

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

RIN 3206-AL05

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations—Eligibility and Public Accountability Standards

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed changes in eligibility requirements and public accountability standards, and to several other parts of the regulations, for the Combined Federal Campaign (CFC). These proposed changes are intended to streamline the significant eligibility requirements and public accountability standards and other administrative areas to reduce the burden on applicant charitable organizations seeking to qualify for the CFC, simplify the administrative process of determining whether charitable organizations are eligible to participate in the CFC and facilitate modernization of the CFC program.

DATES: We will consider comments received by August 14, 2006.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: cfc@opm.gov. Include "RIN 3206-AL05" in the subject line of the message.
- Fax: (202) 606-0902.
- Mail: Mara T. Paternoster, Director, Office of CFC Operations, U.S. Office of Personnel Management, Room 5450, 1900 E Street, NW., Washington, DC 20415.
- Hand Delivery/Courier: Director, Office of CFC Operations, U.S. Office of Personnel Management, Room 5450,

1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT:

Mark W. Lambert, Senior Compliance Officer for the Office of CFC Operations, by telephone on (202) 606-2564, by FAX on (202) 606-0902, or by e-mail at cfc@opm.gov.

SUPPLEMENTARY INFORMATION: The CFC regulations were last revised more than 10 years ago. OPM is issuing proposed changes to its regulations governing the solicitation of Federal civilian and uniformed services personnel at the workplace for contributions to private non-profit organizations through the CFC under the authority of Executive Order 12353 (March 23, 1982). OPM has plenary authority under 5 CFR part 950 to administer the CFC in compliance with legal standards. Public Law (Pub. L.) 100-202 § 101(m), requires OPM to maintain certain eligibility criteria for CFC participation by organizations and federations as well as public accountability standards similar to those that were in effect between 1984 and 1987. These CFC criteria were designed to offer donors assurances of the integrity of the program's participating charitable organizations. However, assuring compliance has created a burdensome application and review process for charitable organizations, locally within each campaign for Local Federal Coordinating Committees (LFCC) and within OPM. At the time when the CFC was established in the 1960s, OPM filled a regulatory void by setting standards for evaluating the fiscal accountability and governance of charitable organizations. Today, this role is better served by the industry, its oversight organizations and the Internal Revenue Service Division of Tax Exempt and Government Entities. The changes proposed will put more responsibility on the donor to perform research on charitable organizations and to utilize industry oversight groups to ensure that their donations are being used effectively and efficiently by these organizations.

There are currently 16 core standards of eligibility and public accountability and 3 core administrative requirements that a charitable organization must satisfy in order to participate in the CFC. These appear in the form of certifications in the annual application. Many require documentation, such as audited financial statements and an

annual report to demonstrate compliance. The proposed changes to these regulations remove eight of the standards, including the requirement that participating organizations' administrative and fundraising expenses not exceed 25 percent of its total revenue. As a service to donors, OPM will still require the applicant to calculate the administrative and fundraising rate (AFR) and report it to donors. Some of the remaining standards will be modified to eliminate documented proof of compliance. OPM will retain the right to request documented evidence of compliance with CFC regulations from any applicant or participating organization. Failure to provide evidence of compliance that is satisfactory to OPM may result in a denial to participate in the CFC or removal from the CFC. OPM will retain eight of the standards and three core administrative requirements for applicant organizations. The standards and administrative requirements that will be retained are as follows:

1. 5 CFR 950.202(a)—National List Eligibility Requirements—Certify that it provides or conducts real services, benefits, assistance, or program activities, in 15 or more different states or a foreign country over the 3 year period immediately preceding the start of the year involved. The regulations will be clarified to indicate that a detailed schedule is required as part of the application that describes activities in each state or foreign country in each year.

2. 5 CFR 950.202(b)—National List Eligibility Requirements—Certify that it is recognized by the Internal Revenue Service as tax-exempt under 26 U.S.C. 501(c)(3) and to which contributions are tax-deductible pursuant to 26 U.S.C. 170(c)(2). OPM proposes to clarify that these organizations must be public charities, not private foundations.

3. 5 CFR 950.203(a)(1)—Public Accountability Standards—Certify that the organization is a human health and welfare organization providing services, benefits, or assistance to, or conducting activities affecting, human health and welfare. No changes are proposed to this standard.

4. 5 CFR 950.203(a)(2)—Public Accountability Standards—Certify that it accounts for its funds in accordance with generally accepted accounting

principles (GAAP) and that an audit of the organization's fiscal operations is completed annually by an independent certified public accountant in accordance with generally accepted auditing standards (GAAS). This standard will be revised to apply only to organizations which report \$250,000 or more in revenue on the organization's IRS Form 990. If an organization indicates revenue of less than \$250,000 on its IRS Form 990, then it will be required to certify that it has controls in place to ensure that funds are properly accounted for and that it can provide accurate timely financial information to interested parties. OPM proposes to raise the revenue threshold amount to reduce unnecessary administrative burdens and expenses to otherwise financially accountable organizations with smaller budgets. Such applicants will no longer be required to submit a copy of a recent audit with their application. However, OPM retains the right to request a copy of the audit and to sanction or penalize the organization if it does not timely produce an acceptable copy.

5. 5 CFR 950.203(a)(3)—Public Accountability Standards—Provide a completed copy of the organization's IRS Form 990, including signature, with the application regardless of whether or not the IRS requires the organization to file this form. OPM proposes to revise this standard to make it a certification. OPM will continue to require a copy of the completed IRS Form 990 together with supplemental statements and Schedule A to be included with the application. If the organization does not file an IRS Form 990, OPM will nonetheless require submission of a pro forma IRS Form 990, page 1 only. OPM will no longer routinely check to determine whether the IRS Form 990 revenues and expenses reported reconcile with the audited financial statements. This reconciliation is required to be performed on the IRS Form 990 in Parts IV–A and IV–B by the organization. OPM strongly encourages Federal donors to utilize the variety of reports and information on participating CFC charities which is publicly available, through the Internet and other sources, to satisfy themselves regarding the financial accountability of any given organization.

6. 5 CFR 950.203(a)(4)—Public Accountability Standards—Provide a computation of the organization's percentage of total support and revenue spent on administrative and fundraising. This percentage shall be computed from information on the IRS Form 990, submitted pursuant to § 950.203(a)(3), by adding the amount

spent on “management and general” (line 14) to “fundraising” (line 15) and then dividing the sum by “total revenue” (line 12). No changes are proposed to this standard, but references to specific lines of the IRS Form 990 will be removed in anticipation of future changes to the Form.

7. 5 CFR 950.203(a)(5)—Public Accountability Standards—Certify that the organization is directed by an active and responsible governing body whose members have no material conflict of interest and a majority of which serve without compensation. No changes are proposed to this standard.

8. 5 CFR 950.203(a)(8)—Public Accountability Standards—Certify that contributions are effectively used for the announced purposes of the charitable organization. No changes are proposed to this standard.

9. 5 CFR 950.203(a)(12)—Public Accountability Standards—Provide a statement that the certifying official is authorized by the organization to certify and affirm all statements required for inclusion on the national list. No changes are proposed to this requirement.

10. 5 CFR 950.203(a)(13)—Public Accountability Standards—Provide a statement in 25 words or less describing the program activities of the charitable organization. This will be removed as a standard, but it is retained as an administrative requirement in 5 CFR 950.401(g)(2) and will be required from each charitable organization completing the CFC application.

11. 5 CFR 950.605—Sanctions Compliance Certification—Each federation, federation member and unaffiliated organization applying for participation in the CFC must, as a condition of participation, complete a certification that it is in compliance with all statutes, Executive orders, and regulations restricting or prohibiting U.S. persons from engaging in transactions and dealings with countries, entities or individuals subject to economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). No changes are proposed to this certification.

