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APPROVED BY: L/LEI : SWITTEN

P: SSCHWARTZ G: SSNYDER M/P:APONCE AF/RA:TBORDEN

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FM SECSTATE WASHDC

TO ALL DIPLOMATIC AND CONSULAR POSTS

DEPT OF JUSTICE WASHDC

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UNCLAS STATE 135276

E.O. 12958: N/A

TAGS: KCRM

SUBJECT: REGULATIONS IMPLEMENTING SECTION 487 OF FOREIGN
ASSISTANCE ACT (FAA)

1. SUMMARY: THIS CABLE PROVIDES GUIDANCE ON
IMPLEMENTATION OF NEWLY ISSUED REGULATIONS DETAILING STEPS
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THAT POSTS MUST TAKE TO IMPLEMENT PROHIBITION ON PROVIDING
ASSISTANCE UNDER THE FAA AND THE AECA -- SUCH AS AID
PROGRAMS, COUNTERNARCOTICS ASSISTANCE, IMET, AND FMS -- TO
OR THROUGH DRUG TRAFFICKERS. GUIDANCE IS SET FORTH IN
PARAS 2-7; TEXT OF REGULATIONS WITH COMMENTARY, AS
PUBLISHED IN FEDERAL REGISTER, IS SET FORTH IN PARA 8.

2. SECTION 487 OF THE FAA DIRECTS THE PRESIDENT TO TAKE ALL
REASONABLE STEPS TO ENSURE THAT ASSISTANCE PROVIDED UNDER
THE FOREIGN ASSISTANCE ACT (FAA) OR ARMS EXPORT CONTROL
ACT(AECA) IS NOT PROVIDED TO OR THROUGH ANY INDIVIDUAL OR

ENTITY THAT THE PRESIDENT KNOWS OR HAS REASON TO BELIEVE IS
OR HAS BEEN INVOLVED IN DRUG TRAFFICKING. THE
RESPONSIBILITIES OF THE PRESIDENT UNDER SECTION 487 HAVE
BEEN DELEGATED TO THE SECRETARY OF STATE.

3. IN ORDER TO MAKE IMPLEMENTATION OF THIS STATUTE MORE SYSTEMATIC AND IN FURTHER COMPLIANCE WITH IT, THE SECRETARY OF STATE HAS RECENTLY ISSUED REGULATIONS, SET FORTH IN PARA 8, AND HAS DELEGATED THE RESPONSIBILITY FOR THEIR IMPLEMENTATION TO THE ASSISTANT SECRETARY FOR INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS. THE REGULATIONS SEEK TO ACHIEVE RIGOROUS STATUTORY ENFORCEMENT IN A MANNER CONSISTENT WITH EFFICIENT FOREIGN ASSISTANCE PROGRAM ADMINISTRATION. WHERE QUESTIONS OF INTERPRETATION ARISE IT SHOULD BE NOTED THAT THE STATED POLICY OF THE REGULATIONS MIRRORS THE REQUIREMENTS OF THE STATUTE -- THAT ALL REASONABLE STEPS BE TAKEN TO ENSURE THAT FAA AND AECA ASSISTANCE IS NOT PROVIDED TO OR THROUGH AN INDIVIDUAL OR ENTITY REASONABLY BELIEVED TO BE OR HAVE BEEN INVOLVED IN

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DRUG TRAFFICKING.

4. THE REGULATIONS WERE PRINTED IN THE FEDERAL REGISTER JULY 7 AND BECAME EFFECTIVE OCTOBER 5, 1998. THE NINETY-DAY DELAY IN THE EFFECTIVE DATE IS IN RECOGNITION OF THE FACT THAT MOST OF THE RESPONSIBILITY FOR COMPLIANCE UNDER THE REGULATIONS IS AT POST AND PROVIDES TIME TO PREPARE FOR THEIR IMPLEMENTATION.

5. THIS PARAGRAPH OUTLINES REQUIREMENTS FOR IMPLEMENTATION AT POST. THE KEY FUNCTIONS ARE SET FORTH PRIMARILY IN 140.6. ALTHOUGH THAT SECTION IS DRAFTED TO APPLY TO FOREIGN GOVERNMENT ENTITIES, ITS PROVISIONS ARE MADE APPLICABLE, WITH CERTAIN MODIFICATIONS, TO ALL RELEVANT RECIPIENTS.

