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Crime Bill - S90107 - Presidential Declaration of Violent Crime and Drug Emergency Areas [3]

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January 31, 1995

MEMORANDUM FOR ABNER MIKVA
COUNSEL TO THE PRESIDENT

FROM: CLARISSA CERDA
ASSISTANT COUNSEL TO THE PRESIDENT

SUBJECT: Implementation of Crime Bill §90107, "Presidential Declaration of Violent Crime and Drug Emergency Areas"

BACKGROUND

Pursuant to the Crime Bill, the President may declare a jurisdiction a violent crime or drug emergency area and direct federal agency assistance to state and local authorities for crime-fighting. Pub. L. No. 103-322 §90107, 108 Stat. 1988 (1994). This crime emergency declaration power raises various legal and political considerations and, as drafted and implemented by the DOJ proposed rule, it also leaves several problems unresolved.

This section established the declaration process as follows: (1) A state or local CEO requests a presidential declaration through the Attorney General; (2) the Attorney General reviews the request, and (3) forwards the request along with a recommendation to the President, who must reject the request or make the declaration within 30 days of the request's submission. Id. §90107(b).

The statute and DOJ's proposed rule further detail the submission and review process for and requirements of a declaration request. 28 C.F.R. Part 92 (DOJ draft proposal).

To implement the statute and avoid practical problems and political embarrassment, a structure should be devised that facilitates prompt and effective Presidential action so the White House is prepared if and when a crime emergency declaration request is made. This office should pursue a number of implementing strategies, including: comments to DOJ regarding the rulemaking; presidential action via executive order, presidential directive, or internal memorandum; and, if necessary and appropriate, a legislative initiative to amend the crime emergency provision.

SUMMARY OF RECOMMENDATIONS

Recommendations for Comments to DOJ

- The regulations should include a policy statement affirming that a Presidential declaration of a crime emergency area in no way effects civil liberties or criminal procedural safeguards.

- Authority to request declarations should be required to go through or be restricted to states' governors.

- The first line of response to a crime emergency declaration should be the President's establishment of an intergovernmental, interagency command group to coordinate efforts. This would highlight presidential involvement, centralize crime-fighting efforts, and <u>avoid unnecessary financial commitments</u>.

Recommendations for Establishing Internal White House Framework

- The cabinet affairs staffer in charge of DOJ should serve as crime emergency liaison, coordinating communications between the White House and DOJ, and should facilitate administration responses to declaration requests. As necessary, a DOJ agency representative should serve in the White House Office to further facilitate the declaration process.

- Upon receipt of requests for a declaration, DOJ should notify the President through the staff liaison <u>immediately</u>. Thereafter, DOJ should brief the staff liaison on the status of their review of the request on a daily or other appropriate basis. DOJ should also prepare a draft document package (see §4, below) and forward it to the White House to facilitate prompt presidential action.

DISCUSSION

1. Protection of civil liberties during crime emergencies

The DOJ regulations should begin with a general policy statement affirming that, absent explicit and extraordinary governmental action, a crime emergency declaration in no way limits civil and criminal rights, and that all judicial and other remedies remain available to citizens whose rights are abused. Alternatively, a section might reaffirm that in crime emergency areas government officers are liable for any abuses under 42 U.S.C. §1983.

Two examples demonstrate how such a policy statement might be folded into the regulations: The DOJ draft regulations already include a short disclaimer indicating that the declaration-power does not otherwise effect presidential powers. 28 C.F.R. §92.6(g)(DOJ draft proposal). An example of a longer policy statement included in agency regulations is found in the DoD regulations governing the domestic use of federal troops, which begins with several paragraphs reaffirming the constitutional and statutory limitations on emergency mobilizations. 32 C.F.R. §215.4.

2. Request authority should be restricted to governors or legislatures

As drafted, the statute explicitly authorizes most any state or subdivision CEO, even local and rural government CEOs, to request a declaration, exposing the executive branch to declaration requests from literally tens of thousands of jurisdictions. Pub. L. No. 103-322 §90107(c)(1). Under FEMA regulations, by contrast, request authority is restricted to governors, 44 C.F.R. §205.33(b). Similarly, domestic mobilization of federal troops in a state can be requested only by a state legislature or governor, not subdivisions. 10 U.S.C. §331.

To create a workable crime emergency chain of command, similar restrictions should apply here. If this would be inconsistent with the statutory text, the draft rule should at minimum be strengthened to require that local officials make their request through the state legislature or the governor, in addition to the current requirement that they demonstrate they have already exhausted all state resources. Alternatively, the Administration should lobby Congress to include an amendment restricting request authority in pending crime legislation.

3. Prevention of crime emergency declaration demands exceeding federal capabilities

Along the same lines, to avoid the political embarrassment of requests overwhelming the DOJ-White House response capabilities and federal resources, DOJ should rigorously screen requests, or even be authorized to reject patently frivolous requests. Under draft 28 C.F.R. §92.6(DOJ proposed draft), the Attorney General may return incomplete requests, or require additional information of those making a request. The Attorney General might further be given a joinder or consolidation power in the case of multiple requests. By analogy, 28 C.F.R. §92.4(a)(DOJ draft proposal) would allow multiple jurisdictions to make single, consolidated declaration requests.

Political embarrassment might result, moreover, if federal responses to crime emergency requests are deemed inadequate-- a real danger, as the Crime Bill provides for no additional funds for crime emergencies. Therefore, to provide effective responses without expense, interagency and intergovernmental coordination of existing efforts should be emphasized as the first line of federal assistance.

4. Internal White House procedure

The draft rules' provision for DOJ-White House communication and the timing of such communication is sparse: 28 C.F.R. §92.6(a)(DOJ draft proposal) provides that "the Attorney General shall review a request... within time for the President to decide [whether to make a declaration] within 30 days".

DOJ-White House communications require more structure. A White House Office staff member-- logically, the cabinet affairs staffer for DOJ-- should serve as the official liaison between DOJ and the White House in order to centralize crime emergency communications in a single person and to ensure rapid response to requests.

The staff liaison's responsibilities should include: facilitating communications between the President, the Attorney General, other federal officers, and other White House offices; the preparation of a package of draft documents-- a draft declaration, rejection, press release, etc.; and briefing and coordinating action with the COS, the Counsel to the President, domestic policy advisors, agency heads, and/or other White House staff as appropriate.

In addition, a DOJ agency representative might be assigned to work within the White House office to assist the White House liaison.

5. DOJ preliminary communications

Regarding the timing of DOJ-White House communications, the Attorney General's office should give the President notification immediately upon receipt of a request. Thereafter, DOJ should continue to update the staff liaison on the review's status on a daily or regular basis.

CONCLUSION

Action is required to implement the Crime Bill's §90107, to address practical problems of implementation, and to avoid political embarrassment. Establishing an internal White House structure now is essential to ensuring the White House will be prepared to respond rapidly and appropriately to crime emergency requests in the future.

final" and inserting "a prior conviction for a felony drug offen has become final".

(b) Section 1012(b) of the Controlled Substances Import an Export Act (21 U.S.C. 962(b)) is amended by striking "one or mo prior convictions of him for a felony under any provision of th title or title II or other law of a State, the United States, a foreign country relating to narcotic drugs, marihuana, or depre sant or stimulant drugs, have become final" and inserting "o or more prior convictions of such person for a felony drug offen have become final".

(c) Section 401(b)(1)(A) of the Controlled Substances Act (2 U.S.C. 841(b)(1)(A)) is amended by striking the sentence beginnin "For purposes of this subparagraph, the term 'felony drug offens means".

(d) Section 102 of the Controlled Substances Act (21 U.S.C 802) is amended by adding at the end the following new paragrap

"(43) The term 'felony drug offense' means an offense th is punishable by imprisonment for more than one year under a law of the United States or of a State or foreign country th prohibits or restricts conduct relating to narcotic drugs, marihuan or depressant or stimulant substances.".

SEC. 90106. ADVERTISING.

Section 403 of the Controlled Substances Act (21 U.S.C. 84 is amended—

(1) by redesignating subsections (c) and (d) as subsectio (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new su section:

"(c) It shall be unlawful for any person to place in any new paper, magazine, handbill, or other publications, any writt advertisement knowing that it has the purpose of seeking or offeri illegally to receive, buy, or distribute a Schedule I controlled su stance. As used in this section the term 'advertisement' include in addition to its ordinary meaning, such advertisements as tho for a catalog of Schedule I controlled substances and any simil written advertisement that has the purpose of seeking or offeri illegally to receive, buy, or distribute a Schedule I controlled su stance. The term 'advertisement' does not include material whi merely advocates the use of a similar material, which advocat a position or practice, and does not attempt to propose or facilita an actual transaction in a Schedule I controlled substance.".