The eight standards that will be removed are:

1. 5 CFR 950.202(c)—National List Eligibility Requirements—Certify that the organization has no expenses connected with lobbying and attempts to influence voting or legislation at the local, State, or Federal level or alternatively, that those expenses would classify the organization as a tax-exempt organization under 26 U.S.C. 501(h).

OPM proposes to remove this standard because it is already a requirement for charitable organizations to qualify as a tax-exempt entity under section 501(c)(3) of the Internal Revenue Code and to maintain that status with the IRS. In addition, some applicant organizations have misinterpreted the standard to mean that no lobbying is permitted, when, in fact, lobbying is permissible if consistent with Internal Revenue Code requirements.

2. 5 CFR 950.203(a)(4)(i)—Public Accountability Standards—If an organization's administrative and fundraising expenses exceed 25 percent of its total support and revenue, it must certify that its actual expenses for administration and fundraising are reasonable under all the circumstances presented. It must provide an explanation with its application and also include a formal plan to reduce these expenses below 25 percent. OPM proposes to remove the 25 percent threshold for administrative and fundraising rates because Federal employees participating in the CFC should be knowledgeable donors and may consult a variety of publicly available reports and publications, many on the Internet, to learn about the administrative and fund raising status of charities they are considering for their donations. Federal donors also can and should review the annual CFC brochure itself which will continue to report the administrative and fundraising rate of all participating charities to determine whether an organization's administrative and fundraising rate is acceptable to that donor. OPM encourages Federal donors to be as knowledgeable as possible about the organizations which they support.

3. 5 CFR 950.203(a)(4)(ii)—Public Accountability Standards—The Director may reject any application from an organization with fundraising and administrative expenses in excess of 25 percent of total support and revenue, unless the organization demonstrates to the satisfaction of the Director that its actual expenses for those purposes and its plan to reduce them are reasonable under the circumstances. OPM believes that Federal employees should have an opportunity to donate to a wide range of charitable organizations and should not be limited in their choice to those charities with particular administrative and fundraising rates deemed acceptable to OPM, so long as the rate information is available to them to make an informed decision. In addition, this requirement conforms to the proposed removal of 5 CFR 950.203(a)(4)(i). As in other proposed regulatory changes, OPM encourages Federal donors to be

knowledgeable about those charities to which they choose to donate.

4. 5 CFR 950.203(a)(6)—Public Accountability Standards—Certify that the organization's fundraising practices prohibit the sale or lease of its CFC contributor lists. This standard applied only when a donor authorized the release of his or her contact information to the organization. Although this standard is being removed, the requirement for a donor to authorize his or her contact information will be retained. If a donor does not authorize this release, then his or her contact information will be kept confidential by the Principal Combined Fund Organization (PCFO) as proprietary information as required by 5 CFR 950.601(c). OPM believes that once a donor authorizes the release of his or her contact information, the use of this information, including whether it may be sold or be subject to other commercial activity, is an issue between the donor and the charitable organization and not one that OPM can track or enforce. OPM looks forward to comments on this proposed change to consider steps OPM might take to increase potential donor awareness of the possible implications of releasing donor information to a charity.

5. 5 CFR 950.203(a)(7)—Public Accountability Standards—Certify that its publicity and promotional activities are based upon its actual program and operations, are truthful and non-deceptive, and make no exaggerated or misleading claims. OPM believes this standard is redundant and is adequately safeguarded by enforcement of other public accountability standards.

6. 5 CFR 950.203(a)(9)—Public Accountability Standards—Certify under which governmental entity the charitable organization is chartered, incorporated or organized (congressionally chartered or the state in which it is registered). OPM believes this information is not required to enforce and monitor public accountability, particularly in view of appropriate presentation of IRS employer identification numbers.

7. 5 CFR 950.203(a)(10)—Public Accountability Standards—Certify that the organization has received no more than 80 percent of its total support and revenues from government sources as computed by dividing line 1c by line 12 from the IRS Form 990 submitted pursuant to § 950.203(a)(3). The IRS already requires charitable organizations to meet a public support test in order to obtain and maintain its 501(c)(3) tax-exempt status. Therefore, this standard is duplicative of 5 CFR 950.202(b).

8. 5 CFR 950.203(a)(11)—Public Accountability Standards—Certify that the organization prepares and makes available to the public upon request an annual report that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. The significant information sought in the annual report is already certified to or obtained from application of other eligibility requirements and public accountability standards contained in 5 CFR 950.202(a) and 5 CFR 950.203(a)(3). In addition, OPM will encourage donors to obtain an annual report directly from the charity, if the donor would like to seek further information on the charity.

Corresponding changes will be made to the local list eligibility requirements and national and local federation standards contained in 5 CFR 950.204, 950.301, and 950.303. However, national, international and local federations will still be required to submit evidence of compliance with the audit, financial, governance and annual report requirements. These requirements will be clarified in 5 CFR 950.301(e)(2) and 950.303(e)(2). Federations provide services to 15 or more member organizations. Services include the receipt and distribution of funds through the CFC. Because federations handle approximately 80 percent of all funds distributed through the CFC, the documented evidence of compliance for federations will continue to be required.

In addition to the changes described above, OPM is proposing 35 other administrative regulatory changes to clarify information and processes within the CFC, address areas of concern noted over the years by OPM and stakeholders, and to recognize the use of electronic technology in the administration of the CFC program. These administrative regulatory changes are:

1. OPM proposes changes throughout many sections of 5 CFR part 950 to modify references associated with the use of paper-based information and processes such that these new terms apply within an electronic CFC environment. Examples include the replacement of the term "brochure" with "charity list", "pledge card" with "pledge form" and "campaign materials" with "campaign information."

2. 5 CFR 950.102(a) limits the solicitation of donors to a six week period between September 1 and December 15. OPM proposes to eliminate the restriction on the six week period and allow local campaign

leadership to determine the length of the solicitation that may occur between September 1 and December 15.

3. 5 CFR 950.102(c) states that the Director exercises general supervision over all operations of the CFC, and takes all necessary steps to ensure the achievement of campaign objectives. OPM proposes to clarify and specifically articulate its authority to perform audits and investigations of all CFC activities and stakeholders and resolve any identified issues resulting from these audits and investigations.

4. 5 CFR 950.103(f) describes a six week period for soliciting donors similar to that described in item (2) above. Corresponding changes are proposed.

5. 5 CFR 950.103(g) defines the types of personnel that can be solicited and contribute to the CFC. The regulation states that contractor personnel, credit union employees and other persons employed on Federal premises, as well as retired Federal employees can contribute, but may not be solicited. This has led to much confusion about how to approach, but not solicit, these non-Federal employees working on Federal premises and retirees. The change proposed removes the restriction that these non-Federal employees not be solicited, but maintains that they be present on Federal premises to contribute to the CFC.

6. 5 CFR 950.103(h) states that a Federal employee may participate in a particular CFC only if that employee's official duty station is located within the geographic boundaries of that CFC. OPM proposes to allow for contributions to organizations outside of an employee's official duty station in the cases of emergencies and disasters as defined in 5 CFR 950.102(a) upon approval by OPM's Director. OPM proposes to remove geographic restrictions on giving completely upon implementation of appropriate technology. Because OPM anticipates elimination of these geographic restrictions on giving, local eligibility based on adjacency and statewide presence will no longer be necessary and are eliminated commencing with implementation of electronic technology that removes geographic restrictions on giving as announced by the Director. Also see changes proposed to § 950.204(b)(1).