A. COUNTRY NARCOTICS COORDINATOR. IF THE POST DOES NOT ALREADY HAVE A COUNTRY NARCOTICS COORDINATOR, THE AMBASSADOR MUST ASSIGN SOMEONE TO FILL THIS KEY POSITION, OFTEN HELD BY THE DCM. ALL CNC'S MUST SATISFY THE DEFINITION SET FORTH IN 140.3(B) AND MUST HAVE APPROPRIATE CLEARANCES TO HANDLE SENSITIVE LAW ENFORCEMENT INFORMATION.

B. ESTABLISH REVIEW SYSTEM. THE CNC IS RESPONSIBLE INITIALLY FOR ESTABLISHING A SYSTEM FOR REVIEWING AVAILABLE INFORMATION REGARDING NARCOTICS OFFENSE CONVICTIONS AND DRUG TRAFFICKING OF PROPOSED ASSISTANCE RECIPIENTS AND DETERMINING WHETHER A PROPOSED ASSISTANCE RECIPIENT IS TO BE DENIED ASSISTANCE OR OTHER MEASURES ARE TO BE TAKEN (140.6(A) (1)).

--IDENTIFICATION OF ENTITIES AND INDIVIDUALS. UNDER THIS
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REVIEW SYSTEM EACH AGENCY INTENDING TO PROVIDE COVERED ASSISTANCE TO AN ENTITY OR INDIVIDUAL SUBJECT TO REVIEW (SEE QUESTION 1 IN PAPA 7) MUST PROVIDE THE CNC WITH NAMES OF PROPOSED RECIPIENT ENTITIES AND INDIVIDUALS. WHERE THE RECIPIENT IS AN ENTITY, THE AGENCY MUST ALSO PROVIDE THE CNC WITH NAMES (AND IDENTIFYING INFORMATION) OF KEY

INDIVIDUALS WHO MAY BE EXPECTED TO CONTROL OR BENEFIT FROM ASSISTANCE (140.6(A) (3))

--CERTIFICATIONS. FOR RECIPIENTS OF SCHOLARSHIPS, FELLOWSHIPS AND PARTICIPANT TRAINING (140.8(B)) AND OTHER NON-GOVERNMENTAL ENTITIES AND INDIVIDUALS (140.9(C)), INDIVIDUALS LOCATED IN A COVERED COUNTRY MUST CERTIFY PRIOR TO APPROVAL OF ASSISTANCE THAT, WITHIN THE LAST TEN YEARS, THEY HAVE NOT BEEN CONVICTED OF NOR BEEN INVOLVED IN A NARCOTICS OFFENSE.

--DETERMINATIONS BY CNC OR INL. ONCE NAMES ARE PROVIDED, THE CNC THEN HAS 14 DAYS, WITH A POSSIBLE 14-DAY EXTENSION, TO DETERMINE WHETHER ASSISTANCE IS TO BE PROVIDED OR WITHHELD OR OTHER MEASURES TAKEN (140.6(A) (4)-(5)). THIS SCHEDULE APPLIES TO ALL INDIVIDUALS AND ENTITIES FOR WHICH THE CNC MAKES A FINAL DETERMINATION. A FINAL NEGATIVE DECISION CONCERNING A SENIOR GOVERNMENT OFFICIAL OF THE HOST NATION (140.6(6)) OR A U.S. ENTITY OR INDIVIDUAL (140.14(A)) IS TO BE MADE BY THE ASSISTANT SECRETARY FOR INL (OR A HIGHER RANKING OFFICIAL OF THE DEPARTMENT). INFORMATION ON SUCH CASES SHOULD BE FORWARDED TO INL AS SOON AS IT BECOMES AVAILABLE. THE ROGER OR ROGER/JMIE CHANNEL SHOULD BE USED WHERE APPROPRIATE AND AVAILABLE TO PROTECT THE INFORMATION.

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-- CRITERIA TO BE APPLIED. SECTION 140.6(B) PROVIDES GUIDANCE ON CRITERIA TO BE APPLIED IN MAKING A DECISION UNDER 487. IT IS ANTICIPATED THAT A DECISION BASED ON CONVICTION OF A NARCOTICS OFFENSE WILL BE AN OBJECTIVE MATTER; THE FACTORS SET FORTH IN 140.6(B) (2) ARE TO ASSIST THE CNC, WHERE THERE ARE ALLEGATIONS THAT A PERSON HAS BEEN ENGAGED IN DRUG TRAFFICKING BUT NO CONVICTION, TO DECIDE WHETHER REPORTS ARE CREDIBLE AND SOURCES RELIABLE, THUS PROVIDING A REASON TO BELIEVE RATHER THAN MERELY RAISING A SUSPICION. A NEGATIVE DECISION CONCERNING A KEY INDIVIDUAL IN AN ENTITY DOES NOT NECESSARILY MEAN THAT ASSISTANCE MUST BE CUT OFF TO THE ENTITY. SECTION 140.6(B) (3) PROVIDES GUIDANCE TO AID THE CNC IN DECIDING WHETHER EITHER WITHHOLDING ASSISTANCE FROM THE ENTITY OR TAKING OTHER