42 USC 14053.

SEC. 90107. VIOLENT CRIME AND DRUG EMERGENCY AREAS.

(a) DEFINITIONS.—In this section—

"major violent crime or drug-related emergency" mea an occasion or instance in which violent crime, drug smugglin drug trafficking, or drug abuse violence reaches such level as determined by the President, that Federal assistance needed to supplement State and local efforts and capabiliti to save lives, and to protect property and public health an safety.

"State" means a State, the District of Columbia, th Commonwealth of Puerto Rico, the United States Virg Islands, American Samoa, Guam, and the Northern Maria Islands.

(b) DECLARATION OF VIOLENT CRIME AND DRUG EMERGENC AREAS.—If a major violent crime or drug-related emergency exis

throughout a State or a part of a State, the President may declare the State or part of a State to be a violent crime or drug emergency area and may take appropriate actions authorized by this section.

(c) PROCEDURE.—

(1) IN GENERAL.—A request for a declaration designating an area to be a violent crime or drug emergency area shall be made, in writing, by the chief executive officer of a State or local government, respectively (or in the case of the District of Columbia, the mayor), and shall be forwarded to the Attorney General in such form as the Attorney General may by regulation require. One or more cities, counties, States, or the District of Columbia may submit a joint request for designation as a major violent crime or drug emergency area under this subsection.

(2) FINDING.—A request made under paragraph (1) shall be based on a written finding that the major violent crime or drug-related emergency is of such severity and magnitude that Federal assistance is necessary to ensure an effective response to save lives and to protect property and public health and safety.

(d) IRRELEVANCY OF POPULATION DENSITY.—The President shall not limit declarations made under this section to highly populated centers of violent crime or drug trafficking, drug smuggling, or drug use, but shall also consider applications from governments of less populated areas where the magnitude and severity of such activities is beyond the capability of the State or local government to respond.

(e) REQUIREMENTS.—As part of a request for a declaration under this section, and as a prerequisite to Federal violent crime or drug emergency assistance under this section, the chief executive officer of a State or local government shall—

(1) take appropriate action under State or local law and furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the major violent crime- or drug-related emergency;

(2) submit a detailed plan outlining that government's short- and long-term plans to respond to the violent crime or drug emergency, specifying the types and levels of Federal assistance requested and including explicit goals (including quantitative goals) and timetables; and

(3) specify how Federal assistance provided under this section is intended to achieve those goals.

(f) REVIEW PERIOD.—The Attorney General shall review a request submitted pursuant to this section, and the President shall decide whether to declare a violent crime or drug emergency area, within 30 days after receiving the request. President.

(g) FEDERAL ASSISTANCE.—The President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, financial assistance, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

(2) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

(h) DURATION OF FEDERAL ASSISTANCE.—

(1) IN GENERAL.—Federal assistance under this section shall not be provided to a violent crime or drug emergency area for more than 1 year.

(2) EXTENSION.—The chief executive officer of a jurisdiction may apply to the President for an extension of assistance beyond 1 year. The President may extend the provision of Federal assistance for not more than an additional 180 days.

(i) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall issue regulations to implement this section.

(j) NO EFFECT ON EXISTING AUTHORITY.—Nothing in this section shall diminish or detract from existing authority possessed by the President or Attorney General.

Subtitle B—National Narcotics Leadership Act Amendments

SEC. 90201. IMPLEMENTATION OF NATIONAL DRUG CONTROL STRATEGY.

(a) PROGRAM BUDGET.—Section 1003(c) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502(c)) is amended—

(1) by redesignating paragraphs (5), (6), and (7), as paragraphs (6), (7), and (8), respectively; and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) The Director shall request the head of a department or agency to include in the department's or agency's budget submission to the Office of Management and Budget funding requests for specific initiatives that are consistent with the President's priorities for the National Drug Control Strategy and certifications made pursuant to paragraph (3), and the head of the department or agency shall comply with such a request.".

(b) BUDGET RECOMMENDATION.—Section 1003(b) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502(b)) is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(8) provide, by July 1 of each year, budget recommendations to the heads of departments and agencies with responsibilities under the National Drug Control Program, which recommendations shall apply to the second following fiscal year and address funding priorities developed in the annual National Drug Control Strategy.".

(c) CONTROL OF DRUG-RELATED RESOURCES.—Section 1003 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502) is amended—

(1) in subsection (d)—

(A) by amending paragraph (2) to read as follows:

"(2) request the head of a department or agency or program to place department, agency, or program personnel who are engaged in drug control activities on temporary detail to another department or agency in order to implement the National Drug Control Strategy, and the head of the department or agency shall comply with such a request;

(B) by striking "and" at the end of paragraph (6);

(C) by striking the period at the end of paragraph (7) and inserting a semicolon; and

(D) by adding after paragraph (7) the following new paragraphs:

"(8) except to the extent that the Director's authority under this paragraph is limited in an annual appropriations Act, transfer funds appropriated to a National Drug Control Program agency account to a different National Drug Control Program agency account in an amount that does not exceed 2 percent of the amount appropriated to either account, upon advance approval of the Committees on Appropriations of each House of Congress; and

"(9) in order to ensure compliance with the National Drug Control Program, issue to the head of a National Drug Control Program agency a funds control notice described in subsection (f)."; and

(2) by adding at the end the following new subsections:

"(f) FUNDS CONTROL NOTICES.—(1) A funds control notice may direct that all or part of an amount appropriated to the National Drug Control Program agency account be obligated by—

"(A) months, fiscal year quarters, or other time periods; and

"(B) activities, functions, projects, or object classes.

"(2) An officer or employee of a National Drug Control Program agency shall not make or authorize an expenditure or obligation contrary to a funds control notice issued by the Director.

"(3) In the case of a violation of paragraph (2) by an officer or employee of a National Drug Control Program agency, the head of the agency, upon the request of and in consultation with the Director, may subject the officer or employee to appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office.".

(d) CERTIFICATION OF ADEQUACY OF BUDGET REQUEST.—Section 1003(c)(3)(B) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502(c)(3)(B)) is amended—

(1) by inserting "in whole or in part" after "adequacy of such request"; and

(2) by striking the semicolon at the end and inserting "and, with respect to a request that is not certified as adequate to implement the objectives of the National Drug Control Strategy, include in the certification an initiative or funding level that would make the request adequate;".

SEC. 90202. OFFICE PERSONNEL RESTRICTION.

Section 1003 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502) is amended by adding at the end the following new subsection:

"(f) PROHIBITION ON POLITICAL CAMPAIGNING.—A Federal officer in the Office of National Drug Control Policy who is appointed by the President, by and with the advice and consent of the Senate, may not participate in Federal election campaign activities, except that such an official is not prohibited by this subsection from making contributions to individual candidates.".

SEC. 90203. NATIONAL DRUG CONTROL STRATEGY OUTCOME MEASURES.

Section 1005(a) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1504(a)) is amended—

U. S. Department of Justice

Office of Policy Development

Counsel

Washington, D.C. 20530

January 12, 1995

TO: Distribution List Below

FROM: Tim Macht, Counsel

RE: Draft of Proposed Rule Implementing Section 90107 of the Crime Act (Violent Crime and Drug Emergency Areas)

Attached, for your review and comment, is a draft of a proposed rule implementing section 90107 of the Crime Act. That section authorizes the President to designate any State or part of a State to be a violent crime or drug emergency area, and to direct any federal agency to use its authorities and the resources granted to it under federal law to assist state and local efforts to alleviate the emergency. The section also authorizes the Attorney General to issue regulations implementing the section. The enclosed regulation is being sent for publication at the beginning of next week, therefore ALL COMMENTS ON THE DRAFT REGULATION MUST BE RECEIVED BY THE C.O.B. THIS FRIDAY, JANUARY 13, 1995. Because of the tight timeframe in which we are operating, please try to be as specific in your comments as possible and provide suggested language to implement your recommendations.

We welcome comments on any part of the regulation or preamble; however, we are especially interested in your views on any of the bracketed items in the text, which are optional inclusions, matters yet to be added, or matters that raise unresolved issues. Specifically, we are very interested in comments on: (1) whether we need any FOIA or confidentiality provision(s), particularly with respect to law enforcement-related intelligence information provided to a State or locality and criminal intelligence systems operating with the support of Federal law enforcement assistance; (2) what should happen to federal resources granted to a State or locality in the event that the resources are used for a purpose other than that intended by the Act (see § 92.7(c) of the regulation); and (3) any additional data that applicant jurisdictions should provide regarding the alleged emergency situation and any additional measures that should be employed in evaluating the requests.

