

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Part 77**

[Docket No. 04–065–2]

Tuberculosis; Reduction in Timeframe for Movement of Cattle and Bison From Modified Accredited and Accreditation Preparatory States or Zones Without an Individual Tuberculin Test**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations to reduce, from 6 months to 60 days, the period following a whole herd test during which animals may be moved interstate from a modified accredited State or zone or from an accreditation preparatory State or zone without an individual tuberculin test. The interim rule was necessary due to our determination that the 6-month period during which individual tuberculin tests have not been required is too long given the risks of exposure to tuberculosis that exist in modified accredited and accreditation preparatory States or zones, especially those States or zones where there are wildlife populations affected with tuberculosis.

DATES: Effective on March 20, 2006, we are adopting as a final rule the interim rule that became effective on May 18, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Dutcher, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD, 20737–1231, (301) 734–5467.

SUPPLEMENTARY INFORMATION:**Background**

Bovine tuberculosis is a contagious, infectious, and communicable granulomatous disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

In an interim rule effective May 18, 2005, and published in the **Federal**

Register on May 24, 2005 (70 FR 29579–29582, Docket No. 04–065–1), we amended the bovine tuberculosis regulations in 9 CFR part 77 by reducing from 6 months to 60 days the period following a whole herd test during which cattle and bison may be moved interstate from a modified accredited State or zone or an accreditation preparatory State or zone without an individual tuberculin test.

Comments on the interim rule were required to be received on or before July 25, 2005. We received two comments by that date. The comments were from a State agricultural agency, which fully supported the rule, and from a private citizen who stated that the timeframe should be reduced to 10 days, but did not provide any explanation or justification for this suggested reduction.

As we discussed in the interim rule, we believe reducing the period from 6 months to 60 days will be sufficient to lower the potential risk of movement of infected animals and decrease the likelihood of tuberculosis transmission. Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, this action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 70 FR 29579–29582 on May 24, 2005.

Done in Washington, DC, this 14th day of March 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–2627 Filed 3–17–06; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION**11 CFR Part 300**

[Notice 2006–6]

Definitions of “Solicit” and “Direct”**AGENCY:** Federal Election Commission.**ACTION:** Final rules and transmittal of rules to Congress.

SUMMARY: The Federal Election Commission is revising its definitions of the terms “to solicit” and “to direct” for its regulations on raising and spending Federal and non-Federal funds. The new definition of “to solicit” encompasses written and oral communications that, construed as reasonably understood in the context in which they are made, contain a clear message asking, requesting, or recommending, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide something of value. Mere statements of political support and mere guidance as to the application of the law are not included. The revised definition also contains a list of examples, to provide practical guidance to Federal candidates, officeholders, political committee officials, and others. The new definition of “to direct” focuses on guidance provided directly or indirectly to a person who has expressed an intent to make a contribution, donation, or transfer of funds. Further information is provided in the supplementary information that follows.

DATES: The revised rules at 11 CFR 300.2(m) and (n) are effective on April 19, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. 107–155, 116 Stat. 81 (2002), amended the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (the “Act”), by adding to the Act new restrictions and prohibitions on the solicitation, receipt, and use of certain types of non-Federal funds (*i.e.*, funds that do not comply with the amount limits, source prohibitions, and reporting requirements of the Act),¹ which are commonly referred to as “soft money.”

The terms “to solicit” and “to direct” are central to three core provisions of

¹ See 11 CFR 300.2(k).

BCRA. First, national parties “may not solicit * * * or direct” non-Federal funds. 2 U.S.C. 441i(a)(1). Second, national, State, district, and local party committees may not solicit any non-Federal funds or direct any donations to certain entities organized under chapter 501(c) or 527 of the Internal Revenue Code. 2 U.S.C. 441i(d); 11 CFR 300.11 and 300.37. Third, Federal candidates and officeholders “shall not * * * solicit” or “direct” funds in connection with any election unless the funds comply with the Act’s contribution limits and prohibitions. 2 U.S.C. 441i(e)(1)(A) and (B); *see also* 2 U.S.C. 441i(e)(2)–(4). In addition, BCRA added prohibitions on soliciting contributions or donations from foreign nationals and on fraudulent solicitations. 2 U.S.C. 441e(a)(2) and 441h(b). Neither BCRA nor FECA contains a definition of either “to solicit” or “to direct.”

On July 29, 2002, the Commission promulgated regulations implementing BCRA’s new limits on raising and spending non-Federal funds by party committees, and Federal candidates and officeholders. *Final Rules and Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 FR 49064 (July 29, 2002) (“*Soft Money Final Rules*”). The 2002 rules defined “to solicit” as “to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether the contribution, donation, transfer of funds, or thing of value, is to be made or provided directly, or through a conduit or intermediary.” 11 CFR 300.2(m) (2002). The 2002 rules defined “to direct” as “to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value, including through a conduit or intermediary.” 11 CFR 300.2(n)(2002).

In *Shays v. FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004) (“*Shays District*”), *aff’d*, *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (“*Shays Appeal*”), *reh’g en banc denied* (Oct. 21, 2005), the District Court held that the Commission’s definitions of “to solicit” and “to direct” did not survive the *second* step of *Chevron* review.² *Shays District* at 77, 79. The

Court of Appeals for the D.C. Circuit affirmed the District Court’s decision on slightly different grounds, holding that the Commission’s definitions of “to solicit” and “to direct” did not survive the *first* step of *Chevron* review. *Shays Appeal* at 105–07.

The Court of Appeals found that the Commission’s definition of “to solicit” was limited to explicit, direct requests for money and, consequently, left “unregulated a ‘wide array of activity’ * * * that the term ‘solicit’ could plausibly cover.” *Id.* at 104. Specifically, the Court of Appeals determined that the Commission’s definition excluded implicit requests for money, impermissibly required that a candidate or officeholder use certain “magic words” to satisfy the definition, and did not allow for any consideration of the non-verbal actions accompanying a communication or any other aspect of the context in which the communication was made. *Id.* at 104–106.