MEASURES TO STRUCTURE THE PROVISION OF ASSISTANCE TO MEET THE REQUIREMENTS OF SECTION 487 IS WARRANTED.

-- VIOLATIONS IDENTIFIED SUBSEQUENT TO OBLIGATION. IF INFORMATION LEADING TO A NEGATIVE DETERMINATION BECOMES AVAILABLE AFTER THE FUNDS HAVE BEEN OBLIGATED (E.G., BECAUSE A NEW PERSON BECOMES A SENIOR OFFICER OF A MINISTRY OR NEW EVIDENCE IS UNCOVERED CONCERNING A CURRENT OFFICER), APPROPRIATE ACTION IS TO BE TAKEN INCLUDING IF NECESSARY TERMINATION OF THE ASSISTANCE FOR FOREIGN GOVERNMENT ENTITIES (140.6(C)) AND RECIPIENTS OF SCHOLARSHIPS, FELLOWSHIPS AND PARTICIPANT TRAINING (140.8(A)). FOR INTERMEDIATE CREDIT INSTITUTIONS (140.10(B)) AND OTHER NON-GOVERNMENTAL ENTITIES AND INDIVIDUALS (140.9(B)) THE SAME MEASURES APPLY; IN ADDITION, ASSISTANCE ALREADY

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PROVIDED IS SUBJECT TO REFUND OR RECALL. AGENCIES
PROVIDING ASSISTANCE ARE RESPONSIBLE FOR INCLUDING
PROVISIONS IN AGREEMENTS TO IMPLEMENT THESE MEASURES.

--PROTECTION OF INFORMATION. INFORMATION NECESSARY TO MAKE
DETERMINATIONS CONCERNING POSSIBLE VIOLATIONS OF NARCOTICS
LAWS MAY COME FROM A NUMBER OF SOURCES. SOME MAY BE
PUBLICLY AVAILABLE, PARTICULARLY WHERE THERE IS A
CONVICTION; OTHER INFORMATION MAY BE PROVIDED BY A FOREIGN
GOVERNMENT OR BY USG LAW ENFORCEMENT OR INTELLIGENCE
AGENCIES. MUCH OF THIS INFORMATION MAY NEED TO BE
PROTECTED FROM DISCLOSURE EITHER BECAUSE IT IS CLASSIFIED
OR BECAUSE SUCH DISCLOSURE WOULD INTERFERE WITH AN ON-GOING
CRIMINAL INVESTIGATION. IN ESTABLISHING A REVIEW SYSTEM,
THE CNC WILL NEED TO ENSURE THAT INFORMATION PROVIDED FOR
PURPOSES OF MAKING DETERMINATIONS IS NOT DISSEMINATED
BEYOND THE DECISION-MAKER. IN ADDITION, SECTIONS 140.13
AND 140.14 SET FORTH CONSTRAINTS ON DISCLOSURE OF
INFORMATION USED AS A BASIS FOR DETERMINATIONS. SECTION
140.13 PROVIDES THAT THE AGENCY ADMINISTERING THE
ASSISTANCE IS TO INFORM AN ENTITY OR INDIVIDUAL IF A
DETERMINATION IS MADE THAT ASSISTANCE TO A FOREIGN ENTITY
OR INDIVIDUAL IS TO BE WITHHELD, SUSPENDED OR TERMINATED.
IT ALSO ESTABLISHES A PRESUMPTION THAT THE ENTITY OR
INDIVIDUAL IS TO BE NOTIFIED ONLY OF THE STATUTORY BASIS
FOR SUCH ACTION. NO ADDITIONAL INFORMATION MAY BE PROVIDED
EXCEPT WITH THE AGREEMENT OF THE AGENCY ADMINISTERING THE
ASSISTANCE, THE CNC AND THE AGENCY OR AGENCIES THAT ARE THE
SOURCE OF THE INFORMATION (140.13(A)). THE CNC IS ALSO
REQUIRED TO ASCERTAIN, IN COORDINATION WITH THE
INVESTIGATING AGENCY, THAT NOTIFICATION ITSELF WOULD NOT
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INTERFERE WITH AN ON-GOING CRIMINAL INVESTIGATION. IF THE
INVESTIGATING AGENCY BELIEVES THAT THERE IS A SIGNIFICANT

