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### FOLDER TITLE:

Violent Crime and Drug Enforcement Areas

2016-0931-S  
rc2354

### RESTRICTION CODES

#### Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

#### Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Enclosed please  
find

1. latest draft  
of reg (redlined  
version and regular  
version); and

2. comments provided  
by Treasury.

— Tim Macht

BILLING CODE: 4410-10  
DEPARTMENT OF JUSTICE  
Office of the Attorney General  
28 CFR Part 94 [New]  
[AG ORDER ]  
RIN 1105-AA29

1/17/95  
**DRAFT**  
*Redlined Version*

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 provides that requests for designation must be submitted by the chief executive officer of a State or local government 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. The Department of Justice is publishing, for public comment, the proposed regulations to implement section 90107 of the Act.

**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 is required to forward a request for such designation to the Attorney General in such form as the Attorney General may by regulation require; following review by the Attorney General, the President must decide, within 30 days of the Attorney General's receipt of the request, whether to declare a violent crime or drug emergency area. 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 provide Federal assistance to areas experiencing a major violent crime or drug-related emergency. 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 establish any new grant making authority, nor~~ does it appropriate or authorize the appropriation of any additional funds to be used to assist designated violent crime or drug emergency areas; thus, any Federal resources to be provided must be funded under other Federal laws and must be diverted from existing uses. Substantial Federal resources already have been committed, and are now being committed, to help States and localities fight violent crime and drug trafficking; such resources are provided through numerous Federal programs and activities, including the short-term assignment of FBI, DEA, ATF and other federal officials to deal with acute violent crime or drug problems. Therefore, section 90107 is designed to provide assistance where Federal assistance under other Federal programs or through 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.

Consequently, it is anticipated that only a very limited number of violent crime or drug emergency areas will be designated under section 90107. ~~Examples of situations that might count as emergencies triggering designation and assistance under the Act include: a jurisdiction has suddenly become a critical manufacturing, transshipment, or distribution center for illicit drugs, and the State and locality is fundamentally unequipped to handle this new development; or a notorious gang or other organized crime group has moved into the jurisdiction, causing violent crime rates to escalate dramatically, and State and local law enforcement officials are not experienced in dealing with such organized violence.~~

Consistent with the intent of section 90107, 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 used 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 the general process for the Attorney General's review of requests for designation.

### **Submission and Form of Request**

Section 90107 provides the basic procedure for making a request for designation of a State or part of a State to be 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, and the appropriateness of the proposed designation. 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, **to the attention of the Violent Crime and Drug Emergency Area Requests Coordinator**, with **four copies in addition to the original**. 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 be signed by the chief executive officer of the applicant jurisdiction (or, in the case of a joint request, the chief executive officer of each jurisdiction submitting the request), and to contain the following information: Description of Emergency; State Resources; Local Resources; Plan of Action; Certifications; and Basic Information. In addition, in the event that a request comes from a local government or from a group of local governments, 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. The specific information to be provided in each of the main sections of a request is discussed below.

#### Description of Emergency

The request must include a detailed statement of the nature of the emergency, including specification of the boundaries in which it exists, its approximate date of onset, cause(s), and 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, on an annual basis, for as many years preceding the date of onset of the emergency as necessary to demonstrate its severity.

It should also contain data on similar or related crimes and other relevant indicators, such as drug- or violence-related hospital admissions or emergency room visits, drug seizures, or results of drug testing of arrestees, that would demonstrate 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.

#### State and Local Resources

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

#### Plan of Action

The proposed rule also requires the chief executive officer(s) 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, the length of

time for which the assistance is requested, the Federal agency or agencies, if known, that possess(es) the types of Federal assistance requested, and related Federal assistance that has been or will be received or requested; and (c) explicit goals (including quantitative goals, if appropriate) to be achieved under the plan, specific timetables for implementation of the plan, and how the requested Federal assistance 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 submit a detailed plan outlining the applying government's short- and long-term plans to respond to the violent crime or drug emergency.

#### Certifications

Finally, the proposed rule requires the chief executive officer(s) of the applying State or local government(s) to make various certifications, including (1) that there has been consultation between all relevant executive and law enforcement officials of the State government(s) and all relevant executive and law enforcement officials of the local government(s) included within the area requested to be designated as a violent crime or drug emergency area concerning the extent of State or local resources available to respond to the emergency, the options and plans for responding to the emergency, as well as the need for Federal assistance to respond to the emergency; (2) that the chief executive officer(s) has/have determined that the emergency

is of such severity and magnitude that State and local resources cannot resolve the emergency; (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; (4) that the chief executive officer(s) agrees/agree to be bound by section 90107, this rule, and any other guidelines that the Attorney General or the President may prescribe; and (5) that all information provided in the request is true, accurate, and complete to the best of the chief executive officer's or chief executive officers' knowledge and belief, and that the certifications and information provided in the request will be treated as material representations of fact upon which the Attorney General and the President will rely. The required certifications are designed to ensure that any assistance provided under section 90107 is used only for the intended purposes of that section.

