

prepared by medical staff, forwarded through the appropriate staff for screening and clearance, and then submitted to the Warden. The Warden may approve an inmate for an in-patient medical escorted trip.

§ 570.42 Non-medical escorted trips.

(a) Non-medical escorted trips allow an inmate to leave the institution under staff escort for approved, non-medical reasons. There are two types of non-medical escorted trips.

(1) *Emergency non-medical escorted trip.*—An escorted trip for such purposes as allowing an inmate to attend the funeral of, or to make a bedside visit to, a member of an inmate's immediate family. For purposes of this rule, immediate family refers to mother, father, brother, sister, spouse, children, step-parents, and foster parents.

(2) *Non-emergency, non-medical escorted trip.*—An escorted trip for such purposes as allowing inmates to participate in program-related functions, such as educational or religious activities, or in work-related functions.

(b) *Escorted trip procedures—emergency non-medical reasons.* Unit staff are to investigate, and determine, the merits of an escorted trip following a review of the available information. This includes contacting those persons (e.g., attending physician, hospital staff, funeral home staff, family members, United States Probation Officer) who can contribute to a determination on whether an escorted trip should be approved.

(1) The government assumes the salary expenses of escort staff for the first eight hours of each day. All other expenses, including transportation costs, are assumed by the inmate, the inmate's family, or other appropriate source approved by the Warden. The necessary funds must be deposited to the inmate's trust fund account prior to the trip. Funds paid by the inmate for purposes of the escorted trip are then drawn, payable to the Treasury of the United States. Unexpended funds are returned to the inmate's trust fund account following the completion of the trip.

(2) A request for an inmate to receive an emergency non-medical escorted trip is prepared by unit staff, forwarded through the appropriate staff for screening and clearance, and then submitted to the Warden. Except as specified in § 570.43, the Warden may approve an inmate for an emergency non-medical escorted trip.

(c) *Escorted trip procedures—non-emergency, non-medical reasons.* This type of escorted trip is considered for an inmate who has been at the institution for at least 90 days, and who is considered eligible for less secure housing and for work details, under minimal supervision, outside the institution's perimeter. A recommendation for an inmate to receive an escorted trip for non-emergency, non-medical reasons is prepared by the recommending staff, forwarded through the appropriate staff for screening and clearance, and then submitted to the Warden. Except as

specified in § 570.43, the Warden may approve an inmate for a non-emergency, non-medical escorted trip.

§ 570.43 Inmates requiring a high degree of control and supervision.

Only the Regional Director may approve a non-medical escorted trip (either emergency or non-emergency) for an inmate determined to require a high degree of control and supervision.

§ 570.44 Supervision and restraint requirements.

Inmates under escort will be within the constant and immediate visual supervision of escorting staff *at all times*. Restraints may be applied to an inmate going on an escorted trip, after considering the purpose of the escorted trip and the degree of supervision required by the inmate. Except for escorted trips for a medical emergency, an inmate going on an escorted trip must agree in writing to the conditions of the escorted trip (for example, agrees not to consume alcohol).

§ 570.45 Violation of escorted trip.

(a) Staff shall process as an escapee an inmate who absconds from an escorted trip.

(b) Staff may take disciplinary action against an inmate who fails to comply with any of the conditions of the escorted trip.

[FR Doc. 85-27921 Filed 11-21-85; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 522, 524, 544, and 550

Control, Custody, Care, Treatment, and Instruction of Inmates; Chemical Abuse Programs, Admission and Orientation, Classification and Program Review, and Inmate Recreation Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rules.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its final rules on (1) admission and orientation (A&O); (2) classification and program review; and (3) inmate recreation programs. The proposed rule on admission and orientation programs includes a requirement that institutions have both a centralized A&O program and a unit familiarization program. The proposed rule on classification and program review requires that the inmate attend the initial classification meeting. The proposed rule on recreation programs includes a revised section on the showing of movies at the institution. The Bureau is also proposing a new rule on chemical abuse programs. The rule is intended to provide an inmate who is identified as having a history of chemical abuse with the opportunity to participate in a chemical abuse program.

DATE: Comments on these rules must be received on or before January 10, 1986.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a), and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** proposed amendments to its rules on (1) admission and orientation; (2) classification and program review; and (3) inmate recreation programs. Because of various non-substantive changes, and to allow for a fuller review, the Bureau is publishing each amended rule in its entirety. In addition, the Bureau is publishing a new proposed rule on chemical abuse programs.

Proposed Amendments to the Rule on the Admission and Orientation Program

A final rule on the admission and orientation program was published in the **Federal Register** December 4, 1981 (at 46 FR 59507 et seq.). The present amendments modify the existing rule. In § 522.40, the first paragraph is revised to specifically reference the institution's centralized admission and orientation program. Proposed paragraph (b) is new and requires that each team or unit in the institution establish a procedure for providing a unit familiarization program to newly assigned inmates. The rule authorizes the unit program to be substituted for the centralized program when necessary to accommodate security needs. Based on new paragraph (b), existing § 522.40 (b) and (c) are reworded and become new § 522.40 (c) and (d). Based on the addition of a unit familiarization program, the title of Part 522, Subpart E becomes "Admission and Orientation/Unit Familiarization Program".

Section 522.41 is retitled "Responsibility for the centralized admission and orientation program". In paragraph (a), the word "centralized" is added to identify the responsibility of the staff coordinator. Paragraphs (b) and (c) are reworded, although their basic intent is unchanged.

Section 522.42 is retitled "Guidelines for the centralized admission and orientation program". Paragraphs (a) and (b) are reworded, although their intent is unchanged. Paragraph (c) is deleted. Its intent is now encompassed within former paragraph (d), now proposed paragraph (c), entitled "A&O activities". New paragraph (c) is intended to ensure that the newly committed inmate receives a full spectrum of activities while in A&O. Final paragraphs (e)-(g), now proposed paragraphs (d)-(f), are reworded, although their intent is unchanged. Section 522.43, "Responsibility for the unit familiarization program", is new. This section identifies Bureau staff responsible for the unit familiarization program.

Proposed Amendments to the Rule on Classification and Program Review

A final rule on classification and program review of inmates was published in the **Federal Register** May 1, 1981 (at 46 FR 24899). An amendment to this rule was published in the **Federal Register** January 3, 1984 (at 49 FR 193). The present amendments are intended to address concerns that have arisen since the rule was last amended.

In § 524.11, the introductory paragraph is revised to indicate that the section

refers to both the classification and program review process. Paragraph (a) is revised to identify committee composition. Because institutions ordinarily have unit management, the last sentence of § 524.11(a) is deleted. In paragraph (b), the phrase "one week" is substituted for "five working days".

In § 524.12, paragraph (b) is revised. The revised rule requires the inmate's waiver to be documented in the inmate's central file. The revised rule also requires the inmate to attend the initial classification meeting. This is necessary to ensure that the newly committed inmate is fully aware of what is expected, and has an opportunity to comment on his classification program. In paragraph (c), the phrase "upon completion of the inmate's initial classification" replaces "at the inmate's initial classification". The remainder of this paragraph (c), and paragraph (d) are revised, although their basic intent are unchanged. Paragraph (e) is revised by substituting "14 days" for "5 working days". Although the time frame is expanded, the inmate will have been verbally advised of the program plan at the time of initial classification. In § 524.13, paragraph (a)(2) (i) and (ii) are now included within a new proposed paragraph (i), "the inmate's projected release date". Existing paragraphs (iii) and (iv) will become new paragraphs (ii) and (iii). Paragraph (c) is revised to specifically require that staff offer the inmate an opportunity to make a written statement and/or to submit materials at the program review. Paragraph (c)(2) is revised to refer to new proposed paragraph (c)(3) which states that staff may require an inmate to attend the program review if staff determine that the inmate's appearance at the review is essential. Proposed paragraph (c)(4), pertaining to program reviews for inmates in administrative detention, is new.

Proposed Amendments to the Rule on Inmate Recreation Programs

A final rule on inmate recreation programs was published in the **Federal Register** May 20, 1980 (at 45 FR 33939). The present amendments are intended to address concerns that have arisen since publication of the final rule.

The first sentence of § 544.30 is reworded, although its intent is unchanged. The last sentence of § 544.30 is deleted, as the rule is intended to apply at all Bureau institutions. Section 544.31(a) is expanded. Section 544.31(b) is reworded, although its intent is unchanged. Paragraph (c) deletes the reference to printers or India ink. In § 544.32, final paragraph (a) and (a)(1)

are now combined into a proposed introductory paragraph. Final paragraphs (a)(2) and (a)(3) are now reworded and become proposed paragraphs (a) and (b). Deleted are final § 544.32(a)(4)-(6), as these are included within other sections of the rule, particularly proposed § 544.31(a).

Final § 544.34 is revised and now becomes proposed § 544.33. The proposed rule authorizes the Warden or designee to approve the showing of movies at the institution. Institutions with HBO or cable will ordinarily be allowed to show rental movies only during holidays and special events. X-rated movies may not be shown. The final rule deletes the reference to a committee being appointed to select and review suggested films. As revised, there is no requirement that a screening committee be appointed.

Final § 544.33 now becomes proposed § 544.34. Paragraph (b) substitutes the word "register" for "registration". Paragraph (c)(2) now states that the inmate pays the mailing cost. Paragraphs (c)(3) through (c)(4) are reworded, although their intent is unchanged. The introductory paragraph of § 544.34(d) is new and sets forth the purpose of art and hobbycraft programs. The proposed rule specifically states that such programs are not designed for mass production of art and hobbycraft items or to provide a means of income to an inmate. Paragraph (d)(5) recognizes that a completed hobbycraft article may be given to an authorized visitor. Paragraph (d)(6) is new and recognizes the Warden's authority to set limits on the length of time an inmate may use a hobbycraft facility.

New Rule on Chemical Abuse Programs

The Bureau of Prisons is publishing a new proposed rule on chemical abuse programs. The rule is intended to offer an inmate with a history of chemical abuse the opportunity to participate in a chemical abuse program.

The Bureau of Prisons has determined that these rules are not major rules for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to these rules since the rules involve agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), do not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 770, 320 1st Street NW., Washington, D.C. 20534. Comments received will be considered

before final action is taken. The proposed rules may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects

28 CFR Parts 522, 524, and 550

Prisoners.

28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

In consideration of the foregoing, it is proposed to amend Subchapters B and C of 28 CFR, Chapter V as follows:

I. In Subchapter B, revise Part 522,

Subpart E;

II. In Subchapter B, revise Part 524, Subpart B;

III. In Subchapter C, revise Part 544, Subpart D; and

IV. In Subchapter C, add a new Subpart F to Part 550.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 522—ADMISSION TO INSTITUTION

Part 522, Subpart E is revised to read as follows:

Subpart E—Admission and Orientation/Unit Familiarization Program

Sec.

522.40 Purpose and scope.

522.41 Responsibility for the centralized admission and orientation program.

522.42 Guidelines for the centralized admission and orientation program.

522.43 Responsibility for the unit familiarization program.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509; 510; 28 CFR 0.95-0.99

Subpart E—Admission and Orientation/Unit Familiarization Program

§ 522.40 Purpose and scope.

(a) Each inmate committed or transferred to a Bureau of Prisons institution shall become involved in that institution's centralized Admission and Orientation (A&O) Program. The Warden shall ensure that staff who are involved with this program offer each newly committed inmate an orientation to the institution, including information regarding institution requirements. Consistent with the security needs of the facility, inmates are to be allowed to visit various areas of the institution. The centralized Admission and Orientation Program shall provide information to inmates on:

- (1) Inmate rights and responsibilities;
 - (2) Institution program opportunities;
- and

(3) The institution disciplinary system.

(b) Each team or unit within the institution shall establish a procedure for conducting "unit" familiarization for newly assigned inmates to the team or unit. This procedure shall provide inmates with information regarding team and/or unit expectations, activities, and operations. A unit familiarization program may be substituted for the institution A&O program when necessary to accommodate the security needs of special management inmates.

(c) Staff shall develop orientation materials (e.g., handouts and pamphlets) to supplement lectures and discussions.

(d) Pre-trial inmates and those who are in holdover status (en route to a different institution) are excluded from the provisions of this rule.

§ 522.41 Responsibility for the centralized admission and orientation program.

(a) The Warden shall assign the responsibility for coordinating the centralized Admission and Orientation Program to a specific member.

(b) Staff who are involved in the lecture portion of the A&O Program shall develop an outline of the information they wish to include in their presentation.

(c) Staff involved in the A&O Program shall notify the A&O Staff Coordinator of inmates who are experiencing unusual emotional stress so that the inmate can be offered appropriate assistance.

§ 522.42 Guidelines for the centralized admission and orientation program.

(a) *Location.* Each Warden shall determine the most appropriate location for the centralized A&O Program.

(b) *Quarters.* Each Warden shall establish procedures whereby A&O inmates are assigned specific living quarters.

(c) *A&O Activities.* The A&O Staff Coordinator shall ensure that the Admission and Orientation Program provides a full spectrum of activities for the newly committed inmate, including work, education, and recreation.

(d) *Telephone Calls.* Newly committed inmates shall ordinarily be permitted to complete at least two local or collect long distance telephone calls during the admission process.

(e) *Length of A&O Program.* An inmate's involvement in the institution A&O Program is based upon the time that is necessary to accomplish program objectives.

(f) *Documentation.* Staff shall prepare documentation that the inmate has received a copy of the institution inmate

handbook and has completed the institution A&O Program. Staff shall have the inmate sign and date a copy of this document, and the original shall be placed in the inmate's central file.

§ 522.43 Responsibility for the unit familiarization program.

(a) Unit managers and case management personnel are responsible for developing a team or unit familiarization process for inmates who are assigned to their respective caseloads.

(b) Staff shall prepare documentation that the inmate has completed the unit familiarization program. Staff shall have the inmate sign and date a copy of this document, and a copy shall be placed in the inmate's central file.

PART 524—CLASSIFICATION OF INMATES

In Part 524, Subpart B is revised to read as follows:

Subpart B—Classification and Program Review of Inmates

Sec.

524.10 Purpose and scope.

524.11 Classification team.

524.12 Initial classification.

524.13 Program reviews.

524.14 Effect of a detainer on an inmate's program.

524.15 Unscheduled reviews.

524.16 Appeals procedure.

524.17 Study and observation cases.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509; 510; 28 CFR 0.95-0.99

Subpart B—Classification and Program Review of Inmates

§ 524.10 Purpose and scope.

It is the policy of the Federal Bureau of Prisons to classify each newly committed inmate within four weeks of the inmate's arrival at the institution designated for service of sentence. Subsequent program reviews for each inmate shall be conducted at regular intervals. The Warden shall establish procedures to ensure that a newly committed inmate is promptly assigned to a classification team.

§ 524.11 Classification team.

The Warden shall ensure that each department within the institution has the opportunity to contribute to the inmate classification and program review process.

(a) At a minimum, each classification (unit) team shall include the unit manager or case management specialist, a case manager, and a correctional counselor. An education advisor and a psychology services representative are

ordinarily members of the classification team as well.

(b) Each member of the classification team shall individually interview the newly arrived inmate within one week of the inmate's assignment to that team.

§ 524.12 Initial classification.

(a) The Warden or designee shall ensure that each newly committed inmate is scheduled for initial classification within four weeks of the inmate's arrival at the designated institution.

(b) Staff shall notify an inmate at least 48 hours prior to the inmate's scheduled appearance before the classification team. An inmate may waive in writing the 48 hours notice requirement. An inmate's waiver of the 48 hour requirement is to be documented in the inmate's central file. The inmate is required to be present at the initial classification meeting.

(c) Staff shall complete a Program Review Report upon completion of the inmate's initial classification. This report shall offer a correctional program (plan) designed to meet the inmate's needs. Each sentenced inmate who is physically and mentally able shall be assigned to an institutional or industrial work program. With the exception of the work assignment, or where program involvement is mandated by Bureau policy, e.g., Adult Basic Education (ABE) or by statute, the inmate may choose not to participate in the recommended program.

(d) The inmate is to be provided, and sign for a copy of the program review report. If the inmate refuses to sign for a copy, staff witnessing the refusal shall place a signed statement to this effect on the report. A copy of the report will be placed in the inmate's central file.

(e) Within 14 days following the initial classification meeting, staff shall prepare a staff summary, discussing those facts which were available at the time of the initial classification. The staff summary is to include information on the inmate's current offense and prior record, social situation, recommended programs, and community resources. A copy of the staff summary is provided to the inmate, upon the inmate's request. A staff summary is not required for an inmate serving a sentence of six months or less.

§ 524.13 Program reviews.