RISK OF SUCH INTERFERENCE, THE CNC, IN COORDINATION WITH
THE INVESTIGATING AGENCY, IS TO DETERMINE THE MEANS OF
COMPLIANCE WITH THE STATUTE THAT BEST MINIMIZES SUCH RISK
(140.13(B)). SECTION 140.14(B) PROVIDES AS TO U.S.
ENTITIES OR INDIVIDUALS THAT THE REGULATIONS ARE NOT TO BE
INTERPRETED TO CREATE A RIGHT TO CLASSIFIED INFORMATION OR
LAW ENFORCEMENT INVESTIGATORY INFORMATION.

6. THE REGULATIONS ALSO IMPOSE NEW RESPONSIBILITIES ON
AGENCIES INTENDING TO PROVIDE COVERED ASSISTANCE:

--INFORMATION FOR CNC REVIEW. AGENCIES PROVIDING FAA OR
AECA ASSISTANCE SUBJECT TO THESE REGULATIONS HAVE THE
INITIAL RESPONSIBILITY TO BRING TO THE ATTENTION OF THE CNC
ANY POTENTIAL OR CURRENT RECIPIENTS WHICH THEY SUSPECT MAY
BE INVOLVED IN DRUG TRAFFICKING. FOR ANY RECIPIENTS SO
IDENTIFIED AND FOR ALL COVERED RECIPIENTS IN "COVERED

COUNTRIES" (DEFINED AS COUNTRIES ON THE MAJORS LIST OR COUNTRIES OTHERWISE DETERMINED TO BE TREATED AS COVERED COUNTRIES) THE AGENCY INTENDING TO PROVIDE ASSISTANCE MUST PROVIDE THE CNC WITH INFORMATION CONCERNING INDIVIDUAL RECIPIENTS AND KEY INDIVIDUALS OF RECIPIENT ENTITIES.

--AGREEMENTS FOR PROVIDING ASSISTANCE. AGENCIES ARE ALSO RESPONSIBLE FOR ENSURING THAT AGREEMENTS PROVIDING ASSISTANCE ARE DRAFTED TO COMPLY WITH THE REGULATIONS. DEPENDING ON THE NATURE OF THE RECIPIENT, SUCH AGREEMENTS MUST:

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(A) PERMIT TERMINATION OF ASSISTANCE WHERE NECESSARY AS A RESULT OF APPLICATION OF THESE REGULATIONS (APPLICABLE TO: FOREIGN GOVERNMENT ENTITIES (140.6(C)), RECIPIENTS OF SCHOLARSHIPS, FELLOWSHIPS AND PARTICIPANT TRAINING (140.8(A)); OTHER NON-GOVERNMENTAL ENTITIES AND INDIVIDUALS (140.9) (B)); AND INTERMEDIATE CREDIT INSTITUTIONS (140.10(B));

(B) MAKE ASSISTANCE PROVIDED SUBJECT TO REFUND OR RECALL IF INVOLVEMENT IN DRUG TRAFFICKING IS SUBSEQUENTLY FOUND (APPLICABLE TO: NON-GOVERNMENTAL ENTITIES AND INDIVIDUALS OTHER THAN RECIPIENTS OF SCHOLARSHIPS, FELLOWSHIPS AND PARTICIPANT TRAINING (140.9(B)) AND INTERMEDIATE CREDIT INSTITUTIONS FOR LOANS GREATER THAN \$1,000 (140.10(B)); AND

(C) STIPULATE THAT THE ENTITY IS TO MAKE REASONABLE EFFORTS, AS NECESSARY, TO ENSURE THAT THE ASSISTANCE IS NOT DIVERTED IN SUPPORT OF DRUG TRAFFICKING (APPLICABLE ONLY

TO: MULTILATERAL INSTITUTIONS AND INTERNATIONAL ORGANIZATIONS (140.7 (C))

7. THE FOLLOWING QUESTIONS AND ANSWERS ARE INTENDED TO ASSIST POSTS IN PREPARING TO IMPLEMENT THE REGULATIONS. FURTHER QUESTIONS SHOULD BE SLUGGED FOR INL/PC - STEVEN PETERSON AND L/LEI - SALLY CUMMINS.