#### **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, 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 designee to request information in addition to that required by the rule. These provisions are designed to help the Attorney General obtain all relevant information regarding the request for designation before the review period expires. In exigent circumstances, the applicant jurisdiction may receive a waiver from the Attorney General or designee of any requirements of this Part, so long as the statutory requirements are met.

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: (1) the nature, cause, and severity and magnitude of the described emergency; (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 those resources to alleviating  
C emergency; ~~(3) the efforts of State and local government  
free up resources to respond to the emergency, including,  
local officials have temporarily or permanently restructured  
resources to maximize the number of officers involved in direct  
community and patrol law enforcement;~~ (3) 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 and local assistance  
efforts; (4) 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; (5) whether the  
applicant jurisdiction has received, or could receive, Federal  
resources under some other program to alleviate the emergency;  
and (6) other demands on Federal law enforcement resources, and  
the degree to which provision of the requested Federal assistance  
would impair the ability of the other federal agency or agencies  
that would be responsible for providing such assistance to carry  
out other law enforcement responsibilities. Whether 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 will be provided only

when needed to supplement State and local efforts to alleviate a violent crime or drug emergency.

After the Attorney General reviews a request, the President must decide whether to designate a violent crime or drug emergency area and direct federal assistance to the area. The proposed rule sets up a general process for the Department of Justice and other federal agencies to develop a proposed Federal assistance plan for the President's consideration with respect to any area that the President has decided to designate as a violent crime or drug emergency area under section 90107. Upon the President's declaration of a violent crime or drug emergency area, the Attorney General or designee shall consult with appropriate officials within the Department and from other federal agencies, including any agency that may be responsible for providing assistance to the designated area, in order to develop a proposed Federal assistance plan to submit for the President's consideration. The plan shall include specification of: (1) which federal agency or agencies would provide assistance and the forms of assistance that would be required; and (2) which federal official would coordinate and evaluate operations supported by Federal assistance.

The proposed rule also imposes limits on the use and duration of federal assistance and describes the sanctions that the Attorney General or designee may impose for misuse of assistance. The proposed rule prohibits the applicant jurisdiction from using resources 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 used, or could be made available, to alleviate the emergency. Supplanting, in the Department's view, is inconsistent with the intent of section 90107, which, by its terms, authorizes the provision of funds to *supplement* State and local efforts and capabilities. Under the proposed rule, the Attorney General or designee may impose sanctions if it is determined that a recipient of assistance under section 90107: (1) is not using federal assistance provided under section 90107 in compliance with that section, the regulations set forth in this Part, or for any purpose other than the purpose for which such assistance is provided; (2) is using federal assistance provided under section 90107 to supplant rather than supplement otherwise available state or local resources; (3) files a false certification or other false information in the request or other documents submitted under section 90107; or (4) otherwise violates any requirement or condition of section 90107 or the regulations set forth in this Part. The Attorney General may impose the following sanctions: (1) wholly or partly suspend any Federal assistance awarded under section 90107 pending correction of the noncompliance; (2) wholly or partly terminate any Federal assistance awarded under section 90107; (3) condition grants to the recipient upon the recipient's taking appropriate action to correct noncompliance and ensure compliance; (4) seek the prompt return of any equipment or supplies furnished under section

90107; and/or (5) seek the prompt repayment of the amount equal to the value of any Federal assistance provided under section 90107. 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 not to limit either the actions that the President may take under section 90107 or under any other provision of law or 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 a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly

this rule has 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 to warrant 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 are being cleared by the Office of Management and Budget ("OMB") under the provisions of the Paperwork Reduction Act.

**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 94 as follows:

Part 94 -- Designation of Violent Crime or Drug Emergency Areas

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#### **§ 94.1 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.

#### **§ 94.2 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, or an Indian tribal government.

(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, Indian tribal area, or part thereof, specified in a request for designation of a violent crime or drug emergency area.

#### **§ 94.3 Consultation Prior to Submission of Request**

The Department strongly encourages the chief executive officer of a State or 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, and the appropriateness of the proposed designation.