7. 5 CFR 950.104(b)(6) encourages local Federal agencies to appoint loaned executives to assist in the campaign and grant administrative leave to all loaned executives appointed. OPM proposes to correct this error and clarify that Federal agencies should not place loaned executives on administrative leave since

the CFC activities are to be considered part of the official duties of the Federal employee loaned to assist in the CFC.

8. 5 CFR 950.104(c) states that the LFCC must annually solicit applications for the PCFO via public notice. OPM proposes to remove the requirement for an annual application and allow LFCC's to enter into multi-year agreements, at their discretion. OPM also proposes the removal of the requirement to solicit the PCFO applications via a public notice and provide the LFCC discretion as to how to announce the solicitation as long as it reaches the audience of prospective applicants.

9. 5 CFR 950.106(a) states the amount a PCFO may recover for campaign expenses shall not exceed 10 percent of the estimated budget. OPM proposes to correct the error in this subsection, which should refer to 110 percent of the estimated budget.

10. 5 CFR 950.109 describes certain conflicts of interest for Federal employees who serve as a LFCC member or fundraising coordinator. OPM proposes to add to the description a noted instance addressed via CFC Memorandum 2002-15.¹

11. 5 CFR 950.201(a)(1) and (2) discuss eligibility for national organizations to be included on a national list. OPM proposes adding references for international organizations, which must also meet these criteria and clarifying the Director's ability to consider corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate, prior to determining eligibility.

12. 5 CFR 950.204(b)(1) is modified to eliminate adjacency and statewide presence eligibility requirements commencing with the implementation of electronic technology that removes geographic restrictions on giving as announced by the Director. Also see changes proposed to § 950.103(h). In addition, OPM clarifies this subsection to define an adjacent local campaign.

13. 5 CFR 950.204(b)(2)(iii) is a newly proposed regulation that may recognize financial relationships between national organizations and their bona fide local affiliates depending on how they are structured. The proposed regulation considers two types of structures for the national and local affiliated organization relationships. The first is when there is a relationship between the national organization and local affiliate based on an IRS group tax-exemption determination. The second considers a relationship between a national

organization and local affiliate when there is not an IRS group tax-exemption determination. Under both scenarios, the proposed regulation removes the requirement for the local affiliate to maintain its own audited financial statements, provided its financial activities are included in the national organization's audited financial statements. If a local affiliate is covered by an IRS group tax-exempt determination, the local affiliate may additionally rely on an IRS Form 990 group return filed by the national organization on its behalf and submit a pro forma IRS Form 990, page 1, prepared for the local affiliate with its own information. The pro forma 990 is used by OPM to calculate an administrative and fundraising rate.

14. OPM proposes adding a subsection 5 CFR 950.204(g) that clarifies the LFCC's ability to consider corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate, prior to determining eligibility of local organizations.

15. 5 CFR 950.301(a) states that the Director may recognize national and international federations that conform to eligibility and accountability standards. OPM proposes clarifying the Director's ability to consider corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate, prior to determining eligibility of national and international federations.

16. 5 CFR 950.301(c) states that an organization may apply for inclusion as a national federation to participate in the CFC if the applicant has 15 or more member charitable organizations that meet the eligibility criteria of §§ 950.202 and 950.203. A national federation must provide copies of applications for all of its members in the initial year that it applies as a federation, but only at OPM's request after the initial year. OPM proposes to add clarifying language that the federation, itself, does not count among the 15 or more members required to receive federation status. OPM proposes to instruct federations to provide OPM with applications for any former or new member organizations that were not CFC participating members of that federation in the previous year's campaign.

17. 5 CFR 950.301(d) discusses the role of national and international federations. OPM will make a terminology change to conform to a terminology change proposed in 5 CFR 950.603(a).

18. 5 CFR 950.301(e)(2) requires national and international federations to

certify that their financial activities conform to GAAP and that they are annually audited by an independent certified public accountant in accordance with GAAS. It further requires a copy of the audit and that the audit must verify that the federation is honoring designations made to each member organization. Finally, the current regulation waives the audit requirement for newly created federations operating for less than a year. OPM proposes to clarify and simplify the language such that it applies all eligibility requirements and public accountability standards, contained in 5 CFR 950.202 and 950.203 and required of independent organizations and federation members, to the national and international federations. OPM does not view this as a substantive change.

19. 5 CFR 950.301(e)(2)(iii) requires national and international federations to disclose important administrative expense information to the CFC and donors in its annual report.

20. 5 CFR 950.303(a) states that the LFCC must approve local federations that conform to eligibility and public accountability standards. OPM proposes to clarify the LFCC's ability to consider corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate, prior to determining eligibility of local federations.

21. 5 CFR 950.303(c) is the same requirement for local federations as that described in item 16 above for 5 CFR 950.301(c). The changes described for the national and international federations also are proposed for local federations.

22. 5 CFR 950.303(d) discusses the role of local federations. OPM will make a terminology change to conform to a terminology change proposed in 5 CFR 950.603(a).

23. 5 CFR 950.303(e)(2) is the same requirement for local federations as that described in item 18 above for 5 CFR 950.301(e)(2). The changes described for the national and international federations also are proposed for local federations.

24. 5 CFR 950.303(e)(2)(iii) is the same requirement for local federations as that described in item 19 above for 5 CFR 950.301(e)(2)(iii). The changes described above for national and international federations also are proposed for local federations.

25. 5 CFR 950.401(g)(3) states that each national and international federation and charitable organization will be assigned a code number by OPM and each local federation and local charitable organization will be assigned

¹ OPM issues policy and administrative guidance to campaigns through numbered memoranda.

code numbers by the LFCC. OPM proposes to modify this regulation to facilitate alternative mechanisms by which OPM may assign charity codes.

26. 5 CFR 950.601 provides a process for authorizing the release of donor names and addresses and for the transmittal of this information to charities to which the donors designated. OPM proposes changing the terms "names and address" to "information." This change enables OPM to allow other donor information to be released, such as contribution amount and home email address. Donors have indicated that they would like the option to release additional information such as the amount contributed to charities, along with their names and addresses. OPM looks forward to comments on this proposed change to assure itself that we are changing the regulation in a manner consistent with Federal donor views.

27. 5 CFR 950.604 specifies that federations, PCFO's and other participants shall retain documents pertinent to the campaign for three campaign years. OPM proposes to clarify that three campaign years is actually three completed campaign periods and is not based on calendar years.

28. 5 CFR 950.801(a)(1) specifies that during a 30 calendar day period between January and March, as determined by the Director, OPM will accept applications from organizations seeking to be listed on the national and international list. OPM proposes to modify this section to remove the defined period of a 30-calendar day period between January and March and replace it with a period determined by the Director. OPM will create, maintain, and issue a calendar of events each year to define the applicable period. Initially, OPM will provide for a specific 60-calendar day period between December and February as the period during which OPM will accept applications.

29. 5 CFR 950.801(a)(2) states that within 35 calendar days of the closing of the receipt of applications, the Director will notify each national and international applicant of the results of the application review. OPM proposes to remove the defined 35 day requirement and will publish an anticipated date for notification on the calendar of events that OPM will maintain.

30. 5 CFR 950.801(a)(3) states that the LFCC must select the PCFO no later than March 15. OPM proposes to remove the reference to March 15 and state that the LFCC must select the PCFO no later than a date to be determined by OPM. OPM will provide

the date in its calendar of events and initially set the date as February 15 to allow campaigns to begin early planning for the upcoming campaign.

31. 5 CFR 950.801(a)(4) requires the Director to issue a national and international list of eligible organizations by June 30. OPM proposes to remove the specific date and state by a date determined by the Director.