--QL: WHEN MUST AN INDIVIDUAL OR ENTITY BE REVIEWED UNDER THE REGULATIONS?

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--AL: AN INDIVIDUAL OR ENTITY MUST BE REVIEWED UNDER THESE REGULATIONS IF TWO CONDITIONS ARE MET: 1) IT IS RECEIVING OR WILL RECEIVE FAA OR AECA ASSISTANCE (WITH CERTAIN EXCEPTIONS) AND 2) EITHER OF THE FOLLOWING IS TRUE: (A) IT IS LOCATED IN A COVERED COUNTRY (A MAJORS LIST COUNTRY OR A COUNTRY OR PORTION THEREOF THAT THE SECRETARY OR INL HAS DETERMINED SHOULD BE TREATED AS A COVERED COUNTRY); OR (B) THERE ARE REASONABLE GROUNDS TO SUSPECT IT IS INVOLVED IN

VIOLATIONS OF NARCOTICS OFFENSES (140.4).

--RECOGNIZING THAT IT WOULD BE IMPOSSIBLE TO TRACE ALL CONCEIVABLE RECIPIENTS AS ASSISTANCE IS DISTRIBUTED, THE REGULATIONS REQUIRE THIS TWO-PART TEST TO BE APPLIED ONLY TO 1) "FIRST-TIER" RECIPIENTS (THAT IS, THOSE THAT ARE PARTY TO AN AGREEMENT WITH AN AGENCY OF THE U.S.G. FOR THE PROVISION OF ASSISTANCE); 2) ANY OTHER RECIPIENTS THAT ARE SPECIFICALLY DESIGNATED BY THE U.S.G. AGENCY DONOR; AND 3) ALL INDIVIDUALS RECEIVING SCHOLARSHIPS, FELLOWSHIPS OR PARTICIPANT TRAINING UNLESS FUNDS ARE PROVIDED THROUGH A MULTILATERAL ORGANIZATION (140.4 (A)).

--Q.2: WHEN IS ASSISTANCE UNDER THE FAA OR AECA NOT COVERED BY THE REGULATIONS?

--A.2. A. PARTICULAR PROVISIONS OF LAW EXEMPT SOME KINDS OF ASSISTANCE FROM OTHERWISE APPLICABLE PROHIBITIONS (E.G., DISASTER RELIEF AND REHABILITATION PROVIDED UNDER CHAPTER 9 OF PART I OF THE FAA AND OTHER PROVISIONS MAKING ASSISTANCE AVAILABLE "NOTWITHSTANDING ANY OTHER PROVISION OF LAW." THE REGULATIONS DO NOT ATTEMPT TO ENUMERATE ALL OF THESE

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EXCEPTIONS BUT IT IS ANTICIPATED THAT AID AND OTHERS WITH EXTENSIVE ASSISTANCE AT STAKE WILL ISSUE ADDITIONAL GUIDANCE. NOTE THAT SINCE 487 IS PART OF THE SAME CHAPTER AS THE COUNTERNARCOTICS PROGRAM, THE "NOTWITHSTANDING" CLAUSE APPLICABLE TO COUNTERNARCOTICS ASSISTANCE WOULD NOT GENERALLY BE AVAILABLE.)
(140.3(C) (1))

B. THE REGULATIONS THEMSELVES EXEMPT ASSISTANCE LESS THAN \$100,000, EXCEPT UNDER TWO CONDITIONS: (A) WHEN BEING PROVIDED FOR SCHOLARSHIPS, FELLOWSHIPS AND PARTICIPANT TRAINING FOR INDIVIDUALS OR (B) WHEN THERE IS REASON TO SUSPECT THAT THE INTENDED RECIPIENT MAY HAVE BEEN INVOLVED IN DRUG TRAFFICKING. (140.3(C) (2))

C. THE REGULATIONS ALSO EXEMPT DUES OR OTHER ASSESSED CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS.
(140.3(C) (3))

--Q.3: IF YOU FIND ONE OR MORE OFFICERS IN A GOVERNMENT AGENCY THAT YOU HAVE REASON TO BELIEVE ARE ENGAGED IN NARCOTICS TRAFFICKING, DOES THAT MEAN THAT THE AGENCY CANNOT RECEIVE ANY ASSISTANCE? DOES IT AFFECT THE REST OF THE GOVERNMENT?