Please provide comments to me, Tim Macht, by E-mail (OPD01 (MACHT)), by internet (macht@justice.usdoj.gov), or by hand (room 4513 of the Justice Department's Main Building, 10th & Constitution Ave., NW). I look forward to receiving your comments on the proposed rule.

Feel free to phone me with any questions, at 514-4228.

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DEPARTMENT OF JUSTICE

DRAFT

Office of the Attorney General

28 CFR Part 92 [New]

[AG ORDER   ]

RIN 1105-AA29

Designation of Violent Crime and Drug Emergency Areas

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements a provision of the Violent Crime Control and Law Enforcement Act of 1994 that authorizes the President to designate a State or part of a State to be a violent crime or drug emergency area, and to direct Federal assistance to that area, when violent crime or drug-related activity in the area reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety. The provision also prescribes that the chief executive officer of a State or local government shall send requests for designation to the Attorney General, in such form as the Attorney General may require, for review, and that the Attorney General shall issue

regulations to implement the section. This proposed rule describes the information that must be set forth in a request for designation of a violent crime or drug emergency area, and the basic process for the Attorney General's review of such requests.

DATES: Comments must be received on or before [insert date 60 days after publication in the Federal Register].

ADDRESSES: Written comments should be submitted to:

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: On September 13, 1994, the President signed the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1988(?) ("the Act"). Section 90107 of the Act authorizes the President, upon finding that a major violent crime or drug-related emergency exists in a given State or part of a State, to designate that State or part of a State to be a violent crime or drug emergency area and to make Federal assistance available to the designated area. The chief executive officer of a State or part of a State shall forward a request for such designation to the Attorney General in such form as the Attorney General may by regulation require; the Attorney General then must review the request, and the President must decide whether to declare a violent crime or drug emergency area. Section 90107 imposes a 30-day deadline for decision on such requests. This proposed rule specifies what must be contained in requests for designation submitted to the Attorney General and describes the general process for the Attorney General's review of such requests.

Purpose of Section 90107

Section 90107 of the Act is designed to assist areas experiencing a major violent crime or drug-related emergency by authorizing the President to designate the area to be a violent crime or drug emergency area and to provide Federal assistance to the area. The term "major violent crime or drug-related emergency" is defined by section 90107 as "an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety." If the President finds that such an emergency exists in any State or part of a State and declares the area to be a violent crime or drug emergency area, the President may then make Federal assistance available to that area; specifically, the President may (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, financial assistance, and managerial, technical, and advisory services) in support of State and local assistance efforts; and (2) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

Prospective applicants for designation and assistance under section 90107 should be aware of that section's specific and limited purpose. The terms of section 90107 make clear that Federal assistance may be provided under the section only when violent crime or drug-related activity in a State or locality reaches extreme proportions that exceed the capabilities of the State and local governments; only for the purpose of alleviating the emergency situation; and only to the extent the Federal assistance will supplement, not supplant, State and local efforts to respond to the emergency. Additionally, section 90107 does not appropriate or authorize the appropriation of any additional funds to be used to assist designated violent crime or drug emergency areas; thus, all Federal resources to be provided must be funded under other Federal law and must be diverted from existing uses. Through numerous Federal programs, as well as through the assignment of FBI, DEA, ATF and other federal officials to deal with acute violent crime or drug problems, substantial Federal resources have already been committed to assisting States and localities fight violent crime and drug crime. Therefore, designation and assistance pursuant to section 90107 may be necessary only where Federal assistance available under other Federal programs or ordinary assignment of federal personnel is either unavailable, or, when combined with State and local efforts, insufficient to alleviate a violent crime or drug emergency. For all of these reasons, it is anticipated that the President will declare only a very limited number of violent crime or drug emergency areas under the Act. [Examples of situations that might count as emergencies covered by the Act are when a jurisdiction has suddenly become a critical manufacturing, transhipment, or distribution center for illicit drugs, and the State and locality is fundamentally unequipped to handle this new development; or when a notorious gang or other organized crime group has moved into the jurisdiction, causing violent crime rates to dramatically escalate, and State and local law enforcement officials are not experienced in dealing with such organized violence.]

Consistent with the intent of section 91017, the rule proposed below is designed to elicit relevant information relating to requests for designation by jurisdictions experiencing extraordinary violent crime or drug problems that cannot be alleviated by State and local efforts, so that the Attorney General and the President can make an informed determination as to whether to divert Federal law enforcement resources from their existing uses to deal with an emergency situation. To that end, the proposed rule (1) requires applicants to provide detailed information, data, and certifications to assure the Attorney General and the President that the requested Federal assistance, if provided, would be to respond to a bona fide violent crime or drug emergency requiring extraordinary Federal assistance, not to respond to routine crime problems in the area or to supplant State and local efforts; and (2) outlines basic procedures for the Attorney General's review of requests for designation.

Submission and Form of Request

Section 90107 provides the basic procedure for making requests for designations of a State or part of a State as a violent crime or drug emergency area. Under that section, the chief executive officer of a State or local government must forward a request for designation, in writing, to the Attorney General. One or more cities, counties, States, or the District of Columbia may submit a joint request for designation as a major violent crime or drug emergency area under section 90107. A request must be based on a written finding that the major violent crime or drug-related emergency is of such severity and magnitude that Federal assistance is necessary to ensure an effective response to save lives and to protect property and public health and safety. Section 90107 also provides that, as part of the request for designation and as a prerequisite to Federal assistance, the chief executive officer of the applying State or local government must: (1) furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the major violent crime- or drug-related emergency; (2) submit a detailed plan outlining that government's short- and long-term plans to respond to the violent crime or drug emergency, specifying the types and levels of Federal assistance requested and including explicit goals (including quantitative goals) and timetables; and (3) specify how Federal assistance provided under this section is intended to achieve those goals.

Pursuant to section 90107(i), which authorizes the Attorney General to issue regulations to implement section 90107, and section 90107(c)(1), which requires requests to be submitted in such form as the Attorney General may by regulation require, this proposed rule further delineates the process for submitting requests. The proposed rule encourages the chief executive officer of the applying State or local government, before submitting a request for a designation, to consult informally with appropriate Federal law enforcement officials. The purpose of this informal consultation is to facilitate discussion of the nature of the emergency, the State or local efforts that have been made to resolve the emergency, the types and levels of Federal assistance desired, the requirements of section 90107 and of this rule, and the appropriateness of the proposed declaration. Once the chief executive officer has decided to make a request for designation, the request should be submitted, in the form of a letter addressed to the Attorney General, directly to [the Assistant Attorney General, Criminal Division/the Deputy Attorney General], together with [] copies. This process will permit the internal evaluation of a request through the most appropriate channels and in the most expeditious manner.

The proposed rule requires a request for designation to contain the following information: Description of Emergency; State Resources; Local Resources; Plan of Action; Certifications; and Basic Information. The specific information to be provided in each of these sections is discussed below.

The chief executive officer of the applicant jurisdiction is required to provide a detailed statement of the nature of the emergency, including specification of the boundaries in which exists, its date of onset, cause, severity, and magnitude. This section of the request must contain any currently available and reliable statistics on the levels of the particular violent crime- or drug-related activity constituting the emergency within the requested violent crime or drug emergency area, since the date of onset of the emergency and in each of the five years preceding the date of onset of the emergency. It should also contain data on similar or related crimes and relevant indicators, such as drug- or violence-related hospital admissions, that would support the existence of the emergency. This information is required in order to allow the Attorney General and the President to determine whether the situation described in the request constitutes a violent crime or drug emergency within the meaning of section 90107.

Additionally, the proposed rule, like section 90107 itself, requires the applicant to provide details on the State and local resources that have been or will be committed to alleviating the emergency, along with a discussion of reasons why such combined resources are not sufficient to resolve the emergency. This information is needed in order to determine whether Federal assistance is needed to supplement State and local efforts and capabilities.

The proposed rule also requires the chief executive officer to submit a plan of action specifying: (a) the actions, separated into short-term and long-term actions, that have been or will be taken to alleviate the emergency; (b) the types and levels of Federal assistance requested, stated as specifically as possible, and the Federal law enforcement agency or other Federal agency, if known, that possesses the types and amounts of Federal assistance requested; (c) explicit goals (including quantitative goals, if appropriate) to be achieved under the plan, and specific timetables for implementation of the plan; and (d) how Federal assistance provided under section 90107 is intended to achieve those goals. The submission of this information conforms to and implements the requirement of section 90107 that the chief executive officer shall submit a detailed plan outlining the applying government's short- and long-term plans to respond to the violent crime or drug emergency.