#### **§ 94.4 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. A joint request should specify one of the signatory chief executive officers as the person who will assume responsibility for coordinating the process of requesting designation and receiving assistance 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, 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 four copies of the request in addition to the original.

#### **§ 94.5 Contents of Request**

A request for a designation under section 90107, signed by the chief executive officer of the applicant jurisdiction (or, in the case of a joint request, by the chief executive officer of each state or local government submitting the request), 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 request 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 approximate date of onset of the emergency;

(3) the cause(s) of the emergency; and

(4) the severity 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, and/or drug abuse violence that produced the emergency, and on the levels of similar or related crimes that would demonstrate the existence of the emergency, in the period since the date of onset of the emergency and, on an annual basis, for as many years preceding the date of onset of the emergency as necessary to demonstrate its severity and magnitude, and

(B) currently available and reliable data on other relevant indicators, such as drug- or violence-related emergency room visits or hospital admissions and medical examiner/coroner reports of the type reported in the Federal Drug Abuse Warning Network (DAWN) program, hospital reports of drug-exposed infants, the results of drug testing of arrestees of the type reported in

the Federal Drug Use Forecasting (DUF) program, or drug seizures and price and purity and source country information, that would demonstrate the existence of the emergency, in the period since the date of onset of the emergency and, on an annual basis, for as many years preceding the date of onset of the emergency as necessary to demonstrate its severity and magnitude.

(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 both local law-enforcement resources and local non-law enforcement 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 and/or available, 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 agencies or other Federal agency or agencies, if known, that possess(es) the types 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 which the assistance or award was or will be received or to which the request was or

will be made, and the program under which the request was or will be made;

(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 the requested Federal assistance is intended to achieve those goals.

(f) *Certifications.* Certifications

(1) that there has been adequate consultation between all relevant executive and law enforcement officials of the State government(s) and all relevant executive and law enforcement officials of the local government(s) included within the area requested to be designated as a violent crime or drug emergency area concerning the extent of State or local resources available to respond to the emergency, the options and plans for responding to the emergency, as well as 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.

Supplantation will be evaluated by using, as the baseline, the

applicant's statement of dedicated state and local resources and other budgetary information contained in the request;

(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; and

(5) that all information provided in the request is true, accurate, and complete to the best of the chief executive officer's or chief executive officers' knowledge and belief, and that the certifications and information provided in the request will be treated as material representations of fact upon which the Attorney General and the President will rely.

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

#### **§ 94.6 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.

(b) *Incomplete Requests.* If the request does not include all information required by section 90107 or by this Part, 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 90107(f) and paragraph (a) above until all required information has been provided.

(c) *Additional Information.* The Attorney General or designee may request information in addition to the information required to be submitted under § 94.5.

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

(e) *Internal Consultation.* The Attorney General or designee, in reviewing any request that appears to warrant designation and Federal assistance, shall consult with appropriate officials in all the federal agencies that may be responsible for providing the requested assistance. The Attorney General or designee may also consult with any other 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:

(1) the nature and cause of the described emergency, and the severity and magnitude of that emergency according to the data supplied in the request, Uniform Crime Reporting data, and other data of comparable reliability;

(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 those 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;~~

(3) 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 and local assistance efforts;

(4) 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;

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

(6) other demands on Federal law enforcement resources, and the degree to which provision of the requested Federal assistance would impair the ability of the other federal agency or agencies that would be responsible for providing such assistance to carry out other law enforcement responsibilities.

(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.

#### **§ 94.7 Development of Federal Assistance Plan**

Upon the President's declaration of a violent crime or drug emergency area, the Attorney General or designee shall consult with appropriate officials within the Department and from other federal agencies, including any agency that may be responsible for providing assistance to the designated area, in

order to develop a proposed Federal assistance plan to submit for the President's consideration. The plan shall include specification of which federal agency or agencies would provide assistance and the forms of assistance that would be provided, and which federal official would coordinate and evaluate operations supported by Federal assistance.

#### **§ 94.8 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 resources 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, or could be made available, to alleviate 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) ~~Grounds for Sanction Violation of Conditions: Return, Relinquishment, and Repayment of Assistance.~~ The Attorney

General or designee may impose sanctions if it is determined that a recipient of assistance under section 90107:

(1) is not using federal assistance provided under section 90107 in compliance with that section, the regulations set forth in this Part, or for any purpose other than the purpose for which such assistance is provided;

(2) is using federal assistance provided under section 90107 to supplant rather than supplement otherwise available state or local resources;

(3) files a false certification or other false information in the request or other documents submitted under section 90107; or

(4) otherwise violates any requirement or condition of section 90107 or the regulations set forth in this Part.