(a) Staff shall conduct a program review for each inmate in:

(1) Security Level 1, 2, and 3 institutions at least once every 90 days, and

(2) Security Level 4, 5, and 6 and administrative institutions at least once

every 180 days. When an inmate in a Security Level 4, 5, 6, or administrative institution is within two years of an anticipated release date, a program review shall be conducted at least once every 90 days. An anticipated release date, for purpose of this rule, refers to the first of the following dates:

(i) The inmate's projected release date;

(ii) The inmate's presumptive parole date; or

(iii) The inmate's effective parole date.

(b) Staff shall prepare a program review report to document each program review. The inmate is to sign for and receive a copy of this report. If the inmate refuses to sign for a copy of this report, staff witnessing the refusal shall place a signed statement to this effect on the report. Staff shall place a copy of the program review in the inmate's central file.

(c) Staff shall notify the inmate of the program review at least 48 hours in advance of the staff originated meeting and offer the inmate an opportunity to make a written statement and/or to submit materials at the program review.

(1) An inmate may waive in writing the 48 hours notice requirement.

(2) Except as noted in paragraph (c)(3) of this section, an inmate may elect not to attend the program review. An inmate who elects not to attend this review ordinarily must indicate this refusal, through a signed statement on the program review report at least 24 hours prior to the scheduled meeting. When an inmate does not provide this signed statement, but elects not to attend the program review, staff shall indicate the inmate's refusal to appear and, if known, the reasons for refusal on the program review report. A copy of this report is to be forwarded to the inmate. The inmate who elects not to appear for a program review is responsible for becoming aware of, and will be held accountable for, the classification team's action.

(3) An inmate may be required to attend the classification meeting when staff determine, and advise the inmate in writing, that the inmate's appearance is essential.

(4) An inmate confined in administrative detention shall receive regularly scheduled program review on the record. This procedure shall be documented and a copy of the report sent to the inmate. Upon the inmate's release from detention status, the inmate may be considered for an unscheduled review as provided for in § 524.15 of this rule.

§ 524.14 Effect of a detainer on an inmate's program.

The existence of detainer, by itself, ordinarily does not affect the inmate's program. An exception may occur where the program is contingent on a specific issue (for example, custody) which is affected by the detainer.

§ 524.15 Unscheduled reviews.

Staff may establish a schedule to ensure that inmates are provided program reviews as required by this rule. Upon request of the inmate or staff, and with the concurrence of the unit manager, an advanced or previously unscheduled program review may occur.

§ 524.16 Appeals procedure.

An inmate may appeal, through the Administrative Remedy Procedure, a decision made at the initial classification or at a program review.

§ 524.17 Study and observation cases.

Inmates committed to the custody of the U.S. Attorney General for purposes of study and observation are excluded from the provisions of this rule.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

Part 544, Subpart D is revised to read as follows:

Subpart D—Inmate Recreation Programs

Sec.

544.30 Purpose and scope.

544.31 Definitions.

544.32 Goals.

544.33 Movies.

544.34 Art and hobbycraft.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4061, 4062, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart D—Inmate Recreation Programs

§ 544.30 Purpose and scope.

The Bureau of Prisons encourages an inmate to make constructive use of leisure time and offers movies, sports, social activities, arts and hobbycrafts.

§ 544.31 Definitions.

(a) *Leisure activities* are a wide range of activities in which inmates may participate when not performing assigned duties. Leisure activities include organized and informal sports, table games, hobbycrafts, music programs, intramural activities, social and cultural organizations, movies and stage shows, religious activities, psychological services, and education classes are not included within this definition.

(b) *Organized activities* are those activities accounted for by registration or roster of individual participants.

(c) *Art work* includes all paintings and sketches rendered in any of the usual media (oils, pastels, crayons, pencils, inks, and charcoal).

(d) *Hobbycraft activities* includes leatherwork, models, clay, mosaics, crochet, knitting, sculptures, woodworking, lapidary, and other forms consistent with institution guidelines.

§ 544.32 Goals.

The Warden is to ensure, to the extent possible, that leisure activities are provided to meet the social, physical, and psychological needs of inmates.

(a) Leisure activities are designed to attract inmate participation regardless of ethnic, racial, age, and sex differences, and to enhance potential for post-release involvement.

(b) Leisure activities are designed to ensure that an inmate with the need, capacity, and desire has the opportunity to complete one or more leisure activities (see 28 CFR 544.81).

§ 544.33 Movies.

The Warden or designee may approve the showing of movies at the institution. Institutions with HBO or cable ordinarily may show rental movies only during holidays and special events. X-rated movies may not be shown at the institution.

§ 544.34 Art and hobbycraft.

(a) An inmate engaged in art or hobbycraft activities may obtain materials through:

(1) The institution art program (if one exists);

(2) The commissary sales unit;

(3) Special purchase commissary orders, if the sales unit is unable to stock a sufficient amount of the needed materials; or

(4) Other sources approved by the Warden.

(b) Each inmate shall identify art or hobbycraft materials by showing the inmate's name and register number on the reverse side of the item.

(c) Completed or abandoned art or hobbycraft articles may be disposed of in the following manner:

(1) Upon approval of the Warden, by giving the item to an authorized visitor;

(2) By mailing the items to a verified relative or approved visitor at the inmate's expense.

(3) Items may be sold through an institution art and hobbycraft sales program, if one exists, after the institution price committee has determined the sale price.

(4) Other methods established by the Warden.

(d) *Restrictions.* Art and hobbycraft programs are intended for the personal enjoyment of the inmate and as an opportunity to learn a new leisure skill. They are not for the mass production of art and hobbycraft items by artists or to provide a means of supplementing institution income.

(1) The Warden may restrict for reasons of security and housekeeping, the size of inmate paintings. Paintings mailed out of the institution must conform to both institution guidelines and postal regulations. If an inmate's art work or hobbycraft is on public display, the Warden may restrict the content of the work in accordance with community standards of decency.

(2) The Warden may set limits, in compliance with commissary guidelines, on the amount of money an inmate may spend on art or hobbycraft materials.

(3) The Warden may restrict for reasons of security, fire safety, and housekeeping, the use or possession of art and hobbycraft items or materials.

(4) The Warden may limit hobbycraft projects in the cell/living areas to those which can be contained/stored in designated personal property containers. Exceptions may be made for such items as a painting where the size would prohibit placement in a locker. Hobbycraft items must be removed from the living area when completed.

(5) The Warden shall require the inmate to mail completed hobbycraft articles out of the institution at the inmate's expense, or to give them to an authorized visitor within 90 days of completion, or to dispose of them through approved sales. However, articles offered for sale must be sold within 90 days of completion, or must be given to an authorized visitor or mailed out of the institution at the inmate's expense.

(6) Where space and equipment are limited and demand is high, the Warden may set limits on the amount of time an inmate may use a hobbycraft facility, e.g. the Warden may limit an inmate's use of a ceramics classroom to six months to make room for new students.

PART 550—DRUG PROGRAMS

In Subchapter C, add a new Subpart F to Part 550 to read as follows:

Subpart F—Chemical Abuse Programs

Sec.

550.50 Purpose and scope.

550.51 Chemical abuse program standards.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4061, 4062, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart F—Chemical Abuse Programs**§ 550.50 Purpose and scope.**

The Bureau of Prisons offers inmates with histories of chemical abuse the opportunity to participate in chemical abuse programs.

§ 550.51 Chemical abuse program standards.

(a) Each Warden shall designate a Chemical Abuse Program Coordinator.

(b) The Chemical Abuse Program Coordinator shall ensure that all new institution admissions are screened by a psychologist to assess the need for chemical abuse programming. Priority for program involvement shall be given to those inmates with serious chemical abuse problems, and to inmates with court-ordered program involvement.

(c) A standard chemical abuse education package shall be presented to inmates as part of the institution's Admission and Orientation program.

(d) A contractual agreement shall be developed between the inmate participant and chemical abuse staff. This contract shall state the responsibilities of both the program staff and the inmate.

Dated: November 18, 1985.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 85-27920 Filed 11-21-85; 8:45 am]

BILLING CODE 4410-05-M

Testis Tumor Federal Register

Friday
November 22, 1985

Part VI

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Actions
Under Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth four actions taken by the Director, NIH, under the November 1984 NIH Guidelines for Research Involving Recombinant DNA Molecules (49 FR 46266).

EFFECTIVE DATE: November 22, 1985.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6051.

SUPPLEMENTARY INFORMATION: Today four actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. Three of the proposed actions were published for comment in the *Federal Register* of August 19, 1985 (50 FR 33462), and reviewed and recommended for approval by the Recombinant DNA Advisory Committee (RAC) at its meeting on September 23, 1985. The fourth action was published in the *Federal Register* of March 28, 1985 (50 FR 12456). It was considered and tabled at the May 3, 1985, RAC meeting; it was rereviewed and recommended for approval at the September 25, 1985, RAC meeting.

In accordance with Section IV-C-1-b of the NIH Guidelines, these actions have been found to comply with the NIH Guidelines and to present no significant risk to health or the environment.

Part I of this announcement provides background information on the actions. Part II provides a summary of the actions of the Director, NIH.

I. Decision on Actions Under NIH Guidelines

A. Request for Permission to Clone Shiga-Like Toxin From the Families Enterobacteriaceae and Vibrionaceae in *E. coli* K-12

Dr. Alison O'Brien of the Uniformed Services University of the Health Sciences (USUHS) had previously (49 FR 36052) received permission from the National Institutes of Health to clone the structural gene of the Shiga-like toxin (SLT) of *Escherichia coli* in *E. coli* K-12.

Subsequently in a letter of July 26, Dr. O'Brien requested permission to clone SLT structural genes, defined either by nucleotide sequence homology with SLT gene probes from *E. coli* or by antigenic cross-reactivity of their gene products with purified *E. coli* SLT, from bacterial species classified in the families Enterobacteriaceae or Vibrionaceae into *E. coli* K-12 under conditions similar to those specified in the previous permission. Dr. O'Brien requested permission to broaden the scope of study of SLT toxin for the following reasons: (1) To investigate the potential role of SLT in the pathogenicity of a variety of bacteria; (2) to compare the SLT genes from various pathogenic bacteria; and (3) to facilitate the development of an experimental *Vibrio cholerae* vaccine strain deleted for SLT genes.

This proposal was published in the August 19, 1985, *Federal Register* for public comment. No comments were received during the comment period.

On August 16, 1985, the RAC Working Group on Toxins considered this proposal. A portion of the minutes of the meeting pertaining to this proposal reads as follows:

"Dr. Gottesman said Dr. Alison O'Brien of the Uniformed Services University of the Health Sciences (USUHS) was requesting permission to clone SLT structural genes (defined either by nucleotide sequence homology with SLT gene probes from *E. coli* or by antigenic cross-reactivity of their gene products with purified *E. coli* SLT) from bacterial species classified in the families Enterobacteriaceae or Vibrionaceae according to Bergey's Manual of Systematic Bacteriology into *E. coli* K-12 under the conditions specified in *Federal Register*, Volume 49, Number 179. Dr. O'Brien had previously sought and had obtained permission from the NIH to clone SLT from *E. coli* in *E. coli* K-12 host-vector systems. The language of that permission appeared in *Federal Register* 49, Number 179, and was incorporated into the NIH Guidelines as Appendix F-IV-H.

"Dr. Gottesman said Appendix F-IV-H of the NIH Guidelines currently reads:

"The intact structural gene(s) of the Shiga-like toxin from *E. coli* may be cloned in *E. coli* K-12 under BL3+EK1 containment conditions.

"*E. coli* host vector systems expressing the Shiga-like toxin gene may be moved from BL3 to BL2 containment conditions provided that: (1) The amount of toxin produced by the modified host-vector systems is no greater than that produced by the positive control strain 933 *E. coli* 0157:H7, grown and measured under optimal conditions; and (2) the cloning

vehicle is to be an EK1 vector preferably belonging to the class of poorly mobilizable plasmids such as pBR322, pBR328, and pBR325.

"Nontoxinogenic fragments of the Shiga-like toxin structural gene(s) may be moved from BL3+EK1 to BL2+EK1 containment conditions or such nontoxinogenic fragments may be directly cloned in *E. coli* K-12 under BL2+EK1 conditions provided that the *E. coli* host-vector systems containing the fragments do not contain overlapping fragments which together would encompass the Shiga-like toxin structural gene(s)."

"... Dr. O'Brien said she and her group had been investigating organisms for the presence of SLT. SLT is defined as being cytotoxic to cells and antigenically cross-reactive with purified *E. coli* SLT. SLT has been identified in members of the families Enterobacteriaceae and the Vibrionaceae, and she was now requesting permission to clone SLT genes from the Vibrionaceae and the Enterobacteriaceae in *E. coli* K-12. The major goal of this work is to develop a cholera toxin vaccine.

"Dr. O'Brien suggested SLT may be a common property of these bacteria; in organisms such as *Shigella dysenteriae* 1, SLT may play a role in virulence when a large amount of the protein is produced and other virulence factors are present.

"Dr. O'Brien said SLT has also been recently identified in one strain of *Campylobacter* and two strains of *Aeromonas*. The *Aeromonas* are classified as Vibrionaceae. The *Campylobacter* had at one time been classified by Bergey's Manual as Vibrionaceae but had recently been reclassified as an orphan species.

"Dr. O'Brien pointed out that a number of *Campylobacter* characteristics are common to the Vibrionaceae. She asked whether she might receive permission to clone SLT genes from *Campylobacter*.

"Dr. Milewski said the August 19, 1985, *Federal Register* announcement (50 FR 33462) published 30 days before the RAC meeting and describing the proposal stated that Dr. O'Brien requested permission to clone the SLT gene from members of the families Enterobacteriaceae and Vibrionaceae. She suggested the working group first vote on the proposal as it appeared in the *Federal Register*. The group could subsequently offer a recommendation on experiments involving *Campylobacter*.

"Dr. Levine pointed out that investigation in other parts of the world may perform the types of experiments

requested by Dr. O'Brien under much less restrictive conditions. He thought U.S. investigators are unfairly shackled by differences in rules on the cloning of toxin genes.

"Dr. Gottesman said there are two approaches to dealing with differences in rules between countries: (1) The working group may suggest the NIH Guidelines be modified; and (2) the investigator may request more generic approvals.

"Dr. Gottesman suggested the working group proceed by voting on those portions of request which were published in the August 19, 1985, *Federal Register* and subsequently propose and vote on other actions the working group deems reasonable.

"Dr. Gottesman asked whether the SLT structural gene is carried on a phage. Dr. O'Brien replied that high toxin production in bacteria usually appears to be associated with the presence of SLT converting phages such as 933J and H19A/J but not always. A low level of toxin production can consistently be detected in the absence of phage, and may be associated with a chromosomal gene. Dr. O'Brien hypothesized that the phage gene may be a variant of the chromosomal gene. She suggested other variants of the gene might be found in other bacterial species. She added that the Shiga toxin gene appears to be a chromosomal gene in *Shigella dysenteriae* 1 since the phage cannot be induced.

"Dr. Gottesman asked what is known about the host range of the SLT converting phages. Dr. John Newland of USUHS said the phages can infect other *E. coli* strains; other bacterial families have not been studied to determine whether these phages will infect members of these families.

"Dr. Gottesman asked how much toxin was produced when the SLT gene under its own regulation on a multicopy plasmid was introduced into the *E. coli* host-vector system. Dr. O'Brien replied that a seven fold increase in toxin production compared to the standard strain 933 *E. coli* 0157:H7 occurs when the SLT gene under its own regulation is introduced into the *E. coli* host-vector system.

"Dr. O'Brien said the issue of increased SLT production by the *E. coli* host-vector system should be kept in perspective. Under optimal laboratory conditions, *Shigella dysenteriae* 1 strain 60R produces 10^6 cytotoxic toxin doses per milligram (mg) protein...; the standard strain 933 *E. coli* 0157:H7 produces 10^3 cytotoxic doses (CDs) per mg protein under optimal conditions. The *E. coli* host-vector strain carrying the SLT gene on a multicopy plasmid

produces 7×10^3 CDs per mg protein under optimal conditions. This level of toxin production is still less than that produced by the *Shigella dysenteriae* 1 strain. She added that *Shigella flexneri* produces approximately 10^4 CDs per mg protein under optimal conditions. The *Vibrio cholerae* vaccine strain produces 10^4 CDs per mg protein under optimal conditions.

"Dr. Collier pointed out that at this time the specific activity of SLT toxin is not known. Dr. Gottesman said arguments on mechanism of entry into the animal and treatability of symptoms support a recommendation to RAC that this proposal be recommended to the NIH Director. Dr. Formal said *E. coli* host-vector systems offer an additional safety factor since experience has shown *E. coli* K-12 will not ordinarily colonize the bowel.

"Dr. Collier moved that the working group approve of Dr. O'Brien's request as it appears in the August 19, 1985, *Federal Register*.