As to the term “to direct,” the District Court held that the Commission’s definition was not a permissible construction of the statute because the Commission’s definition of “to direct” did not comport with any dictionary definition of the term and was subsumed within the definition of “to solicit.” *Shays District* at 76 and 77. Subsequently, the Court of Appeals held that the Commission’s definition of “to direct” was invalid because it effectively defined “to direct” as “to ask” (namely, to ask someone who has expressed an intent to make a contribution or donation) and thus, like the definition of “to solicit” and contrary to Congress’s intent, limited “to direct” to explicit requests for funds. The Court of Appeals did not reach the question of whether “to avoid statutory redundancy, ‘direct’ must mean more than ‘ask in response,’ when ‘solicit’ means ‘ask’ plain and simple.” *Shays Appeal* at 107.

The Court of Appeals affirmed the District Court’s order that had remanded both definitions to the Commission for further action consistent with its opinion. *Id.*

In response to the Court of Appeals’ decision, the Commission published a Notice of Proposed Rulemaking (“NPRM”) on September 28, 2005 in which it sought comment on a number of different ways in which the definitions of “to solicit” and “to direct” could be amended, which are discussed below. 70 FR 56599 (September 28, 2005). The comment

period closed on October 28, 2005. The Commission received written comments from twelve commenters.³ The Commission held a public hearing on November 15, 2005, at which seven witnesses testified. The comments and a transcript of the public hearing are available at http://www.fec.gov/law/law_rulemakings.shtml#def_solicit.⁴

While the Commission believes its regulations have been construed more narrowly than intended, it is issuing final rules adopting a revised definition of “to solicit” that (1) encompasses both explicit and implicit written or oral communications that contain clear messages asking, requesting, or recommending that funds or anything of value be provided, (2) provides an objective test that requires that written or oral communications be reasonably construed in the context in which they are made, and (3) does not rely on any “magic words” or specific statements. The Commission is also adopting a revised definition of “to direct” that distinguishes between “to solicit” and “to direct” by defining the latter as “to guide.” These new definitions further the purpose of BCRA in preventing corruption or the appearance of corruption and they provide guidance that is designed to address the practical, real-life situations that Federal candidates, officeholders, and others face on a daily basis.

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on March 14, 2006.

Explanation and Justification

I. 11 CFR 300.2(m)—Definition of “To Solicit”

A. The Revised Definition

The Commission is revising 11 CFR 300.2(m) by providing a modified version of the rule proposed in the NPRM.⁵ By using the phrase “ask,

³ These included a comment from the Internal Revenue Service stating that “the proposed rules do not pose a conflict with the Internal Revenue Code or the regulations thereunder.”

⁴ For purposes of this document, the terms “comment” and “commenter” apply to both written comments and oral testimony at the public hearing.

⁵ In the NPRM, the Commission proposed defining “to solicit” as “to ask, suggest, or recommend that another person make a contribution, donation, transfer of funds, or

² The first step of the *Chevron* analysis, which courts use to review an agency’s regulations, asks whether Congress has directly spoken to the precise questions at issue. The second step considers whether the agency’s resolution of an issue not addressed in the statute is based on a permissible construction of the statute. *See Shays District* at 51–

52 (citing *Chevron, U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842–43 (1984).)

request, or recommend, explicitly or implicitly,” the revised definition of “to solicit” is properly broad in scope to prevent corruption or the appearance of corruption. 11 CFR 300.2(m). At the same time, the definition sets forth an objective test that focuses on the communications in context, and does not turn on subjective interpretations by the person making the communication or its recipient. Specifically, the definition provides:

[T]o solicit means to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation is an oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation may be made directly or indirectly. The context includes the conduct of persons involved in the communication. A solicitation does not include mere statements of political support or mere guidance as to the applicability of a particular law or regulation.

(1) By including the phrases “ask, request, or recommend, explicitly or implicitly” and “directly or indirectly,” the revised definition of “to solicit” furthers the purposes of BCRA by covering not only communications that explicitly or directly request contributions or donations, but also communications that implicitly or indirectly seek to elicit a contribution or donation

The Commission is including the phrases “explicitly or implicitly” and “directly or indirectly” in the revised definition of “to solicit” to clarify that the definition of “to solicit” covers not only communications that explicitly or directly request contributions or donations, but also communications that implicitly or indirectly seek to elicit a contribution or donation, and does not depend on the use of certain “magic words.”

Importantly, the revised definition implements and reinforces BCRA’s direct prohibitions on soliciting or directing non-Federal funds. The revised definition ensures that candidates and parties may not, implicitly or indirectly, raise unregulated funds for either themselves or, subject to statutory exceptions, “friendly outsiders.” See *Shays Appeal* at 106. By covering implicit and indirect requests and recommendations, the new

otherwise provide anything of value, whether it is to be made or provided directly or through a conduit or intermediary. A solicitation is a written or oral communication, whether explicit or implicit, construed as a reasonable person would understand it in context.” The NPRM also sought comment on five additional alternatives for defining “to solicit.”

definition forecloses parties and candidates from using circumlocutions “that make their intention clear without overtly ‘asking’ for money.” *Id.* The revised definition of “to solicit” also squarely addresses the central concern of the Court of Appeals in *Shays* that “indirect” as well as “direct” requests for funds or anything of value must be covered. See *Shays Appeal* at 105. The changes to the definition also ensure that it encompasses communications such as the following, which were cited by the Court of Appeals: (1) “It’s important for our State party to receive at least \$100,000 from each of you in this election” and (2) “X is an effective State party organization; it needs to get as many \$100,000 contributions as possible.” *Shays Appeal* at 103.

One group of commenters urged the Commission to adopt the language proposed in the NPRM, which defined “to solicit” as “to ask, suggest, or recommend” that another person provide funds. Other commenters, however, opposed the inclusion of this phrase because of its potential to encompass words or actions that do not convey a clear message asking, requesting, or recommending that funds or other things of value be provided. The Commission is not including “to suggest.” The word “suggest” is unnecessary because the revised definition already covers “implicit” statements. The Commission also concludes that including “suggest” could contribute to vagueness rather than clarifying the statutory restriction. The term “suggest” is generally defined to include meanings that imply a concrete proposal for action, but also to include a mental process of association. *The American Heritage College Dictionary* 1358 (3d ed. 1997). The former constitutes a solicitation, but the latter definition, encompassing a largely or wholly subjective process, does not. Including a term which has a range of meanings, some of which are intended to be encompassed within the regulatory definition of “solicit” but others of which necessarily are excluded, is unhelpful in defining and explaining the reach of the solicitation prohibition. Although the revised definition does not include “to suggest,” the Commission notes that a statement such as “I suggest that you give \$30,000” would nonetheless be an implicit request for funds covered by the definition.

(2) A solicitation is a communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person provide funds or something of value, and a solicitation does not encompass mere

statements of political support or mere guidance about a particular law

Federal candidates and officeholders, as a natural consequence of campaigning or carrying out their official duties, are continuously involved in meeting and greeting voters and potential donors and promoting legislative agendas. The sheer number of interactions and similarity in the messages for these different purposes may sometimes give rise to situations where a candidate’s request for electoral or legislative support is misconstrued as a request for financial support. See *Thomas v. Collins*, 323 U.S. 516, 534–35 (1945) (“[g]eneral words create different and often particular impressions on different minds. No speaker, however careful, can convey exactly his meaning, or the same meaning, to the different members of an audience * * * [I]t blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim”). For example, Federal candidates and officeholders routinely thank attendees for their support at campaign rallies and other events. Absent a requirement that a communication contains a clear message asking, requesting, or recommending that another person provide funds or something of value, such a statement might be inappropriately captured by the definition of “to solicit.”

In addition, the revised definition of “to solicit” in 11 CFR 300.2(m) covers only those communications that ask, request or recommend that a contribution or donation be provided, and does not cover mere statements of political support or mere statements seeking political support, such as a request to vote for, or volunteer on behalf of, a candidate. As noted above, the solicitation can be made “explicitly or implicitly,” or “directly or indirectly,” so the definition unequivocally extends beyond overt requests for money or in-kind contributions.

Moreover, the Commission emphasizes that the definition of “to solicit” is not tied in any way to a candidate’s use of particular “magic words” or specific phrases. The revised definition merely requires that whatever communication is used must contain a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. See *Shays Appeal* at 106 (regulations must encompass a communication that “makes [a candidate’s or political party’s] intention clear without overtly ‘asking’

for money * * * if imaginative advertisers are able to make their meaning clear without employing express terms like 'vote for' and 'vote against,' savvy politicians will surely be able to convey fundraising desires without explicitly asking for money.") (emphasis added).

For example, at a ticket-wide rally, the candidate says: "It is critical that we support the entire Democratic ticket in November." Such a statement would not, by itself, constitute a solicitation because the statement is reasonably interpreted as an appeal for continuing political, rather than financial, support. See 11 CFR 300.2(m)(3)(v). On the other hand, a solicitation would result where a candidate states, "I will be very pleased if we can count on you for \$10,000." 11 CFR 300.2(m)(2)(xii). Although implicit, the solicitation of funds is nevertheless clear.

(3) *By specifying that a communication must be construed as reasonably understood in the context in which it is made, the definition of "to solicit" contains an objective test that takes into account all appropriate information and circumstances while avoiding subjective interpretations*

The revised definition retains the requirement that a communication must contain some affirmative verbalization, whether oral or in writing, to be a solicitation. In addition, the Commission believes that it is necessary to reasonably construe the communication in context, rather than hinging the application of the law on subjective interpretations of the Federal candidate's or officeholder's communications or on the varied understandings of the listener. The revised definition reflects the need to account for the context of the communication and the necessity of doing so through an objective test. See 11 CFR 300.2(m).

The context of a communication is often important because words that would not, by their literal meaning, convey a solicitation, may in some contexts be reasonably understood as one. Conversely, words that would by their plain meaning normally be understood as a solicitation, may not be a solicitation when considered in context, such as when the words are used as part of a joke or parody. The following example illustrates the importance of the context in which a communication is conveyed: Fundraiser introduces Donor to Senator, saying: "Senator, I'd like you to meet Joe Donor. Joe's been a longtime supporter of X Organization." Senator: "Joe, it's great to meet you. I really appreciate your support of X Organization's fine work." At this point, the Senator has merely

expressed political support for X Organization; he has not made a solicitation. Fundraiser continues: "I've been trying to persuade Joe to commit to giving X another \$50,000. Wouldn't that be great, Senator?" The Senator replies: "Joe, X is a very worthy organization. It's always been very helpful to me." In the context of the entire conversation, and particularly, the Fundraiser's last statement and question, the Senator's response now constitutes a solicitation.

Despite the potential for differing interpretations of candidate communications, the Act imposes stiff penalties, including potential criminal liability, on a Federal candidate or officeholder who is found to knowingly and willfully violate the prohibition on the solicitation of non-Federal funds. 2 U.S.C. 437g(d) and 441i(e). Moreover, as one commenter warned, complaints are often filed for purely partisan political reasons, so it is likely that all public appearances would be dissected by opponents or interest groups to find a few phrases or words that could be perceived as suggesting that members of the audience make a contribution or donation; this, in turn, would form the basis for filing a complaint with the Commission. To address these concerns, the Commission has historically sought to develop clear standards that provide adequate notice of whether communications constitute solicitations; anything less would place Federal candidates, officeholders, and party officials at the mercy of the various understandings of third parties.

Accordingly, for a solicitation to be made under revised 11 CFR 300.2(m), the communication must be "construed as reasonably understood in the context in which it is made." The mere fact that the recipient of a communication subjectively believes that he or she has been solicited is not a sufficient basis for finding that a solicitation has taken place. See, e.g., *Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724, 727 (1st Cir. 1992) ("For example, a theater critic who wrote that, 'The producer who decided to charge admission for that show is committing highway robbery,' would be immune from liability because no reasonable listener would understand the speaker to be accusing the producer of the actual crime of robbery.") Rather, under revised 11 CFR 300.2(m), the Commission's objective standard hinges on whether the recipient should have reasonably understood that a solicitation was made. This will allow Federal candidates and officeholders and political party officials to determine

with reasonable certainty whether a communication is a solicitation.

The conduct of the speaker or other persons involved in a communication may also be relevant to the meaning of a written or oral communication in certain situations. For example, the following exchange would result in a solicitation by the candidate: "The head of Group X solicits a contribution from a potential donor in the presence of a candidate. The donor asks the candidate if the contribution to Group X would be a good idea and would help the candidate's campaign. The candidate nods affirmatively." See 11 CFR 300.2(m)(2)(xvi). Therefore, revised 11 CFR 300.2(m) expressly provides that the context of a written or oral communication "includes the conduct of persons involved in the communication."

In the NPRM, the proposed definition of "to solicit" also included an objective standard: the communication was to be construed "as a reasonable person would understand it in context." 70 FR at 56606. All of the commenters agreed that an objective standard was appropriate. Some of the commenters disagreed over the particular language of the standard, but one commenter accurately observed that the debate over the language of the objective standard was "a little bit of a kind of false dilemma, because * * * inevitably the Commission is going to construe its regulations by a reasonable understanding of what the words mean * * * whether you put it in the rule or not, I think that's essentially the only sensible way to go about it."

(4) *Because it focuses on the delivery of contributions or donations, rather than how a solicitation is made, the 2002 language relating to the provision of funds or things of value through conduits or intermediaries is superfluous*

The 2002 definition of "to solicit" stated that a solicitation would result where "the contribution, donation, transfer of funds, or thing of value is to be made or provided directly, or through a conduit or intermediary." See 11 CFR 300.2(m) (2002). This statement focuses on the delivery of the funds or thing of value after the solicitation has taken place, as opposed to how a solicitation is made. The Commission has decided to remove that language because it is unnecessary. It is true that a Federal candidate, officeholder, or other person would make a solicitation by asking, requesting, or recommending that funds be provided to himself or herself or to another entity, regardless of whether the funds are ultimately delivered directly through a conduit or

intermediary or some other method. However, the delivery of funds is already addressed through other provisions in the Act and Commission regulations, such as the Commission's earmarking rules at 11 CFR 110.6 implementing 2 U.S.C. 441a(a)(8).

B. Other Alternatives Proposed in the NPRM

In the NPRM, the Commission sought comment on five alternatives for defining "to solicit" in addition to the proposed rule. Of these five alternatives, the only one that received any support from commenters was Alternative Three, which was to retain the 2002 definition of "to solicit" while revising the Explanation and Justification to explain that "to solicit" includes implied or indirect requests for funds. Commenters who supported Alternative Three did so primarily on three grounds. First, notwithstanding the Court of Appeals' interpretation of the Commission's 2002 definition of "to solicit," some of those seeking to comply with the Commission's solicitation rules had understood that definition to cover not only express, but also implied or indirect requests for funds. Second, retaining the 2002 rule would create the least instability and avoid the uncertainty associated with the introduction of new terms. Lastly, a revised Explanation and Justification would provide notice that this definition will be interpreted in accordance with the *Shays* decisions. However, other commenters opposed retaining the 2002 definition of "to solicit" because the rule would continue to be construed to be overly narrow and therefore would not comply with the *Shays* decisions, even if explained differently.

Although the Commission agrees with the commenters that the 2002 definition of "to solicit" was broader than the Court of Appeals understood it to be, the Commission has decided not to retain the 2002 definition because, given the fact that both the District Court and the Court of Appeals construed the 2002 definition to be narrow, there is a significant lack of certainty regarding the scope of that definition. Thus, the most straightforward and effective way of removing ambiguity and providing the necessary guidance to those subject to BCRA is to clarify the scope of the definition of "to solicit" in the regulation itself. Moreover, because the Court of Appeals in *Shays Appeal* struck down the 2002 definition under the first step of *Chevron*,⁶ the court might find that retaining that definition

of "to solicit" as "to ask," even with a revised Explanation and Justification, is not fully responsive to the court's ruling.

Regarding the other alternatives, none of which received any support from commenters, Alternative One would have modified the revised definition of "to solicit" proposed in the NPRM by excluding the requirement that a communication be construed objectively in the context in which it is made. As explained above, the Commission believes it is important to specify in the definition of "to solicit" that a communication must be "construed reasonably in the context in which it is made" in order to make clear that the determination of whether a communication is a solicitation is an objective test and does not turn on subjective interpretations of the communication.

Alternative Two would have modified the 2002 definition to make clear in the regulation itself that "to solicit" covers not only explicit requests or communications that use certain "magic words" but also indirect, implied requests for contributions or donations. This alternative would have provided that "to solicit means to ask, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value." Alternative Two did not include the words "request" or "recommend" or the requirement that the communication be construed objectively and in context. The Commission did not choose this alternative for two reasons. First, inclusion of the words "request" and "recommend" are more effective in putting those subject to BCRA's restrictions on notice that indirect requests for funds are covered by the revised definition of "to solicit." Second, incorporation of the requirement that the communication be construed objectively and in context is important for the reasons discussed above.

Alternative Four was premised on the Commission prevailing on a rehearing by the full Court of Appeals. Alternative Four would have adopted a definition that limits solicitations to explicit requests for contributions or donations. Because the Commission's petition for a rehearing *en banc* was denied, this alternative is no longer viable.

Alternative Five was to provide no definition of "to solicit" in the rules. Under this alternative, those seeking guidance would have had to rely on the Court of Appeals decision, previous advisory opinions, and future applications by the courts and the Commission. Although one commenter

indicated that this alternative would not be inconsistent with the Court of Appeals decision, another commenter asserted that a case-by-case approach would not provide adequate notice and guidance in this area. The Commission believes that defining the term "to solicit" is the most straightforward and effective way of providing guidance.

C. Disclaimer Requirements for Attendance and Participation at Fundraising Events

In the NPRM, the Commission sought comment regarding Advisory Opinions 2003-03 (Rep. Eric Cantor), 2003-05 (National Association of Home Builders), and 2003-36 (Republican Governors Association). These advisory opinions permitted Federal candidates or officeholders to attend and participate in a fundraising event for non-Federal funds held by State and local candidates, or by non-Federal political organizations, so long as the solicitations made by the Federal candidate or officeholder included, or were accompanied by, certain disclaimers.⁷

The Commission sought comment on whether the principles enunciated in these advisory opinions should be incorporated into the Commission's regulations or should be superseded. All of the commenters who addressed the application of the disclaimer requirements, as articulated in the advisory opinions, agreed that Federal candidates and officeholders should be permitted to attend and participate in these non-Federal fundraising events, subject to the disclaimer guidelines. One commenter favorably characterized the disclaimers as a "safe harbor" enabling Federal candidates to participate and speak at such events "in a way that complies with the statute." Another commenter warned that superseding the advisory opinions would "chill" the activities of Federal candidates and officeholders at the State and local, or "grassroots," level.

Some commenters urged the Commission to incorporate the disclaimers into regulations and observed that the advisory opinions provided detailed guidance "without having caused any known abuse or confusion."

The incorporation of the disclaimer requirements into a rule applicable to non-party committee fundraisers was

⁷ This analysis has not been applied to appearances and speeches by Federal candidates and officeholders at State, district, or local party fundraising events because the Act and Commission regulations allow those individuals to attend and speak at such events without restriction or regulation. 2 U.S.C. 441i(e)(3); 11 CFR 300.64.

⁶ See note 2, above.

first addressed in the rulemaking on Federal candidate solicitations at party fundraising events. *See Revised Explanation and Justification for Final Rules on Candidate Solicitation at State, District, and Local Party Fundraising Events*, 70 FR 37649 (June 30, 2005) (“*Party Committee Events Final Rules*”). During the hearings on that rulemaking, a commenter observed that the disclaimer requirements are “understood” and “the community is complying with them,” a view echoed in the current rulemaking. In the *Explanation and Justification for the Party Committee Events Final Rules*, the Commission indicated that it was not necessary “to initiate a rulemaking to address the issues in Advisory Opinions 2003–03, 2003–05, and 2003–36 at this time.” 70 FR at 37654. The Commission continues to stand by that determination.

D. 11 CFR 300.2(m)(1)—Types of Communications That are Solicitations

Several commenters urged the Commission to specifically address communications that include reply envelopes, phone numbers, or Web pages dedicated to facilitating the making of contributions or donations. The Commission is therefore adding new 11 CFR 300.2(m)(1) to specify three types of “solicitation” that result from components of a communication that are intended to provide instructions about how to contribute or otherwise facilitate the making of a contribution. Specifically, paragraph (m)(1) provides that the following are solicitations: (1) A written communication that provides a method of making a contribution or donation, such as a reply card or envelope that permits a contributor or donor to indicate the amount of a contribution, regardless of the other text of the communication; (2) a communication that provides instructions on how or where to send contributions or donations, including providing a phone number specifically dedicated to facilitating the making of contributions or donations; and (3) a communication that identifies a Web address where the Web page displayed is specifically dedicated to facilitating the making of a contribution or donation, or automatically redirects the Internet user to such a page, or exclusively displays a link to such a page. *See* 11 CFR 300.2(m)(1)(i)–(iii).

However, 11 CFR 300.2(m)(1)(ii) and (iii) expressly state that a communication does not become a solicitation simply by providing a mailing address, phone number, or Web address unless the address or number is specifically dedicated to facilitating the

making of a contribution or donation. This clarification is intended to ensure that an organization’s attempt to publicize its own contact information for non-fundraising purposes will not be treated as a solicitation.

E. Examples of Solicitations

In order to provide Federal candidates and officeholders, and political committees and others operating under BCRA, with additional guidance on how the new standard will be applied, the Commission proposed, in the NPRM, to incorporate into either the final rule or the *Explanation and Justification* examples of communications that are solicitations, and examples of communications that are not. The NPRM sought comment on whether some or all of these examples should be included in the regulation itself or in the *Explanation and Justification*.

The commenters generally agreed that all the examples set out in the NPRM should be included. Some commenters believed that the examples should be included in the *Explanation and Justification* while others expressed a preference for including the examples in the regulation itself. Because the Commission recognizes that Federal candidates and officeholders require clear guidance that can be readily applied in practice to their day-to-day activities, the Commission concludes that the examples are such an integral component of the definition of “to solicit” that they are best included in the regulation itself. The inclusion of the examples in the rule makes these examples more accessible to those seeking to comply with the Commission’s rules.

Similar versions of some of these examples were set forth in the NPRM. Several of these examples have been altered slightly to provide further clarity. Furthermore, given the unanimous agreement of the commenters that examples are helpful in applying the rule in real-life situations, the Commission is providing several new examples in addition to those included in the NPRM. The Commission emphasizes that the lists are integral to the application of the definition of “to solicit” in particular situations, but are not intended to be exhaustive.

Revised 11 CFR 300.2(m)(2) lists several communications that *are* solicitations. Some of these examples represent explicit requests, such as “Please give \$100,000 to Group X.” 11 CFR 300.2(m)(2)(i). Other examples are implicit, such as “X is an effective State party organization; it needs to obtain as many \$100,000 donations as possible,”

and “Giving \$100,000 to Group X would be a very smart idea.” 11 CFR 300.2(m)(2)(iv) and (v). Several of the examples also demonstrate how a simple statement can be a solicitation in a particular context, such as the following: A candidate hands a potential donor a list of people who have contributed to a group and the amounts of their contributions. The candidate says, “I see you are not on the list.” 11 CFR 300.2(m)(2)(x).

In contrast, 11 CFR 300.2(m)(3) includes examples of communications that are *not*, in and of themselves, “solicitations” under the revised definition. These statements are specific to the context in which they are made, and similar statements may result in solicitations in other situations. Some of these examples consist of statements indicating general support or electoral support, rather than a clear request for funds or something of value, such as a candidate’s statement of “thank you for your continuing support” at a get-out-the-vote (GOTV) rally, or “It is critical that we support the entire Democratic ticket in November” at a ticket-wide rally. *See* 11 CFR 300.2(m)(3)(iv) and (v). Other examples refer to legislative achievements, such as the following statement by a Federal officeholder: “Our Senator has done a great job for us this year. The policies she has vigorously promoted in the Senate have really helped the economy of the State.” 11 CFR 300.2(m)(3)(vi).

F. 11 CFR Part 114—Corporate and Labor Organization Activity

Several regulations concerning corporate and labor organization activity in 11 CFR Part 114 use the terms “to solicit” and “solicitation” without defining them. *See, e.g.*, 11 CFR 114.5(g), 114.6, 114.7, and 114.8; *see also* 11 CFR 104.7(b)(2). The NPRM sought comment on whether the Commission should continue to leave the terms “to solicit” and “solicitation” undefined in these regulations, or whether these rules should include the same definition of “to solicit” as the regulations regarding non-Federal funds. Five commenters urged the Commission not to expand this rulemaking by promulgating definitions of “to solicit” and “solicitation” with respect to corporate and labor organization activity in 11 CFR Part 114. Because, as three of these commenters observed, a rule defining “solicitation” for 11 CFR Part 114 is not required by the *Shays Appeal*, the Commission has decided to leave the words “solicitation” and “to solicit” undefined in the regulations governing corporate and labor organization activity. The

Commission also notes that there are a number of advisory opinions that already explain what would or would not constitute a solicitation of contributions to a corporation's separate segregated fund ("SSF"). See, e.g., Advisory Opinions 2003-14, 2000-07, 1999-06, 1991-03, 1988-02, 1983-38, 1982-65, and 1979-13.

G. 11 CFR 110.20(a)(6)—Foreign Nationals

The Commission's regulations at 11 CFR 110.20(a)(6) prohibiting contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals incorporate the definition of "to solicit" in 11 CFR 300.2(m). See 11 CFR 110.20(a)(6). The NPRM proposed to continue to use the same definition of "to solicit" for both the regulations regarding non-Federal funds and the foreign national prohibitions, but also invited comment on whether there are reasons for providing two different, independent definitions of the term. All three of the commenters who addressed this issue urged the Commission to use the same definition for both regulations. The Commission agrees, and concludes that it is appropriate to continue to use the same definition of "to solicit" for both the regulations regarding non-Federal funds and the foreign national prohibitions.

II. 11 CFR 300.2(n)—Definition of "To Direct"

The Commission is revising the definition of "to direct" in 11 CFR 300.2(n) to mean the following: "to guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation, transfer of funds, or otherwise provide anything of value, by identifying a candidate, political committee or organization, for the receipt of such funds, or things of value. The contribution, donation, transfer, or thing of value may be made or provided directly or through a conduit or intermediary." The Commission's final rule adopts the revised definition of "to direct" proposed in the NPRM, with the additional clarification that the guidance can be provided directly or indirectly. The inclusion of "directly or indirectly" makes clear that the rule covers not only explicit guidance, but implicit guidance as well.

The final rule at 11 CFR 300.2(n) also includes the statement that "merely providing information or guidance as to the applicability of a particular law or regulation" is not direction. This statement is nearly identical to the statement included in the 2002 rule,

with only technical changes intended to promote clarity in the meaning of the rule.

As indicated above, although the Court of Appeals held that the Commission's definition of "to direct" was invalid because it effectively defined "to direct" as "to ask" and thus, like the definition of "to solicit," limited "to direct" to explicit requests for funds, the court did not provide guidance on how "to direct" should be defined. However, the District Court did provide guidance. Specifically, the District Court observed that the term "to direct" has more than one meaning. It can mean "[t]o guide (something or someone)," as in to inform someone of where he or she can make a donation. The word can also mean "[t]o instruct (someone) with authority," as in to order someone to make a donation." *Shays District* at 76 (quoting Black's Law Dictionary 471 (7th ed. 1999)).

Defining "to direct" as "to guide" is consistent with BCRA's statutory language, which states in relevant part that the national committee of a political party may not "direct to another person a contribution, donation, or transfer of funds or anything of value." 2 U.S.C. 441i(a)(1) (emphasis added). See also 2 U.S.C. 441i(d) ("A national, State, district, or local committee of a political * * * party shall not solicit any funds * * * or direct any donations to [an entity] * * *") (emphasis added). The preposition "to" following the term "to direct" in these statutory provisions would appear to indicate that Congress intended the use of "to direct" in BCRA to mean "to guide."⁸ The revised definition is also fully responsive to the holding in *Shays District* by ensuring that "to solicit" and "to direct" cover distinct, though potentially overlapping, sets of communications.

Specifically, under the revised rule, "to direct" encompasses situations where a person has already expressed an intent to make a contribution or donation, but lacks the identity of an

appropriate candidate, political committee or organization to which to make that contribution or donation. The act of direction consists of providing the contributor with the identity of an appropriate recipient for the contribution or donation. Examples of such direction include providing the names of such candidates, political committees, or organizations, as well as providing any other sufficiently detailed contact information such as a Web or mailing address, phone number, or the name or other contact information of a committee's treasurer, campaign manager, or finance director.

Even though, as explained above, providing a mailing address, telephone number, or Web address is, in certain circumstances, in and of itself, a solicitation, the revised definition of "to solicit" does not cover many other situations in which a Federal candidate or officeholder or party official merely provides information about possible recipients to someone who has already expressed an intent to contribute or donate. For example, Donor approaches Candidate stating: "I have \$10,000 and I want to contribute it to the party for the next election. Where would it be of most use?" Candidate replies: "The New York State Republican Party." Merely providing Donor with the name of an organization to which to donate funds is not a solicitation even under the revised and expanded definition of "to solicit," but is direction under the revised definition of "to direct." Thus, even though the revised definitions of "to direct" and "to solicit" overlap, in certain circumstances, the revised definition of "to direct" also covers a substantial range of actions that are not covered by the revised definition of "to solicit," and therefore is not redundant.

The NPRM invited comments on whether the proposed definition would be too broad or too narrow, whether it would reduce the opportunities for circumvention of the Act or for actual or apparent corruption, and whether it would affect the exercise of political activity. The majority of those who commented on this issue supported the Commission's proposed revision to the rule and indicated that it would reduce the opportunities for circumvention of BCRA's soft money restrictions, and would provide sufficient guidance to candidates, officeholders, and political committees.

Some commenters asserted that because the proposed rule would apply only to persons who had already "expressed an intent" to make a contribution, donation, transfer of funds, or otherwise provide anything of value, the proposed rule would be too

⁸ To define "to direct," based on the second meaning of "to direct" identified by the District Court (i.e., "to instruct with authority"), would effectively subsume the definition of "to direct" within the definition of "to solicit," because "instructing with authority" is a form of asking or requesting. The terms the revised 11 CFR 300.2(m) uses to define "to solicit." In other words, to the extent that "instructing someone with authority" to make a contribution or donation is reasonably understood to be asking or requesting that a contribution or donation be made, it is already encompassed by the amended definition of "to solicit." Thus, defining "to direct" as to "instruct someone with authority" would deprive the term of a meaningful role in the regulation by subsuming it under the meaning of "to solicit." See *Shays District* at 77.

narrow and could lead to circumvention of the Act. These commenters suggested modifying the rule by removing the phrase “who has expressed an intent.”

The Commission disagrees with these commenters. If the phrase “who has expressed an intent” were removed, the definition of “to direct” would include merely providing the identity of an appropriate recipient, without any attempt to motivate another person to contribute or donate funds. Thus, this rule would appear to be substantially broader than the revised definition of “to solicit” at 11 CFR 300.2(m), and would subsume that definition.

The NPRM also asked whether it was even necessary to provide a regulatory definition for the term “to direct” for the purposes of 11 CFR part 300, as long as it was made clear in the Explanation and Justification that the term means “to guide.” This would have allowed the definition to develop through the advisory opinion and enforcement processes. Some commenters objected to this approach, arguing that adopting a regulatory definition adds clarity to the law and provides guidance to Federal candidates and officeholders and political party officers. Taking this into consideration, the Commission agrees that it is preferable to provide guidance, and therefore is adopting the revised definition.

In the NPRM, the Commission noted that the words “directed” and “direction” appear in the Commission’s earmarking rules regarding contributions directed through a conduit or intermediary under 2 U.S.C. 441a(a)(8). See 11 CFR 110.6(a). Although these terms are not defined in the Act or in Commission regulations, the Explanation and Justification for 11 CFR 110.6 states that in determining whether a person has direction or control, “the Commission has considered such factors as whether the conduit [or intermediary] controlled the amount and timing of the contribution, and whether the conduit selected the intended recipient.” *Final Rules for Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 FR 34098, 34108 (August 17, 1989). Thus, the word “direction” in the earmarking rules essentially means “instructing with authority.” The Commission sought comment on whether this was an appropriate definition of the term “to direct” in the context of 11 CFR part 300.

Some commenters believed that this interpretation would be inconsistent with the purposes and intent of BCRA, and would improperly narrow BCRA’s

otherwise broad prohibition on Federal candidates, officeholders and political party committees’ participation in the raising or spending of non-Federal funds. The Commission notes that, as discussed above, under this interpretation the term “to direct” would appear to be subsumed by the revised definition of “to solicit.” Any activity that could be construed as “directing with authority” could also be categorized as “to ask, request or recommend” that another person make a contribution or donation. Therefore, the Commission declines to adopt a definition of “to direct” reflecting this interpretation.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The Commission certifies that the attached final rules do not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the organizations affected by these rules are the national, State, district, and local party committees of the two major political parties and other political committees, which are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. National, State, district, and local party committees and any other political committees affected by these proposed rules are not-for-profit committees that do not meet the definition of “small organization,” which requires that the enterprise be independently owned and operated and not dominant in its field. State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the national and State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately.

Most other political committees affected by these rules are not-for-profit committees that do not meet the definition of “small organization.” Most political committees are not independently owned and operated because they are not financed by a small identifiable group of individuals. Most political committees rely on contributions from a large number of

individuals to fund the committees’ operations and activities.

To the extent that any State party committees representing minor political parties or any other political committees might be considered “small organizations,” the number affected by these rules is not substantial.

Finally, candidates and other individuals operating under these rules are not small entities.

List of Subjects in 11 CFR Part 300

Campaign funds, Nonprofit organizations, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Federal Election Commission is amending Subchapter C of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 300—NON-FEDERAL FUNDS

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

■ 2. Section 300.2 is amended by revising paragraphs (m) and (n) to read as follows:

§ 300.2 Definitions.

* * * * *

(m) *To solicit.* For the purposes of part 300, *to solicit* means to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation is an oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. A solicitation may be made directly or indirectly. The context includes the conduct of persons involved in the communication. A solicitation does not include mere statements of political support or mere guidance as to the applicability of a particular law or regulation.

(1) The following types of communications constitute solicitations:

(i) A communication that provides a method of making a contribution or donation, regardless of the communication. This includes, but is not limited to, providing a separate card, envelope, or reply device that contains an address to which funds may be sent and allows contributors or donors to indicate the dollar amount of

their contribution or donation to the candidate, political committee, or other organization.

(ii) A communication that provides instructions on how or where to send contributions or donations, including providing a phone number specifically dedicated to facilitating the making of contributions or donations. However, a communication does not, in and of itself, satisfy the definition of “to solicit” merely because it includes a mailing address or phone number that is not specifically dedicated to facilitating the making of contributions or donations.

(iii) A communication that identifies a Web address where the Web page displayed is specifically dedicated to facilitating the making of a contribution or donation, or automatically redirects the Internet user to such a page, or exclusively displays a link to such a page. However, a communication does not, in and of itself, satisfy the definition of “to solicit” merely because it includes the address of a Web page that is not specifically dedicated to facilitating the making of a contribution or donation.

(2) The following statements constitute solicitations:

(i) “Please give \$100,000 to Group X.”

(ii) “It is important for our State party to receive at least \$100,000 from each of you in this election.”

(iii) “Group X has always helped me financially in my elections. Keep them in mind this fall.”

(iv) “X is an effective State party organization; it needs to obtain as many \$100,000 donations as possible.”

(v) “Giving \$100,000 to Group X would be a very smart idea.”

(vi) “Send all contributions to the following address * * *.”

(vii) “I am not permitted to ask for contributions, but unsolicited contributions will be accepted at the following address * * *.”

(viii) “Group X is having a fundraiser this week; you should go.”

(ix) “You have reached the limit of what you may contribute directly to my campaign, but you can further help my campaign by assisting the State party.”

(x) A candidate hands a potential donor a list of people who have contributed to a group and the amounts of their contributions. The candidate says, “I see you are not on the list.”

(xi) “I will not forget those who contribute at this crucial stage.”

(xii) “The candidate will be very pleased if we can count on you for \$10,000.”

(xiii) “Your contribution to this campaign would mean a great deal to the entire party and to me personally.”

(xiv) Candidate says to potential donor: “The money you will help us raise will allow us to communicate our message to the voters through Labor Day.”

(xv) “I appreciate all you’ve done in the past for our party in this State. Looking ahead, we face some tough elections. I’d be very happy if you could maintain the same level of financial support for our State party this year.”

(xvi) The head of Group X solicits a contribution from a potential donor in the presence of a candidate. The donor asks the candidate if the contribution to Group X would be a good idea and would help the candidate’s campaign. The candidate nods affirmatively.

(3) The following statements do not constitute solicitations:

(i) During a policy speech, the candidate says: “Thank you for your support of the Democratic Party.”

(ii) At a ticket-wide rally, the candidate says: “Thank you for your support of my campaign.”

(iii) At a Labor Day rally, the candidate says: “Thank you for your past financial support of the Republican Party.”

(iv) At a GOTV rally, the candidate says: “Thank you for your continuing support.”

(v) At a ticket-wide rally, the candidate says: “It is critical that we support the entire Democratic ticket in November.”

(vi) A Federal officeholder says: “Our Senator has done a great job for us this year. The policies she has vigorously promoted in the Senate have really helped the economy of the State.”

(vii) A candidate says: “Thanks to your contributions we have been able to support our President, Senator and Representative during the past election cycle.”

(n) *To direct.* For the purposes of part 300, *to direct* means to guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation, transfer of funds, or otherwise provide anything of value, by identifying a candidate, political committee or organization, for the receipt of such funds, or things of value. The contribution, donation, transfer, or thing of value may be made or provided directly or through a conduit or intermediary. Direction does not include merely providing information or guidance as to the applicability of a particular law or regulation.

* * * * *

Dated: March 13, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. 06–2623 Filed 3–17–06; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–1147]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted a final rule to require Edge and Agreement corporations and U.S. branches, agencies, and representative offices of foreign banks supervised by the Board to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act and the regulations issued thereunder.

DATES: This rule is effective April 19, 2006.

FOR FURTHER INFORMATION CONTACT:

Nina A. Nichols, Assistant Director, (202) 452–2961, Shaswat K. Das, Counsel, (202) 452–2428, or Bridget M. Neill, Assistant Director, (202) 452–5235, Division of Banking Supervision and Regulation; or Ann E. Misback, Associate General Counsel, (202) 452–3788, or Jennifer Sutton, Attorney, (202) 452–3564, Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulations on Bank Secrecy Act Compliance Programs

Subchapter II of chapter 53 of Title 31, United States Code, commonly known as the “Bank Secrecy Act,” generally requires financial institutions to, among other things, keep records and make reports that have a high degree of usefulness in criminal, tax, or regulatory proceedings. Section 1359 of the Anti-Drug Abuse Act of 1986, Pub. L. 99–570, requires the supervisory agencies to prescribe regulations requiring institutions they regulate to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act and to review such procedures during the course of their examinations.¹

¹ See 12 U.S.C. 1818(s).