(d) Forms of Sanction. The Attorney General or designee may impose the following sanctions:

(1) wholly or partly suspend any Federal assistance, whether in the form of personnel, facilities, or other services, awarded under section 90107 pending correction of the noncompliance;

(2) wholly or partly terminate any Federal assistance awarded under section 90107;

(3) condition grants to the recipient under other programs upon the recipient's taking appropriate action to correct noncompliance and ensure compliance;

(4) seek the prompt return of any equipment or supplies furnished under section 90107; and/or

(5) seek the prompt repayment of the amount equal to the value of any Federal assistance provided under section 90107. For example, if the Federal law enforcement personnel are assigned to a state or local government under section 90107, the Attorney General or designee seek the repayment of all salaries, including benefits, for the period of assistance.

#### **§ 94.9 Records, Audits and Confidentiality.**

(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. A state or local government that is provided advisory assistance in the form of law enforcement-related intelligence information under section 90107 shall maintain the confidentiality of all such information, consistent with its status as Federal information and in accordance with the confidentiality provisions of 28 U.S.C. § 534.

**§ 94.10 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.

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DEPARTMENT OF JUSTICE  
Office of the Attorney General  
28 CFR Part 94 [New]  
[AG ORDER                      ]  
RIN 1105-AA29

1/17/95  
**DRAFT**  
1/17/95 - Redlined  
Version

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 provides that requests for designation must be submitted by the chief executive officer of a State or local government 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. The Department of Justice is publishing, for public comment, the proposed regulations to implement section 90107 of the Act.

**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 is required to forward a request for such designation to the Attorney General in such form as the Attorney General may by regulation require; following review by the Attorney General, the President must decide, within 30 days of the Attorney General's receipt of the request, whether to declare a violent crime or drug emergency area. 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 provide Federal assistance to areas experiencing a major violent crime or drug-related emergency. 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 establish any new grant making authority, nor does it appropriate or authorize the appropriation of any additional funds to be used to assist designated violent crime or drug emergency areas; thus, any Federal resources to be provided must be funded under other Federal laws and must be diverted from existing uses. Substantial Federal resources already have been committed, and are now being committed, to help States and localities fight violent crime and drug trafficking; such resources are provided through numerous Federal programs and activities, including the short-term assignment of FBI, DEA, ATF and other federal officials to deal with acute violent crime or drug problems. Therefore, section 90107 is designed to provide assistance where Federal assistance under other Federal programs or through 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.

Consequently, it is anticipated that only a very limited number of violent crime or drug emergency areas will be designated under section 90107.

Consistent with the intent of section 90107, 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 used 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 the general process for the Attorney General's review of requests for designation.

#### **Submission and Form of Request**

Section 90107 provides the basic procedure for making a request for designation of a State or part of a State to be 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, and the appropriateness of the proposed designation. 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, to the attention of the Violent Crime and Drug Emergency Area Requests Coordinator, with four copies in addition to the original. 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 be signed by the chief executive officer of the applicant jurisdiction (or, in the case of a joint request, the chief executive officer of each jurisdiction submitting the request), and to contain the following information: Description of Emergency; State Resources; Local Resources; Plan of Action; Certifications; and Basic Information. In addition, in the event that a request comes from a local government or from a group of local governments, 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. The specific information to be provided in each of the main sections of a request is discussed below.

#### Description of Emergency

The request must include a detailed statement of the nature of the emergency, including specification of the boundaries in which it exists, its approximate date of onset, cause(s), and 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, on an annual basis, for as many years preceding the date of onset of the emergency as necessary to demonstrate its severity. It should also contain data on similar or related crimes and other relevant indicators, such as drug- or violence-related hospital admissions or emergency room visits, drug seizures, or results of drug testing of arrestees, that would demonstrate 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.

### State and Local Resources

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

### Plan of Action

The proposed rule also requires the chief executive officer(s) 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, the length of time for which the assistance is requested, the Federal agency or agencies, if known, that possess(es) the types of Federal assistance requested, and related Federal assistance that has been or will be received or requested; and (c) explicit goals (including quantitative goals, if appropriate) to be achieved under the plan, specific timetables for implementation of the plan, and how the requested Federal assistance 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 submit a detailed plan outlining the applying

government's short- and long-term plans to respond to the violent crime or drug emergency.