32. 5 CFR 950.801(b) requires the Director to annually issue a timetable for accepting and processing national and international applications. OPM proposes to modify this section to specify that the Director will create, maintain and issue a calendar of events with specific dates that include the accepting and processing of national and international applications as well as other significant CFC dates.

33. 5 CFR 950.901(f)(1) requires the remittance check sent by payroll offices to the PCFO each pay period to be accompanied by a statement identifying the agency, the dates of the pay period and the total number of employee deductions. OPM proposes to add the pay period number to the information required to be on this statement. PCFOs often have trouble determining when they have received the complete number (12 or 26 pay periods) of employee deductions from payroll offices. Adding the pay period number will assist PCFOs with this determination.

34. 5 CFR 950.901(i)(1) and (i)(2) each contain dates for the PCFO to notify charitable organizations of the amount of pledged contributions (no later than February 15) and to begin its periodic distributions to charitable organizations. OPM proposes to remove the specific dates referenced in the regulation and state that these actions will occur no later than a date determined by OPM. OPM will publish the dates in its calendar of events. Initially, OPM will extend the notification date to March 15. OPM proposes to remove the requirement for monthly payments and allow all campaigns to make quarterly payments beginning no later than April 1.

35. 5 CFR 950.105(e), 950.302(c), 950.302(d), 950.304(c), 950.304(d), 950.403, and 950.603 all provide for certain penalties and sanctions for federations, unaffiliated organizations, and PCFOs. OPM proposes to clarify and combine these penalties and sanctions into 5 CFR 950.603 and remove the other references from the regulations.

In an effort to develop eligibility and public accountability standards and administrative processes that serve both the public interests and meets the needs of the stakeholder community,

including CFC charitable organization applicants and Federal donors, comments are now being solicited for consideration prior to the 2007 CFC and subsequent Campaigns.

Comments are invited on what issues, if any, are presented by the approach proposed by OPM for the 2007 and subsequent campaigns in light of the current CFC eligibility and public accountability standards in 5 CFR 950.201, 950.202, 950.203, 950.204, 950.301 and 950.303 and other current administrative terms and processes discussed throughout 5 CFR part 950. Comments on proposed regulatory changes that affect the potential use of donor information, such as that in section 950.203(a)(6), and the expansion of donor information to include home email address, such as in 950.601, especially are encouraged. OPM also seeks comments from charitable organizations participating in the Combined Federal Campaign as well as from Federal donors. It is noted that some CFC application and reporting forms may need to be revised as a result of these proposed regulatory changes. Any such changes will be publicly announced prior to an applicant charity's need to use such forms.

Waiver of 60-Day Comment Period for Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists to waive the 60-day comment period for general notice of proposed rulemaking. Limiting the comment period for the proposed regulations to 45 days will enable OPM to issue final regulations in 2006, sufficiently in advance of the 2007 CFC to enable charitable organizations and the Government to benefit from the streamlined eligibility and public accountability requirements for purposes of the 2007 CFC. A longer comment period may result in significant additional costs to the Government as well as for national and international organizations and federations, caused by potential confusion over what regulations are in effect during the earliest stage at which charities begin to put together their CFC applications. While the CFC begins in the fall of the campaign year, charities, especially those that apply through a federation, begin the application process late in the year preceding the campaign. Any confusion over which CFC regulations are in effect at the time organizations are preparing their applications for the CFC could result in frustration with the application process as well as denials of applications, appeals, potential litigation, and bad will toward the CFC itself.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. Charitable organizations applying to the CFC have an existing, independent obligation to comply with the eligibility and public accountability standards contained in current CFC regulations. Streamlining these standards will be less burdensome.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR part 950

Administrative practice and procedures, Charitable contributions, Government employees, Military personnel, Nonprofit organizations and Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

Linda M. Springer,
Director.

Accordingly, OPM is proposing to amend 5 CFR part 950 as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

1. The authority citation for part 950 continues to read as follows:

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982), 3 CFR, 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), Pub. L. 100–202, and Pub. L. 102–393 (5 U.S.C. 1101 Note).

2. Amend part 950 as follows:

a. Remove the words “brochure” and “brochures” and add in their place “Charity List” and “Charity Lists”, respectively, wherever they appear;

b. Remove the words “card” and “cards” and add in their place “form” and “forms”, respectively, wherever they appear; and

c. Remove the words “materials”, “pamphlet”, and “pamphlets” and add in their place “information” wherever they appear.

3. In § 950.101 remove the definition of *Campaign Year* and add the definitions of *Campaign Period*, *Charity List*, and *Independent Organization* in alphabetical order and in the definition of *International General Designation Option* remove the word “campaign” to read as follows:

§ 950.101 Definitions.

* * * * *

Campaign Period means generally a 24 month period beginning with the selection of the Principal Combined Fund Organizations (PCFO) or renewal of the PCFO's agreement and ending with final disbursements to charitable organizations.

* * * * *

Charity List means the official list of charities approved by OPM for inclusion in the CFC within a given geographic solicitation area.

* * * * *

Independent Organization means a charitable organization that is not a member of a Federation for the purposes of the Combined Federal Campaign.

* * * * *

4. In § 950.102 amend paragraph (a) by removing the text “6 week” from the second sentence, and amend paragraph (c) by adding two sentences at the end of the paragraph to read as follows:

§ 950.102 Scope of the Combined Federal Campaign.

* * * * *

(c) * * * OPM has the authority to audit, investigate, and report on the administration of any campaign, the organization that administers the campaign, and any national, international and local federation, federation member or independent organization that participates in the campaign for compliance with these regulations. The Director resolves any issues reported and determines sanctions or penalties, as warranted under § 950.603.

5. In § 950.103, revise paragraphs (f), (g) and (h) to read as follows:

§ 950.103 Establishing a local campaign.

* * * * *

(f) Each year the LFCC must establish the time period to solicit employees. The solicitation may not begin before September 1 and in no event will it extend beyond December 15 of each year.

(g) Current Federal civilian and active duty military employees may be solicited for contributions using payroll deduction, checks, money orders, or cash, or by electronic means, including credit cards, as approved by the Director. Contractor personnel, credit union employees and other persons present on Federal premises, as well as retired Federal employees, may make single contributions to the CFC through checks, money orders, or cash, or by electronic means, including credit cards, as approved by the Director.

(h) A Federal employee whose official duty station is outside the geographic boundaries of an established CFC may not be solicited in that CFC. A Federal

employee may participate in a particular CFC only if that employee's official duty station is located within the geographic boundaries of that CFC. This restriction is discontinued upon implementation of electronic technology that removes geographic restrictions on giving as announced by the Director. At the discretion of the Director, and upon showing of extraordinary circumstances, Federal employees may contribute in support of victims in cases of emergencies and disasters defined in § 950.102(a) outside the geographic boundaries of their participating CFC. Such contributions can be check, money order, or cash or by electronic means, including credit cards, as approved by the Director, but shall not be made through payroll deduction.

6. Amend § 950.104 as follows:

a. In paragraphs (b)(4) and (b)(5), remove the word “local”; and

b. Revise paragraphs (b)(6) and (c) to read as follows:

The amendments to § 950.104 read as follows:

§ 950.104 Local Federal Coordinating Committee responsibilities.

* * * * *

(b) * * *

(6) Encouraging local Federal agencies to appoint loaned executives to assist in the campaign. CFC loaned executives' time should be charged to regular working hours. It is not appropriate to place a CFC loaned executive on administrative leave, leave without pay, or annual leave. Federal loaned executives are prohibited from working on non-CFC fundraising activities during duty hours.