--A.3: TAKING THESE QUESTIONS IN REVERSE ORDER: FIRST, FINDING TAINTED KEY INDIVIDUALS IN ONE GOVERNMENT AGENCY DOES NOT AFFECT THE ABILITY OF ANY OTHER AGENCY TO RECEIVE ASSISTANCE SO LONG AS ASSISTANCE TO THE OTHER AGENCY WOULD NOT BE FURNISHED TO OR THROUGH THOSE SAME INDIVIDUALS. SECOND, EVEN THE AGENCY WITH TAINTED PERSONNEL MAY BE ABLE

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TO RECEIVE ASSISTANCE SO LONG AS IT IS POSSIBLE TO
STRUCTURE THE PROVISION OF THE ASSISTANCE IN SUCH A WAY
THAT THE TAINTED INDIVIDUALS DON'T EFFECTIVELY CONTROL OR
BENEFIT FROM THE ASSISTANCE. (140.6(B) (3) (V)). ON THE OTHER
HAND, IF A NEGATIVE DETERMINATION IS MADE ABOUT AN
INDIVIDUAL INTENDED TO RECEIVE A FELLOWSHIP, THE ONLY
RECOURSE WOULD PRESUMABLY BE TO WITHDRAW THE ASSISTANCE.

--Q.4: IF I'M POSTED IN A COUNTRY THAT'S NOT ON THE MAJORS
LIST, DOES THAT MEAN WE DON'T HAVE TO DO ANYTHING?

--A.4: NO, THE REGULATIONS USE INCLUSION ON THE MAJORS
LIST AS ONE OF THE TRIGGERS FOR HIGHER SCRUTINY. IN SUCH
"COVERED COUNTRIES," ALL FAA AND AECA ASSISTANCE WILL HAVE
TO BE REVIEWED, UNLESS SPECIFICALLY EXEMPTED (140.3(C)).
THE REGULATIONS MAKE CLEAR, HOWEVER, THAT THE SECRETARY OR
INL CAN DETERMINE THAT OTHER COUNTRIES OR EVEN PORTIONS OF
OTHER COUNTRIES SHOULD BE TREATED AS IF THEY WERE COVERED
COUNTRIES (140.4B) (1)). (FUNCTIONALLY, IT'S AS IF THE
DEFINITION OF "COVERED COUNTRIES" INCLUDED BOTH MAJORS LIST
COUNTRIES AND OTHER COUNTRIES OR PORTIONS SO DESIGNATED.)
FURTHERMORE, THE GRANT OF RELEVANT ASSISTANCE MUST ALWAYS
BE REVIEWED IN ANY COUNTRY IF THERE ARE REASONABLE GROUNDS
TO SUSPECT CURRENT OR PAST INVOLVEMENT IN DRUG TRAFFICKING

OR CONVICTION OF A NARCOTICS OFFENSE BY A RECIPIENT
(140.4(B) (2)).

--Q.5: IF THE ASSISTANCE IS FOR LESS THAN \$100,000 DOES
THAT MEAN IT DOESN'T HAVE TO BE REVIEWED?

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--A.5: ALTHOUGH THE \$100,000 TRIGGER IS APPLICABLE AS A
GENERAL MATTER (140.3(C) (2)), IT DOES NOT APPLY IN TWO
CIRCUMSTANCES: (A) FOR RECIPIENTS OF SCHOLARSHIPS,
FELLOWSHIPS AND PARTICIPANT TRAINING AND (B) IN ANY CASE
WHERE THE AGENCY PROVIDING ASSISTANCE HAS REASONABLE
GROUNDS TO SUSPECT THAT THERE MAY BE INVOLVEMENT IN DRUG
TRAFFICKING.

--Q.6: HOW DO THE REGULATIONS APPLY IF U.S. ASSISTANCE IS
PROVIDED THROUGH A MULTILATERAL INSTITUTION OR
INTERNATIONAL ORGANIZATION?

--A.6: THE INSTITUTION OR ORGANIZATION ITSELF IS SUBJECT
TO REVIEW IF THE AGENCY PROVIDING ASSISTANCE HAS REASONABLE
GROUNDS TO SUSPECT THAT THE INSTITUTION OR ORGANIZATION MAY
BE OR MAY HAVE BEEN INVOLVED IN DRUG TRAFFICKING. IF THE
U.S.G. AGENCY PROVIDING THE ASSISTANCE DESIGNATES THE
RECIPIENT OF ASSISTANCE FROM THE MULTILATERAL ORGANIZATION
OR INTERNATIONAL ORGANIZATION, THAT RECIPIENT WOULD BE
SUBJECT TO REVIEW. IF THE U.S.G. AGENCY DOES NOT DESIGNATE
THE RECIPIENTS, THEY ARE NOT SUBJECT TO REVIEW BUT THE
AGENCY'S AGREEMENT WITH THE MULTILATERAL INSTITUTION OR
INTERNATIONAL ORGANIZATION MUST STIPULATE THAT THE ENTITY

IS TO MAKE REASONABLE EFFORTS, AS NECESSARY, TO ENSURE THAT THE ASSISTANCE IS NOT DIVERTED IN SUPPORT OF DRUG TRAFFICKING (140.7).

