telephone number is 404/347-3555 extension 4209. Reference file TN118-1-6083.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct

final rule which is published in the rules section of this **Federal Register**.

Dated: January 6, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 95-3212 Filed 2-8-95; 8:45 am]

BILLING CODE 6560-50-F

**40 CFR Part 761**

[OPPTS-66019A; FRL-4935-5]

RIN 2070-AB20

**Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, and Distribution in Commerce Exemptions; Notice of Informal Hearing**

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

**ACTION:** Notice of Informal Hearing.

**SUMMARY:** On December 6, 1994, EPA's Office of Pollution Prevention and Toxics published a proposed rule with respect to 19 petitions for exceptions to the general prohibitions on the manufacture, import, processing, and distribution in commerce of PCBs under the Toxic Substances Control Act (TSCA). EPA has received a request for a hearing on four of the petitions that seek an exemption to allow the importation of PCBs from Canada for disposal in the United States. EPA will hold a half-day informal public hearing in the Washington, DC area on the four petitions. This notice announces the time and location of that hearing.

**DATES:** The hearing will take place on Monday, March 6, 1995, from 9:00 a.m. to 1:00 p.m. Written requests to participate in the hearing must be received on or before February 24, 1995. If reply comments are submitted, they must be received on or before March 20, 1995.

**ADDRESSES:** The hearing will be held at EPA Headquarters, 401 M St., SW., Washington, DC, in the Washington Information Center (WIC), conference room number 17 from 9 am to 1 pm. Three copies of the request to participate in the informal hearing, identified with the docket number OPPTS-66019A must be submitted to: OPPT Document Control Officer, Attn: TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Rm. G-99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. See SUPPLEMENTARY INFORMATION for the type of information that must be included in the request and who may participate. Requests for a waiver to participate in the informal hearing by those