* * * * *

(c) The LFCC must select a PCFO to act as its fiscal agent and campaign coordinator on the basis of presentations made to the local committee as described in § 950.105(c). The LFCC may, at its discretion select a PCFO for up to three campaign periods, subject to renewal each year following a review of performance as defined in § 950.105. The LFCC must consider the capacity of the organization to perform an efficient and effective campaign and its history of public accountability, use of funds, truthfulness and accuracy in solicitations, and sound governance and fiscal management practices as the primary factors in selecting a PCFO. The LFCC must solicit applications on a competitive basis for the PCFO no later than a date to be determined by OPM and, if it exercises discretion to enter into a multi-year arrangement, upon completion of the multi-year term. The LFCC shall solicit applications via outreach activities including: Public

notice in newspapers, postings on Web sites, advertising in trade journals, dissemination among participating CFC organizations and federations, and/or outreach through local or state nonprofit associations and training centers, among others. The PCFO application period must be open a minimum of 21 calendar days. Costs incurred for soliciting applications must be added to the PCFO budget as an administrative cost.

§ 950.105 [Amended]

7. Amend § 950.105 as follows:

a. In paragraph (b), remove the word “printed” in the second sentence and add in its place the word “developed”;

b. In paragraph (d)(3), remove the word “address” and add in its place “contact information”;

c. In paragraph (d)(6), add a comma and the text “contact information and contribution amounts” after the word “names”;

d. In paragraph (d)(10), remove the word “reprinting” and add in its place “reproduction and/or reissuing” and remove the number “10” and add in its place “110”; and

e. Remove paragraph (e).

§ 950.106 [Amended]

8. In § 950.106, amend paragraph (a) by removing the number “10” and adding in its place “110.”

§ 950.109 [Amended]

9. In § 950.109, amend the first sentence by adding the text “serve in any official capacity in any organization that serves as the PCFO of the local CFC, or” before the word “participate”.

10. Amend § 950.201 as follows:

a. Revise the section heading;

b. In paragraph (a)(1), add the text “and international” after the word “national”; and

c. Revise paragraphs (a)(2) through (b) to read as follows:

§ 950.201 National and International list eligibility.

(a) * * *

(2) Determine which organizations among those that apply qualify to be part of the national and international lists and then provide these lists of qualified organizations to all local campaigns. In order to determine whether an organization may participate in the campaign, the Director may request evidence of corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate. The Director retains the ultimate authority to decide whether the organization has demonstrated, to the Director’s satisfaction, that the organization has taken appropriate corrective action.

Failure to demonstrate satisfactory corrective action or to respond to the Director’s request for information within 10 calendar days of the date of the request may result in a determination that the organization will not be included in the national and international list.

(b) These lists of national and international charities shall be included in all local Charity Lists in accordance with these regulations. These lists will include each organization’s CFC code. These CFC codes must be faithfully reproduced in the local Charity Lists.

* * * * *

11. Revise § 950.202 to read as follows:

§ 950.202 National and International list eligibility requirements.

(a) Certify that it provides or conducts real services, benefits, assistance, or program activities, in 15 or more different states or a foreign country over the 3 year period immediately preceding the start of the year involved. This requirement cannot be met on the sole basis of services provided through an “800” telephone number or by disseminating information and publications via the U.S. Postal Service, the Internet, or a combination thereof. A schedule listing a detailed description of the services in each state (minimum 15) or foreign countries (minimum 1), including the year of service, must be included with the application. The schedule must make a clear showing of national or international presence. Broad descriptions of services and identical repetitive narratives will be disregarded at the discretion of OPM if they do not allow OPM to adequately determine that real services were provided or to accurately determine the individuals or entities who benefited. Providing listings of affiliated groups does not sufficiently demonstrate provision of real services by the applicant. Location of residence of organization members or location of residence of visitors to a facility does not substantiate provision of services in the location of residence. However, organizations that issue student scholarships or fellowships must indicate the state in which the recipient resides, not the state of the school or place of fellowship. Mere dissemination of information does not demonstrate provision of real services. While it is not expected that an organization maintain an office in each state or foreign country, a clear showing must be made of the actual services, benefits, assistance or activities provided in each state or foreign country. De minimus services, benefits, assistance, or other

program activities in any State or foreign country will not be accepted as a basis for qualification as a national or international organization.

(b) Certify that it is an organization recognized by the Internal Revenue Service as tax exempt under 26 U.S.C. 501(c)(3) to which contributions are deductible under 26 U.S.C. 170(c)(2) and that the organization is further classified as a public charity under 26 U.S.C. 509(a). A copy of the letter(s) from the Internal Revenue Service granting tax exempt and public charity status must be included in the organization’s application.

12. Amend § 950.203 as follows:

a. Remove paragraphs (a)(6), (a)(7), (a)(9) through (a)(11), and (a)(13) and redesignate paragraph (a)(8) as (a)(6) and paragraph (a)(12) as (a)(7), respectively;

b. In paragraph (a), add the text “or international” after the word “national” in the first sentence;

c. In paragraph (a)(1), remove the second sentence;

d. Revise paragraphs (a)(2) through (a)(4) ;

e. In the newly redesignated paragraph (a)(7), add the text “or international” after the word “national”.

The amendments to § 950.203 read as follows:

§ 950.203 Public accountability standards.

(a) * * *

(2) Certify that the organization:

(i)(A) Indicates total revenue of \$250,000 or more on its most recent IRS Form 990 or pro forma IRS Form 990 submitted to the CFC, if it is not required by the IRS to file an IRS Form 990, covering a period not more than 18 months prior to the January of the campaign year to which the organization is applying;

(B) Accounts for its funds on an accrual basis (cash, modified cash, modified accrual and any other methods of accounting are not acceptable) in accordance with generally accepted accounting principles; and

(C) Has an audit of its fiscal operations completed annually by an independent certified public accountant in accordance with generally accepted auditing standards; or

(ii)(A) Reports total revenue of less than \$250,000 on its most recent IRS Form 990 covering a period not more than 18 months prior to the January of the campaign year to which the organization is applying; and

(B) Has controls in place to insure funds are properly accounted for and that it can provide accurate timely financial information to interested parties.

(3) Certify that it prepares and submits to the IRS a complete copy of

the organization's IRS Form 990 or that it is not required to prepare and submit an IRS Form 990 to the IRS. Provide a completed copy of the organization's most recent IRS Form 990 submitted to the IRS, including signature, supplemental statements and Schedule A, with the application, or if not required to file an IRS Form 990, provide a pro forma IRS Form 990 page 1 only. IRS Forms 990EZ, 990PF, and comparable forms are not acceptable substitutes.

(4) Provide a computation of the organization's percentage of total support and revenue spent on administrative and fundraising. This percentage shall be computed from information on the IRS Form 990 submitted pursuant to § 950.203(a)(3).

* * * * *

13. Amend § 950.204 as follows:

a. In paragraphs (a) and (b), remove the word "local";

b. Revise paragraph (b)(1);

c. Remove paragraph (b)(2)(ii) and redesignate paragraph (b)(2)(iii) as (b)(2)(ii);

d. Add new paragraphs (b)(2)(iii) and (b)(2)(iv);

e. In paragraph (f), remove the word "print" from the first sentence and add in its place "produce" and remove the word "campaign" from the first sentence; and

f. Add new paragraph (g).

The amendments to § 950.204 read as follows:

§ 950.204 Local list eligibility.