#### Certifications

Finally, the proposed rule requires the chief executive officer(s) of the applying State or local government(s) to make various certifications, including (1) that there has been consultation between all relevant executive and law enforcement officials of the State government(s) and all relevant executive and law enforcement officials of the local government(s) included within the area requested to be designated as a violent crime or drug emergency area concerning the extent of State or local resources available to respond to the emergency, the options and plans for responding to the emergency, as well as the need for Federal assistance to respond to the emergency; (2) that the chief executive officer(s) has/have determined that the emergency is of such severity and magnitude that State and local resources cannot resolve the emergency; (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; (4) that the chief executive officer(s) agrees/agree to be bound by section 90107, this rule, and any other guidelines that the Attorney General or the President may prescribe; and (5) that all information provided in the request is true, accurate, and complete to the best of the chief executive officer's or chief executive officers' knowledge and

belief, and that the certifications and information provided in the request will be treated as material representations of fact upon which the Attorney General and the President will rely. The required certifications are designed to ensure that any assistance provided under section 90107 is used only for the intended purposes of that section.

### **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, 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 designee to request information in addition to that required by the rule. These provisions are designed to help the Attorney General obtain all relevant information regarding the request for designation before the review period expires. In exigent circumstances, the applicant jurisdiction may receive a waiver

from the Attorney General or designee of any requirements of this Part, so long as the statutory requirements are met.

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: (1) the nature, cause, and severity and magnitude of the described emergency; (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 those resources to alleviating the emergency; (3) 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 and local assistance efforts; (4) 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; (5) whether the applicant jurisdiction has received, or

could receive, Federal resources under some other program to alleviate the emergency; and (6) other demands on Federal law enforcement resources, and the degree to which provision of the requested Federal assistance would impair the ability of the other federal agency or agencies that would be responsible for providing such assistance to carry out other law enforcement responsibilities. Whether 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 will be provided only when needed to supplement State and local efforts to alleviate a violent crime or drug emergency.

After the Attorney General reviews a request, the President must decide whether to designate a violent crime or drug emergency area and direct federal assistance to the area. The proposed rule sets up a general process for the Department of Justice and other federal agencies to develop a proposed Federal assistance plan for the President's consideration with respect to any area that the President has decided to designate as a violent crime or drug emergency area under section 90107. Upon the President's declaration of a violent crime or drug emergency area, the Attorney General or designee shall consult with appropriate officials within the Department and from other federal agencies, including any agency that may be responsible for providing assistance to the designated area, in order to

develop a proposed Federal assistance plan to submit for the President's consideration. The plan shall include specification of: (1) which federal agency or agencies would provide assistance and the forms of assistance that would be required; and (2) which federal official would coordinate and evaluate operations supported by Federal assistance.

The proposed rule also imposes limits on the use and duration of federal assistance and describes the sanctions that the Attorney General or designee may impose for misuse of assistance. The proposed rule prohibits the applicant jurisdiction from using resources 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 used, or could be made available, to alleviate the emergency. Supplanting, in the Department's view, is inconsistent with the intent of section 90107, which, by its terms, authorizes the provision of funds to *supplement* State and local efforts and capabilities. Under the proposed rule, the Attorney General or designee may impose sanctions if it is determined that a recipient of assistance under section 90107: (1) is not using federal assistance provided under section 90107 in compliance with that section, the regulations set forth in this Part, or for any purpose other than the purpose for which such assistance is provided; (2) is using federal assistance provided under section 90107 to supplant rather than supplement otherwise available state or local resources; (3) files a false

certification or other false information in the request or other documents submitted under section 90107; or (4) otherwise violates any requirement or condition of section 90107 or the regulations set forth in this Part. The Attorney General may impose the following sanctions: (1) wholly or partly suspend any Federal assistance awarded under section 90107 pending correction of the noncompliance; (2) wholly or partly terminate any Federal assistance awarded under section 90107; (3) condition grants to the recipient upon the recipient's taking appropriate action to correct noncompliance and ensure compliance; (4) seek the prompt return of any equipment or supplies furnished under section 90107; and/or (5) seek the prompt repayment of the amount equal to the value of any Federal assistance provided under section 90107. 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 not to limit either the actions that the President may take under section 90107 or under any other provision of law or 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 a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly this rule has 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 to warrant 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 are being cleared by the Office of Management and Budget ("OMB") under the provisions of the Paperwork Reduction Act.

#### **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 94 as follows:

#### Part 94 -- Designation of Violent Crime or Drug Emergency Areas

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#### **§ 94.1 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.