"Dr. Gill said he would like the record to show the working group was taking this action because it judged that *E. coli* host-vector systems carrying the SLT gene no more harmful than Shiga toxin expressing strains found in nature.

"By a vote of six in favor, none opposed, and no abstentions, the working group recommended RAC approve Dr. O'Brien's request as it appeared in the August 19, 1985, *Federal Register*...

"Dr. Newland asked whether 933 *E. coli* 0157:H7 would be the standard against which activity is measured regardless of what strain was used as the source of the SLT gene. Dr. Gill said the strain specified in Appendix F-IV-H of the NIH Guidelines would be standard strain regardless of the source of the SLT gene.

"Dr. O'Brien asked the working group to consider substituting in Appendix F-IV-H a shigella strain which produces more toxin than 933 *E. coli* 0157:H7 as the standard against which to measure toxin production. *Shigella dysenteriae* 1 strains produce approximately 10^6 CDs mg protein in cell lysate; standard strain 933 *E. coli* 0157:H7 produces 10^3 CDs per mg protein under optimal conditions.

"Dr. Collier said the question is whether there is any reason to believe an *E. coli* K-12 host-vector strain expressing SLT or Shiga toxin on a high copy number plasmid would be any more toxic than *Shigella* found in nature. Dr. Levine pointed out that *E. coli* K-12 does not colonize the gut and a K-12 host-vector system carrying the SLT gene would not be more pathogenic than *Shigella dysenteriae*. He thought 10^6 CDs per mg protein in cell lysates

would be an appropriate upper limit for permitting a clone to be removed from BL3 containment.

"Dr. Gill said an extra margin of safety is provided by the specification in Appendix F-IV-H of 10^3 CDs per mg protein in cell lysates as the upper limit for removal of SLT clones from BL3 containment.

He would prefer strain 933 *E. coli* 0157:H7 which produces 10^3 CDs under optimal containment be the standard strain for determining whether a particular host-vector strain could be removed from BL3 containment. If cloning of the Shiga toxin gene on a high copy number plasmid in *E. coli* K-12 resulted in a 10 fold increase in toxin production, a very high level of toxin, 10^6 CDs, would be produced.

"Dr. Kopecko said it was important to clone the Shiga gene from *Shigella dysenteriae* 1 in order to understand how toxin gene expression is controlled since *Shigella dysenteriae* 1, an epidemic strain, produces more toxin than other bacteria. He thought 10^6 CDs per mg protein is equivalent to the highest level of Shiga toxin expression found in nature; therefore, the working group should recommend *E. coli* K-12 host-vector systems expressing 10^6 CDs per mg protein be permitted to be moved from BL3 to lower containment. K-12 strains producing more than 10^6 CDs per mg protein will not be permitted to leave BL3 containment under the proposed language.

"Dr. Gottesman said the issue is whether *E. coli* K-12 producing high levels of Shiga toxin would be hazardous to animals.

"Dr. Habig said he did not see why *E. coli* K-12 host-vector systems carrying the Shiga toxin gene would pose a greater danger than *Shigella dysenteriae* 1. Dr. Kopecko pointed out that clinical laboratories routinely work with *Shigella dysenteriae* 1 at BL2 conditions. He did not think *E. coli* K-12 host-vector systems would be more dangerous than *Shigella dysenteriae* 1. Dr. Gottesman said she felt comfortable with permitting *E. coli* host-vector systems expressing 10^6 CDs of SLT to be used at BL2 containment since *E. coli* K-12 does not colonize the gut.

"Dr. Levine suggested a number such as 10^6 CDs be chosen as the upper limit of toxin in a host-vector system might express if it is to be removed from BL3 to a lower containment level.

"Dr. Levine said *E. coli* K-12 is not an invasive pathogenic organism. Several factors are necessary for pathogenicity, and even for *Shigella* more is required than simply expression of the toxin gene. An attenuated Shiga bacillus

vaccine strain which produces as much Shiga toxin as the parent pathogenic strain but lacks invasiveness factors did not cause disease when fed to human volunteers. In the single case in which the strain reverted to invasive, the human volunteer became ill.

"Dr. Formal said he had constructed a strain by introducing half of the *Shigella flexneri* chromosome and an SLT converting phage into *E. coli* K-12. The introduced *Shigella flexneri* genes were thought to include all of the genes necessary for virulence. The constructed strain had no effect on monkeys in feeding experiments although it produced 10^3 CDs per mg protein of SLT under optimal laboratory conditions.

"Dr. Gill asked whether concern exists about transfer to other organisms of a high copy number plasmid carrying the Shiga toxin gene and its control elements.

"Dr. Newland said the probability of transfer of the SLT or Shiga toxin gene by phage in nature is higher than the probability of transfer from K-12 by poorly mobilizable plasmid vectors.

"Dr. Gottesman asked what laboratory conditions are necessary to obtain optimal expression of the SLT gene in the *E. coli* K-12 host-vector system. Dr. Newland replied that antibiotic pressure is necessary. In addition, several other procedures such as using specially treated medium are also required. If an SLT clone is simply cultured in the conditions usually used to culture the host-vector system, toxin production is generally a factor of 10^2 lower than the highest level of expression obtained under optimal conditions with that clone.

"Dr. Newland said he had observed that the recombinant plasmid carrying the SLT gene appears to be rapidly lost from the *E. coli* host-vector system in the absence of selective antibiotic pressure. The plasmid without the SLT gene is not so rapidly lost in the absence of selective pressure. He and Dr. O'Brien hypothesized that high levels of toxin may be toxic to bacteria. The rapid loss of the recombinant plasmid in the absence of selective pressure may be an additional safety factor.

"Dr. Gottesman asked whether the working group would consider modifying Appendix F-IV-H by raising the upper level of toxin expression to 10^3 CDs per mg protein in cell lysates in exchange for an assurance that the plasmid will be rapidly lost in the absence of antibiotic pressure. Alternatively, an upper level of expression need not be fixed if the plasmid will be rapidly lost since rapid plasmid loss will provide a measure of safety.

"Dr. Levine said one problem with Dr. Gottesman's proposal is that language generic for experiments involving *E. coli* may not apply to experiments involving *Vibrio* or *Shigella*. A second concern is the variability of the SLT assay; without an internal standard it is difficult to know how much toxin is produced. He asked Dr. O'Brien how great a difference is observed using the same procedure from experiment to experiment. Dr. O'Brien replied that a 100 fold difference in the amount of CDs produced may be observed from experiment to experiment.

"Dr. Gill moved that Appendix F-IV-H be amended to read in part:

E. coli host-vector systems expressing the Shiga-like toxin gene product may be moved from BL3+EK1 to BL2+EK1 containment conditions provided that: (1) The amount of toxin produced by the modified host vector systems be no greater than that produced by the positive control strain 933 *E. coli* 0157:H7, grown and measured under optimal conditions, or ten times this level if the maintenance of the plasmid carrying the gene is dependent upon growth in the presence of an antibiotic . . .

"Dr. Levine suggested the motion be amended to read in part:

E. coli host-vector systems expressing the Shiga-like toxin gene product may be moved from BL3+EK1 to BL2+EK1 containment conditions provided that: (1) The amount of toxin produced by the modified host vector strain be no greater than 10^3 CDs per mg protein. . .

"Dr. Formal suggested the motion should name a toxin producing strain as the standard rather than citing a specific number. He suggested *Shigella dysenteriae* 1 strain 60R be used for this purpose. *Shigella dysenteriae* 1 strain 60R, a rough strain not capable of colonizing the human gut, produces about ten times more toxin than 933 *E. coli* 0157:H7. Language specifying a specific strain would provide an internal standard and permit comparison from laboratory to laboratory. Dr. Kopecko agreed.

"Dr. Levine amended his motion to require use of *Shigella dysenteriae* strain 60R as the standard strain. Dr. Formal seconded this motion.

"Dr. Gottesman seconded Dr. Gill's original motion in order to permit a vote on this motion. By a vote of two in favor, four opposed, and no abstentions, Dr. Gill's motion was refused by the working group. . .

"The working group then voted on Dr. Levine's motion. By a vote of five in favor, one opposed, and no abstentions, the working group accepted this motion. . .

"Dr. Kopecko then offered the following motion:

Campylobacter species have long been recognized as members of the family *Vibrionaceae*. Recently *Campylobacter* species have been separated taxonomically into an orphan genus. Because of the similarities between *Campylobacter* and *Vibrionaceae*, the Working Group on Toxins recommends that for purposes of cloning SLT *Campylobacter* can be considered as members of the *Vibrionaceae*.

"Dr. Levine seconded this motion.

"Dr. Gill said the most important consideration in evaluating a proposal is not the species from which the gene was originally isolated but the characteristics of the gene's product and the host-vector system. He said he would support Dr. O'Brien's request to permit cloning of the SLT gene from *Campylobacter*. He thought Dr. Kopecko's motion did not convey the idea that the gene, and the characteristics of its product are the most important considerations. He suggested a substitute motion which would not refer to the source of the gene he developed.

"Dr. Formal said although he agreed with Dr. Gill, at the present time it would be difficult to precisely define the characteristics of SLT toxin. A substitute motion would have to contain such a definition.

"Dr. Milewski said Dr. Kopecko's motion was preferable because of the way the August 19, 1985, *Federal Register* announcement had been written. She said the minutes of the working group meeting would show the group strongly supports the concept that the gene is the most important consideration.

"Dr. Levine called the vote on Dr. Kopecko's motion. By a vote of six in favor, none opposed, and no abstentions, the working group approved of the motion. . .

The RAC discussed Dr. O'Brien's proposal at the September 23, 1985, meeting.

By a vote of seventeen in favor, none opposed, and no abstentions the RAC recommended NIH accept the working group recommendation to approve Dr. O'Brien's request as it appeared in the August 19, 1985, *Federal Register* with *Campylobacter* species considered to be members of the *Vibrionaceae*.

By a vote of seventeen in favor, none opposed, and no abstentions the RAC recommended the NIH accept the working group recommendation that Appendix F-IV-H be amended to read in part:

"*E. coli* host vector systems expressing the Shiga-like toxin gene may be moved from BL3+EK1 to BL2+EK1 containment conditions provided that: (1) The amount of toxin produced by the modified host-vector systems be no greater than that produced by the positive control strain *Shigella dysenteriae* 60R, grown and measured under optimal conditions; and (2) the cloning vehicle is to be an EK1 vector preferably belonging to the class of poorly mobilizable plasmids such as pBR322, pBR328, and pBR325."

I accept these recommendations and Appendix F-IV-H has been modified accordingly.

B. Request To Clone a Hybrid Toxin Gene in *E. coli* K-12

Dr. John Murphy of the University Hospital of Boston University Medical Center in a letter dated July 30, 1985, requested permission to construct a hybrid molecule in which the gene coding for interleukin-2 (IL-2) is joined to a segment of the gene encoding diphtheria toxin. The diphtheria toxin segment encodes the A subunit and portions of the B subunit of the toxin. The hybrid gene would be cloned in *E. coli* K-12 host-vector systems.

The goal of the project is the development and testing of novel therapeutic agents targeted at the interleukin 2 (IL-2) receptor to combat rejection and/or create a state of tolerance in organ transplantation. As a by-product, some of the agents may have therapeutic potential for patients with leukemia and lymphoma.

This proposal was published in the August 19, 1985, *Federal Register* for public comment. No comments were received on the proposal during the comment period.

On August 16, 1985, the RAC Working Group on Toxins considered this proposal.

Although not part of the action requested in this proposal, it should be noted that Dr. Murphy was previously granted permission (Appendix F-IV-I, 49 FR 46279) to propagate under BL4 containment a hybrid molecule composed of the gene coding for α -melanocyte stimulating hormone (α -MSH) and a segment of the diphtheria toxin gene. On August 16, 1985, the RAC Working Group on Toxins considered a request from Dr. Murphy to remove these clones from BL4 containment. Dr. Murphy submitted data on the effects on guinea pigs challenged with: (1) The viable and boiled *E. coli* K-12 host-vector system (the control); (2) the viable and boiled *E. coli* K-12 host-vector system carrying and expressing the hybrid gene; and (3) the conjugate

protein. After thorough discussion, the working group recommended Dr. Murphy be permitted to proceed with experiments involving clones carrying the α -MSH-diphtheria toxin gene at BL2 containment with BL3 practices. I previously accepted this recommendation.

The portion of the minutes of the August 16, 1985, meeting of the Working Group on Toxins pertaining to Dr. Murphy's proposal to construct and clone a hybrid gene composed of the genes coding for IL-2 and portion of diphtheria toxin reads as follows:

"Dr. Gottesman said in this proposal, Dr. John Murphy of the University Hospital of the Boston University Medical Center requests permission to construct a hybrid gene composed of the gene coding for interleukin-2 (IL-2) and the *SphI* segment of the diphtheria toxin gene. The hybrid gene would be cloned in *E. coli* K-12 host-vector systems.

"The long-term goal of this research is to develop novel IL-2 receptor-targeted cytotoxic agents to combat organ rejection and to create a state of graft "tolerance" in organ transplantation. Some of the products may have therapeutic potential for treating leukemia and lymphoma.

"Dr. Gottesman said the primary difference between the α -MSH-diphtheria toxin hybrid molecule proposal and the IL-2-diphtheria toxin hybrid molecule proposal is the type of cell postulated to be sensitive to the conjugate problem.

"Dr. John Williams of Beth Israel Hospital said IL-2 receptors are found on proliferating, antigen-activated T cells and to a lesser extent on activated B cells. These cells would be the targets of the IL-2-diphtheria toxin hybrid protein. Resting or memory lymphocytes do not express IL-2 receptors. There is no evidence of IL-2 receptors on tissues outside of the lymphoid compartment.

"Dr. Williams said the goal of this project is to selectively remove activated T cells and activated B cells during a well controlled time period following organ transplantation. It is hoped the IL-2-diphtheria toxin molecule would be more selective than the immunosuppressive techniques currently in use. Experiments in mice using anti-IL-2 receptor-monoclonal antibody conjugates to suppress cells which cause rejection in cardiac transplants support this hypothesis. In these experiments, the life of the graft in mice was extended from 10-14 days to three months or more in 80 percent of the animals.

"Dr. Gill said the 'worse case' scenario he could conjecture would be that an animal's T cells and B cells

would be eliminated by this hybrid protein. A long observation of test animals might be necessary before such an effect would be detected. Dr. Habig said a long observation period might also be necessary for animals treated with the α -MSH-diphtheria hybrid protein.

"Dr. Levine said the IL-2-diphtheria toxin hybrid protein could be an important therapeutic agent, but it would be a new toxin and could be harmful. He suggested containment be initially set at the BL4 level.

"Dr. Martin said the largest B64 facility at the Frederick Cancer Research Facility is run by NIAID. Any request by Dr. Murphy for use of the facility will need to be considered by NIAID in relation to other competing requests.

"Dr. Levine said since little is known about the potential toxicity of the proposed hybrid protein, the working group approach should be conservative. If BL4 containment is not available, the experiment should be permitted under BL3 containment with a recognition that concern exists about the nature of the proposed hybrid protein.

"Dr. Gottesman suggested containment could be set at BL3 with a requirement for the use of EK2 host-vector systems. Dr. Levine said he would accept the suggestion to specify EK2 vectors; he would not accept the suggestion to specify EK2 hosts.

"Dr. Gottesman asked whether any type of risk assessment experiment could be performed which would answer basic questions about the nature of the protein.

"Dr. Gill said risk assessment experiments with this hybrid protein would differ from previous risk assessment protocols because acute lethality is not a likely outcome. Tests would have to be devised to look for chronic impairment of the immune system. This type of data and the protocols necessary to generate it are different from that generally required for toxins.

"Dr. Gill offered a motion to recommend permission to proceed under BL3 conditions; EK2 vectors would be used. Dr. Levine said he would prefer the language of the motion specified the use of 'poorly mobilizable plasmid vectors such as the EK2 certified plasmids.' Dr. Gill agreed to this modification. Dr. Levine seconded the motion.

"By a vote of five in favor, none opposed, and no abstentions, the working group agreed this recommendation should be forwarded to the RAC."

The RAC discussed this proposal at the September 23, 1985, meeting.

The RAC considered the minutes of the August 16, 1985, meeting of the Working Group on Toxins and the advice of two *ad hoc* consultants, Dr. John Collier of Harvard Medical School and Dr. Thomas Waldmann of the National Cancer Institute. By a vote of twelve in favor, none opposed, and four abstentions, the RAC recommended the experiments be permitted at BL2 containment plus BL3 practices with the use of poorly mobilizable plasmid vectors such as EK2 certified plasmids. I accept this recommendation and appropriate language has been added to Appendix F of the NIH Guidelines.