Finally, the proposed rule requires the chief executive officer of the applying State or local government to make various certifications, including (a) that there has been consultation between officials of the State government and officials of the local government(s) included within the area requested to be designated to be a violent crime or drug emergency concerning the emergency and the need for Federal assistance to respond to the emergency; (b) that the chief executive officer has determined that the emergency is of such severity and magnitude that State and local resources cannot resolve the emergency; (c) that no resources provided pursuant to the request will be used to supplant any State or local resources that would otherwise be made available to respond to the emergency; and (d) that the chief executive officer agrees to be bound by section 90107, this rule, and any other guidelines that the Attorney General or the President may prescribe. The required certifications are designed to ensure that any assistance provided under section 90107 is used only for the intended purposes of that section.

In the event that a request comes from a local government, the request must also include a statement from the State's chief executive officer or chief law enforcement official regarding the emergency, the availability of State resources, and the need for Federal assistance.

Attorney General Review of Requests

This proposed rule sets out basic procedures for the Attorney General's review of requests for designation. It provides that the Attorney General shall review a request submitted pursuant to section 90107 in time to allow the President to make a decision regarding such request within 30 days of the Attorney General's receipt of the request. The proposed rule further provides that if the request fails to provide all information required by section 90107 or by these regulations that the Attorney General may return the request to the applicant for the provision of such information; in that event, the request is not deemed to be received for purposes of the review period until all required information has been provided. The proposed rule also authorizes the Attorney General or [the Assistant Attorney General, Criminal Division/Deputy Attorney General] to request information in addition to that required by the rule. Finally, in exigent circumstances, the applicant jurisdiction may receive a waiver of any requirements of this Part, so long as the statutory requirements are met. These provisions are designed to help the Attorney General obtain all relevant information regarding the request for designation before the review period expires.

Additionally, the proposed rule sets forth criteria that the Attorney General may consider in reviewing requests for designation. Section 90107 authorizes the President to designate a violent crime or drug emergency area if the President determines that the violent crime or drug-related activity in the area has reached such levels that Federal assistance is needed to respond effectively to the emergency. In reviewing requests for designation, the Attorney General will consider all factors that relate to the question whether the violent crime or drug-related activity has reached such emergency levels. Factors that the

Attorney General may consider include: (a) the nature, cause, and extent of the emergency within the requested area; (b) the availability of State and local resources to respond to the emergency, and whether the State and local government(s) have committed or will commit available resources to alleviating the emergency; (c) the efforts of State and local government(s) to free up resources to respond to the emergency; (d) the nature and amount of the Federal assistance requested, whether the requested assistance is consistent with the mission and operational capacities of a Federal agency, and whether the requested assistance would duplicate or supplant State or local assistance efforts; (e) the coherence and feasibility of the applicant jurisdiction's plan for responding to the emergency, and whether the requested Federal assistance will significantly contribute toward achieving the goals set forth in that plan; (f) whether the applicant jurisdiction has received, or could receive, Federal resources under some other provision or program to alleviate the emergency; and (g) other demands on Federal law enforcement resources. Whether or not the applicant jurisdiction is a highly populated or a less populated area is not a relevant factor. The specified criteria are each consistent with, and designed to implement, the basic objective of section 90107: that Federal assistance be provided only when needed to supplement State and local efforts to alleviate a violent crime or drug emergency.

In addition to setting criteria for the Attorney General's review of requests submitted under section 90107, the proposed rule also prohibits the applicant jurisdiction from using funds for purposes other than to alleviate the violent crime or drug emergency on which the designation is based, or to supplant any State or local resources that would otherwise be made available to alleviate the emergency. Such supplantation, in the Department's view, is inconsistent with the intent of section 90107, which, but its terms, authorizes the provision of funds to *supplement* State and local efforts and capabilities. [The proposed rule also requires the return of equipment or supplies, the relinquishment of use of any personnel or services provided, and the repayment of the value of any financial assistance provided under section 90107 in the event that any such equipment, supplies, personnel, services or financial assistance is used by the recipient in violation of section 90107 or of this Part, or for any purpose other than the purpose for which the assistance is provided.] Section 90107, and the proposed rule, also limit the duration of assistance that may be provided under section 90107 to one year, unless the President agrees to extend the assistance, which extension may be for up to an additional 180 days.

Finally, the proposed rule clarifies that it is designed neither to limit the actions that the President may take under section 90107 or under any other provision of law nor the otherwise lawful activities of the Attorney General, the Department of Justice, or any other Federal agency.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order No. 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order No. 12612

The regulations proposed herein will have not substantial direct effect on the States, on the relationship between the national government and the States, and on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

Executive Order No. 12606

The Attorney General certifies that she has assessed this proposed rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been cleared by the Office of Management and Budget ("OMB") under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is [].

List of Subjects

By the authority vested in me as Attorney General by section 90107(i) of the Act, and for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by adding a new part 92 as follows:

Part 92 -- Designation of Violent Crime or Drug Emergency Areas

§ 92.1 Purpose

The regulations of this Part describe the required form and content of the information that must be included in requests submitted by the chief executive officer of a State or local government to the Attorney General for a Presidential designation of the State or locality as a violent crime or drug emergency area under section 90107 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1988(?). These regulations also describe the basic procedure for the Attorney General's review of such requests.

§ 92.2 Definitions

(a) *The Act* means § 90107 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat.1988(?).

(b) *major violent crime or drug-related emergency* means an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

(c) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(d) *Local Government* means a political subdivision of a State, including, but not limited to, a city, town, village, county, township or parish.

(e) *Requested violent crime or drug emergency area* or *requested area* means the physical area including any State, city, town, village, county, township or parish, or part thereof, specified in a request for designation of a violent crime or drug emergency area.

§ 92.3 Consultation Prior to Submission of Request

The Department strongly encourages the chief executive officer of a State and local government, if possible, to consult informally with all appropriate Federal law enforcement officials prior to submitting a formal request for designation of a violent crime or drug emergency area under section 90107. The purpose of this informal consultation is to facilitate discussion of the nature of the emergency, the State or local efforts that have been made to resolve the emergency, the types and levels of Federal assistance desired, the requirements of section 90107 and this Part, and the appropriateness of the proposed designation.

§ 92.4 Submission of Request

(a) *Requesting Official.* A request for a declaration designating an area to be a violent crime or drug emergency area under section 90107 of the Act shall be made, in writing, by the chief executive officer of a State or local government, respectively (or in the case of the District of Columbia, the mayor). The chief executive officer of a State government may request a declaration designating the State or any part of the State to be a violent crime or drug emergency area; the chief executive officer of a local government may make a request for designation of that part of the State under his or her jurisdiction. One or more cities, counties, States, or the District of Columbia may submit a joint request for designation as a major violent crime or drug emergency area under section 90107.

(b) *Designated Official to Receive Requests.* A request not to PCTS? under section 90107 shall be submitted in the form of a letter addressed to the Attorney General of the United States, and sent directly to the [Assistant Attorney General, Criminal

Division/Deputy Attorney General], United States Department of Justice, 10th St. & Constitution Ave. NW, Washington, D.C. 20530, Attn: Violent Crime and Drug Emergency Area Requests Coordinator. The submission shall include [] copies of the request.

§ 92.5 Contents of Request

A request for a designation under section 90107, signed by the chief executive officer of the applicant jurisdiction, shall include the information set forth in the following paragraphs. If a request is submitted by the chief executive officer of a local government, the requests shall also include a statement from the State's chief executive officer or chief law enforcement official regarding the emergency, the availability of State resources, and the need for Federal assistance.

(a) *Description of Emergency*. A statement of the nature of the emergency, including specification of:

(1) the political and/or geographic subdivision(s) in which the emergency exists;

(2) the date of onset of the emergency;

(3) the cause of the emergency; and

(4) the severity and magnitude of the emergency, including the following data:

(A) currently available and reliable data on the levels of the particular violent crime (murder, rape, aggravated assault, robbery, etc.), drug smuggling, drug trafficking or drug abuse violence that produced the emergency, in the period since the date of onset of the emergency, and in each of the [five] years preceding the date of onset of the emergency, within the requested area,

(B) currently available and reliable data on the levels of similar or related crimes that would support the existence of the emergency, in the period since the date of onset of the emergency, and in each of the [five] years preceding the date of onset of the emergency, within the requested area, and

(C) currently available and reliable data on relevant indicators, such as drug- or violence-related hospital admissions (DAWN statistics), drug seizures, or results of drug testing of arrestees (DUF statistics), in the period since the date of onset of the emergency, and in each of the [five] years preceding the date of onset of the emergency, within the requested area.

(b) *State Resources.* A statement of the nature and amount of all State resources, including both State law enforcement resources and State non-law enforcement resources, that have been committed, as of the date of the submission of the request, or that will be committed to specific actions to resolve the emergency.