#### **§ 94.2 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, or an Indian tribal government.

(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, Indian tribal area, or part thereof, specified in a request for designation of a violent crime or drug emergency area.

### **§ 94.3 Consultation Prior to Submission of Request**

The Department strongly encourages the chief executive officer of a State or 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, and the appropriateness of the proposed designation.

#### **§ 94.4      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. A joint request should specify one of the signatory chief executive officers as the person who will assume responsibility for coordinating the process of requesting designation and receiving assistance 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, 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 four copies of the request in addition to the original.

#### **§ 94.5 Contents of Request**

A request for a designation under section 90107, signed by the chief executive officer of the applicant jurisdiction (or, in the case of a joint request, by the chief executive officer of each state or local government submitting the request), 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 request 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 approximate date of onset of the emergency;

(3) the cause(s) of the emergency; and

(4) the severity 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, and/or

drug abuse violence that produced the emergency, and on the levels of similar or related crimes that would demonstrate the existence of the emergency, in the period since the date of onset of the emergency and, on an annual basis, for as many years preceding the date of onset of the emergency as necessary to demonstrate its severity and magnitude, and

(B) currently available and reliable data on other relevant indicators, such as drug- or violence-related emergency room visits or hospital admissions and medical examiner/coroner reports of the type reported in the Federal Drug Abuse Warning Network (DAWN) program, hospital reports of drug-exposed infants, the results of drug testing of arrestees of the type reported in the Federal Drug Use Forecasting (DUF) program, or drug seizures and price and purity and source country information, that would demonstrate the existence of the emergency, in the period since the date of onset of the emergency and, on an annual basis, for as many years preceding the date of onset of the emergency as necessary to demonstrate its severity and magnitude.

(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 both local law-enforcement

resources and local non-law enforcement 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 and/or available, 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 agencies or other Federal agency or agencies, if known, that possess(es) the types 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 which the assistance or award was or will be received or to which the request was or will be made, and the program under which the request was or will be made;

(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 the requested Federal assistance is intended to achieve those goals.

(f) *Certifications.* Certifications

(1) that there has been adequate consultation between all relevant executive and law enforcement officials of the State government(s) and all relevant executive and law enforcement officials of the local government(s) included within the area requested to be designated as a violent crime or drug emergency area concerning the extent of State or local resources available to respond to the emergency, the options and plans for responding to the emergency, as well as 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. Supplantation will be evaluated by using, as the baseline, the applicant's statement of dedicated state and local resources and other budgetary information contained in the request;

(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; and

(5) that all information provided in the request is true, accurate, and complete to the best of the chief executive officer's or chief executive officers' knowledge and belief, and that the certifications and information provided in the request will be treated as material representations of fact upon which the Attorney General and the President will rely.

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

#### **§ 94.6      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.

(b) *Incomplete Requests.* If the request does not include all information required by section 90107 or by this Part, 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 90107(f) and paragraph (a) above until all required information has been provided.

(c) *Additional Information.* The Attorney General or designee may request information in addition to the information required to be submitted under § 94.5.

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

(e) *Internal Consultation.* The Attorney General or designee, in reviewing any request that appears to warrant designation and Federal assistance, shall consult with appropriate officials in all the federal agencies that may be

responsible for providing the requested assistance. The Attorney General or designee may also consult with any other 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:

(1) the nature and cause of the described emergency, and the severity and magnitude of that emergency according to the data supplied in the request, Uniform Crime Reporting data, and other data of comparable reliability;

(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 those resources to alleviating the emergency;

(3) 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 and local assistance efforts;

(4) 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;

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

(6) other demands on Federal law enforcement resources, and the degree to which provision of the requested Federal assistance would impair the ability of the other federal agency or agencies that would be responsible for providing such assistance to carry out other law enforcement responsibilities.

(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.

#### **§ 94.7      Development of Federal Assistance Plan**

Upon the President's declaration of a violent crime or drug emergency area, the Attorney General or designee shall

consult with appropriate officials within the Department and from other federal agencies, including any agency that may be responsible for providing assistance to the designated area, in order to develop a proposed Federal assistance plan to submit for the President's consideration. The plan shall include specification of which federal agency or agencies would provide assistance and the forms of assistance that would be provided, and which federal official would coordinate and evaluate operations supported by Federal assistance.