--Q.7: ARE INDIVIDUALS WHO RECEIVE A SCHOLARSHIP, FELLOWSHIP, OR PARTICIPANT TRAINING ALWAYS SUBJECT TO REVIEW, EVEN IF THEY AREN'T "FIRST-TIER" RECIPIENTS?

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--A.7: YES, SO LONG AS THEY ARE IN A COVERED COUNTRY (140.8) OR THERE IS REASON TO SUSPECT THAT THEY HAVE BEEN INVOLVED IN DRUG-TRAFFICKING (140.4(B) (2)). THERE IS NO DOLLAR LIMIT FOR SUCH RECIPIENTS AND THEY NEED NOT BE EITHER "FIRST-TIER" OR DESIGNATED BY THE U.S. AGENCY PROVIDING ASSISTANCE (140.4(A) (2)). THE ONLY EXCEPTION IS WHEN THE ASSISTANCE IS PROVIDED THROUGH A MULTILATERAL INSTITUTION OR INTERNATIONAL ORGANIZATION AND THE RECIPIENT HAS NOT BEEN DESIGNATED BY THE AGENCY PROVIDING ASSISTANCE(140.7(C)). NOTE TOO THAT IN MAJORS LIST COUNTRIES AND OTHER COUNTRIES DESIGNATED TO BE TREATED AS

"COVERED COUNTRIES," SUCH RECIPIENTS MUST TAKE THE ADDITIONAL STEP OF CERTIFYING THAT THEY HAVE NOT BEEN INVOLVED IN DRUG TRAFFICKING IN THE PAST TEN YEARS BEFORE ASSISTANCE CAN BE PROVIDED (140.8(B)).

--Q.8: WHAT ROLE DOES INL PLAY IN DECISIONS?

--A.8: AS A GENERAL MATTER, THE AUTHORITY TO IMPLEMENT SECTION 487 HAS NOW BEEN DELEGATED TO THE ASSISTANT SECRETARY FOR INL BY THE SECRETARY. THE DELEGATION RESERVES THE RIGHT OF THE SECRETARY OR DEPUTY SECRETARY ALSO TO CARRY OUT THE DELEGATED FUNCTIONS. THUS, WHEREVER THE REGULATIONS REFER TO THE SECRETARY'S DESIGNEE, THAT DESIGNEE WILL BE THE ASSISTANT SECRETARY FOR INL UNLESS OTHERWISE DETERMINED BY THE SECRETARY. SPECIFICALLY, THE SECRETARY OR ASSISTANT SECRETARY IS AUTHORIZED TO DETERMINE THAT A COUNTRY OR ANY PART OF A COUNTRY SHOULD BE TREATED AS A COVERED COUNTRY FOR PURPOSES OF THESE REGULATIONS (140.4(B) (1)). THE REGULATIONS

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PROVIDE FURTHER THAT THE ASSISTANT SECRETARY FOR INL, IN CONSULTATION WITH OTHER APPROPRIATE BUREAUS AND AGENCIES, RESOLVES DISAGREEMENTS BETWEEN THE CNC AND THE AGENCY PROVIDING ASSISTANCE AS TO WHO SHOULD BE INCLUDED WITHIN THE GROUP OF KEY INDIVIDUALS IN A RECIPIENT ENTITY (140.6(A) (3)), WHETHER AN INTERMEDIATE CREDIT INSTITUTION WILL BE TREATED AS A NON-GOVERNMENTAL ENTITY OR A FOREIGN GOVERNMENT ENTITY (140.10(A)) (THIS CAN ALSO BE DONE BY A DESIGNEE OF THE ASSISTANT SECRETARY), AND WHETHER TO WITHHOLD, SUSPEND OR TERMINATE ASSISTANCE TO A U.S. ENTITY OR INDIVIDUAL (140.14). THE ASSISTANT SECRETARY, OR A HIGHER RANKING OFFICIAL OF THE DEPARTMENT OF STATE, IS TO

TAKE A FINAL DETERMINATION ON ALLEGATIONS CONCERNING A KEY INDIVIDUAL WHO IS A SENIOR GOVERNMENT OFFICIAL OF A HOST NATION (140.6(A) (6)); AND IT IS THE ASSISTANT SECRETARY OR HIS DESIGNEE WHO NOTIFIES U.S. ENTITIES OR INDIVIDUALS THAT ASSISTANCE IS TO BE WITHHELD, SUSPENDED OR TERMINATED UNDER THESE REGULATIONS AND PROVIDES THEM WITH AN OPPORTUNITY TO RESPOND BEFORE ACTION IS TAKEN. FINALLY, IF THE AGENCY PROPOSING ASSISTANCE DISAGREES WITH A DETERMINATION BY THE CNC TO WITHHOLD ASSISTANCE OR TAKE OTHER MEASURES, THE AGENCY MAY REQUEST REVIEW BY THE ASSISTANT SECRETARY OF INL, IN COORDINATION WITH OTHER APPROPRIATE BUREAUS AND AGENCIES (140.12).

Q.9: ARE THERE ANY CIRCUMSTANCES IN WHICH APPLICATION OF THESE REGULATIONS WOULD BE WAIVED?

A.9: THE SECRETARY OR THE ASSISTANT SECRETARY FOR INL CAN DECIDE THAT THE PROCEDURES (OTHER THAN THOSE GOVERNING NOTIFICATION AND DISCLOSURE) SHOULD NOT APPLY TO A UNCLASSIFIED

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PARTICULAR CASE BECAUSE, FOR INSTANCE, OF PARTICULARLY SENSITIVE FOREIGN POLICY CONCERNS. IN SUCH AN EXCEPTIONAL CASE, PROCEDURES MAY BE ALTERED AS NECESSARY TO MEET SPECIFIC CONCERNS WHILE STILL COMPLYING WITH SECTION 487 (140.4). REQUIREMENTS CONCERNING DISCLOSURE AND NOTIFICATION, HOWEVER, WOULD STILL APPLY.

8. BEGIN TEXT OF REGULATIONS AS PRINTED IN FEDERAL REGISTER, JULY 7, 1998(63 FED. REG. 36571):
22 CFR 140
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. 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 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 UNCLASSIFIED

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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. 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

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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.

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-- 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 DOLLARS 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

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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

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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,

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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 SECTIONS 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
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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) 15 DEVELOPED
AND SUGGESTED THAT PARAMETERS OF SUCH A SYSTEM BE INCLUDED
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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
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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
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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 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

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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

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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 15 ADDED TO SUBCHAPTER N 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

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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 48V 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

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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

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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

-- (11) 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 DOLLARS 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

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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 DISGUISED 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
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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

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TRAINING, EXCEPT CERTAIN RECIPIENTS FUNDED THROUGH A MULTILATERAL INSTITUTION OR INTERNATIONAL ORGANIZATION, AS PROVIDED IN ' 140.(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 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 DOLLARS 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 DOLLARS 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 DOLLARS GRANT FROM THE DEPARTMENT OF STATE PROVIDING COVERED ASSISTANCE, CORPORATION B MAKES A 120,000 DOLLARS SUBGRANT TO UNIVERSITY Y FOR THE TRAINING OF 12 INDIVIDUALS. IF CORPORATION B IS LOCATED IN OR

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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 DOLLARS REGIONAL ASSISTANCE RESEARCH PROJECT GRANT FROM THE AGENCY FOR INTERNATIONAL DEVELOPMENT, 80,000 DOLLARS OF WHICH IS PROVIDED FOR RESEARCH IN COVERED COUNTRIES. UNIVERSITY C IS NOT A COVERED ENTITY. (HOWEVER, IF 100,000 DOLLARS 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 140.9 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

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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

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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 UNCLASSIFIED

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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.

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(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
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OVER ASSISTANCE RECEIVED; (11) 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
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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 DOLLARS TO THE UNITED
NATIONS FOR THE UNITED NATIONS DRUG CONTROL PROGRAM,
SPECIFICALLY DESIGNATING THAT GOVERNMENT D OF A COVERED
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COUNTRY RECEIVE 150,000 DOLLARS AND CORPORATION E RECEIVE
60,000 DOLLARS 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 DOLLARS 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

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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 DOLLARS 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
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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 DOLLARS 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.

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(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. 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 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

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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

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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 VS
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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.

MADELEINE K. ALBRIGHT
SECRETARY OF STATE
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