(c) *Local Resources.* A statement of the nature and amount of all local resources, including all local police resources within the area requested to be designated to be a violent crime or drug emergency area, that have been committed, as of the date of the submission of the request, or that will be committed to specific actions to resolve the emergency.

(d) *Inadequacy of Available Resources*. A discussion of reasons why the available resources listed in paragraphs (b) and (c) of this section, when combined with any Federal assistance already received, are not sufficient to resolve the emergency;

(e) *Plan of Action*. A detailed plan outlining the applicant government's short- and long-term plans to respond to the violent crime or drug emergency, including specification of:

(1) Actions Taken or to be Taken Under State or Local Law. Actions, separated into short-term and long-term actions, that have been taken or will be taken under State or local law to alleviate the emergency,

(2) Requested Federal Assistance. (A) The types and levels of Federal assistance requested under Section 91017, stated as specifically as possible (including personnel, equipment, supplies, facilities, financial assistance, and managerial, technical, and advisory services),

(B) the Federal law enforcement agency or other Federal agency, if known, that possesses the types and amounts of Federal assistance requested, consistent with the Federal agency's mission and operational capacities,

(C) the length of time for which the resources are requested or the specific event that will terminate the need and request for such resources, and

(D) all related Federal assistance, awards, and requests for Federal assistance, current or anticipated, including whether any non-law enforcement resources have been or will be requested to respond to non-law enforcement elements of the emergency, and including the agency from whom the assistance or award was or will be received or to whom the request was or will be made, and the program under which the request was or will be made; and

(3) Explicit Goals to Be Achieved and Timetables for Implementation. Explicit goals (including quantitative goals, if appropriate) to be achieved under the plan, specific timetables for implementation of the plan, and how Federal assistance provided under section 90107 is intended to achieve those goals.

(f) *Certifications*. Certifications

(1) that there has been adequate consultation between the chief executive officer or other appropriate official of the State government and the chief executive officer(s) or other appropriate official(s) of the local government(s) included within the requested area concerning the nature of the emergency, the extent of State or local resources available to respond to the emergency, and the need for Federal assistance to respond to the emergency;

(2) that the chief executive officer has determined that the major violent crime or drug related emergency is of such severity and magnitude that Federal assistance is necessary to

ensure an effective response to save lives and to protect property and public health and safety;

(3) that no resources provided pursuant to the request will be used to supplant any State or local resources that would otherwise be made available to respond to the emergency; and

(4) that the chief executive officer agrees to be bound by the provisions of section 90107 and of this Part, and any other guidelines that the Attorney General or the President may prescribe.

(g) *Basic Information.* The full name, title, address and telephone number of the chief executive officer of the State or local government submitting the request, and of a principal contact person.

§ 92.6 Review of Request

(a) *Review Period.* The Attorney General shall review a request submitted pursuant to section 90107 and in accordance with the regulations set forth in this Part within time for the President to decide within 30 days of the Attorney General's receipt of such request whether to designate the requested violent crime or drug emergency area.

Prelim ? to comm. POTUS

(b) *Incomplete Requests.* If the request does not include all information required by section 90107 or by this Part, and if there has not been an appropriate waiver under paragraph (d) of this section, the Attorney General may return the application to the applicant chief executive officer or request provision of the omitted information. In the event that an incomplete request has been returned or omitted information requested, the request is not deemed to be received for purposes of the review period described in section 92017(f) and paragraph (a) above until all required information has been provided.

(c) *Additional Information*. The Attorney General or [the Assistant Attorney General, Criminal Division/Deputy Attorney General] may request information in addition to the information required to be submitted under § 92.5.

(d) *Waiver*. In exigent circumstances, the Attorney General, or the Assistant Attorney General, Criminal Division/Deputy Attorney General may waive any requirements of this Part, provided that the requirements of section 90107 are met.

(e) *Internal Consultation*. The Assistant Attorney General, Criminal Division/Deputy Attorney General may, on behalf of the Attorney General, consult with any appropriate Federal, State, or local official regarding a request made pursuant to section 90107.

(f) *Review Criteria*. Section 90107 of the Act provides that the President may designate a violent crime or drug emergency area if there exists an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety. In reviewing requests for designation, the Attorney General will consider all factors relevant to the question whether the violent crime or drug-related activity in the requested area has reached such emergency levels. Whether or not the applicant jurisdiction is a highly populated or a less populated area is not a relevant factor. Factors that the Attorney General may consider include the following: + advise

(1) the nature, cause, and extent of the emergency within the requested area;

(2) the availability of State and local resources to respond to the emergency, and whether the State and local government(s) have committed or will commit available resources to alleviating the emergency;

(3) the efforts of State and local government(s) to free up resources to respond to the emergency, including whether local officials have temporarily or permanently restructured resources to maximize the number of officers involved in direct community and patrol law enforcement;

(4) the nature and amount of the Federal assistance requested, whether the requested assistance is consistent with the mission and operational capacities of a Federal agency, and whether the requested assistance would duplicate or supplant State or local assistance efforts;

(5) the coherence and feasibility of the applicant government's plan for responding to the emergency, and whether

the requested Federal assistance will significantly contribute to achieving the goals set forth in that plan;

(6) whether the applicant jurisdiction has received, or could receive, Federal resources under some other program to alleviate the emergency; and

(7) other demands on Federal law enforcement resources.

(g) *No Limitation on Presidential Actions.* Notwithstanding any provision of this Part, the President may take any action otherwise permitted by law or section 90107 of the Act. This Part shall not be construed to limit the authority of the President in any way.

§ 92.7 Limitations on Use and Duration of Federal Assistance

(a) *Limitations on Use.* Section 90107 of the Act provides for use of Federal resources to supplement State and local efforts to alleviate major violent crime or drug-related emergencies. No funds, equipment or services provided under section 90107 shall be used for any purpose other than to alleviate the violent crime or drug emergency, or to supplant any State or local resources that would otherwise be used to respond to such emergency.

(b) *Duration of Assistance.* (1) Federal assistance under section 90107 shall not be provided to a violent crime or drug emergency area for more than 1 year;

(2) The chief executive officer of a jurisdiction may apply for an extension of assistance beyond 1 year, and the

President may extend the provision of Federal assistance for not more than an additional 180 days.

[(c) *Violation of Conditions: Return, Relinquishment, and Repayment of Assistance.* If the Federal assistance provided under section 90107 is used by the recipient of such assistance in violation of section 90107 or the regulations set forth in this Part, or for any purpose other than the purpose for which that assistance is provided, then such recipient shall promptly return any equipment or supplies provided under section 90107, relinquish use of any personnel, facilities or managerial, technical and advisory services provided under section 90107, and repay to the Attorney General an amount equal to the value of any financial assistance provided under section 90107.]

COORDINATE WITH THE OIG

§ 92.8 Records, Audits and Repayments.

(a) *Records.* Each chief executive officer receiving Federal assistance under section 90107 shall keep such records of the use and disposition of any resources provided thereunder as are required under generally accepted accounting standards to facilitate a full and complete audit of the use and disposition of such resources.

(b) *Audits.* The Attorney General, or any designated agent of the Attorney General or the Inspector General of the Department of Justice, shall be given access, for the purpose or audit and examination, to any books, documents, and records of the chief executive officer of the State or local government provided assistance under section 90107 which, in the opinion of the Attorney General or the Inspector General of the Department of Justice, or his or her designee, are related to the use and disposition of such resources.

(c) *Confidentiality.* [DISCUSS WITH OIG WHETHER ANY CONFIDENTIALITY PROVISION SHOULD BE ADDED]

§ 92.9 Disclaimer

These regulations do not, are not intended to, and shall not be construed to exclude, supplant, or limit otherwise lawful activities of the President, Attorney General, the Department of Justice, or any other Federal agency. These regulations do not, are not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.

U. S. Department of Justice

Office of Policy Development

Counsel

Washington, D.C. 20530

January 12, 1995

TO: Distribution List Below

FROM: Tim Macht, Counsel

RE: Draft of Proposed Rule Implementing Section 90107 of the Crime Act (Violent Crime and Drug Emergency Areas)

Attached, for your review and comment, is a draft of a proposed rule implementing section 90107 of the Crime Act. That section authorizes the President to designate any State or part of a State to be a violent crime or drug emergency area, and to direct any federal agency to use its authorities and the resources granted to it under federal law to assist state and local efforts to alleviate the emergency. The section also authorizes the Attorney General to issue regulations implementing the section. The enclosed regulation is being sent for publication at the beginning of next week, therefore ALL COMMENTS ON THE DRAFT REGULATION MUST BE RECEIVED BY THE C.O.B. THIS FRIDAY, JANUARY 13, 1995. Because of the tight timeframe in which we are operating, please try to be as specific in your comments as possible and provide suggested language to implement your recommendations.