**§ 94.8 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 resources 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, or could be made available, to alleviate 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) *Grounds for Sanction.* The Attorney General or designee may impose sanctions if it is determined that a recipient of assistance under section 90107:

(1) is not using federal assistance provided under section 90107 in compliance with that section, the regulations set forth in this Part, or for any purpose other than the purpose for which such assistance is provided;

(2) is using federal assistance provided under section 90107 to supplant rather than supplement otherwise available state or local resources;

(3) files a false certification or other false information in the request or other documents submitted under section 90107; or

(4) otherwise violates any requirement or condition of section 90107 or the regulations set forth in this Part.

(d) *Forms of Sanction.* The Attorney General or designee may impose the following sanctions:

(1) wholly or partly suspend any Federal assistance, whether in the form of personnel, facilities, or other services, awarded under section 90107 pending correction of the noncompliance;

(2) wholly or partly terminate any Federal assistance awarded under section 90107;

(3) condition grants to the recipient under other programs upon the recipient's taking appropriate action to correct noncompliance and ensure compliance;

(4) seek the prompt return of any equipment or supplies furnished under section 90107; and/or

(5) seek the prompt repayment of the amount equal to the value of any Federal assistance provided under section 90107. For example, if the Federal law enforcement personnel are assigned to a state or local government under section 90107, the Attorney General or designee seek the repayment of all salaries, including benefits, for the period of assistance.

#### **§ 94.9      Records, Audits and Confidentiality.**

(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.* A state or local government that is provided advisory assistance in the form of law enforcement-related intelligence information under section 90107 shall maintain the confidentiality of all such information, consistent with its status as Federal information and in accordance with the confidentiality provisions of 28 U.S.C. § 534.

**§ 94.10 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.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

January 13, 1995

MEMORANDUM FOR TIM MACHT  
COUNSEL, DEPARTMENT OF JUSTICE

FROM: David Medina  
Policy Advisor to the Under Secretary  
of the Treasury (Enforcement)

SUBJECT: Proposed Regulation Re. Crime Act Provision

The following responds to your request, dated January 12, 1995 and received by the Department of the Treasury on January 13, 1995, for comments on the Draft Proposed Rule Implementing Section 90107 of the Crime Act (the "Proposed Rule").

The breadth and extent of our comments on the Proposed Rule are limited by the time frame set for the submission of comments. Notwithstanding such constraints, we offer the following comments:

First, while we appreciate the opportunity to comment on the Proposed Rule, we believe that such opportunity also should be extended to other affected departments in the Administration, most notably the Office of Management and Budget.

Citing Executive Order 12866, the Proposed Rule states that it need not be reviewed by OMB because it does not constitute "significant regulatory action." Time limitations prevented us from obtaining a full review by counsel's office of the actions considered significant enough to warrant OMB's review. However, as a matter of policy, if not law, such review by OMB seems entirely appropriate in the instant case, given the Administration's established OMB review process, as well as the Proposed Rule's expenditure of limited funds already appropriated to law enforcement bureaus.

Moreover, we are troubled that the Proposed Rule would prevent law enforcement bureaus from participating in decisions to impose upon them additional responsibilities. The unfettered discretion granted to a single, albeit principal, law enforcement official could harm law enforcement bureaus in ways going beyond any abstract notion of independence. Most notable in this regard are the funds that the individual bureaus would have to spend after the Attorney General decides to grant federal assistance to a locality, as well as the opportunity costs arising from loss of the very same funds for ongoing projects. In short, since no new funds are being allocated to pay for increased activity, a law enforcement bureau could be forced to spend its own limited resources to fulfill a mandate that it had no role in setting.

Finally, the Proposed Rule provides no guidance on operational issues that would arise after federal resources and personnel are deployed at the local level. For example, who will direct or supervise a particular operation? How would a particular operation be evaluated? Are federal employees going to be detailed to local operations? Are there rules as to the use of federal personnel that have not been sufficiently reviewed in connection with the Proposed Rule? We would request that such issues be reviewed as soon as possible, and prior to the implementation of the Proposed Rule.

We thank you again for the opportunity to comment on the Proposed Rule, and ask that its final issuance be withheld until the issues raised in this memorandum are reviewed more thoroughly. We regret that time constraints prevented a more detailed response or the inclusion of suggested alternative language, but are confident that we could provide such language by early next week. We respectfully request that, in the interim, OMB be granted a review copy of the Proposed Rule.

Please feel free to contact me at the office today (622-1483) or through the Treasury Department operator (622-1260) over the weekend.