* * * * *

(b) * * *

(1) An organization must demonstrate to the satisfaction of the LFCC, that it has a substantial local presence in the geographical area covered by the local campaign, a substantial local presence in the geographical area covered by an adjacent local campaign, or substantial statewide presence. Eligibility to participate in an adjoining campaign on the basis of adjacency or statewide presence is discontinued upon implementation of electronic technology that removes geographic restrictions on giving as announced by the Director.

(i) Substantial local presence is defined as a staffed facility, office or portion of a residence dedicated exclusively to that organization, available to members of the public seeking its services or benefits. The facility must be open at least 15 hours a week and have a telephone dedicated exclusively to the organization. The office may be staffed by volunteers. Substantial local presence cannot be met on the basis of services provided solely through an "800" telephone

number or the U.S. Postal Service or a combination thereof.

(ii) An adjacent local campaign is defined as a local campaign whose geographic border touches the geographic border of another local campaign. Participation in a local campaign via an adjacency determination does not grant the organization a substantial local presence in the adjacent local campaign and participating via adjacency cannot be used to establish adjacency to local campaigns bordering the adjacent campaign area. In addition, an organization must first be determined eligible to participate in the local campaign area where it has a substantial local presence before it may be determined eligible to participate in an adjacent local campaign. An organization cannot otherwise qualify as an eligible organization in an adjacent local campaign.

(iii) Substantial statewide presence is defined as providing or conducting real services, benefits, assistance or program activities over the 3 year period immediately preceding the start of the application year covering 30 percent of a state's geographic boundaries or providing or conducting real services, benefits, assistance or program activities affecting 30 percent of a state's population. Substantial statewide presence cannot be met on the basis of services provided solely through an "800" telephone number or the U.S. Postal Service or a combination thereof. This subsection is eliminated upon implementation of electronic technology that removes geographic restrictions on giving as announced by the Director.

* * * * *

(2) * * *

(iii) A local charitable organization covered by a 26 U.S.C. 501(c)(3) group exemption that can demonstrate it provides services as a separately incorporated local bona fide chapter or affiliate in good standing of a national tax-exempt organization under 26 U.S.C. 501(c)(3) does not need to maintain its own independent IRS determination letter, audited financial statements and IRS Form 990 for CFC purposes. These local charitable organizations must provide a certification signed by either the Chief Executive Officer (CEO) or CEO equivalent of the national organization stating that the local charitable organization is covered under the national organization's tax-exempt status and financial accountability and reporting controls, and that the local organization's financial activities are included in the national organization's audited financial statements. The local

charitable organization must provide a copy of the national organization's IRS group tax-exemption determination, including the most recent IRS approval of subordinates covered by the group exemption, a copy of the IRS letter assigning the local charitable organization an Employer Identification Number (EIN) and a copy of its IRS Form 990 filed with the IRS. If the organization is covered by a group return on IRS Form 990 filed by the national organization, the local organization must provide a copy of the complete group return on IRS Form 990 along with a pro forma IRS Form 990 (page 1) prepared for the local charitable organization for CFC purposes only. In either case, the IRS Form 990 must cover a period ending not more than 18 months prior to the January of the campaign year to which the organization is applying. The local charitable organization must certify and demonstrate that it independently meets all other applicable local eligibility requirements and public accountability standards included in §§ 950.204(b)(1) and 950.204(b)(2).

(iv) A local charitable organization that can demonstrate it provides services as a separately incorporated local bona fide chapter or affiliate in good standing of a national tax-exempt organization under 26 U.S.C. 501(c)(3), but is not covered by a 26 U.S.C. 501(c)(3) group exemption does not need to maintain its own independent audited financial statements for CFC purposes. These local charitable organizations must provide a certification signed by either the Chief Executive Officer (CEO) or CEO equivalent of the national organization stating that the local charitable organization operates as a bona-fide chapter or affiliate in good standing of the national organization and is subject to the financial accountability and reporting controls of the national organization, and that the local organization's financial activities are included in the national organization's audited financial statements. Upon certification, the local organization must provide a copy of an IRS tax-exemption determination letter that includes appropriate taxpayer identification information obtained from the IRS and a completed copy of its Form 990 filed with the IRS. The local charitable organization must certify and demonstrate that it independently meets all other applicable local eligibility requirements and public accountability standards included in §§ 950.204(b)(1) and 950.204(b)(2).

* * * * *

(g) In order to determine whether an organization may participate in the campaign, the LFCC may request evidence of corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate. The LFCC will decide whether the organization has demonstrated, to the LFCC's satisfaction, that the organization has taken appropriate corrective action. Failure to demonstrate satisfactory corrective action or to respond to the LFCC's request for information within 10 calendar days of the date of the request may result in a determination that the organization will not be included in the local list.

§ 950.205 [Amended]

14. In § 950.205, amend paragraph (c)(4) by removing the word "and" and adding to the end of the sentence the text "and supporting information to justify the reversal of the original decision."

15. Amend § 950.301 as follows:

- a. Revise the section heading and paragraph (a);
- b. Revise paragraph (c);
- c. In paragraph (d), remove the word "decertification" in the last sentence and add in its place the text "withdrawal of federation status"; and
- d. Revise paragraph (e)(2).

The amendments to § 950.301 read as follows:

§ 950.301 National and International federations eligibility.

(a) The Director may recognize national and international federations that conform to the requirements and are eligible to receive designations. The Director may from time to time place a moratorium on the recognition of national and international federations. In order to determine whether the Director will recognize a national or international federation, the Director may request evidence of corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate. The Director retains the ultimate authority to decide whether the federation has demonstrated, to the Director's satisfaction, that the federation has taken appropriate corrective action. Failure to demonstrate satisfactory corrective action or to respond to the Director's request for information within 10 calendar days of the date of the request may result in a determination that the federation will not be included in the national and international list.

* * * * *

(c) An organization may apply to the Director for inclusion as a national or

international federation to participate in the CFC if the applicant has, as members of the proposed federation, 15 or more charitable organizations, in addition to the federation itself, that meet the eligibility criteria of §§ 950.202 and 950.203. The initial year an organization applies for federation status, it must submit the applications of all its proposed member organizations in addition to the federation application. Federations must re-establish eligibility each year, however only the applications of its new and former members that were not within their federation, as a CFC participant, in the previous year's campaign need accompany the annual federation application once an organization has obtained federation status, unless additional member applications are requested by the Director.

* * * * *

(e) * * *

(2) That it meets the eligibility requirements and public accountability standards contained in §§ 950.202 and 950.203. The federation can demonstrate that it has met the eligibility requirement in § 950.202(a) either through its own services, benefits, assistance or program activities or through its 15 members' activities.

(i) The federation must complete the certification set forth at § 950.203(a)(2) without regard to the amount of revenue reported on its IRS Form 990 and must provide a copy of its audited financial statements. The audited financial statements provided must verify that the federation is honoring designations made to each member organization by distributing a proportionate share of receipts based on donor designations to each member. The audit requirement is waived for newly created federations operating for less than a year as determined from the date of its IRS tax-exemption letter to the closing date of the CFC application period.

(ii) The federation must provide a listing of its board of directors, beginning and ending dates of each member's term of office, and the board's meeting dates and locations for the previous year.

(iii) The federation must certify that it prepares and makes available to the public, upon request, an annual report that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. The federation must provide a copy of its most recently completed annual report covering the fiscal year ending not more than 18 months prior to January of the

campaign year to which the federation is applying or the preceding calendar year. The annual report must also include an accurate description of the federation's membership dues and/or service charges received by the federation from the charitable organizations participating as members. The information must clearly present the amounts raised, the sources of contributions, the cost of fundraising, and how costs are recovered from donations.

* * * * *

16. In § 950.302, revise the section heading, remove paragraphs (c) through (e), and add a new paragraph (c) to read as follows:

§ 950.302 Responsibilities of national and international federations.