C. Proposed Amendments of Appendix C-III of the NIH Guidelines

BioTechnica International, Inc., of Cambridge, Massachusetts, in a letter of August 13, 1985, proposed the following amendments to Appendix C-III of the NIH Guidelines. The first paragraph of Appendix C-III would be amended to read as follows:

"Experiments which use *Saccharomyces cerevisiae* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines."

This amendment would extend the current exemption to include strains other than "laboratory strains."

A new second paragraph would be added to Appendix C-III to read as follows:

"Experiments which use *Saccharomyces uvarum* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines."

This proposal was published in the August 19, 1985, *Federal Register* for public comment. No comments were received during the comment period.

The RAC considered this proposal at the September 23, 1985, meeting. It was noted that no industrial or wild *S. cerevisiae* strains are known to be pathogenic to either man or animals. In fact, products containing *S. cerevisiae*, including beer, wine, brewer's yeast tablets, bread, and yeast extract flavor enhancers, have been consumed by humans for thousands of years. Brewer's and distiller's yeasts are also consumed by the ton by domestic livestock.

Laboratory and non-laboratory strains are virtually identical with respect to their morphology, biochemistry, and growth habits. The arrangement of the genomes (i.e., the genetic maps) of the two classes are largely indistinguishable. These similarities are not surprising given that all laboratory

strains were ultimately derived from wild and industrial yeasts.

Most brewing strains sporulate poorly, and the few spores that can be obtained have extremely poor viability. Thus, industrial strains tend to be much less capable of mating than laboratory strains, many of which have been bred and selected for increased ability to mate, sporulate and germinate. These factors together lead to a considerable phenotypic stability for most industrial strains that, in fact, make them desirable hosts for recombinant DNA experiments.

Evidence was presented on the great similarity between *S. cerevisiae* and *S. uvarum*.

The RAC accepted these arguments and by vote of seventeen in favor, none opposed, and no abstentions, recommended approval of the proposal as it appeared in the August 19, 1985, *Federal Register*.

I accept this recommendation and Appendix C-III has been modified.

D. Proposed Amendment of Part III of the NIH Guidelines

In a memorandum dated February 12, 1985, Dr. Bernard Talbot, Deputy Director of the National Institute of Allergy and Infectious Diseases, noted that under the NIH Guidelines for Research Involving Recombinant DNA Molecules certain proposals are received by NIH for review by the NIH Recombinant DNA Advisory Committee (RAC) and subsequent NIH approval.

Recently other Federal agencies have made steps toward assuming new roles in review of recombinant DNA proposals. Because of these developments, it could now happen that a proposal submitted to the NIH for RAC review and NIH approval may be also submitted to another Federal agency for review.

Dr. Talbot stated:

"In such a case, I believe it would be advantageous for NIH to have the option of deferring to the review and approval by the other Federal agency rather than always going through review and approval by both the other Federal agency and the NIH. In order to allow this, I request that the following proposed change in the NIH Guidelines be issued for public comment, and placed on the agenda of the next RAC meeting. I propose that a new sentence be added at the end of Section III-A of the Guidelines ('Experiments that Require RAC Review and NIH and IBC Approval Before Initiation') just before Section III-A-1 of the Guidelines, as follows: 'If experiments in this category are submitted for review to another Federal agency, the submitter shall

notify ORDA: ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal Agency.'"

The proposal was published in the March 28, 1985, *Federal Register* (50 FR 12456) for comment.

One comment was received on the proposal. Dr. Carol Lax Gronbeck of Genentech, Inc., of South San Francisco, California, wrote:

"At the present time, the Office of Recombinant DNA Activities and the NIH Recombinant DNA Advisory Committee represent the only formal government body with the expertise and large base of experience to evaluate research proposals. Genentech agrees that dual review of proposals would seem unnecessary; however, concern also exists that at this time, various Federal agencies presented with RDNA proposals may not have all of the necessary expertise and pertinent experience in-house to thoroughly review the proposals. Since the function of such review includes determination that the experiment will not adversely affect man and/or the environment, it is especially important that the appropriate experts evaluate the information. To receive proper evaluation, and until such time that Federal agencies have in place a biotechnology review policy such as that proposed by the Office of Science and Technology Policy, Genentech suggests a revision of Dr. Talbot's amendment to read as follows:

"If experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA and may provide information regarding the necessity of dual review; ORDA may then determine if dual review is necessary based upon whether or not the reviews serve the same purpose and whether the other Federal agency has the appropriate expertise and experience to thoroughly review the proposals in a timely manner, and. . ."

"Genentech believes that RAC should enjoy the privilege of exercising an option to defer review, and it is our belief that this revision to the amendment still permits RAC the desired option, while continuing to provide constructive advice to those conducting research and protection of the public and environment."

The proposal was first considered by the RAC at the May 3, 1985, meeting. At that meeting, RAC voted to table the proposal by a vote of seventeen in favor.

none opposed, and no abstentions. Dr. Talbot's proposal was again considered by the RAC at the September 23, 1985, meeting. By a vote of seventeen in favor, none opposed, and no abstentions, the RAC recommended the NIH accept this proposal. I accept this recommendation and Section III-A has been modified.

II. Summary of Actions

A. Amendment of Section F-IV-H of the NIH Guidelines

Appendix F-IV-H has been modified to read as follows:

"Appendix F-IV-H. The intact structural gene(s) of the Shiga-like toxin from bacterial species classified in the families *Enterobacteriaceae* or *Vibrionaceae* including *Campylobacter* species may be cloned in *E. coli* K-12 under BL3+EK1 containment conditions.

"*E. coli* host-vector systems expressing the Shiga-like toxin gene product may be moved from BL3+EK1 to BL2+EK1 containment conditions provided that: (1) the amount of toxin produced by the modified host-vector systems be no greater than that produced by the positive control strain *Shigella dysenteriae* 60R, grown, and measured under optimal conditions; and (2) the cloning vehicle is to be an EK1 vector preferably belonging to the class of poorly mobilizable plasmids such as pBR322, pBR328, and pBR325.

"Nontoxigenic fragments of the Shiga-like toxin structural gene(s) may be moved from BL3+EK1 to BL2+EK1 containment conditions or such nontoxic fragments may be directly cloned in *E. coli* K-12 under BL2+EK1 conditions provided that the *E. coli* host-vector systems containing the fragments do not contain overlapping fragments which together would encompass the Shiga-like toxin structural gene(s)."

B. Addition of a New Appendix F-IV-K to the NIH Guidelines

A new Appendix F-IV-K is added to the NIH Guidelines as follows:

"A hybrid gene in which the gene coding for interleukin 2 (IL-2) is joined to a specified segment of the gene encoding diphtheria toxin may be propagated in *E. coli* K-12 host-vector systems under BL2 containment plus BL3 practices, with the use of poorly mobilizable plasmid vectors such as EK2 certified plasmids."

C. Amendment of Appendix C-III of the NIH Guidelines

The first paragraph of Appendix C-III is amended to read as follows:

"Experiments which use *Saccharomyces cerevisiae* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines."

A new second paragraph is added to Appendix C-III to read as follows:

"Experiments which use *Saccharomyces uvarum* host-vector systems, with the exception of experiments listed below, are exempt from these Guidelines."

D. Modification of Section III-A of the NIH Guidelines

A new sentence is added to the end of Section III-A of the NIH Guidelines ("Experiments that Require RAC Review and NIH and IBC Approval Before Initiation") just before Section III-A-1 of the NIH Guidelines as follows:

"If experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA; ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal Agency."

Dated: November 12, 1985.

James B. Wyngaarden, M.D.,

Director, National Institutes of Health.

[FR Doc. 85-27880 Filed 11-21-85; 8:45 am]

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Federal Register

Friday
November 22, 1985

Part VII

Department of Education

34 CFR Parts 500, 501, etc.
Bilingual Education; Program
Implementation; General Provisions;
Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 500, 501, 505, 510, 514, 525, 526, 527, 537, 561, 573, and 574

Bilingual Education; General Provisions; Basic Programs (Programs of Transitional Bilingual Education, Programs of Developmental Bilingual Education, and Special Alternative Instructional Programs); Family English Literacy Program; Special Populations Program; Program for the Development of Instructional Materials; Educational Personnel Training Program; Training Development and Improvement Program; and Short-Term Training Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary of Education proposes to issue general provisions to govern programs authorized under the Bilingual Education Act and specific regulations to implement the Basic Programs, the Family English Literacy Program, the Special Populations Program, the Program for the Development of Instructional Materials, the Educational Personnel Training Program, the Training Development and Improvement Program, and the Short-Term Training Program. These proposed regulations would implement the Educational Amendments of 1984, which substantively amended the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act, (Title VII of the Act).

DATES: Comments must be received on or before January 21, 1986.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Carol Pendas Whitten, Director, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 421, Reporters Building), Washington, D.C. 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: William A. Wooten, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 421, Reporters Building), Washington, D.C. 20202. Telephone (202) 245-2600.

SUPPLEMENTARY INFORMATION:

Major Objectives of These Regulations

The major objectives of this regulatory package are to:

(a) Inform local educational agencies (LEAs) that the Act gives them substantial discretion to determine the extent of native language use in transitional bilingual education programs funded under section 721(a)(1).

(b) Expand parental involvement in the educational decisions relating to their children.

(c) Increase emphasis on building local capacity to operate programs of instruction for the limited English proficient.

(d) Ensure that limited English proficient children obtain proficiency in English as quickly as possible so that they can effectively participate in the regular educational program.

The proposed regulations interpret and implement Title VII as amended and, when adopted in final form, will apply to applications submitted and grants awarded, beginning in fiscal year 1986.

The following is a summary of the proposed regulations:

Part 500—Bilingual Education: General Provisions

The proposed General Provisions establish general rules applicable to all Title VII programs and all grants awarded under the Act.

Part 501—Bilingual Education: Basic Programs

The regulations in Part 501 apply to the Basic Programs of the Act: transitional bilingual education, developmental bilingual education, and special alternative instruction. Funding for these programs is available for local educational agencies (LEAs) and institutions of higher education (IHEs) applying jointly with one or more LEAs. The regulations are structured to permit the Secretary to conduct separate, annual competitions for the three programs.

The Secretary encourages each LEA to apply for the type of authorized program that provides the method of instruction most appropriate for meeting the educational needs of the local limited English proficient (LEP) population. The Secretary intends to provide maximum flexibility to LEAs in implementing these projects, while ensuring that all funded projects comply with the requirements of the Act.

Transitional Bilingual Education

The Secretary wishes to ensure that LEAs understand the extent of the discretion granted to them under the Act

to make educational judgments about the extent of native language instruction used in transitional bilingual education projects. Section 703(a)(4)(A) of the Act defines program of transitional bilingual education to mean:

a program of instruction, designed for children of limited English proficiency in elementary or secondary schools, which provides, with respect to the years of study to which such program is applicable, structured English language instruction, and, to the extent necessary to allow a child to achieve competence in the English language, instruction in the child's native language. Such instruction shall incorporate the cultural heritage of such children and of other children in American society. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

The statute specifically prohibits the Secretary from promulgating regulations which further define, restrict, or expand upon the statutory definition of the program found in section 703(a)(4).

Thus, any project funded as a program of transitional bilingual education under this section of the Act must make provision for native language instruction of LEP participants only to the extent necessary to allow them to achieve competence in English and to meet local grade-promotion and graduation standards. The Act grants LEAs considerable discretion to decide the extent and duration of native language instruction needed, and the manner in which it will be used in their projects, when responding to the specific, changing, educational needs of participating LEP students. The statute does not prescribe the minimum amount of time or instruction required to meet this standard. LEAs are in the best position to make these educational judgments.

If a school district is unable to make any provision for native language instruction, or determines that providing native language instruction in its educational program is inconsistent with the educational needs of LEP students to be served, then its application cannot be considered for funding as a program of transitional bilingual education. However, its application may be submitted for consideration under the Basic Programs competition as a special alternative instructional program, authorized under section 721(a)(3) of the Act. LEAs should be aware that funding for special alternative instructional programs in years when the appropriation does not exceed \$140 million is limited to 4 percent of the total appropriation. When the appropriation does exceed \$140 million, the Secretary

shall reserve one half of the appropriation in excess of \$140 million for special alternative instructional programs. In the latter case, the reservation may not exceed 10 percent of the total appropriation.

The Secretary specifically invites comments and questions on methods to provide greater LEA flexibility in programs of transitional bilingual education, within the bounds of the statute.

Transitional Bilingual Education: Native Language

The Secretary also wishes to emphasize that native language instruction in a program of transitional bilingual education must be given only in the native language of the LEP participants. For example, a student properly identified as LEP having a native language of French may not be placed in a program of transitional bilingual education which uses Italian as the native language of instruction. Similarly, the statute does not authorize a child to be placed in a transitional bilingual education program which uses his or her grandparents' native language as the native language of instruction if the language is not the child's native language.

Parental Involvement

The Secretary believes that it is important for parents to be involved in decision-making about which educational program best suits their children. The statute and these regulations provide for three means of parental involvement: (1) Parental participation in an application advisory committee; (2) parental participation in a parent advisory committee during the implementation of each project; and (3) each parent's participation in determining whether his or her child would benefit from and should participate in particular programs provided by the LEA.

Applicants are required to establish an application advisory council. A majority of the applicant's advisory council must be composed of parents and other representatives of the children to be served in the proposed project. The LEA must submit documentation of its consultation with the council in developing the application and the council's specific comments on the application. These comments must show the council's participation in and comments on the decision by the LEA to submit its application as a program of transitional bilingual education, a program of developmental bilingual education, or a special alternative

instructional program. The LEA must also assure that if its project is funded, it will establish a parent advisory committee to provide for continuing consultation concerning the project. The majority of the parent advisory committee must be composed of parents of LEP children participation in the project. Members of the application advisory council may continue as members of the parent advisory committee as long as the other requirements of the parent advisory committee are complied with.

These regulations also require that parents or other legal guardians of children identified for enrollment in these projects, including LEP children and children whose language is English, be informed of the reasons for selection of their child, the alternative educational programs available in the LEA, the instructional alternatives that the LEA might have chosen for LEP students, and the nature of the program offered at the LEA, including (1) the instructional method to be used; (2) the instructional goals of the project; (3) the expected progress of the child in the project, including how quickly the child is expected to enter the regular classroom; and (4) the past effectiveness of comparable projects using a similar instructional method. LEAs are also required to inform parents or legal guardians—(1) that they have the right to refuse to allow their child to participate in the project, and (2) at appropriate intervals, of the progress of their child in the program including the extent to which the child is meeting the instructional goals of the project.

The Secretary recommends that LEAs, in meeting these requirements of the statute, inform parents and legal guardians of examples of alternative programs the LEA could have chosen and could choose in the future to meet the needs of LEP children and the extent to which parents and legal guardians will be involved in the ongoing implementation and administration of the project. In addition, in the case of a child whose language is English, the LEA should inform the parents of that child of the reason for selection of their child for participation in the program.

The Secretary specifically invites comments on methods for the implementation of the statutory requirements for parental involvement.

Capacity and Commitment

The recipients of Part A instructional grants are required by statute to build their capacity to provide a program of instruction for LEP children on a regular basis when Federal assistance for the

project is reduced or no longer available. The proposed regulations specify that to carry out this purpose, the Secretary will fund a project only if the applicant sets forth a realistic plan in its application to develop its programmatic capacity for serving LEP children and to assume financial responsibility for the program. The program must be of sufficient size, scope, and quality to promise significant improvement in the education of LEP children. The Secretary will consider, among other factors, the prior experience of existing and past grantees and their success or lack of success in building capacity to continue a project.

The Secretary has determined that the best evidence of increased capacity and commitment at the local level is increased commitment of local funds over the project period. The Secretary will reduce the level of Federal support in each successive year of the project unless the applicant's plan provides for an increased commitment of local funds each year to provide expanded special services for greater numbers of LEP children. Any such reductions will be based on negotiations with each applicant. Alternatively, based on unforeseen circumstances such as a substantial influx of LEP children in the school district of the LEA, the grantee—in its application for a successive budget period under the project—may amend its original plan to demonstrate to the Secretary that it will provide expanded special services. The Secretary, in annually determining the funding level at which to continue a project, and in determining whether to renew a project after its first three years, will consider evidence of the extent to which the grantee has successfully carried out its capacity building plan.

Application Procedures

Applicants must provide, in their applications, data and information required by the statute and these regulations. Applications will be evaluated using specified selection criteria (with a maximum possible score of 100 points) and on the basis of additional factors required by the Act and described in Part 501. The annual distribution of points designated for the additional factors will be published in the Federal Register. Commenters are specifically invited to comment on the weighted selection criteria as well as the distribution of points designated for the additional factors.