Office of Policy Development  
United States Department of Justice  
10th and Constitution Ave. NW  
Washington, D. C. 20530

TO: Jose Czepa

FAX: ( )

FROM: Grace

VOICE: (202)  
FAX: (202) 514-8639

Total Pages (excluding this cover): 17

Additional Message:

FYI.

Grace:

Here's some language for your editing pleasure:

Most individuals arrested and charged with criminal offenses test positive for drugs at the time of their arrest. According to data produced by NIJ's Drug Use Forecasting System, between half and three quarters of all arrestees test positive, the most prevalent drug is cocaine. Over the period of a year, millions of drug users come through the front door of the criminal justice system (do you need anything more exact?) -- including hard core users, occasional users, long term addicts, and weekend testers. Some of those individuals pursue criminal careers in order to support their drug use; others would be involved in criminal behavior even if they were not simultaneously using drugs.

The policy issue presented by these research findings is whether the leverage of the criminal justice system can be used, as part of the National drug strategy, to reduce the levels of drug use and criminal behavior. Other research findings suggest that the leverage of the criminal justice process can be used effectively to promote public safety and reduced drug use. For example, research indicates that drug treatment provided in a correctional setting can be effective. Similarly, research indicates that the use of the probation and parole systems to require treatment participation can also be effective in reducing drug use and criminal behavior. Finally, the emerging research from the National experiments with drug courts shows that the intervention of judges in requiring defendants to participate in drug treatment programs, including urinetesting and other forms of drug surveillance, can reduce drug use and criminal behavior.

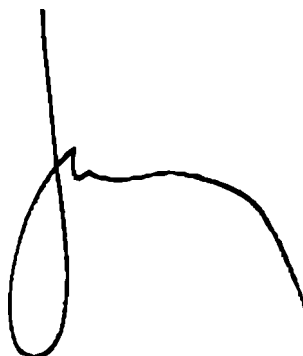
The opportunity presented by the 1995 National Drug Strategy is to build upon these promising findings to develop a comprehensive demonstration program that will maximize the use of the criminal justice system's coercive powers to move drug-abusing defendants toward reduced levels of drug abuse and criminal conduct through a variety of approaches including ongoing drug testing, drug treatment, and monitoring during all stages of the defendant's criminal case. Under such a demonstration project, every defendant entering the criminal court would be drug tested, and all would who test positive would be placed in a program of testing, surveillance and treatment. Those in jail or prison would participate; those on pretrial release or bail would participate; those on probation or parole would participate. The focus of this intervention would be the individual and that person's drug problem; there would be no explicit effort to substitute program participation for incarceration or to defer prosecution while awaiting program outcome. Those changes in system treatment might occur, but the effort of this initiative would be to reduce drug use and criminal behavior, not change criminal justice outcomes.

It would be very important for the demonstration project to provide a "treatment broker" who would be responsive to the court. In

other words, a neutral entity, removed from the adversarial process, would be established that could select appropriate treatment offerings, ensure continuity of service as the defendant moves between incarceration and release status, be empowered by the court to make placement decisions between court dates, be viewed as neutral within the treatment approaches, and be independent enough to recommend re-incarceration of an individual who is not meeting the conditions of release.

In establishing this demonstration program, cities and other jurisdictions would be encouraged to participate in a planning effort and ultimately three to six sites would be selected for a three year demonstration program. The sites would most likely be those that are already DUF sites, or have experience with drug courts. In these sites, you are more likely to find an acceptance of drug testing as a part of the system, consensus regarding legal issues on consent, etc., and a willingness to expand. An important criterion would be the ability of the site to expand its treatment capacity to provide necessary treatment for all participants. HIDTA sites might also be likely candidates.

The sites would also have to agree to some form of random assignment, or controlled research, so the effects of the demonstration program upon drug use, criminal behavior and system outcomes could be accurately measured. The jurisdiction would not have to commit to requiring every defendant arrested to participate -- e.g., the program could be limited to individuals arrested in a certain police precinct -- but the program would be required to include all categories of defendants in the program -- e.g., they could not limit it to low level offenses, or drug offenses, etc. The funding required would be for (1) drug testing technology (which might include hair testing as well as urine testing), (2) staff to manage the demonstration project and personnel to staff the treatment broker, (3) feedback mechanisms to the court on treatment outcomes, (4) enhancements to the existing treatment programs to handle this new population, and (5) research and evaluation.

A handwritten signature in black ink, consisting of a large loop followed by a horizontal stroke and a short vertical line.



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.

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2016-0931-S  
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#### Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

#### Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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, transshipment, 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

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## **§ 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.

(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:

(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.