* * * * *

(c) Each federation, as fiscal agent for its member organizations, must ensure that Federal employee designations are honored in that each member organization receives its proportionate share of receipts based on the results of each individual campaign. The proportionate share of receipts is determined by donor designations to the individual member as compared to total campaign designations.

17. Amend § 950.303 as follows:

- a. Revise paragraph (a);
- b. Revise paragraph (c);
- c. In paragraph (d), remove the word "decertification" in the last sentence and add in its place the text "withdrawal of federation status"; and
- d. Revise paragraph (e)(2).

The amendments to § 950.303 read as follows:

§ 950.303 Local federations' eligibility.

(a) LFCC's must approve local federations that meet the applicable requirements, except that in order to determine whether the LFCC must recognize a local federation, the LFCC may request evidence of corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate. A local federation that has been notified that it will not be included on the local list because of failure to correct a prior violation may appeal the LFCC's decision to the Director in accordance with § 950.205(b). The Director retains the ultimate authority to decide whether the local federation has demonstrated, to the Director's satisfaction, that the local federation has taken appropriate corrective action. Failure to demonstrate satisfactory corrective action or to respond to a request by the LFCC or Director for information within 10 calendar days of the date of the request

may result in a determination that the local federation will not be included in the local list.

* * * * *

(c) An organization may apply to the LFCC for inclusion as a local federation to participate in the CFC if the applicant has as members of the proposed federation 15 or more charitable organizations, in addition to the federation itself, that meet the eligibility criteria of §§ 950.202, 950.203 and 950.204. The initial year an organization applies for federation status, it must submit to the LFCC applications of all its proposed member organizations in addition to the federation application. Federations must re-establish eligibility each year, however only the applications of its new and former members that were not within their federation, as a CFC participant, in the previous year's campaign need accompany the annual federation application once an organization has obtained federation status, unless additional member applications are requested by the LFCC.

* * * * *

(e) * * *

(2) That it meets the eligibility requirements contained in § 950.204 (including eligibility requirements and public accountability standards of §§ 950.202 and 950.203 that are incorporated by reference). The federation can demonstrate that it has met the eligibility requirement in § 950.204(b)(1) either through its own services, benefits, assistance or program activities or through its 15 members' activities.

(i) The federation must complete the certification set forth at § 950.203(a)(2) without regard to the amount of revenue reported on its IRS Form 990 and must provide a copy of its audited financial statements. The audited financial statements provided must verify that the federation is honoring designations made to each member organization by distributing a proportionate share of receipts based on donor designations to each member. The audit requirement is waived for newly created federations operating for less than a year as determined from the date of its IRS tax-exemption letter to the closing date of the CFC application period.

(ii) The federation must provide a listing of its board of directors, beginning and ending dates of each member's term of office, and the board's meeting dates and locations for the previous year.

(iii) The federation must certify that it prepares and makes available to the public, upon request, an annual report

that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. The federation must provide a copy of its most recently completed annual report covering the fiscal year ending not more than 18 months prior to January of the campaign year to which the federation is applying or the preceding calendar year. The annual report must also include an accurate description of the federation's membership dues and/or service charges received by the federation from the charitable organizations participating as members. The information must clearly present the amounts raised, the sources of contributions, the cost of fundraising, and how costs are recovered from donations.

* * * * *

18. In § 950.304, remove paragraphs (c) through (e), and add a new paragraph (c) to read as follows:

§ 950.304 Responsibilities of local federations.

* * * * *

(c) Each federation, as fiscal agent for its member organizations, must ensure that Federal employee designations are honored in that each member organization receives its proportionate share of receipts based on the results of each individual campaign. The proportionate share of receipts is determined by donor designations to the individual member as compared to total campaign designations.

19. Amend § 950.401 as follows:

a. In paragraph (a), remove the word "printed" in the second sentence and add in its place "developed";

b. In the first sentence of paragraph (e), add the text "source of" after the word "official", remove the word "package", and add the text "either in hard copy or electronic format" after the word "available";

c. In paragraph (f), remove the word "package" in the first and second sentences and add in its place "design";

d. Revise the introductory paragraph of (g)(1);

e. Revise paragraphs (g)(2), (g)(3), and (h); and

f. In paragraph (k), remove the word "year" and add in its place "period", and add to the end of the sentence the text "or if the campaign can demonstrate to the satisfaction of the Director that it can make the same information available electronically without disrupting donor opportunities to contribute."

The amendments to § 950.401 read as follows:

§ 950.401 Campaign and publicity materials.

(g) * * *

(1) OPM will include in the annual distribution of the National and International Lists explicit instructions for the production of the Charity Lists and language to be reproduced verbatim in the introductory section. The general information provided will include:

* * * * *

(2) Following the introductory section, the Charity List will consist of three parts—the national, the international, and the local. The order of these three parts will be annually rotated in accordance with OPM instructions. In 1996 the Local part will be first followed by the National and finally the International. The national and international lists will consist of faithful reproductions of the lists of national and international organizations, including federations, provided by OPM. The third part, the local list, is determined by the LFCC. The order of listing of the federated and independent organizations within the three separate parts will be determined by random drawing. The order of organizations within each federation will be determined by the federation. The order within the national, international and local independent groups will be alphabetical. Absent specific instructions from OPM to the contrary, each participating organization and federated group listing must include a description, not to exceed 25 words, of their services and programs, plus a telephone number for the Federal donor to request further information about the group's services, benefits, and administrative expenses. Each listing will include the organization's administration and fundraising percentage as calculated pursuant to § 950.203(a)(4). Neither the percentage of administrative and fundraising expenses, nor the telephone number count toward the 25-word statement.

(3) Each federation and charitable organization will be assigned a code in a manner determined by the Director. At the beginning of each federated group's listing will be the federation's name, code number, 25-word statement, percentage of administrative and fundraising expenses, and telephone number. The sections of the Charity Lists where the independent organizations are listed will begin with the titles National Independent Organizations, International Independent Organizations and Local Independent Organizations respectively.

(h) Omission of an eligible charitable organization from the Charity List may

require that all Charity Lists be reproduced and reissued. Such omissions must be reported to OPM immediately upon discovery. The Director or LFCC may direct that the cost of such reproduction and reissue be borne by the PCFO or charged to CFC administrative expenses.

* * * * *

20. Amend § 950.402 as follows:

a. In paragraph (a), remove the word “year” and add in its place “period”;

b. In paragraph (c), add to the end of the second sentence a comma followed by the text “except in cases of emergencies or disasters as approved by the Director. This restriction does not apply upon implementation of electronic technology that removes the geographic restrictions on giving as announced by the Director.” and

c. In paragraph (d), revise the last sentence.

The amendments to § 950.402 read as follows:

§ 950.402 Pledge card.

* * * * *

(d) * * * For example, if an employee indicates a total gift of \$100 on the pledge form, but designates \$50 to one organization and \$25 to each of three other organizations, the PCFO must adjust the pledges proportionately by entering a pledge of \$40 to the first organization and \$20 to each of the three other organizations.

§ 950.403 [Removed]

21. Remove § 950.403.

22. Revise § 950.601 to read as follows:

§ 950.601 Release of contributor information.

(a) The pledge form, designed pursuant to § 950.402, must allow a contributor to indicate if the contributor does wish his or her name, contribution amount, and home contact information forwarded to the charitable organization or organizations designated. A PCFO's failure to honor a contributor's wish may result in the PCFO being sanctioned or penalized as provided for in § 950.603(a).

(b) The pledge form shall permit a contributor to specify which information, if any, he or she wishes released to organizations receiving his or her donations.