Parts 525, 526 and 537—Family English Literacy Program, Special Populations Program, and Program for the Development of Instructional Materials

These three parts govern three programs funded under Part A of the Act. Part 525 governs the family English literacy program authorized by section 721(a)(5) of the Act. Family English literacy programs are designed to aid in the elimination of the intergenerational cycle of illiteracy. These programs provide English literacy training for LEP adults and out-of-school youth, with preference given to family members of LEP children enrolled in projects assisted under the Act, to help them acquire English language competence and facilitate their children's educational achievement.

Part 526 implements the special populations program created by section 721(a)(6) of the Act. The special populations program authorizes grants for the establishment, operation, and improvement of bilingual preschool, special education, and gifted and talented programs preparatory or supplementary to programs such as those assisted under the Act. Any special education program for handicapped children funded under this part must be designed for LEP children who also receive services in accordance with the requirements of Part B of the Education of the Handicapped Act (EHA-B), 20 U.S.C. 1411-1420, and must supplement those services.

Part 537 implements section 721(a)(7) of the Act, which authorizes grants to support the development of instructional materials where those materials are needed but commercially unavailable.

The regulations for each of these parts describe the eligibility requirements, relevant definitions, application procedures, and selection procedures for each program.

Under the statute, the Family English Literacy Program and Special Populations Program are open to local educational agencies (LEAs), institutions of higher education (IHEs)—including junior and community colleges—and private nonprofit organizations, applying separately or jointly. Neither the statute nor these regulations impose any limitations on the types of applicants eligible to apply under the Program for the Development of Instructional Materials.

Applications will be evaluated using specified selection criteria (with a maximum possible score of 100 points) and on the basis of additional factors required by the Act and described in the regulations. The Secretary proposes to apply these additional factors to both

LEA and non-LEA applicants. The annual distribution of points designated for the additional factors will be published in a notice in the *Federal Register*. Commenters are specifically invited to comment on the weighted selection criteria as well as the distribution of points designated for the additional factors.

Parts 561, 573, 574—Educational Personnel Training Program, Training Development and Improvement Program, and Short-Term Training Program

These three parts govern three training programs authorized under Part C of the Act, and describe the eligibility requirements, applicable regulations, definitions, selection criteria, and additional factors considered, if any. Part 561 implements the educational personnel training program established by section 741(a)(1) of the Act. The program authorizes grants to institutions of higher education for the establishment, operation, and improvement of training programs for educational personnel preparing to participate, or participating, in programs for limited English proficient persons. These programs must emphasize opportunities for career development, advancement, and lateral mobility. In order to address the varying needs throughout the Nation for qualified personnel to meet the diverse educational needs of LEP children, this program provides funding for both degree and non-degree training programs.

The regulations include the requirement that applicants consult with parents and other representatives of LEP children both prior to submission of the application and during the ongoing implementation of the project. This consultation must be through an application advisory council and an advisory committee selected by and predominantly composed of parents of LEP children enrolled in LEAs whose educational personnel have training needs similar to those addressed by the project. The Secretary specifically invites comments on these proposed application advisory council and present advisory committee requirements.

Part 573 governs the training development and improvement program established by section 741(a)(3) of the Act. This program authorizes grants to institutions of higher education to encourage reform, innovation, and improvement in graduate education curricula, in the structure of the academic profession, and in recruitment and retention of higher education and graduate school faculties, as related to

programs for limited English proficient persons.

Part 574 governs the short-term training program established by section 741(a)(4) of the Act. The program authorizes the operation of short-term training institutes designed to improve the skills of educational personnel and parents. Eligible applicants include local educational agencies, State educational agencies, and institutions of higher education—including junior or community colleges—and private for-profit or nonprofit organizations which apply after consultation with or jointly with one or more LEAs or SEAs. The regulations allow the Secretary to establish annual priorities for teachers, educational personnel other than teachers, or parents. The annual priorities will be announced in a notice published in the *Federal Register*.

The Secretary evaluates applications under each of these parts on the basis of the selection criteria, with a maximum possible score of 100 points, and any additional factors required by the Act and these regulations. The annual distribution of points designated for the additional factors will be published in a notice in the *Federal Register*. Commenters are specifically invited to comment on the weighted selection criteria as well as the distribution of points designated for the additional factors.

Other Regulations Under the Act

The following Parts of Title 34 CFR have been codified:

(a) Part 562—Fellowship Program implements sections 741(a)(2) and 743, and was published in the *Federal Register* on August 16, 1985 at 50 FR 33308.

(b) Part 548—State Educational Agency Program implements section 732, and was published in the *Federal Register* on August 16, 1985 at (50 FR 33202).

A notice of proposed rulemaking implementing section 733 of the Act, concerning evaluation requirements, was published in the *Federal Register* on May 24, 1985 at 50 FR 21578. When published in final form these regulations will add a new subpart F to part 500, (34 CFR 500.50-500.52).

The following Parts of Title 34 CFR will be proposed for codification in the future:

Part 524—Programs of Academic Excellence will implement section 721(a)(4).

Part 549—Evaluation Assistance Centers Program will implement section 734.

Part 575—Multifunctional Resource Centers will implement sections 741(a)(5) and 742.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. To the extent that these proposed regulations affect small entities, they are intended to impose minimal burdens on applicants and grantees. The selection criteria and other requirements are designed to relieve regulatory and paperwork burden on small entities participating in the programs.

Paperwork Reduction Act of 1980

Sections 501.20, 501.22, 501.23, 501.24, 501.25, 501.31, 501.40, 525.20, 525.21, 525.31, 526.32, 526.40, 537.31, 561.20, 561.31, 561.32, 574.32, and 574.33 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, D.C. 20503; Attention: Joseph F. Lackey, Jr.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 421, Reporters Building, 300 7th Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 500, 501, 525, 526, 537, 561, 573, and 574

Adult education, Bilingual education, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Teachers.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education: Basic Programs, Family English Literacy Program; Special Populations Program; Program for the Development of Instructional Materials; Evaluation Assistance Centers Program; Educational Personnel Training Program; Training Development and Improvement Program, and Short-Term Training Program.)

Dated: November 19, 1985.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Parts 500, 501, 525, and 526; removing Parts 505, 510, 514, and 527; and adding new Parts 537, 561, 573, and 574 as follows:

1. Part 500 is revised to read as follows:

PART 500—BILINGUAL EDUCATION: GENERAL PROVISIONS

Subpart A—General

Sec.

500.1 What programs are governed by these regulations?

500.2 [Reserved]

500.3 What regulations apply to these programs?

500.4 What definitions apply to these programs?

Subpart B—What Kinds of Projects Does the Secretary Assist?

500.10 What requirements pertain to all programs assisted under this Act for limited English proficient persons?

500.11 What programs are there for students of limited Spanish proficiency in Puerto Rico?

Subpart C—How Does One Apply for an Award?

500.20 What requirements pertain to SEA review of an application?

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—[Reserved]

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 500.1 What programs are governed by these regulations?

The regulations in this part apply to programs authorized under the Act. The programs governed by this part and their applicable program regulations are as follows:

(a) Basic Programs (34 CFR Part 501). (20 U.S.C. 3231(a)(1), (2), and (3))

(b) Programs of Academic Excellence (34 CFR Part 524). (20 U.S.C. 3231(a)(4))

(c) Family English Literacy Program (34 CFR Part 525). (20 U.S.C. 3231(a)(5))

(d) Special Populations Program (34 CFR Part 526). (20 U.S.C. 3231(a)(6))

(e) Program for the Development of Instructional Materials (34 CFR Part 537). (20 U.S.C. 3231(a)(7))

(f) State Educational Agency Program (34 CFR Part 548). (20 U.S.C. 3242)

(g) Evaluation Assistance Centers Program (34 CFR Part 549). (20 U.S.C. 3244)

(h) Educational Personnel Training Program (34 CFR Part 561).

(20 U.S.C. 3251(a)(1))

(i) Fellowship Program (34 CFR Part 562).

(20 U.S.C. 3251(a)(2), 3253)

(j) Training Development and Improvement Program (34 CFR Part 573).

(20 U.S.C. 3251(a)(3))

(k) Short-Term Training Program (34 CFR Part 574).

(20 U.S.C. 3251(a)(4))

(l) Multifunctional Resource Centers (34 CFR Part 575).

(20 U.S.C. 3251(a)(5), 3252)

§ 500.2 (Reserved)

§ 500.3 What regulations apply to these programs?

(a) Except as described in paragraphs (b) and (c) of this section, the following regulations apply to programs authorized under the Act listed in § 500.1:

- (1) The regulations in this Part 500.
- (2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR—
 - (i) Part 74 (Administration of Grants);
 - (ii) Part 75 (Direct Grant Programs);
 - (iii) Part 77 (Definitions That Apply to Department Regulations);
 - (iv) Part 78 (Education Appeal Board); and
 - (v) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The provisions in 34 CFR 75.217(c)–(e) (relating to the review of applications) do not apply to the State Educational Agency Program in Part 548.

(c) Except for the provisions in 34 CFR 75.51 (relating to proof of nonprofit status) the EDGAR provisions listed in paragraph (a)(2) of this section do not apply to the Fellowship Program in Part 562.

(20 U.S.C. 3221–3262)

§ 500.4 What definitions apply to these programs?

(a) *Definitions in EDGAR.* The following terms used in the parts listed in § 500.1 (except Part 562) are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Elementary school
Fiscal year
Grant period

Local educational agency; for the purpose of carrying out programs under the Act for individuals served by elementary, secondary, or postsecondary schools operated predominantly for Indian or Alaskan Native children, the term also means an Indian tribe or tribally sanctioned educational authority.

Nonprofit
Nonpublic
Preschool
Private
Project
Public
Recipient
Secondary school
Secretary
State
State educational agency

(b) *Program definitions.* The following definitions also apply to the parts listed in § 500.1:

"Act" or "Title VII" means the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98–511.

(20 U.S.C. 3221–3262)

"Educational personnel" means teachers, teacher aides, paraprofessionals, administrators, school psychologists, guidance counselors, and other persons who provide or are preparing to provide instructional or support services in programs for limited English proficient persons.

(20 U.S.C. 3221–3262)

"Family English literacy program" means a program of instruction designed to help limited English proficient adults and out-of-school youth achieve competence in the English language. These programs of instruction may be conducted exclusively in English, or in English and the student's native language. Where appropriate, the programs may include instruction on how parents and family members can facilitate the educational achievement of limited English proficient children. To the extent feasible, preference for participation in the programs must be given to the parents and immediate family members of children enrolled in programs assisted under the Act.

(20 U.S.C. 3223(a)(7))

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (85 Stat. 688) which is recognized for the special programs and services provided by the United States

to Indians because of their status as Indians.

(20 U.S.C. 3232(a)(1))

"Institution of higher education" (IHE) is defined in section 1001(e) of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 3381(e))

"Limited English proficiency" and "limited English proficient," (LEP) when used with reference to an individual, means an individual—

(1)(i) Who was not born in the United States or whose native language is other than English;

(ii) Who comes from a home in which a language other than English is used most for communication; or

(iii) Who is an American Indian or Alaskan Native and comes from a home in which a language other than English has had significant impact on his or her level of English language proficiency as a result of substantial use of that other language for communication; and

(2)(i) Who, as a result of the circumstances described in paragraph (1) of the definition, has sufficient difficulty in speaking, reading, writing or understanding the English language to deny him or her the opportunity to learn successfully in classrooms in which the language of instruction is English.

(ii) The Secretary interprets an individual's difficulty in the English language as resulting from the circumstances in paragraph (1) of this definition only if that difficulty is attributable to the use of a native language other than English in the home.

(20 U.S.C. 3223(a)(1))

"Low-income," when used with respect to a family, means an annual income for a family which does not exceed the poverty level determined pursuant to section 111(c)(2) of Title I of the Elementary and Secondary Education Act of 1965.

(20 U.S.C. 3223(a)(3))

"Native language," when used with reference to an individual of limited English proficiency, means the language normally used by the individual. If the language normally used by a child cannot be determined, the language normally used by the parents or legal guardians of the child is the child's native language.

(20 U.S.C. 3223(a)(2))

"Programs of academic excellence" means programs of transitional bilingual education, developmental bilingual education, or special alternative instruction which have an established

record of providing effective, academically excellent instruction and which are designed to serve as models of exemplary bilingual education programs and to facilitate the dissemination of effective bilingual educational practices.

(20 U.S.C. 3223(a)(8))

"Program for limited English proficient persons" means any instructional program authorized under Part A of the Act.

(20 U.S.C. 3231-3262)

"Program of developmental bilingual education."

(1) The term means a full-time program of instruction in elementary and secondary schools which provides, with respect to the years of study to which the program is applicable, structured English-language instruction and instruction in a second language. The program must be designed to help children achieve competence in English and a second language, while mastering subject matter skills. The instruction must, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

(2) Where possible, classes in programs of developmental bilingual education must be comprised of approximately equal numbers of students whose native language is English and limited English proficient students whose native language is the second language of instruction and study in the program.

(20 U.S.C. 3223(a)(5))

"Program of transitional bilingual education."

(1) The term means a program of instruction, designed for children of limited English proficiency in elementary or secondary schools, which provides, with respect to the years of study to which the program is applicable, structured English language instruction, and, to the extent necessary to allow a child to achieve competence in the English language, instruction in the child's native language. The instruction must incorporate the cultural heritage of these children and of other children in American society. The instruction must, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

(2) In order to prevent the segregation of children on the basis of national origin in programs of transitional bilingual education, and in order to broaden the understanding of children about languages and cultural heritages

other than their own, a program of transitional bilingual education may include the participation of children whose language is English, but in no event may the percentage of those children exceed 40 percent. The program may provide for centralization of teacher training and curriculum development, but it must serve the children in the schools which they normally attend.

(3) In courses or subjects of study such as art, music, and physical education, a program of transitional bilingual education must make provision for the participation of children of limited English proficiency in regular classes.

(4) Children enrolled in a program of transitional bilingual education must, if graded classes are used, be placed, to the extent practicable, in classes with children of approximately the same age and level of educational attainment. If children of significantly varying ages or levels of educational attainment are placed in the same class, the program of transitional bilingual education must seek to ensure that each child is provided with instruction which is appropriate for his or her level of educational attainment.

(20 U.S.C. 3223(a)(6))

"Special alternative instructional programs" means programs of instruction designed for children of limited English proficiency in elementary and secondary schools. The programs are not transitional or developmental bilingual education programs, but have specially designed curricula and are appropriate for the particular linguistic and instructional needs of the children enrolled. The programs must provide, with respect to the years of study to which the programs are applicable, structured English language instruction and special instructional services which will allow a child to achieve competence in the English language and to meet grade-promotion and graduation standards.

(20 U.S.C. 3223(a)(6))

"Tribally sanctioned educational authority" means any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe, as well as any nonprofit institution or organization which—

(1) Is chartered by the governing body of an Indian tribe to operate any school or otherwise to oversee delivery of educational services to members of that tribe; and

(2) Is approved by the Secretary for the purposes of carrying out programs under the Act.

(20 U.S.C. 3223(a)(2))

Subpart B—What Kinds of Projects Does the Secretary Assist?

§ 500.10 What requirements pertain to all programs assisted under this Act for limited English proficient persons?

All persons assisted under this Act must—

(a) Give priority to serving LEP children having the greatest need for those programs, particularly those children whose usual language is not English; and

(b) Be designed to enable students to achieve full competence in English.

(20 U.S.C. 3222)

§ 500.11 What programs are there for students of limited Spanish proficiency in Puerto Rico?

Projects funded in the Commonwealth of Puerto Rico may include programs of instruction, teacher training, curriculum development, research, evaluation, and testing designed to improve the English proficiency of children and may also make provision for serving the needs of students of limited Spanish proficiency.

(20 U.S.C. 3231(i))

Subpart C—How Does One Apply for an Award?

§ 500.20 What requirements pertain to SEA review of an application?

An applicant that seeks assistance under 34 CFR Parts 501 and 561 shall include evidence, in its application, that the SEA has been notified of the application and has been given an opportunity to offer recommendations on the application to the applicant and the Secretary and otherwise comply with the procedures in 34 CFR 75.156-75.160.

(20 U.S.C. 3231(e)(4))

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—[Reserved]

2. Part 501 is revised to read as follows:

PART 501—BILINGUAL EDUCATION: BASIC PROGRAMS

Subpart A—General

Sec.

501.1 Basic Programs.

501.2 Who is eligible to apply for assistance under Basic Programs?

Sec.

501.3 What regulations apply to Basic Programs?

501.4 What definitions apply to Basic Programs?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

501.10 What activities are eligible for assistance?

501.11 What level of commitment to continue the program must the applicant demonstrate?

Subpart C—How Does One Apply for an Award?

501.20 What must an applicant include in its application for assistance?

501.21 What requirements pertain to the application advisory council and the parent advisory committee?

501.22 What requirements pertain to the participation of children enrolled in nonprofit private schools?

501.23 What requirements pertain to preservice activities?

501.24 What requirements pertain to training activities?

501.25 What requirements pertain to the development of an evaluation plan?

Subpart D—How Does the Secretary Make an Award?

501.30 How does the Secretary evaluate an application?

501.31 What selection criteria does the Secretary use?

501.32 What additional factors does the Secretary consider in awarding grants?

501.33 What specific factors may the Secretary consider in awarding grants under special alternative instructional programs?

501.34 What is the length of the project period?

Subpart E—What Conditions Must Be Met by a Recipient?

501.40 What information must be given to parents?

501.41 What additional requirements apply to programs of transitional bilingual education?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 501.1 Basic Programs.

The Basic Programs provide assistance to eligible applicants for—

(a) Programs of transitional bilingual education authorized under section 721(a)(1) of the Act;

(b) Programs of developmental bilingual education authorized under section 721(a)(2) of the Act; or

(c) Special alternative instructional programs authorized under section 721(a)(3) of the Act.

(20 U.S.C. 3231(a) (1), (2), and (3))

§ 501.2 Who is eligible to apply for assistance under Basic Programs?

(a) The following parties are eligible to apply for assistance under this part:

(1) Local educational agencies (LEAs).

(2) Institutions of higher education (IHEs), including junior or community colleges, that apply jointly with one or more LEAs.

(b) In the case of an application submitted by an IHE jointly with one or more LEAs, an LEA must be designated as the applicant in the group agreement required under 34 CFR 75.128.

(20 U.S.C. 3231(b)(1)(A))

§ 501.3 What regulations apply to Basic Programs?

The following regulations apply to Basic Programs:

(a) The regulation identified in 34 CFR 500.3.

(b) The regulations in this Part 501.

(20 U.S.C. 3231(a) (1), (2), (3))

§ 501.4 What definitions apply to the Basic Programs?

The definitions in 34 CFR 500.4 apply to the Basic Programs.

(20 U.S.C. 3223, 3231(a) (1), (2), (3))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 501.10 What activities are eligible for assistance?

The Secretary provides assistance for the following activities:

(a) Establishing, operating, or improving basic programs.

(b) During the first six months of a project (unless a waiver is granted under § 501.23(b)), only preservice activities designed to prepare a grantee to operate the proposed project. These activities do not include providing instructional services to limited English proficient (LEP) children. Activities may include, but are not limited to—

(1) Program design;

(2) Materials development;

(3) Staff recruitment and training;

(4) Development of evaluation mechanisms and procedures; and

(5) Activities to involve parents in the educational program and to enable parents and family members to assist in the education of LEP children.

(c) Providing or securing training, as necessary, for personnel participating or preparing to participate in the program. To the extent possible, college or university credit must be awarded for the training.

(20 U.S.C. 3231(a) (1), (2), (3), (d)(1)(B), (f)(6))

§ 501.11 What level of commitment to continue the program must the applicant demonstrate?

(a)(1) The purpose of grants under this part is to build the capacity of the grantee to provide a program, on a regular basis, similar to that proposed for assistance, when Federal assistance under the project is reduced or no longer available.

(2) The program to be provided must be of sufficient size, scope, and quality to promise significant educational improvement for LEP children.

(b) To carry out this purpose—

(1) The Secretary funds a project only if the applicant demonstrates a realistic plan in its application to develop its programmatic capacity for serving LEP children and to assume financial responsibility for the program when Federal assistance is reduced or no longer available;

(2) The Secretary reduces the level of Federal assistance in each successive year of the project, unless—

(i) The plan under paragraph (b)(1) of this section provides for an increased commitment of local funds to provide expanded special services for greater numbers of LEP children in each successive year of the project; or

(ii) Based on unforeseen circumstances, such as a substantial influx of LEP children to the school district, the grantee—in an application for a successive budget period under the project—amends the plan under paragraph (b)(1) of this section to assure the Secretary that it will provide expanded services; and

(3) The Secretary, in determining the funding level for each successive year of a project, and in determining whether to renew a project after its first three years, in accordance with § 501.34, considers the extent to which the grantee has successfully carried out its plan under paragraph (b)(1) of this section.

(20 U.S.C. 3231(f)(5))

Subpart C—How Does One Apply for an Award?

§ 501.20 What must an applicant include in its application for assistance?

An application must—

(a) Include the information and assurances required under—

(1) Section 721(c)(2) of the Act; and

(2) 34 CFR 500.20, 501.20—501.25 and

501.32, and 501.33, if applicable; and

(b) Provide assurances that the project will—

(1) Use only qualified personnel, who are proficient in spoken and written English, and, if appropriate, any other

language or languages used for instruction;

(2) Comply with the non-supplanting requirements of section 721(f)(4) of the Act; and

(3) Comply with the parent advisory committee requirements in § 501.21(c). (20 U.S.C. 3231)

§ 501.21 What requirements pertain to the application advisory council and the parent advisory committee?

An applicant shall—

(a) Establish an application advisory council, of which a majority must be parents and other representatives of the children to be served in the program, to assist in the development of the application;

(b) Submit with its application documentation of its consultation with the council and the council's comments on the application and on the decision to submit an application under one of the programs listed in § 501.1.

(c) Assure in its application that—

(1) In carrying out its project, the applicant will provide for continuing consultation with, and participation by, a parent advisory committee composed of parents, teachers, and other interested individuals.

(2) The parent advisory committee will be selected by and predominantly composed of parents of LEP children participating in the program and may include members of the application advisory council; and

(3) In the case of a project carried out in a secondary school, the parent advisory committee will include representatives of the secondary school students participating in the project.

(20 U.S.C. 3231(e))

§ 501.22 What requirements pertain to the participation of children enrolled in nonprofit private schools?

(a) An applicant shall demonstrate in its application that—

(1) In designing the project the applicant has consulted with appropriate private school officials and has taken into account the needs of LEP children enrolled in nonprofit private elementary and secondary schools in the area to be served; and

(2) The applicant will make provision for participation of the LEP children enrolled in nonprofit private schools—

(i) On a basis comparable to that provided for the public school children; and

(ii) Consistent with the number of those children enrolled in nonprofit private schools in the area to be served whose educational needs are of the type and whose language and grade level are of a similar type to those the program is

intended to address. (See 34 CFR 75.650 Participation of students enrolled in private schools.)

(b) If the Secretary determines that an applicant is unable or unwilling to provide for the participation of LEP children enrolled in nonprofit private schools as required by this section, the Secretary—

(1) Withholds approval of the application until the applicant demonstrates that it is in compliance with the requirements of this section; or

(2) Reduces the amount of the grant by the amount the Secretary needs to—

(i) Arrange to assess the needs of children in nonprofit private schools in the area to be served; and

(ii) Carry out a program for limited English proficient persons which meets the needs of those children.

(20 U.S.C. 3231 (f)(2), (j))

§ 501.23 What requirements pertain to preservice activities?

(a) Except as provided in paragraph (b) of this section, an applicant shall demonstrate in its application how it plans to conduct the preservice activities described in § 501.10(b) for the first six months of the grant.

(b)(1) An applicant desiring a waiver of the requirement for preservice activities shall submit, as part of the application, a request for a waiver and shall demonstrate that it is already prepared to operate the proposed project successfully.

(2) If the Secretary denies a waiver request, an applicant is eligible for further funding consideration only if its original application would still meet the requirements of paragraph (a) of this section without the waiver.

(20 U.S.C. 3231(d)(1)(B))

§ 501.24 What requirements pertain to training activities?

An applicant shall demonstrate in its application that it will—

(a) Provide or secure training for the persons participating in the project that, to the extent possible, awards college or university credit for the training;

(b) Base training on an assessment of the needs of the persons who will be participating in the project and on the needs of the LEP children who will receive instruction under the project; and

(c) Apply the applicable provisions in 34 CFR 561.41 if the approved application provides for financial assistance to participants.

(20 U.S.C. 3231(f)(6))

§ 501.25 What requirements pertain to the development of an evaluation plan?

An applicant shall demonstrate that its plan for evaluating the progress and achievements of the proposed project meets the requirements of section 733 of the Act and 34 CFR 500.50-500.52.

(20 U.S.C. 3231(f)(3), 3243)

Subpart D—How Does the Secretary Make an Award?

§ 501.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 501.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors listed in § 501.32 in selecting applications for new grants.

(c) For special alternative instructional programs the Secretary may also consider the specific factors in § 501.33 in selecting applications for new grants.

(20 U.S.C. 3231(a) (1), (2), (3), (c) (3), (f) (7), (g), (h))

§ 501.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Need for a program to serve LEP children.* (25 points) The Secretary reviews each application to determine—

(1) The extent and type of the needs of the LEP students to be served in the program, including—

(i) The lack of proficiency of the LEP children in speaking, reading, writing, and understanding the English language; and

(ii) The degree of proficiency of the LEP children in their native language and in other courses or subjects of study.

(2) The reliability and objectivity of the methods used to identify those needs;

(3) The adequacy of the applicant's justification for concluding that the schools selected for the project enroll the children most in need of assistance within the LEA; and

(4) The extent to which the project will serve the children most in need of assistance, within the schools selected.

(b) *Program objectives and design.* (30 points)

(1) The Secretary reviews each application to determine the appropriateness and reasonableness of

the applicant's design for meeting the needs of the LEP students to be served, including—

(i) The extent to which the instructional approach to be used will address the specific needs identified in the application; and

(ii) The extent to which other instructional approaches have been considered in choosing the instructional approach to be used in the project.

(2) The Secretary looks for the extent to which the project has specific and quantifiable objectives that will lead to the realization of the goals of the Act, including—

(i) The manner and time schedule by which the applicant will meet the needs of LEP children served by the project, including—

(A) The achievement of goals set for the children served by the project, especially the goal of achieving English language proficiency as quickly as possible;

(B) The identification of children who have achieved proficiency in the English language adequate for their effective participation in the regular educational program;

(C) The transfer of those children identified in paragraph (b)(2)(i)(B) of this section to the regular educational program as soon as possible; and

(ii) The way the applicant plans to use its resources and personnel to achieve each objective.

(3) The Secretary reviews each application to determine the quality of the training plan for the project, including the extent to which—

(i) The plan provides for training personnel in ways designed to meet the needs of LEP children to be served by the project; and

(ii) Preservice training activities, if any, and inservice training activities are designed, to the extent possible, to award college or university credit.

(c) *Evaluation plan.* (8 points) The Secretary reviews the strength of the evaluation plan and its relationship to the educational goals of the project and the activities conducted to attain those goals.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(d) *Quality of personnel.* (7 points) (1) The Secretary reviews each application to determine the quality of the following personnel:

(i) The principal classroom instructional personnel.

(ii) The project director, if one is to be used, and other personnel essential to the success of the project.

(2) The Secretary considers—

(i) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(ii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Commitment, capacity, and cost effectiveness.* (30 points) (1) The Secretary reviews each application to determine the extent of the applicant's commitment to special programs designed to meet the educational needs of LEP students.

(2) The Secretary reviews the strength of the applicant's plan under § 501.11(b)(1) to develop its programmatic capacity for serving LEP children and to assume financial responsibility for the program, including provision for—

(i) The gradual assumption of program costs during the proposed project period;

(ii) The adoption of successful components of the project into the regular educational programs that it conducts for LEP children;

(iii) Follow-up services to children who have achieved proficiency in English; and

(iv) Use of its non-Federal resources to provide a program on a regular basis, similar to that proposed, that will be of sufficient size, scope, and quality to promise significant improvement in the education of children of limited English proficiency in future years.

(3) If the applicant has carried out a previous project with funds under the Act, the Secretary also may consider the applicant's experience under that project in developing its programmatic capacity for serving LEP children and assuming financial responsibility for the program.

(4) The Secretary also reviews each application to determine the extent to which the project has—

(i) An adequate budget to support project activities in which costs are reasonable in relation to the objectives of the project; and

(ii) An effective plan of management that ensures proper and efficient administration of the project, including evidence that administrative costs constitute a minimum proportion of the total costs of the project.

(20 U.S.C. 3231(a) (1), (2), (3), (c)(2), (d)(1)(B), (f), (1), (3), (5), (6), 3243)

§ 501.32 What additional factors does the Secretary consider in awarding grants?

(a) In addition to the points awarded under § 501.31, the Secretary considers the following factors in awarding grants:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(i) An applicant qualifies for points under this factor, if the Secretary determines that—

(A) The applicant has never received assistance under the Act; or

(B) The applicant has received assistance under the Act in the past but plans to serve a new language group. To receive points under this factor, at least 50 percent of the LEP children to be served by the project must belong to the new language group.

(ii) The Secretary does not give any points to an applicant that has received assistance under the Act in the past and plans to serve the same language group for which it received assistance.

(2) The relative need of the particular LEA(s) for the proposed program. The Secretary determines the relative need based upon—

(i) The overall concentration of LEP children in the district as compared to other applicants; and

(ii) Whether the applicant proposes to serve a significant number and proportion of LEP children who have arrived in the LEA during the last school year.

(3) The geographical distribution of LEP children. The Secretary considers the need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States.

(4) The number and proportion of children from low-income families to be benefited by the program.

(b) The Secretary distributes an additional 15 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the *Federal Register* how these 15 points will be distributed.

(20 U.S.C. 3231 (f)(7), (h))

§ 501.33 What specific factors may the Secretary consider in awarding grants under special alternative instructional programs?

(a) For special alternative instructional programs, the Secretary may additionally give priority to applications based on—

(1) The administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language;

(2) The unavailability of personnel qualified to provide bilingual instructional services; and

(3) The applicant's current or past efforts to establish a bilingual education program.

(b) The Secretary may distribute an additional 5 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the Federal Register how these 5 points are distributed.

(20 U.S.C. 3231 (c)(3), (g))

§ 501.34 What is the length of the project period?

(a) The Secretary approves a project period of three years.

(b) If a grantee wants to apply for an additional two years of funding, it must demonstrate, to the satisfaction of the Secretary, that—

(1) The program complies with all applicable requirements in the Act and these regulations governing the project;

(2) The grantee's project has made substantial and measurable progress in achieving the specific educational goals contained in the original application, including the extent to which the grantee has—

(i) Met the objectives established under § 501.31(b)(2)(i); and

(ii) Successfully carried out its plan for building the applicant's capacity as provided in § 501.11(b); and

(3) There is a continuing need for the grantee's project.

(20 U.S.C. 3231(d)(1) (A), (C))

Subpart E—What Conditions Must Be Met by a Recipient?

§ 501.40 What information must be given to parents?

(a) Before enrolling a child in the project (including each LEP child and each child whose language is English), and with sufficient advance notice to give the parents or legal guardians of the child adequate opportunity to decline enrollment, a grantee shall inform the parents or legal guardians of—

(1) The reasons for determining that the child is in need of special instructional services;

(2) The alternative educational programs that are available;

(3) The nature of the educational program for LEP students including—

(i) The instructional method to be used;

(ii) The instructional goals of the project;

(iii) The expected progress of the child in the project, including how quickly the child is expected to enter the regular educational program; and

(iv) The past effectiveness of comparable projects using a similar instructional method;

(4) The instructional alternatives for LEP students; and

(5) The option of and opportunity to decline enrollment of the child in the project.

(b) At appropriate intervals during the child's participation in the program, the grantee shall inform parents or legal guardians of the progress of their child in the program, including the extent to which the child is meeting the instructional goals referred to in paragraph (a)(3)(ii) of this section.

(20 U.S.C. 3223(c), 3231 (d)(1)(D), (f)(1))

§ 501.41 What additional requirements apply to programs of transitional bilingual education?

A grantee under the programs of transitional bilingual education shall comply with all additional requirements found in the definition of program of transitional bilingual education in section 703(a)(4)(B)-(D) of the Act and 34 CFR 500.4 regarding—

(a) The forty percent restriction on the participation of children whose language is English;

(b) The participation of LEP children in regular classes in courses such as art, music, and physical education;

(c) The requirement that the programs must be offered in the schools the children normally attend; and

(d) How the children must be grouped in graded and nongraded classrooms.

(20 U.S.C. 3223(a)(4)(B)-(D))

PART 505—[REMOVED]

3. Part 505 is removed.

PART 510—[REMOVED]

4. Part 510 is removed.

PART 514—[REMOVED]

5. Part 514 is removed.

6. Part 525 is revised to read as follows:

PART 525—BILINGUAL EDUCATION: FAMILY ENGLISH LITERACY PROGRAM

Subpart A—General

Sec.

525.1 Family English Literacy Program.

525.2 Who is eligible to apply for assistance under the Family English Literacy Program?

525.3 What regulations apply to the Family English Literacy Program?

525.4 What definitions apply to the Family English Literacy Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

525.10 What activities are eligible for assistance?

Subpart C—How Does One Apply for an Award?

525.20 What must an applicant include in its application for assistance?

525.21 What requirements pertain to the development of an evaluation plan?

Subpart D—How Does the Secretary Make an Award?

525.30 How does the Secretary evaluate an application?

525.31 What selection criteria does the Secretary use?

525.32 What additional factors does the Secretary consider in awarding grants?

525.33 What is the length of the project period?

Authority: Title VII of the elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 525.1 Family English Literacy Program.

The Secretary provides assistance for projects under the Family English Literacy Program as defined in 34 CFR 500.4.

(20 U.S.C. 3223(a)(7))

§ 525.2 Who is eligible to apply for assistance under the Family English Literacy Program?

The following parties are eligible to apply for assistance under the Family English Literacy Program:

(a) Local educational agencies (LEAs).

(b) Institutions of higher education, including junior or community colleges.

(c) Private nonprofit organizations, applying separately or jointly.

(20 U.S.C. 3231(b)(1)(B))

§ 525.3 What regulations apply to the Family English Literacy Program?

The following regulations apply to the Family English Literacy Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 525.

[20 U.S.C. 3231(a)(5)]

§ 525.4 What definitions apply to the Family English Literacy Program?

The definitions in 34 CFR 500.4 apply to this program.

[20 U.S.C. 3221(a)(5)]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 525.10 What activities are eligible for assistance?

(a) The Secretary provides assistance for activities designed to establish, operate, and improve family English literacy programs such as—

(1) Instruction designed to help limited English proficient (LEP) adults and out-of-school youth achieve competence in the English language; and

(2) Instruction in methods by which parents and family members can facilitate the educational achievement of LEP children.

(b) Instruction under this program may be conducted exclusively in English or in English and the native language of the participants.

[20 U.S.C. 3223(a)(7)]

Subpart C—How Does One Apply for an Award?

§ 525.20 What must an applicant include in its application for assistance?

An application for an award under this program must contain the information required under section 721(c)(2) of the Act and § 525.21 and 525.32.

[20 U.S.C. 3231(a)(5)]

§ 525.21 What requirements pertain to the development of an evaluation plan?

An applicant shall demonstrate in its application, that its plan for evaluating the progress and achievements of the proposed project meets the requirements of section 733 of the Act and 34 CFR 500.50–500.52.

[20 U.S.C. 3231(a)(5), 3243]

Subpart D—How Does the Secretary Make an Award?

§ 525.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 525.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses after the heading for the criterion.

(b) The Secretary then applies the additional factors listed in § 525.32.

[20 U.S.C. 3223 (a)(7), (h)]

§ 525.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need and impact.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) There is a need for the proposed family English literacy program;

(2) The methods used by the applicant to identify the needs are objective and quantifiable;

(3) The project proposes to develop the skills of LEP adults and out-of-school youth to achieve competence in English and to facilitate the educational achievement of LEP children; and

(4) The applicant gives preference for participation in the proposed project to parents and immediate family members of children enrolled in programs assisted under the Act.

(b) *Program objectives and design.* (30 points) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the needs of the persons to be served by the project and the likelihood that the project will meet those needs.

(c) *Commitment and capacity.* (20 points) The Secretary reviews each application to determine the applicant's commitment and capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(d) *Quality of personnel.* (7 points) (1) The Secretary reviews each application to determine the quality of the following personnel:

(i) The principal classroom instructional personnel.

(ii) The project director, if one is to be used, and other personnel essential to the success of the project.

(2) The Secretary considers—

(i) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(ii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures the proper and efficient administration of the project, including evidence that administrative costs are a minimum proportion of the total costs of the project.

(f) *Evaluation plan.* (8 points) The Secretary reviews the strength of the evaluation plan and its relationship to the educational goals of the project and the activities conducted to attain those goals.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

[20 U.S.C. 3223(a)(7)]

§ 525.32 What additional factors does the Secretary consider in awarding grants?

(a) The Secretary considers the following additional factors in awarding grants:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(2) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation, and within each of the States.

(3) The need for financial assistance to establish, operate, or improve programs for limited English proficient persons.

(4) The relative numbers of children from low-income families sought to be benefited by the program.

(b) The Secretary distributes an additional 15 points among the criteria listed in paragraph (a) of this section. The Secretary indicates how these 15 points are distributed in the application notice published in the *Federal Register*.

[20 U.S.C. 3231]

§ 525.33 What is the length of the project period?

The Secretary approves a project period of three years for an award under the Family English Literacy Program.

[20 U.S.C. 3231(d)(2)]

7. Part 526 is revised to read as follows:

**PART 526—BILINGUAL EDUCATION:
SPECIAL POPULATIONS PROGRAM****Subpart A—General**

Sec.

- 526.1 Special Populations Program.
 526.2 Who is eligible to apply for assistance under the Special Populations Program?
 526.3 What regulations apply to the Special Populations Program?
 526.4 What definitions apply to the Special Populations Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

- 526.10 What types of projects may be funded?

Subpart C—How Does One Apply for an Award?

- 526.20 What requirements pertain to the development of an evaluation plan?

Subpart D—How Does the Secretary Make an Award?

- 526.30 What priorities may the Secretary establish?
 526.31 How does the Secretary evaluate an application?
 526.32 What selection criteria does the Secretary use?
 526.33 What is the length of the project period?

Subpart E—What Conditions Must Be Met by a Recipient?

- 526.40 What information must be given to parents?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General**§ 526.1 Special Populations Program.**

The Special Populations Program provides assistance to preschool, special education, and gifted and talented programs which are—

- (a) For limited English proficient (LEP) children; and
 (b) Preparatory or supplementary to programs such as those assisted under the Act.

(20 U.S.C. 3231(a)(6))

§ 526.2 Who is eligible to apply for assistance under the Special Populations Program?

The following parties are eligible for assistance under the Special Populations Program:

- (a) Local educational agencies (LEAs).
 (b) Institutions of higher education, including junior or community colleges.
 (c) Private nonprofit organizations.

(20 U.S.C. 3231(b)(1)(B))

§ 526.3 What regulations apply to the Special Populations Program?

The following regulations apply to the Special Populations Program:

- (a) The regulations identified in 34 CFR 500.3.

- (b) The regulations in this Part 526.

(20 U.S.C. 3223(a)(6))

§ 526.4 What definitions apply to the Special Populations Program?

The following definitions apply to the Special Populations Program:

- (a) The definitions in 34 CFR 500.4.
 (b) The definitions implementing Part B of the Education of the Handicapped Act (EHA-B) for—

- (1) "Handicapped children" in 34 CFR 300.5; and
 (2) "Individualized education program" in 34 CFR 300.340.

(20 U.S.C. 3223(a)(6), 20 U.S.C. 1401-1420)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?**§ 526.10 What types of projects may be funded?**

The Secretary provides assistance for activities that are preparatory or supplementary to programs, such as those assisted under the Act, designed to assist LEP students in achieving full competence in English. Special Populations projects may establish, operate, and improve—

- (a) Preschool programs for LEP children who have not reached elementary school age;
 (b) Programs for LEP children who receive services in accordance with the EHA-B and which are supplementary to the services required by the EHA-B; and
 (c) Programs for LEP children who by reason of outstanding abilities are capable of high performance.

(20 U.S.C. 3231(a)(6))

Subpart C—How Does One Apply for an Award?**§ 526.20 What requirements pertain to the development of an evaluation plan?**

An applicant shall demonstrate in its application that its plan for evaluating the progress and achievements of the proposed project meets the requirements of section 733 of the Act and 34 CFR 500.50-500.52.

(20 U.S.C. 3231(a)(6), 3243)

Subpart D—How Does the Secretary Make an Award?**§ 526.30 What priorities may the Secretary establish?**

- (a) In any fiscal year, the Secretary may establish as priorities, one or more of the activities listed in § 526.10.

- (b) The Secretary announces any priorities in a notice published in the Federal Register.

(20 U.S.C. 3231(a)(6))

§ 526.31 How does the Secretary evaluate an application?

- (a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 526.32.

- (2) The Secretary awards a maximum of 100 points for all the criteria.

- (3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

- (b) The Secretary then applies the additional factors listed in 34 CFR 525.32.

(20 U.S.C. 3231(a)(6))

§ 526.32 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

- (a) *Need.* (25 points) the Secretary reviews each application to determine—

- (1) The extent of the needs of the special populations to be served including the lack of proficiency of the LEP children in understanding, speaking, and, if appropriate, reading and writing in the English language;

- (2) The reliability and objectivity of the means used to identify those needs, including—

- (i) The criteria and other objective means used to identify the LEP children eligible to participate in the project; and

- (ii) If applicable, the basis for differentiating between children whose language problems relate to limited English proficiency and those whose language problems relate to the child's handicap as identified in his or her individualized education program developed in accordance with EHA-B, and 34 CFR Part 300; and

- (3) The extent to which the project will serve those most in need of services.

- (b) *Program objectives and design.* (30 points) (1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the needs of LEP students to be served, including the extent to which the instructional approach to be used will address the specific needs identified in the application.

- (2) The Secretary looks for the extent to which the project has specific and quantifiable objectives that will lead to the realization of the goals of the Act, including—

- (i) The manner and time schedule by which the applicant will meet the needs of LEP children served by the project, including—

(A) The achievement of goals set for the children served by the project, especially the goal of achieving English language proficiency as soon as possible;

(B) The identification of children who have achieved proficiency in the English language adequate for their effective participation in the regular educational program;

(C) The transfer of these children identified in paragraph (b)(2)(i)(B) of this section to the regular educational program as soon as possible;

(ii) The strategies for coordination with established instructional programs at the elementary and secondary level for LEP children in the schools operated or supported by LEAs in the community or communities to be served; and

(iii) The way the applicant plans to use its resources and personnel to achieve each objective.

(3) The Secretary reviews each application to determine the quality of the training plan for the project, including the extent to which the plan addresses the needs of personnel to be trained to meet the needs of LEP children to be taught by the personnel.

(c) *Commitment and capacity.* (20 points) The Secretary reviews each application to determine the applicant's commitment and capacity to continue, expand, and build upon the project when Federal assistance ends.

(d) *Evaluation plan.* (8 points) The Secretary reviews the strength of the evaluation plan and its relationship to the educational goals of the project and the activities conducted to attain those goals.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.
(20 U.S.C. 3231(a)(6), 3243)

(e) *Quality of personnel.* (7 points) (1) The Secretary reviews each application to determine the quality of the following personnel:

(i) The principal classroom instructional personnel.

(ii) The project director, if one is to be used, and other personnel essential to the success of the project.

(2) The Secretary considers—

(i) The time that each person referred to in paragraphs (e)(1)(i) and (ii) of this section will commit to the project; and

(ii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures the proper and efficient administration of the project, including evidence that administrative costs are a minimum proportion of the total costs of the project.

(20 U.S.C. 3231(a)(6), 20 U.S.C. 1401-1402)

§ 526.33 What is the length of the project period?

The Secretary approves a project period of one to three years.

(20 U.S.C. 3231(d)(3))

Subpart E—What Conditions Must Be Met by a Recipient?

§ 526.40 What information must be given to parents?

A grantee shall inform parents or legal guardians of students identified for enrollment in the project of the information specified in 34 CFR 501.40.

(20 U.S.C. 3223(c), 3231(d)(1)(D))

PART 527—[REMOVED]

8. Part 527 is removed.

9. A new Part 537 is added to read as follows:

PART 537—BILINGUAL EDUCATION: PROGRAM FOR THE DEVELOPMENT OF INSTRUCTIONAL MATERIALS

Subpart A—General

Sec.

537.1 Program for the Development of Instructional Materials.

537.2 Who is eligible to apply for assistance under the Program for the Development of Instructional Materials?

537.3 What regulations apply to the Program for the Development of Instructional Materials?

537.4 What definitions apply to the Program for the Development of Instructional Materials?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

537.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

537.30 How does the Secretary evaluate an application?

537.31 What selection criteria does the Secretary use?

537.32 What is the length of a project period?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 537.1 Program for the Development of Instructional Materials.

The Program for the Development of Instructional Materials provides assistance to establish, operate, and improve programs for the development of instructional materials in languages for which materials are commercially unavailable. These instructional materials must meet the needs of local educational agencies that offer instructional programs such as those authorized under Part A of the Act.

(20 U.S.C. 3231(a)(7))

§ 537.2 Who is eligible to apply for assistance under the Program for the Development of Instructional Materials?

The following parties are eligible to apply under the part:

(a) State educational agencies (SEAs).

(b) Local educational agencies (LEAs).

(c) Institutions of higher education (IHEs).

(d) Private and public profit and nonprofit organizations.

(e) Individuals.

(20 U.S.C. 3231(a)(7))

§ 537.3 What regulations apply to the Program for the Development of Instructional Materials?

The following regulations apply to this program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 537.

(20 U.S.C. 3231(a)(7))

§ 537.4 What definitions apply to the Program for the Development of Instructional Materials?

The definitions in 34 CFR 500.4 apply to this program.

(20 U.S.C. 3231(a)(7))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 537.10 What activities are eligible for assistance?

The Secretary provides assistance to develop instructional materials including testing materials for use in programs for limited English proficient persons.

(20 U.S.C. 3231(a)(7))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 537.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 537.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for the complete criterion is indicated in parentheses after the heading for the criterion.

(b) The Secretary then applies the additional factors listed in 34 CFR 525.32.

(20 U.S.C. 3231(a)(7))

§ 537.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (35 points) The Secretary reviews each application to determine the extent of the need for the materials, including—

(1) The method used to identify the need;

(2) The nature and magnitude of the need; and

(3) How the applicant determined that the materials are not commercially available.

(b) *Program objectives and design.* (35 points)

(1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the need identified in the application, including how the instructional materials to be developed will meet that need.

(2) The Secretary looks for the extent to which the objectives of the project will lead to the realization of the goals of the Act, including—

(i) The goal of enabling LEP children to achieve English language proficiency;

(ii) The time schedule established to develop and test the instructional materials fully; and

(iii) The manner in which the applicant provides for the inclusion of staff of one or more LEAs in the development and testing of the instructional materials.

(c) *Quality of key personnel and applicant.* (10 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraph (c)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(3) The Secretary also considers the applicant's experience in developing instructional materials.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures the proper and efficient administration of the project, including evidence that administrative costs are a minimum proportion of the total costs of the project.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(20 U.S.C. 3231(a)(7))

§ 537.32 What is the length of a project period?

The Secretary approves a project period of one to three years.

(20 U.S.C. 3231(d)(3))

10. A new Part 561 is added to read as follows:

PART 561—BILINGUAL EDUCATION: EDUCATIONAL PERSONNEL TRAINING PROGRAM

Subpart A—General

Sec.

561.1 Educational Personnel Training Program.

561.2 Who is eligible to apply for assistance under the Educational Personnel Training Program?

561.3 What regulations apply to the Educational Personnel Training Program?

561.4 What definitions apply to the Educational Personnel Training Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

561.10 What activities are eligible for assistance?

Subpart C—How Does One Apply for an Award?

561.20 What requirements pertain to the application advisory council and advisory committee?

Subpart D—How Does the Secretary Make an Award?

561.30 How does the Secretary evaluate an application?

561.31 What selection criteria does the Secretary use?

561.32 What additional factors does the Secretary consider?

Subpart E—What Conditions Must be Met by a Recipient?

561.40 What additional requirement applies to programs that include preservice training?

561.41 What financial assistance to participants is allowable under this program?

Authority: Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 561.1 Educational Personnel Training Program.

The Educational Personnel Training Program provides financial assistance to meet the needs for additional or better trained educational personnel (as defined in 34 CFR 500.4), for programs for limited English proficient persons. These projects may provide training for parents and may also provide

educational personnel with opportunities for career development, advancement, and lateral mobility.

(20 U.S.C. 3251(a)(1))

§ 561.2 Who is eligible to apply for assistance under the Educational Personnel Training Program?

Institutions of higher education are eligible to apply for assistance under the Educational Personnel Training Program.

(20 U.S.C. 3251(a)(1))

§ 561.3 What regulations apply to the Educational Personnel Training Program?

The following regulations apply to the Educational Personnel Training Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 561.

(20 U.S.C. 3251(a)(1))

§ 561.4 What definitions apply to the Educational Personnel Training Program?

The following definitions apply to the Educational Personnel Training Program:

(a) The definitions in 34 CFR 500.4.

(b) "Preservice training" means training for educational personnel preparing to participate in programs for limited English proficient persons.

(20 U.S.C. 3251(a)(1))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 561.10 What activities are eligible for assistance?

The Secretary provides assistance under this program for projects that provide training necessary to prepare educational personnel and parents to meet the ongoing needs of the limited English proficient (LEP) children that they will be serving. Assistance may be provided to degree and non-degree programs.

(20 U.S.C. 3251(a)(1))

Subpart C—How Does One Apply for an Award?

§ 561.20 What requirements pertain to the application advisory council and advisory committee?

An applicant for an award under this program shall—

(a) Develop its application in consultation with an advisory council of which a majority must be parents and other representatives of LEP children needing instruction from personnel with training similar to that provided in the project;

(b) Include in its application documentation of consultation with the council and the comments which the council makes on the application; and

(c) Assure in its application that it will provide for continued consultation with, and participation by, an advisory committee of parents, teachers, and other interested individuals that is selected by and predominantly composed of parents of LEP children needing instruction from personnel with training similar to that provided.

(20 U.S.C. 3231(e), 3251(b)(3)(c))

Subpart D—How Does the Secretary Make an Award?

§ 561.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 561.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors in § 561.32.

(20 U.S.C. 3251(a)(1))

§ 561.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Need and impact.* (30 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant has specifically identified needs to be addressed by the project for additional or better trained educational personnel to serve LEP students in the community, geographical region, or Nation; and

(2) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

(b) *Program objectives and design.* (30 points) (1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's proposal for meeting the needs identified in its application, including—

(i) The extent to which those needs will be met by the project;

(ii) How rapidly those needs will be met by the project;

(iii) The appropriateness of the curriculum for meeting those needs; and

(iv) The extent and quality of practice teaching or other clinical experience—

(A) In the geographic area(s) where those needs have been identified; and

(B) In the substantive subject(s) for which the project will train personnel.

(2) The Secretary considers the extent to which a project designed to include preservice training contains coursework in—

(i) Teaching English as a second language;

(ii) Use of a non-English language for instructional purposes;

(iii) Linguistics;

(iv) Evaluation and assessment; and

(v) Involvement of parents in the educational process.

(3) The Secretary considers how well the specific project objectives will realize the goals of the Act. The Secretary considers the extent to which—

(i) The training objectives are—

(A) Clear and specific;

(B) Measurable; and

(C) Attainable within the proposed timeframe;

(ii) The training design is appropriate for the proposed objectives and participants;

(iii) The project will prepare teachers to teach English to LEP students;

(iv) The applicant proposes to use its resources and personnel to achieve each objective; and

(v) The project will provide opportunities for career development, advancement, and lateral mobility for participants in order to meet the changing needs of the LEP population to be served.

(20 U.S.C. 3254(a), 3251(d))

(c) *Coordination.* (10 points) (1) The Secretary reviews each application to determine the applicant's plans to coordinate project activities with related projects, including other activities funded under the Act.

(2) The Secretary considers the extent to which the applicant will coordinate the project with—

(i) Other related degree and non-degree programs and course of study at the IHE; and

(ii) SEAs, LEAs, and IHEs in—

(A) The geographic area(s) in which there is a need for personnel; and

(B) The substantive subject(s) for which the project will train personnel.

(3) The Secretary also considers whether the project will complement and not duplicate other activities funded under the Act.

(d) *Commitment and capacity.* (10 points) The Secretary reviews each application to determine the applicant's commitment to the project and capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(e) *Quality of key personnel.* (7 points) (1) The Secretary reviews each

application to determine the quality of the key personnel the applicant plans to use on the project, including—

- (i) The qualifications of the project director (if one is to be used);
- (ii) The qualifications of each of the other key personnel to be used in the project;
- (iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and
- (iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures proper and efficient administration of the project including evidence that administrative costs are a minimum proportion of the project's total costs.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable, including—

- (i) Data on numbers of participants;
- (ii) Data on placement of participants;
- (iii) Evidence of participants' success in serving LEP children in accordance with the needs identified in the application; and

(iv) Evidence that the project has developed the grantee's capacity as described in paragraph (d) of this section.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(20 U.S.C. 3251(a)(1), (d))

§ 561.32 What additional factors does the Secretary consider?

(a) In addition to the points awarded under § 561.31, the Secretary considers the following factors which demonstrate the applicant's competence and experience in programs and activities such as those authorized under the Act:

- (1) Job placement and development.
- (2) Evidence of prior participant's success in serving LEP children in accordance with the needs identified in the prior project.
- (3) Evidence of demonstrated capacity and cost effectiveness as described in § 561.31(d) and (f).

(b) The Secretary distributes an additional 10 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the **Federal Register** how these 10 points are distributed.

(20 U.S.C. 3254)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 561.40 What additional requirement applies to programs that include preservice training?

Programs that include preservice training must be designed to ensure that participants become proficient in English and a second language of instruction.

(20 U.S.C. 3251(d))

§ 561.41 What financial assistance to participants is allowable under this program?

(a) The Secretary may authorize a grantee to provide the following financial assistance to participants:

(1) Tuition and fees—the normal and usual costs associated with the course of study.

(2) Books—up to \$250.

(3) Travel—up to \$250 for travel related to practice teaching or clinical experience.

(4) Up to a maximum stipend of \$325 per month, including allowances for subsistence and other expenses for a participant and his or her dependents, if the participant is—

(i) A full-time student in a program of study that was in the approved application; and

(ii) Gainfully employed no more than 20 hours a week or the annual equivalent of 1040 hours.

(b) In authorizing assistance to participants under paragraph (a) of this section, the Secretary considers the amount of other financial compensation that the participants receive during the training period.

(20 U.S.C. 3255)

11. A new Part 573 is added to read as follows:

PART 573—BILINGUAL EDUCATION: TRAINING DEVELOPMENT AND IMPROVEMENT PROGRAM

Subpart A—General

Sec.

573.1 Training Development and Improvement Program.

573.2 Who is eligible to apply for assistance under the Training Development and Improvement Program?

573.3 What regulations apply to the Training Development and Improvement Program?

573.4 What definitions apply to the Training Development and Improvement Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

573.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

573.30 How does the Secretary evaluate an application?

573.31 What selection criteria does the Secretary use?

Subpart E—[Reserved]

Authority: Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 573.1 Training Development and Improvement Program.

The Training Development and Improvement Program provides financial assistance to encourage reform, innovation, and improvement in higher education programs related to programs for limited English proficient persons.

(20 U.S.C. 3251(a)(3))

§ 573.2 Who is eligible to apply for assistance under the Training Development and Improvement Program?

Institutions of higher education (IHEs) are eligible to apply for assistance under the Training Development and Improvement Program.

(20 U.S.C. 3251(b)(1))

§ 573.3 What regulations apply to the Training Development and Improvement Program?

The following regulations apply to the Training Development and Improvement Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 573.

(20 U.S.C. 3251(a)(3))

§ 573.4 What definitions apply to the Training Development and Improvement Program?

The definitions in 34 CFR 500.4 apply to the Training Development and Improvement Program.

(20 U.S.C. 3251(a)(3))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 573.10 What activities are eligible for assistance?

The Secretary provides assistance for activities related to programs for limited English proficient persons which encourage reform, innovation, and improvement in—

- (a) Applicable education curricula in graduate education;
- (b) The structure of the academic profession; and
- (c) The recruitment and retention of higher education and graduate school facilities.

(20 U.S.C. 3251(a)(3))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 573.30 How does the Secretary evaluate an application?

- (a) The Secretary evaluates an application on the basis of the criteria listed in § 573.31.
- (b) The Secretary awards a maximum of 100 points for all the criteria.
- (c) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(20 U.S.C. 3251(a)(3))

§ 573.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

- (a) *Need and impact.* (30 Points) (1) The Secretary reviews each application to determine—
 - (i) The extent to which there are specifically identified needs for the project; and
 - (ii) The extent to which the methods used by the applicant to identify those needs are reliable and objective.
- (2) The Secretary also considers the extent to which—
 - (i) The project's objectives will assist in achieving the goals of the Act; and
 - (ii) The applicant proposes to use its resources and personnel to achieve each objective.
- (b) *Program development and improvement.* (30 points) The Secretary

reviews each application to determine the appropriateness and reasonableness of the applicant's proposal for meeting the needs identified in the application including—

- (1) The extent to which those needs will be met by the project;
- (2) How rapidly those needs will be met;
- (3) The courses, curriculum, or any applicable clinical training to be developed or revised; and
- (4) The applicant's plan to recruit and retain qualified faculty members for the training program to be improved or reformed.

(c) *Coordination.* (10 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to coordinate project activities with related projects, including projects funded under the Act.

(2) The Secretary considers how the applicant will coordinate the project with—

- (i) Other related programs and disciplines at the IHE; and
- (ii) SEAs, LEAs, and IHEs in—
 - (A) The geographic area(s) in which there is a need for personnel; and
 - (B) The substantive subject(s) for which the project will train personnel.

(3) The Secretary also considers the extent to which the project will complement and not duplicate other activities funded under the Act.

(d) *Commitment and capacity.* (10 points) The Secretary reviews each application to determine—

- (1) The applicant's commitment and capacity to continue, expand, and build upon the project when Federal assistance under this part ends; and
- (2) The extent to which the applicant demonstrates competence and experience in programs and activities such as those authorized under the Act, particularly in training activities directly related to the objectives of the project.

(e) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

- (i) The qualifications of the project director (if one is to be used);
- (ii) The qualifications of each of the other key personnel to be used in the project;
- (iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and
- (iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that

have been traditionally underrepresented, such as—

- (A) Members of racial or ethnic minority groups;
- (B) Women;
- (C) Handicapped persons; and
- (D) The elderly.

(2) To determine personnel qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures proper and efficient administration of the project, including evidence that administrative costs constitute a minimum proportion of the total costs of the project.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

- (1) Are appropriate to the project; and
- (2) To the extent possible, are objective and produce data that are quantifiable.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

Subpart E—[Reserved]

12. A new Part 574 is added to read as follows:

PART 574—BILINGUAL EDUCATION: SHORT-TERM TRAINING PROGRAM

Subpart A—General

Sec.

- 574.1 Short-Term Training Program.
- 574.2 Who is eligible to apply for assistance under the Short-Term Training Program?
- 574.3 What regulations apply to the Short-Term Training Program?
- 574.4 What definitions apply to the Short-Term Training Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

574.10 What activities are eligible for assistance?

Subpart C—How Does One Apply for an Award?

574.20 What requirements pertain to consultation?

Subpart D—How Does the Secretary Make an Award?

- 574.30 What priorities may the Secretary establish?
- 574.31 How does the Secretary evaluate an application?
- 574.32 What selection criteria does the Secretary use?
- 574.33 What additional factors does the Secretary consider?

Subpart E—What Conditions Must Be Met by a Recipient?

- 574.40 What financial assistance to participants is allowable under this program?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General**§ 574.1 Short-Term Training Program.**

The Short-Term Training Program provides financial assistance to improve the skills of educational personnel and parents participating in programs for limited English proficient persons.

(20 U.S.C. 3251(a)(4))

§ 574.2 Who is eligible to apply for assistance under the Short-Term Training Program?

The following parties are eligible to apply for assistance under the Short-Term Training Program:

- (a) Local educational agencies (LEAs).
- (b) State educational agencies (SEAs).
- (c) Institutions of higher education (IHEs), including junior or community colleges, and private for-profit or nonprofit organizations, which apply—

- (1) After consultation with one or more LEAs or SEAs; or
- (2) Jointly with one or more LEAs or SEAs.

(20 U.S.C. 3251(b)(2))

§ 574.3 What regulations apply to the Short-Term Training Program?

The following regulations apply to the Short-Term Training Program:

- (a) The regulations identified in 34 CFR 500.3.
- (b) The regulations in this Part 574.

(20 U.S.C. 3251(a)(4))

§ 574.4 What definitions apply to the Short-Term Training Program?

The following definitions apply to the Short-Term Training Program:

- (a) The definitions in 34 CFR 500.4.
- (b) "Consultation" means engaging in discussions with appropriate persons representing entities to be served by the proposed project to determine needs, and providing opportunities for those persons to contribute to the development, operation, and evaluation of the proposed project.

(20 U.S.C. 3223, 3251(a)(4))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?**§ 574.10 What activities are eligible for assistance?**

The Secretary provides assistance for the following activities:

- (a) Training designed to improve the instructional competence of teachers in carrying out their responsibilities in programs for limited English proficient persons.

- (b) Training designed to improve the skills of educational personnel other than teachers, in carrying out their responsibilities in programs for limited English proficient persons.

- (c) Training designed to improve the skills of parents in carrying out their responsibilities in programs for limited English proficient persons.

(20 U.S.C. 3251(a)(4))

Subpart C—How Does One Apply for an Award?**§ 574.20 What requirements pertain to consultation?**

An IHE or a private for-profit or nonprofit organization, which applies after consultation with one or more LEAs or SEAs, shall certify in its application that the consultation took place during the development of the proposed project and that the consultation will continue during the project period.

(20 U.S.C. 3251(b)(2))

Subpart D—How Does the Secretary Make an Award?**§ 574.30 What priorities may the Secretary establish?**

- (a) The Secretary may annually establish, as a priority, one or more of the activities listed in § 574.10.

- (b) The Secretary announces any annual priorities in a notice published in the Federal Register.

(20 U.S.C. 3251(a)(4))

§ 574.31 How does the Secretary evaluate an application?

- (a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 574.32.

- (2) The Secretary awards a maximum of 100 points for all the criteria.

- (3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

- (b) The Secretary then applies the additional factors in § 574.33.

(20 U.S.C. 3241(a)(4))

§ 574.32 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

- (a) *Need.* (30 points) The Secretary reviews each application to determine—

- (1) The extent to which there are specifically identified needs to be addressed by the project for the improvement of the skills of educational personnel and parents participating in programs for limited English proficient persons; and

- (2) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

- (b) *Program objectives and design.* (30 points) (1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's proposal for meeting the needs identified in the application, including—

- (i) The extent to which those needs will be met by the project;

- (ii) How rapidly those needs will be met by the project; and

- (iii) Whether an appropriate curriculum is proposed for meeting those needs.

- (2) The Secretary also considers how well the specific project objectives will lead toward the realization of the goals of the Act, including consideration of the extent to which—

- (i) The training objectives are—

- (A) Clear and specific;

- (B) Measurable; and

- (C) Attainable within the proposed timeframe;

- (ii) The training design is appropriate for the proposed objectives and participants;

- (iii) The project is designed to train participants to teach English to LEP children; and

- (iv) The applicant proposes to use its resources and personnel to achieve each objective.

(20 U.S.C. 3254(a), 3251(d))

- (c) *Coordination.* (10 points) (1) The Secretary reviews each application to determine the applicant's plans to coordinate project activities with related projects, including other activities funded under the Act.

- (2) The Secretary considers—

- (i) How the applicant will coordinate the project with SEAs, LEAs, and IHEs in—

- (A) The geographic area(s) in which there is a need for personnel; and

- (B) The substantive subject(s) for which the project will train personnel; and

(ii) The extent to which the project will complement and not duplicate other activities funded under the Act.

(d) *Commitment and capacity.* (10 points) The Secretary reviews each application to determine the applicant's commitment to the project and capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(e) *Quality of key personnel.* (7 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (8 points) The Secretary reviews each

application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures proper and efficient administration of the project, including evidence that administrative costs constitute a minimum proportion of the total costs of the project.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective, and produce data that are quantifiable, including—

(i) Data on numbers of participants;

(ii) Evidence that participants' performance successfully addresses the needs identified in the application; and

(iii) Evidence that the project has developed the grantee's capacity as described in paragraph (d) of this section.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(20 U.S.C. 3251(a)(4))

§ 574.33 What additional factors does the Secretary consider?

(a) In addition to the points awarded under § 574.32, the Secretary considers the following factors which demonstrate the applicant's competence and experience in programs and activities such as those authorized under the Act:

(1) Evidence of prior participants' success in serving LEP children in

accordance with needs identified in the prior project.

(2) Evidence of demonstrated capacity and cost effectiveness as provided in § 574.32(d) and (f).

(b) The Secretary distributes an additional 10 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the *Federal Register* how these 10 points are distributed.

(20 U.S.C. 3251(a)(4), 3254)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 574.40 What financial assistance to participants is allowable under this program?

(a) The Secretary may authorize a grantee to provide the following financial assistance to participants:

(1) Up to \$250 for travel directly related to the individual's participation in the short-term training.

(2) Up to \$325 per month for costs including allowances for subsistence and other expenses for a participant and his or her dependents.

(b)(1) A grantee may provide financial assistance to an individual participating in short-term training only to the extent necessary to allow the individual to participate in the training.

(2) In authorizing assistance to participants under paragraph (a) of this section, the Secretary considers the amount of other financial compensation that the participants receive during the short-term training period.

(20 U.S.C. 3255)

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