We welcome comments on any part of the regulation or preamble; however, we are especially interested in your views on any of the bracketed items in the text, which are optional inclusions, matters yet to be added, or matters that raise unresolved issues. Specifically, we are very interested in comments on: (1) whether we need any FOIA or confidentiality provision(s), particularly with respect to law enforcement-related intelligence information provided to a State or locality and criminal intelligence systems operating with the support of Federal law enforcement assistance; (2) what should happen to federal resources granted to a State or locality in the event that the resources are used for a purpose other than that intended by the Act (see § 92.7(c) of the regulation); and (3) any additional data that applicant jurisdictions should provide regarding the alleged emergency situation and any additional measures that should be employed in evaluating the requests.

Please provide comments to me, Tim Macht, by E-mail (OPD01 (MACHT)), by internet (macht@justice.usdoj.gov), or by hand (room 4513 of the Justice Department's Main Building, 10th & Constitution Ave., NW). I look forward to receiving your comments on the proposed rule.

Feel free to phone me with any questions, at 514-4228.

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DRAFT

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 92 [New]

[AG ORDER]

RIN 1105-AA29

Designation of Violent Crime and Drug Emergency Areas

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements a provision of the Violent Crime Control and Law Enforcement Act of 1994 that authorizes the President to designate a State or part of a State to be a violent crime or drug emergency area, and to direct Federal assistance to that area, when violent crime or drug-related activity in the area reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety. The provision also prescribes that the chief executive officer of a State or local government shall send requests for designation to the Attorney General, in such form as the Attorney General may require, for review, and that the Attorney General shall issue

regulations to implement the section. This proposed rule describes the information that must be set forth in a request for designation of a violent crime or drug emergency area, and the basic process for the Attorney General's review of such requests.

DATES: Comments must be received on or before [insert date 60 days after publication in the Federal Register].

ADDRESSES: Written comments should be submitted to:

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: On September 13, 1994, the President signed the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1988(?) ("the Act"). Section 90107 of the Act authorizes the President, upon finding that a major violent crime or drug-related emergency exists in a given State or part of a State, to designate that State or part of a State to be a violent crime or drug emergency area and to make Federal assistance available to the designated area. The chief executive officer of a State or part of a State shall forward a request for such designation to the Attorney General in such form as the Attorney General may by regulation require; the Attorney General then must review the request, and the President must decide whether to declare a violent crime or drug emergency area. Section 90107 imposes a 30-day deadline for decision on such requests. This proposed rule specifies what must be contained in requests for designation submitted to the Attorney General and describes the general process for the Attorney General's review of such requests.

Purpose of Section 90107

Section 90107 of the Act is designed to assist areas experiencing a major violent crime or drug-related emergency by authorizing the President to designate the area to be a violent crime or drug emergency area and to provide Federal assistance to the area. The term "major violent crime or drug-related emergency" is defined by section 90107 as "an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety." If the President finds that such an emergency exists in any State or part of a State and declares the area to be a violent crime or drug emergency area, the President may then make Federal assistance available to that area; specifically, the President may (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, financial assistance, and managerial, technical, and advisory services) in support of State and local assistance efforts; and (2) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

Prospective applicants for designation and assistance under section 90107 should be aware of that section's specific and limited purpose. The terms of section 90107 make clear that Federal assistance may be provided under the section only when violent crime or drug-related activity in a State or locality reaches extreme proportions that exceed the capabilities of the State and local governments; only for the purpose of alleviating the emergency situation; and only to the extent the Federal assistance will supplement, not supplant, State and local efforts to respond to the emergency. Additionally, section 90107 does not appropriate or authorize the appropriation of any additional funds to be used to assist designated violent crime or drug emergency areas; thus, all Federal resources to be provided must be funded under other Federal law and must be diverted from existing uses. Through numerous Federal programs, as well as through the assignment of FBI, DEA, ATF and other federal officials to deal with acute violent crime or drug problems, substantial Federal resources have already been committed to assisting States and localities fight violent crime and drug crime. Therefore, designation and assistance pursuant to section 90107 may be necessary only where Federal assistance available under other Federal programs or ordinary assignment of federal personnel is either unavailable, or, when combined with State and local efforts, insufficient to alleviate a violent crime or drug emergency. For all of these reasons, it is anticipated that the President will declare only a very limited number of violent crime or drug emergency areas under the Act. [Examples of situations that might count as emergencies covered by the Act are when a jurisdiction has suddenly become a critical manufacturing, transhipment, or distribution center for illicit drugs, and the State and locality is fundamentally unequipped to handle this new development; or when a notorious gang or other organized crime group has moved into the jurisdiction, causing violent crime rates to dramatically escalate, and State and local law enforcement officials are not experienced in dealing with such organized violence.]

Consistent with the intent of section 91017, the rule proposed below is designed to elicit relevant information relating to requests for designation by jurisdictions experiencing extraordinary violent crime or drug problems that cannot be alleviated by State and local efforts, so that the Attorney General and the President can make an informed determination as to whether to divert Federal law enforcement resources from their existing uses to deal with an emergency situation. To that end, the proposed rule (1) requires applicants to provide detailed information, data, and certifications to assure the Attorney General and the President that the requested Federal assistance, if provided, would be to respond to a bona fide violent crime or drug emergency requiring extraordinary Federal assistance, not to respond to routine crime problems in the area or to supplant State and local efforts; and (2) outlines basic procedures for the Attorney General's review of requests for designation.

Submission and Form of Request

Section 90107 provides the basic procedure for making requests for designations of a State or part of a State as a violent crime or drug emergency area. Under that section, the chief executive officer of a State or local government must forward a request for designation, in writing, to the Attorney General. One or more cities, counties, States, or the District of Columbia may submit a joint request for designation as a major violent crime or drug emergency area under section 90107. A request must be based on a written finding that the major violent crime or drug-related emergency is of such severity and magnitude that Federal assistance is necessary to ensure an effective response to save lives and to protect property and public health and safety. Section 90107 also provides that, as part of the request for designation and as a prerequisite to Federal assistance, the chief executive officer of the applying State or local government must: (1) furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the major violent crime- or drug-related emergency; (2) submit a detailed plan outlining that government's short- and long-term plans to respond to the violent crime or drug emergency, specifying the types and levels of Federal assistance requested and including explicit goals (including quantitative goals) and timetables; and (3) specify how Federal assistance provided under this section is intended to achieve those goals.

Pursuant to section 90107(i), which authorizes the Attorney General to issue regulations to implement section 90107, and section 90107(c)(1), which requires requests to be submitted in such form as the Attorney General may by regulation require, this proposed rule further delineates the process for submitting requests. The proposed rule encourages the chief executive officer of the applying State or local government, before submitting a request for a designation, to consult informally with appropriate Federal law enforcement officials. The purpose of this informal consultation is to facilitate discussion of the nature of the emergency, the State or local efforts that have been made to resolve the emergency, the types and levels of Federal assistance desired, the requirements of section 90107 and of this rule, and the appropriateness of the proposed declaration. Once the chief executive officer has decided to make a request for designation, the request should be submitted, in the form of a letter addressed to the Attorney General, directly to [the Assistant Attorney General, Criminal Division/the Deputy Attorney General], together with [] copies. This process will permit the internal evaluation of a request through the most appropriate channels and in the most expeditious manner.

The proposed rule requires a request for designation to contain the following information: Description of Emergency; State Resources; Local Resources; Plan of Action; Certifications; and Basic Information. The specific information to be provided in each of these sections is discussed below.

The chief executive officer of the applicant jurisdiction is required to provide a detailed statement of the nature of the emergency, including specification of the boundaries in which exists, its date of onset, cause, severity, and magnitude. This section of the request must contain any currently available and reliable statistics on the levels of the particular violent crime- or drug-related activity constituting the emergency within the requested violent crime or drug emergency area, since the date of onset of the emergency and in each of the five years preceding the date of onset of the emergency. It should also contain data on similar or related crimes and relevant indicators, such as drug- or violence-related hospital admissions, that would support the existence of the emergency. This information is required in order to allow the Attorney General and the President to determine whether the situation described in the request constitutes a violent crime or drug emergency within the meaning of section 90107.

Additionally, the proposed rule, like section 90107 itself, requires the applicant to provide details on the State and local resources that have been or will be committed to alleviating the emergency, along with a discussion of reasons why such combined resources are not sufficient to resolve the emergency. This information is needed in order to determine whether Federal assistance is needed to supplement State and local efforts and capabilities.

The proposed rule also requires the chief executive officer to submit a plan of action specifying: (a) the actions, separated into short-term and long-term actions, that have been or will be taken to alleviate the emergency; (b) the types and levels of Federal assistance requested, stated as specifically as possible, and the Federal law enforcement agency or other Federal agency, if known, that possesses the types and amounts of Federal assistance requested; (c) explicit goals (including quantitative goals, if appropriate) to be achieved under the plan, and specific timetables for implementation of the plan; and (d) how Federal assistance provided under section 90107 is intended to achieve those goals. The submission of this information conforms to and implements the requirement of section 90107 that the chief executive officer shall submit a detailed plan outlining the applying government's short- and long-term plans to respond to the violent crime or drug emergency.

Finally, the proposed rule requires the chief executive officer of the applying State or local government to make various certifications, including (a) that there has been consultation between officials of the State government and officials of the local government(s) included within the area requested to be designated to be a violent crime or drug emergency concerning the emergency and the need for Federal assistance to respond to the emergency; (b) that the chief executive officer has determined that the emergency is of such severity and magnitude that State and local resources cannot resolve the emergency; (c) that no resources provided pursuant to the request will be used to supplant any State or local resources that would otherwise be made available to respond to the emergency; and (d) that the chief executive officer agrees to be bound by section 90107, this rule, and any other guidelines that the Attorney General or the President may prescribe. The required certifications are designed to ensure that any assistance provided under section 90107 is used only for the intended purposes of that section.

In the event that a request comes from a local government, the request must also include a statement from the State's chief executive officer or chief law enforcement official regarding the emergency, the availability of State resources, and the need for Federal assistance.

Attorney General Review of Requests

This proposed rule sets out basic procedures for the Attorney General's review of requests for designation. It provides that the Attorney General shall review a request submitted pursuant to section 90107 in time to allow the President to make a decision regarding such request within 30 days of the Attorney General's receipt of the request. The proposed rule further provides that if the request fails to provide all information required by section 90107 or by these regulations that the Attorney General may return the request to the applicant for the provision of such information; in that event, the request is not deemed to be received for purposes of the review period until all required information has been provided. The proposed rule also authorizes the Attorney General or [the Assistant Attorney General, Criminal Division/Deputy Attorney General] to request information in addition to that required by the rule. Finally, in exigent circumstances, the applicant jurisdiction may receive a waiver of any requirements of this Part, so long as the statutory requirements are met. These provisions are designed to help the Attorney General obtain all relevant information regarding the request for designation before the review period expires.

Additionally, the proposed rule sets forth criteria that the Attorney General may consider in reviewing requests for designation. Section 90107 authorizes the President to designate a violent crime or drug emergency area if the President determines that the violent crime or drug-related activity in the area has reached such levels that Federal assistance is needed to respond effectively to the emergency. In reviewing requests for designation, the Attorney General will consider all factors that relate to the question whether the violent crime or drug-related activity has reached such emergency levels. Factors that the

Attorney General may consider include: (a) the nature, cause, and extent of the emergency within the requested area; (b) the availability of State and local resources to respond to the emergency, and whether the State and local government(s) have committed or will commit available resources to alleviating the emergency; (c) the efforts of State and local government(s) to free up resources to respond to the emergency; (d) the nature and amount of the Federal assistance requested, whether the requested assistance is consistent with the mission and operational capacities of a Federal agency, and whether the requested assistance would duplicate or supplant State or local assistance efforts; (e) the coherence and feasibility of the applicant jurisdiction's plan for responding to the emergency, and whether the requested Federal assistance will significantly contribute toward achieving the goals set forth in that plan; (f) whether the applicant jurisdiction has received, or could receive, Federal resources under some other provision or program to alleviate the emergency; and (g) other demands on Federal law enforcement resources. Whether or not the applicant jurisdiction is a highly populated or a less populated area is not a relevant factor. The specified criteria are each consistent with, and designed to implement, the basic objective of section 90107: that Federal assistance be provided only when needed to supplement State and local efforts to alleviate a violent crime or drug emergency.

In addition to setting criteria for the Attorney General's review of requests submitted under section 90107, the proposed rule also prohibits the applicant jurisdiction from using funds for purposes other than to alleviate the violent crime or drug emergency on which the designation is based, or to supplant any State or local resources that would otherwise be made available to alleviate the emergency. Such supplantation, in the Department's view, is inconsistent with the intent of section 90107, which, but its terms, authorizes the provision of funds to *supplement* State and local efforts and capabilities. [The proposed rule also requires the return of equipment or supplies, the relinquishment of use of any personnel or services provided, and the repayment of the value of any financial assistance provided under section 90107 in the event that any such equipment, supplies, personnel, services or financial assistance is used by the recipient in violation of section 90107 or of this Part, or for any purpose other than the purpose for which the assistance is provided.] Section 90107, and the proposed rule, also limit the duration of assistance that may be provided under section 90107 to one year, unless the President agrees to extend the assistance, which extension may be for up to an additional 180 days.

Finally, the proposed rule clarifies that it is designed neither to limit the actions that the President may take under section 90107 or under any other provision of law nor the otherwise lawful activities of the Attorney General, the Department of Justice, or any other Federal agency.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order No. 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order No. 12612

The regulations proposed herein will have not substantial direct effect on the States, on the relationship between the national government and the States, and on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

Executive Order No. 12606

The Attorney General certifies that she has assessed this proposed rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been cleared by the Office of Management and Budget ("OMB") under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is [].

List of Subjects

By the authority vested in me as Attorney General by section 90107(i) of the Act, and for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by adding a new part 92 as follows:

Part 92 -- Designation of Violent Crime or Drug Emergency Areas

§ 92.1 Purpose

The regulations of this Part describe the required form and content of the information that must be included in requests submitted by the chief executive officer of a State or local government to the Attorney General for a Presidential designation of the State or locality as a violent crime or drug emergency area under section 90107 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1988(?). These regulations also describe the basic procedure for the Attorney General's review of such requests.

§ 92.2 Definitions

(a) *The Act* means § 90107 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat.1988(?).

(b) *major violent crime or drug-related emergency* means an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

(c) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(d) *Local Government* means a political subdivision of a State, including, but not limited to, a city, town, village, county, township or parish.

(e) *Requested violent crime or drug emergency area* or *requested area* means the physical area including any State, city, town, village, county, township or parish, or part thereof, specified in a request for designation of a violent crime or drug emergency area.

§ 92.3 Consultation Prior to Submission of Request

The Department strongly encourages the chief executive officer of a State and local government, if possible, to consult informally with all appropriate Federal law enforcement officials prior to submitting a formal request for designation of a violent crime or drug emergency area under section 90107. The purpose of this informal consultation is to facilitate discussion of the nature of the emergency, the State or local efforts that have been made to resolve the emergency, the types and levels of Federal assistance desired, the requirements of section 90107 and this Part, and the appropriateness of the proposed designation.

§ 92.4 Submission of Request

(a) *Requesting Official.* A request for a declaration designating an area to be a violent crime or drug emergency area under section 90107 of the Act shall be made, in writing, by the chief executive officer of a State or local government, respectively (or in the case of the District of Columbia, the mayor). The chief executive officer of a State government may request a declaration designating the State or any part of the State to be a violent crime or drug emergency area; the chief executive officer of a local government may make a request for designation of that part of the State under his or her jurisdiction. One or more cities, counties, States, or the District of Columbia may submit a joint request for designation as a major violent crime or drug emergency area under section 90107.

(b) *Designated Official to Receive Requests.* A request under section 90107 shall be submitted in the form of a letter addressed to the Attorney General of the United States, and sent directly to the [Assistant Attorney General, Criminal

Division/Deputy Attorney General], United States Department of Justice, 10th St. & Constitution Ave. NW, Washington, D.C. 20530, Attn: Violent Crime and Drug Emergency Area Requests Coordinator. The submission shall include [] copies of the request.

§ 92.5 Contents of Request

A request for a designation under section 90107, signed by the chief executive officer of the applicant jurisdiction, shall include the information set forth in the following paragraphs. If a request is submitted by the chief executive officer of a local government, the requests shall also include a statement from the State's chief executive officer or chief law enforcement official regarding the emergency, the availability of State resources, and the need for Federal assistance.

(a) *Description of Emergency*. A statement of the nature of the emergency, including specification of:

(1) the political and/or geographic subdivision(s) in which the emergency exists;

(2) the date of onset of the emergency;

(3) the cause of the emergency; and

(4) the severity and magnitude of the emergency, including the following data:

(A) currently available and reliable data on the levels of the particular violent crime (murder, rape, aggravated assault, robbery, etc.), drug smuggling, drug trafficking or drug abuse violence that produced the emergency, in the period since the date of onset of the emergency, and in each of the [five] years preceding the date of onset of the emergency, within the requested area,

(B) currently available and reliable data on the levels of similar or related crimes that would support the existence of the emergency, in the period since the date of onset of the emergency, and in each of the [five] years preceding the date of onset of the emergency, within the requested area, and

(C) currently available and reliable data on relevant indicators, such as drug- or violence-related hospital admissions (DAWN statistics), drug seizures, or results of drug testing of arrestees (DUF statistics), in the period since the date of onset of the emergency, and in each of the [five] years preceding the date of onset of the emergency, within the requested area.

(b) *State Resources*. A statement of the nature and amount of all State resources, including both State law enforcement resources and State non-law enforcement resources, that have been committed, as of the date of the submission of the request, or that will be committed to specific actions to resolve the emergency.

(c) *Local Resources*. A statement of the nature and amount of all local resources, including all local police resources within the area requested to be designated to be a violent crime or drug emergency area, that have been committed, as of the date of the submission of the request, or that will be committed to specific actions to resolve the emergency.

(d) *Inadequacy of Available Resources.* A discussion of reasons why the available resources listed in paragraphs (b) and (c) of this section, when combined with any Federal assistance already received, are not sufficient to resolve the emergency;

(e) *Plan of Action.* A detailed plan outlining the applicant government's short- and long-term plans to respond to the violent crime or drug emergency, including specification of:

(1) Actions Taken or to be Taken Under State or Local Law. Actions, separated into short-term and long-term actions, that have been taken or will be taken under State or local law to alleviate the emergency,

(2) Requested Federal Assistance. (A) The types and levels of Federal assistance requested under Section 91017, stated as specifically as possible (including personnel, equipment, supplies, facilities, financial assistance, and managerial, technical, and advisory services),

(B) the Federal law enforcement agency or other Federal agency, if known, that possesses the types and amounts of Federal assistance requested, consistent with the Federal agency's mission and operational capacities,

(C) the length of time for which the resources are requested or the specific event that will terminate the need and request for such resources, and

(D) all related Federal assistance, awards, and requests for Federal assistance, current or anticipated, including whether any non-law enforcement resources have been or will be requested to respond to non-law enforcement elements of the emergency, and including the agency from whom the assistance or award was or will be received or to whom the request was or will be made, and the program under which the request was or will be made; and

(3) Explicit Goals to Be Achieved and Timetables for Implementation. Explicit goals (including quantitative goals, if appropriate) to be achieved under the plan, specific timetables for implementation of the plan, and how Federal assistance provided under section 90107 is intended to achieve those goals.

(f) *Certifications*. Certifications

(1) that there has been adequate consultation between the chief executive officer or other appropriate official of the State government and the chief executive officer(s) or other appropriate official(s) of the local government(s) included within the requested area concerning the nature of the emergency, the extent of State or local resources available to respond to the emergency, and the need for Federal assistance to respond to the emergency;

(2) that the chief executive officer has determined that the major violent crime or drug related emergency is of such severity and magnitude that Federal assistance is necessary to

ensure an effective response to save lives and to protect property and public health and safety;

(3) that no resources provided pursuant to the request will be used to supplant any State or local resources that would otherwise be made available to respond to the emergency; and

(4) that the chief executive officer agrees to be bound by the provisions of section 90107 and of this Part, and any other guidelines that the Attorney General or the President may prescribe.

(g) *Basic Information.* The full name, title, address and telephone number of the chief executive officer of the State or local government submitting the request, and of a principal contact person.

§ 92.6 Review of Request

(a) *Review Period.* The Attorney General shall review a request submitted pursuant to section 90107 and in accordance with the regulations set forth in this Part within time for the President to decide within 30 days of the Attorney General's receipt of such request whether to designate the requested violent crime or drug emergency area.

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(b) *Incomplete Requests.* If the request does not include all information required by section 90107 or by this Part, and if there has not been an appropriate waiver under paragraph (d) of this section, the Attorney General may return the application to the applicant chief executive officer or request provision of the omitted information. In the event that an incomplete request has been returned or omitted information requested, the request is not deemed to be received for purposes of the review period described in section 92017(f) and paragraph (a) above until all required information has been provided.

(c) *Additional Information.* The Attorney General or [the Assistant Attorney General, Criminal Division/Deputy Attorney General] may request information in addition to the information required to be submitted under § 92.5.

(d) *Waiver.* In exigent circumstances, the Attorney General, or the Assistant Attorney General, Criminal Division/Deputy Attorney General may waive any requirements of this Part, provided that the requirements of section 90107 are met.

(e) *Internal Consultation.* The Assistant Attorney General, Criminal Division/Deputy Attorney General may, on behalf of the Attorney General, consult with any appropriate Federal, State, or local official regarding a request made pursuant to section 90107.

(f) *Review Criteria.* Section 90107 of the Act provides that the President may designate a violent crime or drug emergency area if there exists an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety. In reviewing requests for + adusc designation, the Attorney General will consider all factors relevant to the question whether the violent crime or drug-related activity in the requested area has reached such emergency levels. Whether or not the applicant jurisdiction is a highly populated or a less populated area is not a relevant factor. Factors that the Attorney General may consider include the following:

(1) the nature, cause, and extent of the emergency within the requested area;

(2) the availability of State and local resources to respond to the emergency, and whether the State and local government(s) have committed or will commit available resources to alleviating the emergency;

(3) the efforts of State and local government(s) to free up resources to respond to the emergency, including whether local officials have temporarily or permanently restructured resources to maximize the number of officers involved in direct community and patrol law enforcement;

(4) the nature and amount of the Federal assistance requested, whether the requested assistance is consistent with the mission and operational capacities of a Federal agency, and whether the requested assistance would duplicate or supplant State or local assistance efforts;

(5) the coherence and feasibility of the applicant government's plan for responding to the emergency, and whether

the requested Federal assistance will significantly contribute to achieving the goals set forth in that plan;

(6) whether the applicant jurisdiction has received, or could receive, Federal resources under some other program to alleviate the emergency; and

(7) other demands on Federal law enforcement resources.

(g) *No Limitation on Presidential Actions.* Notwithstanding any provision of this Part, the President may take any action otherwise permitted by law or section 90107 of the Act. This Part shall not be construed to limit the authority of the President in any way.

§ 92.7 Limitations on Use and Duration of Federal Assistance

(a) *Limitations on Use.* Section 90107 of the Act provides for use of Federal resources to supplement State and local efforts to alleviate major violent crime or drug-related emergencies. No funds, equipment or services provided under section 90107 shall be used for any purpose other than to alleviate the violent crime or drug emergency, or to supplant any State or local resources that would otherwise be used to respond to such emergency.

(b) *Duration of Assistance.* (1) Federal assistance under section 90107 shall not be provided to a violent crime or drug emergency area for more than 1 year;

(2) The chief executive officer of a jurisdiction may apply for an extension of assistance beyond 1 year, and the

President may extend the provision of Federal assistance for not more than an additional 180 days.

[(c) *Violation of Conditions: Return, Relinquishment, and Repayment of Assistance.* If the Federal assistance provided under section 90107 is used by the recipient of such assistance in violation of section 90107 or the regulations set forth in this Part, or for any purpose other than the purpose for which that assistance is provided, then such recipient shall promptly return any equipment or supplies provided under section 90107, relinquish use of any personnel, facilities or managerial, technical and advisory services provided under section 90107, and repay to the Attorney General an amount equal to the value of any financial assistance provided under section 90107.]

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§ 92.8 Records, Audits and Repayments.

(a) *Records.* Each chief executive officer receiving Federal assistance under section 90107 shall keep such records of the use and disposition of any resources provided thereunder as are required under generally accepted accounting standards to facilitate a full and complete audit of the use and disposition of such resources.

(b) *Audits.* The Attorney General, or any designated agent of the Attorney General or the Inspector General of the Department of Justice, shall be given access, for the purpose or audit and examination, to any books, documents, and records of the chief executive officer of the State or local government provided assistance under section 90107 which, in the opinion of the Attorney General or the Inspector General of the Department of Justice, or his or her designee, are related to the use and disposition of such resources.

(c) *Confidentiality.* [DISCUSS WITH OIG WHETHER ANY CONFIDENTIALITY PROVISION SHOULD BE ADDED]

§ 92.9 Disclaimer

These regulations do not, are not intended to, and shall not be construed to exclude, supplant, or limit otherwise lawful activities of the President, Attorney General, the Department of Justice, or any other Federal agency. These regulations do not, are not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.