(c) It is the responsibility of the PCFO to forward the contributor information for those who have indicated that they wish this information released to the recipient organization directly, if the organization is independent, and to the organization's federation if the organization is a member of a

federation. The PCFO may not sell or make any other use of this information.

23. In § 950.602, revise paragraph (b) to read as follows:

§ 950.602 Solicitation methods.

* * * * *

(b) Special CFC fundraising events, such as raffles, lotteries, auctions, bake sales, carnivals, athletic events, or other activities not specifically provided for in these regulations are permitted during the campaign period if approved by the appropriate agency head or government official, consistent with agency ethics regulations. CFC special fundraising events should be undertaken in the spirit of generating interest in the CFC and open without regard to whether an individual makes a contribution. Chances to win should be dissociated from amount of contributions, if any. Raffle prizes should be modest in nature and value. Examples of successful raffles have included opportunities for lunch with Agency Officials, parking spaces for a week, and holiday turkeys. Any special CFC fundraising event and prize or gift should be approved in advance by the Agency's ethics official.

* * * * *

24. In § 950.603, revise the section heading and paragraph (a) to read as follows:

§ 950.603 Sanctions and penalties.

(a)(1) The Director may impose sanctions or penalties on a federation, charitable organization or PCFO for violating these regulations, other applicable provisions of law, or any directive or instruction from the Director. The Director will determine the appropriate sanction and/or penalty, up to and including expulsion from the CFC. In determining the appropriate sanction and/or penalty, the Director will consider previous violations, harm to Federal employee confidence in the CFC, and any other relevant factors. The Director may bar a federation or charitable organization from serving as PCFO, for a period not to exceed one campaign period, if it is determined that that the federation or charitable organization has violated any provisions of these regulations. A federation, charitable organization or PCFO will be notified in writing of the Director's intent to sanction and/or penalize and will have 10 calendar days from the date of receipt of the notice to submit a written response. The Director's final decision will be communicated in writing to the federation, charitable organization, or PCFO, with a copy to the appropriate LFCC.

(2) The Director may withdraw federation status with respect to a national, international or local federation that makes a false certification or fails to comply with any directive of the Director, or to respond in a timely fashion to a request by the Director or LFCC for information or cooperation, including with respect to an investigation or in the settlement of disbursements. The LFCC may recommend the withdrawal of federation status with respect to a local federation. As stated in §§ 950.301(d) and 950.303(d), failure to meet minimum federation eligibility requirements shall not be deemed to be a withdrawal of federation status subject to a hearing on the record. Eligibility decisions shall follow the procedures in §§ 950.301(f) and 950.303(f). A federation will be notified in writing of the Director's intent to withdraw federation status for a period of up to one campaign period and will have 10 calendar days from the date of receipt of the notice to submit a written response. On receipt of the response, or in the absence of a timely response, the Director or representative shall set a date, time, and place for a hearing. The federation shall be notified at least 10 calendar days in advance of the hearing. A hearing shall be conducted by a hearing officer designated by the Director unless it is waived in writing by the federation. After the hearing is held, or after the Director's receipt of the federation's written waiver of the hearing, the Director shall make a final decision on the record, taking into consideration the recommendation submitted by the hearing officer. The Director's final decision will be communicated in writing to the federation, with a copy to the appropriate LFCC.

(3) A federation, charitable organization or PCFO sanctioned or penalized under any provision of these regulations must demonstrate to the satisfaction of the Director that it has taken corrective action to resolve the reason for sanction and/or penalty and has implemented reasonable and appropriate controls to ensure that the situation will not occur again prior to being allowed to participate in subsequent CFCs and/or serving as a PCFO for a campaign.

* * * * *

25. Revise § 950.604 to read as follows:

§ 950.604 Records retention.

Federations, PCFO's and other participants in the CFC shall retain documents pertinent to the campaign for at least three completed campaign

periods. For example, documentation regarding the 2006 campaign, which would include selection of the PCFO in March of 2006 through the final distribution of contributions in approximately March 2008, must be retained through the completion of the 2007, 2008 and 2009 campaign periods (*i.e.* until approximately March 2011). Documents requested by OPM must be made available within 10 business days of the request.

26. Amend § 950.801 as follows:

a. In paragraph (a)(1), remove the text “one 30-day calendar day” and add in its place the word “a”, remove the text “January and March” and add in its place the text “December and January”, and add the text “and international” to the last sentence after the word “national”;

b. Revise paragraph (a)(2);

c. In paragraph (a)(3), remove the date “March 15” and add in its place “a date to be determined by OPM. The date will be part of the annual timetable issued by the Director under § 950.801(b).”;

d. In paragraph (a)(4), remove the text “June 30” and add in its place “a date to be determined by OPM. The date will be part of the annual timetable issued by the Director under § 950.801(b).”;

e. In paragraph (b), add the text “and international” in the first sentence after the word “national”, and add a second sentence to read as follows: “The Director will issue the timetable for a campaign period no later than October 31 of the year preceding the campaign period.”

The amendments to § 950.801 read as follows:

§ 950.801 Campaign schedule.

(a) * * *

(2) The Director will determine a date after the closing of the receipt of applications by which the Director will issue notices to each national and international applicant organization of the results of the Director's review. The date will be part of the annual timetable issued by the Director under § 950.801(b).

* * * * *

27. Amend § 950.901 as follows:

a. In paragraph (c)(1), remove the text “printed or purchased from a central source” and add in its place “reproduced”, and remove the word “distributed” and add in its place “made available”;

b. In paragraph (c)(2), add the word “paper” after the word “each”, and add the text “or an acceptable electronic version” after the word “authorization”;

c. In paragraph (f)(1), add the text “pay period number,” after the word “period,”; and

d. Revise paragraphs (i)(1) and (i)(2).
The amendments to § 950.901 read as follows:

§ 950.901 Payroll allotment.

* * * * *

(i) * * *

(1) The PCFO shall notify the federations, national and international organizations, and local organizations as soon as practicable after the completion of the campaign, but in no case later than a date to be determined by OPM, of the amounts, if any, designated to them and their member agencies and of the amounts of the undesignated funds, if any, allocated to them. The date will be part of the annual timetable issued by the Director under § 950.801(b).

(2) The PCFO is responsible for the accuracy of disbursements it transmits to recipients. It shall transmit disbursements at least quarterly, minus the approved proportionate share for administrative cost reimbursement and the PCFO fee set forth in § 950.106. It shall remit the contributions to each organization or to the federation, if any, of which the organization is a member. The PCFO will distribute all CFC receipts beginning April 1, and quarterly thereafter. At the close of each disbursement period, the PCFO's CFC account shall have a balance of zero.

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BILLING CODE 6325-46-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FVO6-966-1 PR]

Tomatoes Grown in Florida; Partial Exemption to the Minimum Grade Requirements

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a proposed partial exemption to the minimum grade requirements under the marketing order for tomatoes grown in Florida (order). The Florida Tomato Committee (Committee) locally administers the order. Under the order, Florida tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule would exempt UglyRipe™ (UglyRipe) tomatoes from the shape requirements associated with the U.S. No. 2 grade. This change would increase the volume of UglyRipe tomatoes that would meet the order requirements, and would help increase

shipments and availability of these tomatoes.

DATES: Comments must be received by August 28, 2006.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail: moab.docketclerk@usda.gov; or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

William Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (863) 324-3375, Fax: (863) 325-8793, or e-mail William.pimental@usda.gov; or Christian Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (863) 324-3375, Fax: (863) 325-8793, or e-mail: Christian.nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in certain designated counties in Florida, hereinafter referred to as the “order.” The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil