§ _____.123 Early termination of research support; evaluation of applications and proposals.

(a) The department or agency head may require that department or agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the department or agency head finds an institution has materially failed to comply with the terms of this policy.

(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragraph (a) of this section and whether the applicant or the person or persons who would direct or has have directed the scientific and technical aspects of an activity has have, in the judgment of the department or agency head, materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

§ _____.124 Conditions.

With respect to any research project or any class of research projects the department or agency head may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

[FR Doc. 88-25552 Filed 11-9-88; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50 and 56

[Docket No. 87N-0032]

Protection of Human Subjects; Informed Consent; Standards for Institutional Review Boards for Clinical Investigations

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend (1) its regulations that contain the general standards for any institutional review board (IRB) that reviews clinical investigations regulated by the agency and (2) its regulations that establish general requirements for informed consent of human subjects that participate in such research. The agency intends to conform its regulations to the extent possible to the "Federal Policy for the Protection of Human Research Subjects" (Model Policy) published elsewhere in this issue of the **Federal Register.** Existing FDA regulations governing protection of human subjects share a common core with the Model Policy and implement the fundamental principles embodied in that policy. The purpose of these proposed amendments is to eliminate certain inconsistencies with the Model Policy.

DATE: Comments by January 9, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Bonnie M. Lee, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION:

Background

Development of Model Policy

FDA is charged by statute with the obligation of ensuring the protection of the rights, safety, and welfare of human subjects who participate in clinical investigations involving articles subject to section 505(i), 507(d), or 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i), 357(d), or 360j(g)), as well as clinical investigations that support applications for research or marketing permits for products regulated by FDA, including food and color additives, drugs for human use, medical devices for human use, biological products for human use, and electronic products. In performance of that obligation, FDA, in the **Federal Register**, of January 27, 1981, adopted regulations governing informed consent of human subjects (21 CFR Part 50; 46 FR 8942) and regulations establishing standards for the composition, operation, and responsibilities of any IRB that reviews clinical investigations involving human subjects (21 CFR Part 56; 46 FR 8958). At the same time, the Department of Health and Human Services (HHS) also adopted regulations on the protection of human research subjects (45 CFR Part 46). The regulations adopted by FDA in 21 CFR Parts 50 and 56 and by HHS in 45 CFR Part 46 have provided a common framework for clinical investigators, any IRB, and institutions that have been involved in research that is subject to FDA's regulatory requirements or that is funded by HHS.

In December 1981, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research issued its "First Biennial Report on the Adequacy and Uniformity of Federal Rules and Policies, and Their Implementation, for the Protection of Human Subjects in Biomedical and Behavioral Research, Protecting Human Subjects." Included in this report was a recommendation that the regulations issued by HHS (45 CFR Part 46) be adopted as a common core by all Federal departments and agencies, while permitting additions needed by any department or agency that were not inconsistent with these core provisions.

In May 1982, The President's Science Advisor, Office of Science and Technology Policy (OSTP), appointed an Ad Hoc Committee for the Protection of Human Research Subjects, under the auspices of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET), to respond to the recommendations of the President's Commission. The Committee was composed of representatives and ex-officio members from departments and agencies that conduct, support, or regulate research involving human subjects. The Ad Hoc Committee developed responses to the recommendations of the President's Commission in consultation with OSTP and the Office of Management and Budget (OMB).

The Ad Hoc Committee agreed that uniformity of Federal regulations is desirable to eliminate unnecessary regulations and to promote increased understanding by institutions that conduct federally supported or regulated research involving human subjects. The Ad Hoc Committee developed a model policy which OSTP later modified and, with the concurrence of all affected Federal departments and agencies, published as a proposal in the **Federal Register** of June 3, 1986 (51 FR 20204). More than 200 written comments were submitted in response to the proposal. These comments were considered by the Interagency Human Subjects Coordinating Committee, a second committee chartered by FCCSET in 1983. This committee is composed of representatives of all Federal departments and agencies that conduct, support, or regulate research involving human subjects. Published elsewhere in this issue of the **Federal Register** is the final Model Policy.

FDA concurs with the final Model Policy. However, FDA must diverge

from § _____.101(h) of the final Model Policy with regard to those clinical investigations that take place in a foreign country and are conducted under a research permit granted by FDA. Such investigations must be carried out in accordance with the act, which establishes certain requirements for the conduct of such investigations (see, e.g., 21 U.S.C. 355(i), 357(d)(3), and 360j(g)). For these investigations, FDA does not have the authority to accept the procedures followed in a foreign country in lieu of the procedures required by the act. FDA must also depart from § _____.116(d) of the final Model Policy (see 21 CFR 50.20). The act requires that informed consent be obtained from all subjects of clinical investigations except in very limited circumstances (see, e.g., 21 U.S.C. 355(i), 357(d)(3), and 360j(g)(3)(D), which establish requirements for the conduct of clinical investigations for drugs, antibiotic drugs, and medical devices, respectively). FDA does not have the authority under the act to waive this requirement.

Accordingly, the agency is committed to being as consistent with the final Model Policy as it can be, given the unique situation created by the act and the fact that FDA only regulates, and does not support or conduct, research under its regulations. For all these reasons, the agency proposes the following amendments to its regulations in Parts 50 and 56 to conform them to the final Model Policy to the extent permitted by the act. The proposed changes are minor, and FDA believes that they would not require significant modifications in current IRB procedures or operations or in how informed consent is obtained from human subjects who participate in clinical investigations.

Proposed Revisions of FDA'S Regulations

Definitions

1. FDA proposes to revise the definition of "minimal risk" in §§ 50.3(l) and 56.102(i) to conform it to the definition in the Model Policy. The current definition in §§ 50.3(l) and 56.102(i) of FDA's regulations states:

> "Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

The wording of the definition of "minimal risk" in § ——.102(i) of the final Model Policy is slightly different. To make its regulations as consistent as possible with the Model Policy, FDA is proposing to adopt that policy's definition of "minimal risk." Accordingly, FDA is proposing to revise §§ 50.3(l) and 56.102(i) to state:

> "Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

FDA believes that the proposed change in wording does not substantively change the current definition of "minimal risk" as it pertains to research regulated by the agency. Rather, it clarifies FDA's current definition.

2. FDA proposes to add to the IRB regulations a definition of "IRB approval," which is included in § —— .102(h) of the final Model Policy. The definition of "IRB approval" in proposed new § 56.102(m) is provided to conform FDA's regulations with the Model Policy and for clarification. It is consistent with the agency's policy respecting IRB approval under current Part 56.

Exemptions from IRB Requirement

3. In new § 56.104(d), FDA proposes to add to the list of categories of clinical investigations that are exempt from the requirements for IRB review certain taste and food quality evaluation studies. This exemption is provided in the final Model Policy at § —— .101(b)(6), in response to a request from the U.S. Departmen tof Agriculture (USDA), but it is also appropriate for FDA. The exemption would apply only to taste tests and quality evaluation studies of foods that are not adulterated and that contain ingredients that are (1) generally recognized as safe (GRAS) (see 21 CFR Parts 170, 182, 184, and 186), (2) used in accordance with FDA's food additive regulations, or (3) used in accordance with an approval issued by USDA or the Environmental Protection Agency.

IRB Membership

4. FDA is proposing to amend § 56.107(a) in several respects to conform it to the language contained in § ——.107(a) of the final Model Policy. First, instead of the current provision in FDA's regulations that specifies that an IRB shall be sufficiently qualified through, among other factors, "* * * the diversity of the members' backgrounds including consideration of the racial and cultural backgrounds of members * * *," the agency proposes to substitute "* * * the diversity of the members, including consideration of race, gender, and cultural backgrounds * * *."

This proposed change would add gender to the considerations of diversity. The addition of gender emphasizes the importance of including both men and women as members of any IRB. FDA considers this change to be necessary in light of the change that it is proposing to make in § 56.107(b), which is discussed in paragraph 5 of this preamble.

In addition, to conform to the language contained in § ——.107(a) of the final Model Policy, FDA is proposing to modify the requirement in § 56.107(a) that an IRB that regularly reviews research that involves a vulnerable category of subjects include one or more individuals who are primarily concerned with the welfare of those subjects. FDA is proposing to require only that the institution (or other authority) that establishes the IRB consider including such an individual as a member of such an IRB. FDA expects that, even if it makes this change in its regulations, institutions will continue to appoint individuals to the IRB who are primarily concerned with the welfare of vulnerable subject populations in appropriate situations.

Finally, FDA proposes to add the following examples of vulnerable populations to § 56.107(a): Children, prisoners, pregnant women, or mentally disabled persons. FDA is proposing this change in the regulation to conform it to the final Model Policy and to make clear the types of human subjects that the agency considers to be "vulnerable populations."

5. In current § 56.107(b), FDA provides that an IRB may not consist entirely of men or entirely of women, or entirely of members of one profession. FDA proposes to revise § 56.107(b) to require that:

> Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

This language was developed by OSTP in consultation with the U.S. Department of Justice and is included in § _____.107(b) of the final Model Policy to make clear that an individual should not be appointed to an IRB solely because of gender. FDA proposes to revise § 56.107(b) accordingly.

As provided in § 56.107(a), however, in seeking diverse membership on the IRB, the institution must consider both men and women who can contribute to

the work of the IRB. Given the ready availability of well-qualified persons of both genders, FDA expects that only rarely, if ever, will an IRB consist solely of men or solely of women.

6. FDA proposes to revise § 56.107(c), which currently requires each IRB to include at least one member whose primary concerns are in nonscientific areas, to conform to the language contained in final § _____.107(c) of the Model Policy. As revised, § 56.107(c) would require that each IRB include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas. These changes should not affect any IRB that reviews research regulated by FDA. As described in the preamble to the 1981 IRB regulations (46 FR 8966), FDA's current regulations assume that an IRB will include at least one qualified scientist:

> * * * FDA emphasizes that § 56.107(a) requires that IRBs have as members persons with the professional competence necessary to review the proposed research. For example, FDA would expect that an IRB that reviews investigational new drug studies will include at least one physician.

FDA expects that institutions will continue to use good judgment and diligence in selecting as IRB members persons who can fulfill the requirements of § 56.107(a), so that persons of varying backgrounds will be included on any IRB to ensure complete and adequate review of the research activities.

Should FDA adopt the proposed amendment, in inspecting any IRB, the agency will continue to review an IRB's composition to ensure that its membership is appropriate for the research it is charged to review and may request that member ship be supplemented if complete and adequate review of the research does not appear possible.

IRB Functions and Operations

To be consistent with the language contained in § _____.103(b) (4) and (5) of the final Model Policy, FDA is proposing to remove § 56.108(a) (5) and (c), redesignate current § 56.108(b) as § 56.108(c), and add new § 56.108(b) that would state:

> Follow written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the Food and Drug Administration of: (1) Any unanticipated problems or scientific misconduct involving risks to human subjects or others; (2) any instance of serious or continuing noncompliance with these regulations or the requirements or determinations of the IRB; and (3) any suspension or termination of IRB approval.

New § 56.108(b) would incorporate the requirements currently included in § 56.108(a) (5) and (c) of FDA's regulations, conform them to the final Model Policy, and respond to recommendations 7 and 8 of the President's Commission concerning scientific misconduct in research involving human subjects, as described in the preamble to the proposed Model Policy (51 FR 20209, 20210). New § 56.108(b) would effect three changes in FDA's regulations.

a. The major change is to require prompt reporting of scientific misconduct involving risks to human subjects or others while allowing institutions the flexibility to develop their own procedures. These procedures must assure that instances of scientific misconduct are promptly reported to the IRB, to appropriate institutional officials, and to FDA. Institutions will, therefore, be afforded flexibility in meeting the requirements of the regulations.

b. The current regulations require that an IRB follow written procedures that ensure prompt reporting to the IRB of unanticipated problems involving risks to subjects or others. Proposed § 56.108(b) would require that an IRB follow written procedures that ensure prompt reporting of unanticipated problems not only to the IRB but also to appropriate institutional officials and FDA.

c. Finally, FDA's current regulations provide that the IRB is responsible for reporting any instance of serious or continuing noncompliance with the regulations or the requirements or determinations of the IRB, and any suspension or termination of IRB approval, to appropriate institutional officials and to FDA. FDA is proposing to require that these responsibilities be reflected in the written procedures of the IRB.

These proposed changes would ensure that the IRB, the institution, and FDA are informed of problems and misconduct based on noncompliance with the regulations. Because of the importance that FDA attaches to ensuring that the IRB, the institution, and FDA are so informed, the agency has tentatively determined that the obligation to notify these bodies should be reflected in the IRB's written procedures.

Expedited Review Procedures for Certain Kinds of Research Involving No More Than Minimal Risk and for Minor Changes in Approved Research

8. FDA proposes to revise § 56.110(b) to conform it to the language contained in § 2.110(b) of the final Model Policy. The first and second sentences of § 56.110(b) currently provide that:

> An IRB may review some or all of the research appearing on [a list published in the **Federal Register** of January 27, 1981; 46 FR 8980] through an expedited review procedure, if the research involves no more than minimal risk. The IRB may also use the expedited review procedure to review minor changes in previously approved research during the period for which approval is authorized.

FDA proposes to revise this language to state:

> An IRB may use the expedited review procedure to review either or both of the following: (1) Some or all of the research appearing on the list and found by the reviewers to involve no more than minimal risk, (2) minor changes in previously approved research during the period (of 1 year or less) for which approval is authorized.

FDA believes that this change would not in any way change the substance of the regulation or the circumstances in which expedited review may be used.

Criteria for IRB Approval of Research

9. FDA proposes to revise § 56.111(a)(3) and (b) to conform its regulations to the language contained in § _____.111(a)(3) and (b) of the final Model Policy. As discussed below, these proposed revisions would both clarify and reinforce current regulatory requirements.

FDA would retain the current wording in § 56.111(a)(3), but at the end of the provision would add the phrase "and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons."

This proposed addition would conform § 56.111(a)(3) to the language contained in § ——.111(a)(3) of the final Model Policy and would reinforce the protections in § 56.107 for vulnerable populations.

FDA is proposing three changes in § 56.111(b) to conform it to the language contained in the Model Policy. The first proposed change would delete the phrase "such as persons with acute or severe physical or mental illness" from the examples given of subjects likely to be vulnerable to coercion or undue influence. Although this category of subjects would no longer be explicitly included in § 56.111(b), FDA would continue to regard these persons as being likely to be vulnerable to coercion or undue influence and would expect an IRB to ensure that appropriate additional safeguards have been

included in a study to protect the rights and welfare of such subjects. The second proposed change would clarify which groups of subjects are likely to be vulnerable to coercion or undue influence, by giving examples from § ——.111(b) of the final Model Policy. The groups mentioned are children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons. The third change that the agency is proposing is to delete the word "appropriate" from the requirement that, where necessary "* * * additional safeguards have been included in the study to protect the rights and welfare of these subjects." FDA expect that any additional safeguards that are recommended in a study would be appropriate to protect the rights and welfare of subjects included in the study, and, therefore, inclusion of the word "appropriate" is unnecessary.

IRB Records

10. FDA is proposing to revise § 56.115(a)(6) to cross-reference proposed § 56.108(b), which would require the IRB to follow written procedures for certain reporting requirements. The agency proposes this change for consistency with the Model Policy and, therefore, considers it to be minor.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

Sections 56.108(b) and 56.115 of this proposed rule contain collection of information requirements subject to approval by the Office of Management and Budget under the terms of the Paperwork Reduction Act. Comments on these requirements should be submitted to FDA's Dockets Management Branch (address above) and to Mr. Richard Eisinger, Office of Management and Budget, Executive Office of the President, Room 3002, New Executive Office Building, Washington, DC 20503.

Economic and Regulatory Assessments

FDA has examined the economic consequences of the proposed amendments to its regulations pertaining to any IRB and to informed consent in accordance with the criteria in section 1(b) of Executive Order 12291 and found that these amendments, if promulgated, would not be a major rule under the Executive Order. The agency also has considered the effect that the proposed rule would have on small entities including small businesses in accordance with the Regulatory Flexibility Act (Pub. L. 96–354). The agency certifies that there will not be a significant economic impact on a substantial number of small entities.

The proposed amendments are intended to being FDA's regulations on informed consent of human subjects that participate in clinical research (21 CFR Part 50) and on general standards for any IRB that reviews clinical investigations regulated by the agency (21 CFR Part 56) into conformance with the Model Policy to the extent possible. The proposed amendments have three kinds of impact.

First, there are nomenclature, definitional, and clarifying changes that do not alter the current usage or meaning of the terms in the regulations. These changes have no impact on IRB functions or operations.

Second, there are two changes that clearly benefit an IRB and the research community in general. One exempts certain taste and food quality evaluation studies from IRB review. The other allows for greater flexibility in determining the composition of any IRB.

Third, there is the change, responding to recommendations in the preamble to the Model Policy, which necessitates adding "unanticipated problems or scientific misconduct" to a list of items that are to be reported to the IRB, the institution, and to the agency, and requires the IRB to adopt and follow written procedures for two responsibilities held under the current regulations. Incorporating these requirements into existing IRB written procedures should require at most a paragraph. The agency does not consider this to be a material burden on any IRB, regardless of size.

Thus, these proposed amendments are considered to have no significant effect, either positive or negative, on the institutions overseeing clinical research.

Request for Comments

Interested persons may, on or before January 9, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 50

Prisoners, Reporting and recordkeeping requirements, Research, Safety.

21 CFR Part 56

Reporting and recordkeeping requirements, Research, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, it is proposed that Parts 50 and 56 be amended as follows:

PART 50—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for 21 CFR Part 50 is revised to read as follows:

Authority: Secs. 201, 406, 409, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701(a), 706, and 801, Pub. L. 717, 52 Stat. 1040–1042 as amended, 1049–1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 72 Stat. 1785–1788 as amended, 74 Stat. 399–407 as amended, 76 Stat. 794–795 as amended, 90 Stat. 540–560, 562–574 (21 U.S.C. 321, 346, 348, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371(a), 376, and 381); secs. 215, 351, 354–360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 262, 263b–263n); 21 CFR 5.10.

2. In § 50.3 by revising paragraph (l) to read as follows:

§ 50.3 Definitions.

* * * * *

(l) "Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

* * * * *

PART 56—INSTITUTIONAL REVIEW BOARDS

3. The authority citation for 21 CFR Part 56 is revised to read as follows:

Authority: Secs. 201, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701(a), 706, and 801, Pub. L. 717, 52 Stat. 1040–1042 as amended, 1049–1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511–518 as amended, 72 Stat. 1785–1788 as amended, 74 Stat. 399–407 as amended, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 560, 562–574 (21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371(a), 376, and 381) secs. 215, 301, 351, 354–360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 241, 262, 263–263n); 21 CFR 5.10.

4. In § 56.102 by revising paragraph (i) and adding new paragraph (m) to read as follows:

§ 56.102 Definitions.

* * * * *

(i) "Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

* * * * *

(m) "IRB approval" means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and Federal requirements.

5. In § 56.104 by adding paragraph (d) to read as follows:

§ 56.104 Exemptions from IRB requirement.

* * * * *

(d) Taste and food quality evaluation and consumer acceptance studies, if wholesome foods without additives are consumed or if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

6. In § 56.107 by revising paragraphs (a), (b), and (c) to read as follows:

§ 56.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

* * * * *

7. In § 56.108 by removing paragraph (c), redesignating paragraph (b) as paragraph (c), revising paragraph (a), and adding paragraph (b) to read as follows:

§ 56.108 IRB functions and operations.

* * * * *

(a) Follow written procedures (1) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (2) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; (3) for ensuring prompt reporting to the IRB of changes in a research activity; and (4) for ensuring that changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except where necessary to eliminate apparent immediate hazards to the human subjects.

(b) Follow written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the Food and Drug Administration of (1) any unanticipated problems or scientific misconduct involving risks to human subjects or others; (2) any instance of serious or continuing noncompliance with these regulations or the requirements or determinations of the IRB; and (3) any suspension or termination of IRB approval.

* * * * *

8. In § 56.110 by revising paragraph (b) to read as follows:

§ 56.110 Expedited review procedures for certain kinds of research involving no more than minimal risk and for minor changes in approved research.

* * * * *

(b) An IRB may use the expedited review procedure to review either or both of the following: (1) some or all of the research appearing on the list and found by the reviewers to involve no more than minimal risk, (2) minor changes in previously approved research during the period (of 1 year or less) for which approval is authorized. Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited procedure set forth in § 56.108(c).

* * * * *

9. In § 56.111 by revising paragraphs (a)(3) and (b) to read as follows:

§ 56.111 Criteria for IRB approval of research.

(a) * * *

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

* * * * *

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

10. In § 56.115 by revising paragraph (a)(6) to read as follows:

§ 56.115 IRB records.

(a) * * *

(6) Written procedures for the IRB as required by § 56.108 (a) and (b).

* * * * *

James S. Benson,

Acting Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

Dated: August 9, 1988.

[FR Doc. 88-25553 Filed 11-9-88; 8:45 am]

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federal register

Thursday
November 10, 1988

Part III

Department of Education

Consolidated Application Package for Fiscal Year 1989; Notice

DEPARTMENT OF EDUCATION

Consolidated Application Package for Fiscal Year 1989

AGENCY: Department of Education.

ACTION: Notice inviting applications for certain new direct grant awards.

SUMMARY: The Secretary gives notice inviting applications for new direct grants under the Handicapped Children's Early Education Program and Postsecondary Education Programs for Handicapped Persons.

This notice consists of three Sections and an Appendix. Section I provides background information and discusses the purpose of this notice. Section II contains two lists of program application notices and application information that pertains to the programs in each list. Section III provides information regarding applicable procedures under Executive Order 12372, Intergovernmental Review of Federal Programs. The Appendix contains the basic application form and instructions for completing the form. No separate application package is necessary to apply under the programs announced in this notice.

The estimates of funding levels in this notice do not bind the Department of Education to a specific number of grants or level of funding, unless otherwise specified by statute or regulation.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priorities for these competitions, as published in the **Federal Register** on September 29, 1988, 53 FR 38254, because many of these projects will require cooperative planning efforts among grantees and State and local agencies and that projects need to be in place at the beginning of the 1989–90 school year.

Further, the Secretary has received only a few comments regarding these priorities. None of the commenters objected to the priorities, but rather offered suggestions for modification in their focus. It is not anticipated that substantive changes will be made in the final priorities. However, if any substantive changes are made in the final priorities for these programs, applicants will be given an opportunity to revise or resubmit their applications.

DATES: The closing dates for transmitting applications under this notice are listed in Section II of this notice.

ADDRESS: Applications are to be mailed to the following address: U.S. Department of Education, 400 Maryland Avenue SW., Application Control Center, Washington, DC 20202–4725. See Section III for detailed information relate to hand-delivered applications.

FOR FURTHER INFORMATION CONTACT: For specific information concerning a particular program, contact the Program Contact cited in the application notice in section II applicable to the program.

Section I—Background Information

The purpose of this notice is to inform potential applicants of closing dates for the transmittal of applications for certain grants issued by the U.S. Department of Education.

Application closing dates are listed in section II of this notice.

Applicants who decide to apply under one or more program priority covered by this notice should submit an application for each program priority and follow the specific instructions established for each program, as described in section II.

Closing dates and procedures may vary from program to program. The charts in section II inform potential applicants of: Title of the program; Title of program priority and Catalog of Federal Domestic Assistance (CFDA) number; Deadline for transmittal of Applications (closing date); Deadline for Intergovernment Review; Expected available funds; Estimated range of awards; Estimated size of awards; and Expected project period. To ensure expeditious processing of their respective applications, applicants are particularly requested to make certain that the correct CFDA number for the priority addressed in the application appears on each application. Following the chart is the program specific information: the purpose of the program, applicable regulations, information contact person, description of programmatic priorities, and other program information and specific requirements not covered in the application form in the Appendix.

Section II—Program Application Notices

This section contains (1) a listing of application notices for new awards for FY 1989 and (2) specific application information and requirements for individual programs.

Paperwork Reduction Act of 1980

This combined application package contains no new information collection requirements. The information collection requirements contained herein have been approved by the Office of Management and Budget under OMB control number 1820–0028.

TITLE OF PROGRAM: HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

[Application notices for fiscal year 1989]

Title and CFDA Number	Deadline for transmittal of applications	Deadline for Intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Nondirected Demonstration (CFDA No. 84.024B1)	Jan. 12, 1989	Mar. 12, 1989	$550,000	$80,000 to 125,000	$110,000	5	Up to 36.
Nondirected Experimental Projects [1] (CFDA No. 84.024H1).	Jan. 12, 1989	Mar. 12, 1989	1,500,000	80,000 to 150,000	125,000	4	Up to 36.

[1] Nondirected Experimental projects are forward funded for three years.

Title of Program: Handicapped Children's Early Education Program CFDA No. 84.024

Purpose: To provide Federal support for a variety of activities designed to address the special problems of infants and children with handicaps, from birth through age eight and their families, and to assist State and local entities in expanding and improving programs and services for these children and their families. Activities include demonstrations, outreach, experimental, research and training projects, and research institutes.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 79, and 80, and (b) The Handicapped Children's Early Education Program, 34 CFR Part 309, as amended August 11, 1987 (52 FR 29816).

Priorities: The Secretary announces, pursuant to 34 CFR 75.105(c)(3), the following priorities for the Handicapped Children's Early Education Program. The Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications that meet these priorities.

Priority 1. Nondirected Demonstrations (CFDA No. 84.024)

This priority supports demonstration projects that develop, implement, and evaluate new or improved approaches for serving young children with handicaps (ages birth through eight). Projects funded under this priority must design models that allow young children with handicaps to achieve their optimal functioning level within normalized, nonsegregated environments.

Applications must describe (1) the specific service problem or issue that the project will address; (2) the specific components or procedures of the model and the rationale, based on theory, research, or practice evaluation, for those components or procedures; (3) the specific types of students participating in the project (i.e., age, handicapping condition or diagnosis, level of functioning) and (4) an evaluation design that includes functional outcome measures for the young children with handicaps who participate in the proposed intervention(s). Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for developing interventions for young children with handicaps. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information.

The Secretary particularly invites applications for demonstration projects that develop models for delivering, coordinating, or supplementing needed developmental, special educational, or related services to infants, toddlers, or preschool-aged children with handicaps who are in day-care programs (home-based, center-based, or home or center based in conjunction with part-day special education preschool programs). This invitational priority responds to the growing number of young children, including children with handicaps, who are placed in day-care services to accommodate the child-care needs of working parents. However, applications that meet this invitational priority will not receive a competitive preference over applications for demonstration projects that develop, implement, and evaluate new or improved approaches for serving young children with handicaps (ages birth through eight).

Priority 2. Nondirected Experimental Projects (CFDA No. 84.024)

This priority supports investigations of alternative interventions or approaches for serving infants, toddlers, or preschool-aged children with handicaps. Interventions selected for comparison must include those for which information is unavailable regarding their relative effectiveness for particular groups of children or within particular settings or conditions. Projects supported under this priority must:

(1) Compare the alternative interventions or approaches in typical service settings;

(2) Conduct the investigations using methodological procedures that will produce unambigious findings regarding the relative effectiveness of the alternative strategies as well as any findings as to interaction effects between particular approaches and particular groups of children or particular contexts; and

(3) Include dissemination activities that will lead to improved services for infants, toddlers, or preschool-aged children with handicaps.

Applications must describe (1) the specific problem or issue that the project will address; (2) the specific approaches or interventions that will be compared or validated, including the rationale for selecting particular approaches and previous evaluation information regarding these approaches; (3) specifically, the children targeted by the project (i.e., age, handicapping condition or diagnosis, level of functioning); and (4) an evaluation design that includes functional outcome measures for the young children with handicaps or their families who participate in the proposed intervention(s). Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for developing interventions for young children with handicaps. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information.

The Secretary particularly invites applications that compare alternative approaches to assessing family strengths and needs as part of the process for developing the individualized family service plans (IFSP) required under Part H of the Education of the Handicapped Act. Such projects could compare approaches, instruments, or tools commonly used for family assessment across disciplines or within a single discipline to determine their relative effects on the strength and needs identified, on the process for developing the IFSP, on the document itself, and on the satisfaction of participants in the planning process, including families of infants and toddlers with handicaps. However, applications that meet the invitational priority will not receive a competitive preference over other applications for projects that investigate alternative interventions or approaches for serving infants, toddlers, or preschool-aged children with handicaps.

Eligible Applicants: Public agencies and nonprofit private organizations may apply for an award under any of the priorities.

For Applications or Information Contact: Susan Fowler or Joseph Clair, Office of Special Education Programs, Division of Educational Services, U.S. Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4620–2644), Washington, DC 20202. Telephone: Susan Fowler (202) 732–1068; Joseph Clair (202) 732–4503.

Program Authority: 20 U.S.C. 1424.

(Catalog of Federal Domestic Assistance No. 84.024; Handicapped Children's Early Education Program)

Selection Criteria: The Secretary uses the following criteria under 34 CFR Part 309 to evaluate an application. References to the Act refer to the Education of the Handicapped Act.

(a) *Importance.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed:

(ii) The extent to which the project is based on previous research findings related to the problem or issue:

(iii) The numbers of individuals who will benefit; and

(iv) How the project will address the identified problem or issue.

(b) *Impact.* (15 points)

(1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with

handicaps, birth through age eight, and their families.

(2) The Secretary considers—

(i) The contribution that project findings or products will make to current knowledge and practice;

(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and

(iii) The extent to which findings or products are replicable, if appropriate.

(c) *Technical soundness.* (35 points)

(1) The Secretary reviews application to determine the the technical soundness of the project plan;

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project:

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects, in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers—

(i) The curriculum, course sequence, and practica leading to specific competencies; and

(ii) The relationship of the project to the comprehensive system of personnel development plans required by Parts B and H of the Act, and State licensure or certification standards.

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities;

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with children, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other than those available through this part;

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timelines for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objective and quantifiable data.

(f) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) The Secretary considers experience and training in areas related to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

TITLE OF PROGRAM: POSTSECONDARY EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

[Application notices for fiscal year 1989]

Title and CFDA Number	Deadline for transmittal of applications	Deadline for Intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Nondirected Demonstration (CFDA No. 84.078C1)	Jan. 13, 1989	Mar. 13, 1989	$800,000	$60,000–90,000	$75,000	10	Up to 36

Title of Program: Postsecondary Education Programs for Handicapped Persons CF DA No: 84.078.

Purpose: To develop, operate, and disseminate specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with handicapping conditions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 79, and 80, and (b) The regulations for Postsecondary Education Programs for Handicapped Persons, 34 CFR Part 338.

Priorities: The Secretary announces pursuant to 34 CFR 75.105(c)(3), the following priority for fiscal year 1989. The Secretary will give an absolute preference to applications that meet this priority; that is, the Secretary will select for funding only those applications proposing projects that meet this priority.

Priority: Postsecondary Demonstration Projects. (CFDA 84.078C)

This priority supports model projects which provide individuals with mild or moderately disabling conditions other than deafness with adapted or specially designed programs that coordinate, facilitate, and promote the provision of appropriate education of these individuals with their nondisabled peers. These projects are to be targeted to improve the vocational outcomes for youths and adults who have completed or left secondary school programs and who are in need of additional education or training in order to secure and maintain competitive employment. Applicants under this priority must describe in detail how they will accomplish the following tasks:

(1) Establish strategies for use in locating and serving youth and adults with disabilities who are in need of continued educational services;

(2) Establish or make use of existing formal cooperative relationships among and between schools (public secondary and higher educational institutions), vocational rehabilitation agencies, and potential employers;

(3) Develop individualized programs that detail the goals and objectives necessary for students to obtain the requisite skills for securing competitive employment;

(4) Achieve appropriate job placements for persons with disabilities served by the project through short term postsecondary educational interventions;

(5) Provide follow-up and follow-along activities for persons with disabilities placed in jobs by the project; and

(6) Propose training of project participants in relevant aspects of adjustment to the community as well as the workplace.

Eligible Applicants: State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other nonprofit educational agencies.

Selection Criteria: The Secretary uses the weighted criteria in this section to evaluate applications for new awards. The maximum score for all the criteria is 100 points.

(a) *Plan of Operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

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

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants 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.

(b) *Quality of Key Personnel:* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(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 (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory 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 the qualifications of a person, the Secretary considers experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, *Evaluation by the grantee.)*

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Continuation of program.* (5 points)

(1) The Secretary reviews each application for information that shows that the activities to be supported are likely to be continued after Federal funding ends.

(2) The Secretary looks for information that shows the likelihood that the services provided under the proposed program will be continued by the applicant following the expiration of the Federal funding, as measured by evidence of financial and other commitment of the applicant to the program.

(g) *Importance.* (10 points)

(1) The Secretary reviews each application for information demonstrating that the proposed project is nationally important in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issue to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue, and in remediating or compensating for it;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(h) *Impact* (15 points)

The Secretary reviews each application for information that shows the probable impact of the proposed research or demonstration activities in improving postsecondary education for handicapped individuals, including—

(1) The contribution that the research or demonstration findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(Authority: 20 U.S.C. 1424a)

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Exceutive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# [applicant must insert number and letter], U.S. Department of Education, MS 6403, 400 Maryland Avenue, SW., Washington, DC 20202–0125. Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #[applicant must insert number and letter]), Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA#[applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (Note: Ed Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.)

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Joseph Clair, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4620–2644), Washington, DC 20202. Telephone: Joseph Clair (202) 732–4503.

Dated: November 4, 1988.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions. In general these questions and answers are applicable to all direct grant competitions covered by this combined application package.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to *all* applications. Waivers for individual applications *cannot* be granted, regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only an original and two copies need be submitted. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applicants should not use foldouts, photographs, or other materials that are hard to duplicate.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, but it may not be worth the postage. A properly prepared application should meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate. What should I do?

A. We are happy to discuss the questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor does it guarantee the success of the application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with *anyone* reviewed under a different competition from the one you intended.

Q. Will my application be returned if I am not funded?

A. We no longer return original copies of unsuccessful applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to applicants who are not successful.

Q. How should my application be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria of the regulations pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project should precede the application narrative.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual meeting, you may also wish to include a trip to Washington, DC in the travel budget. Travel conferences is sometimes allowed when it is for the purpose of dissemination.

Q. If my application receives a high score from the reviewer, does that mean that I will receive funding?

A. No. It is often the case that the number of applications scored highly by or approved by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations, technical and budget issues may be raised. These are issues that have been identified during panel and staff review and require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. If my application is successful can I assume I will get the estimated/projected budget amounts in subsequent years?

A. No. The estimate for subsequent year project costs is helpful to us for planning purposes but it in no way represents a commitment for a particular level of funding in subsequent years. Grantees having a multi-year project will be asked to submit a continuation application and a detailed budget request prior to each year of the project.

Q. What is a cooperative agreement and how does it differ from a grant?

A. A cooperative agreement is similar to a grant in that its principal purpose is to provide assistance for a public purpose of support or stimulation as authorized by a Federal statute. A cooperative agreement differs from a grant because of the substantial involvement anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

Q. Is the procedure for applying for a cooperative agreement different from the procedure for applying for a grant?

A. No. If the Department of Education determines that a given award should be made by cooperative agreement rather than a grant, the applicant will be advised at the time of negotiation of any special procedures that must be followed.

Q. How do I provide an assurance?

A. Simply state in writing that you are meeting a prescribed requirement.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. It is helpful to include in the appendices such information as:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information relevant to the proposed project. Qualifications of consultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project,

including copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. How can I be sure that my application is assigned to the correct competition?

A. Applicants should clearly indicate in Block 10 of the face page of their application (Standard form 424) the CFDA number and the title of the program priority (e.g., 84.023) representing the competition in which the application should be considered. If this information is not provided, your application may inadvertently be assigned and

Q. Where can copies of the **Federal Register**, program regulations, and federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION:		2. DATE SUBMITTED	Applicant Identifier
Application ☐ Construction ☐ Non-Construction	*Preapplication* ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d) Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f) The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

PART III - PROGRAM NARRATIVE

A. New Grants

Prepare the program narrative statement in accordance with the following instructions for all new grants programs and all new functions or activities for which support is being requested.

Note that the program narrative should encompass each program and each function or activity for which funds are being requested (see Sections A and B in Part II). Relevant selection criteria (included in this package) should be carefully examined for criteria upon which evaluation of an application will be made and the program narrative must respond to such criteria under the related headings below. The program narrative should begin with an overview statement (Abstract) of the major points covered below.

1. OBJECTIVES AND NEED FOR THIS ASSISTANCE

Describe the problem and demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used.

Any relevant data based on planning studies should be included or footnoted. Projects involving Demnstration/Service activities should present available data, or estimates for need in terms of number of handicapped childen (by type of handicap and by type of service) in the geographic area involved.

Projects involving Training should present available data, or estimates, for need in terms of number of personnel by position type (e.g., teachers, teacher-aides) by type of handicap to be served. Documentation by the SEA should be supplied for 84.029 (Handicapped Personnel Preparation).

2. RESULTS OR BENEFITS EXPECTED

Identify results and benefits to be derived. Projects involved in Training and or Demonstration/Service activities should indicate the number of personnel to be trained or the number of children to served.

3. APPROACH

a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others.

For example, an application for demonstration/service programs should describe the planned educational curriculum: the types of attainable accomplishments set for the children served; supplementary services including parent education; and the composition and responsibilities of an advisory council.

An application for a training program should describe the substantive content and organization of the training program, including the roles or positions for which students are prepared, the tasks associated with such roles, the competencies that must be acquired; the program staffing; and the practicum facilities including their use by students, accessibility to students and their staffing.

B. Provide for each grant program, function or activity, quantitative projections of the accomplishments to be achieved.

An applications for demonstration/service programs should project the number of children to receive demonstration/services by type of handicapping conditions, and number of persons to receive inservice training.

Training programs should project the number of students to be trained by type of handicapping condition.

For non-demonstratin/service and non-training activities of all programs, planned activities should be listed in chronological order to show the schedule of accpmplishment and their target dates.

C. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. For demonstration/service activities, evaluation procedures snould be related to the child-centered objectives set for project participants.

For all activities, explain the methodology that will be used to evaluate project accomplishments.

D. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Especially for demonstration/service activities, describe the liaison with community or State organizations as it affects project planning and accomplishments.

E. Present biographical sketch of the project director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the names, training and background for other key personnel engaged in the project.

Note: The application narrative should not exceed 30 double-spaced, typed pages (on one side only).

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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Part IV

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 516 and 530

Employment of Homeworkers in Certain Industries; Records To Be Kept by Employers; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 516 and 530

Employment of Homeworkers in Certain Industries; Records To Be Kept by Employers

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Final rules.

SUMMARY: This document provides a final rule on restrictions affecting the employment of industrial homeworkers in certain industries under section 11(d) of the Fair Labor Standards Act (FLSA). It also provides a final rule amending the recordkeeping requirements imposed pursuant to section 11(c) of the FLSA for all covered employers of homeworkers. There are presently six industries in which homework is banned under section 11(d) of the FLSA unless special individual certificates are obtained. The six industries are: Women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries. (Under a rule adopted in 1984, homework is permitted in the knitted outerwear industry, provided the employer first obtains a certificate from the Department of Labor.) For the reasons discussed below, the Department has decided that the current restrictions should be modified.

Under the final rule, the women's apparel industry and activities in the jewelry industry not identified herein as nonhazardous remain subject to the same restrictions on homework as in the prior rule. Any employer who wishes to employ homeworkers in the remaining restricted industries must first obtain a certificate from the Department authorizing such employment. Employers in the knitted outerwear industry must obtain new certificates in accordance with this rule. Any such employer who does not first obtain a certificate cannot legally employ homeworkers (other than those homeworkers for whom special certificates have been issued under certain specified conditions) and is subject to the restrictions and sanctions provided by the FLSA. Also, a number of clarifying changes have been made in the text of the final rule.

EFFECTIVE DATE: January 9, 1989. The paperwork requirements of this regulation §§ 530.102, 530.103, 530.202, and 516.31(c)) are effective January 9, 1989, provided they have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980, as amended. If they are not approved by January 9, 1989, a notice will be published in the Federal Register delaying the effective date.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, the recordkeeping provisions that are included in these rules, including revisions to the homeworker handbooks, have been submitted to the Office of Management and Budget for approval. The Wage and Hour Division has requested an expedited review of its submission under the Act, to be completed within 30 days of the date of publication in the Federal Register. A copy of the submission is being separately published in the Federal Register for the convenience of the public.

Public reporting burden for this collection of information, including the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is estimated to average, per response: (1) Homework application (§ 530.102 and .103)—½ hour; (2) piecework measurement documentation (§ 530.202)—1 hour per measurement plus 1 minute for filing; (3) homeworker handbook (§ 516.31(c))—½ hour completion time by the homeworker plus ½ minute for filing by the employer. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Washington, DC 20503.

Background

Statutory Provisions and History of Homework Regulations

Section 11(d) of the FLSA provides that the Secretary of Labor is "authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act." Pursuant to this authority, the Secretary has issued regulations, published as Part 530 of Title 29 of the Code of Federal Regulations. As originally issued in the 1940's, these regulations restricted the employment of industrial homework in seven industries: Knitted outerwear; women's apparel; jewelry manufacturing; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. Homework in other industries has not been restricted. The regulations essentially provide that the production of goods in these restricted industries may not be carried on by employees in or about a home, apartment, tenement, or room in a residential establishment except by a certified homeworker. Under specified conditions, an employer may obtain a certificate for employees who are unable to adjust to factory work because of age or physical or mental disability or who are unable to leave home because their presence is required to care for an invalid there. Individuals may also be employed as industrial homeworkers in the restricted industries under the supervision of a sheltered workshop without obtaining a certificate under Part 530.

Final Rule Establishing a Certification System in Knitted Outerwear Industry Effective December 5, 1984

In 1980, in light of the fact that the homework regulations had been in effect for almost 40 years without substantive revision, the Department undertook a review of the status of industrial homework. The Department published a proposal in the Federal Register on May 5, 1981 (46 FR 25108) to remove the existing restrictions on homework in all seven industries. On October 9, 1981, after reviewing the entire record, the Department issued a final rule rescinding the restrictions on the employment of homeworkers in the knitted outerwear industry only (46 FR 50348).

This rulemaking action was challenged in court by the International Ladies' Garment Workers' Union (ILGWU), various knitgoods manufacturers, the New York and California State Labor Commissioners, and others who sought to enjoin the rescission. The United States District Court for the District of Columbia upheld the rule. However, on November 29, 1983, the Court of Appeals for the District of Columbia Circuit vacated the rescission of the restriction and remanded the case to the district court resulting in the reinstatement of

restrictions in the knitted outerwear industry on May 23, 1984.

The Court of Appeals ruled that the final rule had been promulgated in violation of the Administrative Procedure Act, in that the Department had failed to articulate adequately the reasons for its action (*ILGWU* v. *Donovan*, 722 F.2d 795 (DC Cir. 1983)). The court was concerned that the Department had failed to consider alternatives to the complete lifting of the ban, and that the record lacked factual support for the Department's assertion that an effective enforcement program would be feasible if the ban were lifted. In this connection, the court focused on four factors which arguably rendered the enforcement of the minimum wage for homeworkers difficult or impossible:

1. Difficulty of locating and identifying homeworkers;
2. Inadequate or nonexistent recordkeeping by employers and employees;
3. Strain on departmental resources required by excessive investigative time in homework cases; and
4. Difficulty in recovering back wages when violations were discovered.

Thereafter, the Department published a proposal on March 27, 1984 (49 FR 11786) to repromulgate a permanent rule rescinding the restrictions in knitted outerwear, and solicited comments on various alternatives to total rescission. A second comment period was announced on June 22, 1984 (49 FR 25641) inviting comments on the alternatives to total rescission, and, in particular, comments pertaining to licensing/registration of employers of industrial homeworkers.

On March 27, 1984, the Department also promulgated an "emergency" rule (49 FR 11792) temporarily rescinding the restrictions on homework in knitted outerwear for 120 days, to avoid potential disruption to homeworkers while the new rulemaking was pending. On May 8, 1984, the District Court ruled that the emergency rule was invalid, and ordered that it be rescinded forthwith.

On November 5, 1984, a final rule was published in the Federal Register (49 FR 44262) which permits the use of homeworkers in the knitted outerwear industry, provided the employer first obtains a certificate from the Department. Those knitted outerwear employers who do not obtain such certificates remain subject to the ban on homework and to the same restrictions applicable in the case of the other six restricted industries. The authority of the Department to promulgate this regulation was never challenged.

On August 21, 1986, the Department of Labor published a proposed rule which, if adopted, would have lifted the restrictions on the employment of homeworkers in all restricted industries for employers who first obtain certificates authorizing homework from the Department. Thus, the proposal would have expanded the certification program currently in effect in the knitted outerwear industry. The period for public comment on the proposed rule, after having been extended, expired on December 4, 1986.

A number of the commenters indicated their belief that the Department would face substantial difficulty in enforcing the FLSA under the proposal. Specifically, these commenters argued that the enforcement had been ineffective among employers of homeworkers in the knitted outerwear industry under the rule promulgated in 1984. The Department reviewed its enforcement experience in knitted outerwear in light of the issues raised in these comments and, recognizing the validity of some of the concerns raised, issued a revised proposal on March 30, 1988, which incorporated a number of provisions designed to improve and strengthen FLSA enforcements with respect to homeworkers. That notice also stated that any action with respect to the restrictions on homework in the women's apparel industry would be the subject of separate rulemaking proceedings. In addition, those manufacturing operations in the jewelry industry that were believed to be potentially hazardous were not included in the March 30, 1988, proposal. Thus, those portions of the August 21, 1986, proposal relating to the women's apparel and jewelry industries (other than those operations identified in the revised proposal as nonhazardous) were specifically withdrawn.

Increased Homeworker Enforcement Efforts

Since 1981, the Department has conducted a concerted compliance effort to detect violations of the FLSA among homeworkers. As part of this effort, the Department has given priority to investigating all complaints received involving homework, has followed up on all leads regarding employment of homeworkers, and has actively sought to ensure that homework activity, wherever it occurs, is in compliance with the FSLA. Between October 1981 and September 1987, 1,926 investigations of employers utilizing homeworkers were completed as compared with approximately 75 to 80 such investigations during the entire previous six-year period. Of the 1,926 investigations completed, 170 involved knitted outerwear employers; 573 were of other restricted industry employers; and the remaining 1,183 involved employers in nonrestricted industries.

The Department is fully committed to maintaining a strong and effective FLSA enforcement program in industries utilizing homeworkers and will continue to provide a sufficient level of resources to insure the accomplishment of this goal. In this regard, the FY 1989 Budget request submitted to the Congress included 20 additional full-time equivalent (FTE) positions for enforcement of the FLSA among employers of homeworkers. The Department will monitor its enforcement resource needs under this rule and take the necessary steps to ensure that appropriate resources are devoted to this effort.

Interest in Lifting the Remaining Restrictions on Homework

After the implementation of the certification system in the knitted outerwear industry, the Department received five petitions with 1,493 signatures requesting further deregulation of homework, as well as over 400 letters from individuals and organizations urging that the remaining homework restrictions be lifted. Among the reasons for wishing to work at home cited by employees were: The desire to be at home to care for their children; the inability to afford the costs of child care, transportation, clothing, and meals, if they had to work in a factory; the lack of transportation or the difficulty in commuting from their homes to a factory; the desire to set their own work schedules; and the ability to engage in farming operations or other pursuits while working part-time at home.

Individuals who wrote to the Department regarding the homework restrictions pointed to the inequity and incongruity of the prior regulations which permitted the manufacture at home of certain articles of clothing and prohibited the manufacture at home of other similar articles of clothing. For example, homeknitters whose employer obtained a certificate could knit sweaters and hats at home, but they could not knit mittens. The extension of the certification system to the extent practical and appropriate among the remaining restricted industries is intended to reduce these inequities.

Except for the 1981 and 1984 revisions to the homework regulations for the knitted outerwear industry, these regulations have not been substantively changed since the early 1940s. The underlying rationale behind the regulatory restrictions was that people

working in their homes in these industries would be more susceptible to abuse and federal minimum wage violations, as well as child labor exploitation. We now know that the Federal (and, in many cases, State) prohibition on homework in these industries did not eliminate such homework. Moreover, in the Department's view, the prohibition against any homework significantly increased the difficulty of locating homeworkers and ensuring that they have been properly paid. The ban on homework reduced an employee's incentive to file a complaint or cooperate in an investigation regarding minimum wage violations, since a substantiated complaint might have led to a loss of the homeworker's job. Unlike the certificate system, the ban provided no alternative basis for identifying firms employing homeworkers. Since homeworker employers operating in the restricted industries were operating in violation of the law simply by employing homeworkers, these employers had little incentive to comply with the FLSA wage provisions; if found by the Department, they could be compelled to discontinue their homework operations regardless of any minimum wage or overtime pay violations.

August 1986 Regulatory Proposal

The Department reviewed its experience with the certification system in the knitted outerwear industry which became effective December 5, 1984, and concluded that such a system was more effective in ensuring compliance with the minimum wage requirement of the FLSA than was the ban on homework. Accordingly, on August 21, 1986, the Department proposed to adopt a similar certification system in the remaining restricted industries (51 FR 30036). The comment period was subsequently extended to December 4, 1986 (51 FR 37045 as corrected by 51 FR 37296). A total of 19,206 comments were received on the August 1986 proposal, of which 8,020 argued in favor of lifting the ban on homework and 11,186 argued against. Included were 5,814 form letters and post cards opposed to the proposal; 235 form letters in favor. Not included in the above count of comments were 7,648 signatures on petitions in favor of the proposal and 953 signatures on petitions opposed.

March 1988 Regulatory Proposal

A number of commenters on the August 1986 proposal expressed concerns about the Department's ability to enforce the FLSA with respect to homeworkers in these industries. The Department reviewed its enforcement experience in knitted outerwear in light of these comments. Based on this review, and to address the concerns raised in the comments, the Department decided to include in the proposed rule a wider range of enforcement mechanisms to improve FLSA compliance among employers of homeworkers in the restricted industries. In addition, the Department decided to propose revisions to the homework handbook and other recordkeeping requirements in 29 CFR Part 516. These revisions to the August 1986 proposal were made in a March 30, 1988, proposal (53 FR 10342, as corrected by 53 FR 11590).

Furthermore, with respect to the women's apparel industry, the Department decided to continue to review the potential impact of lifting the ban on homework and thus withdrew its prior proposal to modify the existing homework ban in that industry in the March 1988 proposal. The proposal indicated that if the Department decided at a later date to lift the ban in women's apparel, such action would require separate rulemaking. With respect to the jewelry industry, in the March 1988 proposal, the Department withdrew its proposal to lift the ban on the employment of homeworkers except with respect to certain jewelry manufacturing operations which it believed do not involve safety and health hazards. Nonhazardous operations were specifically identified in the proposal as the stringing of beads and other jewelry, carding, and packaging. While the Department tentatively identified these operations as nonhazardous, it recognized that there might be other such safe operations. Comment was invited identifying any additional nonhazardous operations (as well as any operations identified as nonhazardous that might in fact be hazardous).

In the March 1988 notice, the Department also proposed to adopt a policy whereby certain employers who utilize so-called "model garment programs" would not be subject to any action by the Department simply for employing individuals who may work at home at times under certain specified conditions.

Pursuant to the March 1988 notice, the comment period was reopened to solicit views on these modifications to the August 1986 proposal. Notice was given that all comments received in response to the prior notice would continue to be part of the rulemaking record. These comments were considered in preparation of this final rule.

A total of 2,823 comments were received on the March 1988 proposal, of which 197 argued in favor of lifting the ban on homework and 2,626 argued against. The vast majority of the comments opposed consisted of one of several identical (or virtually identical) form letters.

Among the commenters supporting the lifting of the homework ban were five State Departments of Labor; American Farm Bureau Federation; National Federation of Independent Business; U.S. Small Business Administration; Federal Trade Commission; several business, civic, and religious groups; and a number of U.S. Senators and Representatives and other public officials.

Among the commenters opposing the lifting of the homework ban were the AFL–CIO and a number of affiliated unions, including the International Ladies' Garment Workers' Union (ILGWU), Service Employees International Union (SEIU), Amalgamated Clothing and Textile Workers Union (ACTWU), and National Council of Field Labor Lodges (NCFLL); five former Secretaries of Labor and several former Wage and Hour Division officials; 13 State Departments of Labor; a large number of religious, civic, and community organizations; and a number of U.S. Senators and Representatives and other public officials.

Discussion of Issues and Analysis of Comments

The Department recognizes the deeply-held views on all sides of this complex issue. The strong feelings about the employment of homeworkers were highly evidenced in the comments, as discussed below.

I. Enforcement Mechanisms Proposed in March 1988 and Included in the Final Rule

As indicated above, the March 1988 proposal included a number of additional enforcement mechanisms. All of these have been incorporated into this final rule.

The additional enforcement mechanisms were developed with the expectation that, while no single requirement or remedy is likely to ensure compliance with the FLSA, their impact would be cumulative, and the cumulative impact would enhance compliance. Among other things it was expected that experience with the new requirements would educate employers as to their responsibilities under the FLSA. Employers who understand and are willing to comply with the requirements of the FLSA in the

employment of homeworkers will be able to do so, and certificates will be revoked and other enforcement mechanisms utilized, as appropriate, where the Department discovers a lack of responsibility to comply with the Act. Vigorous efforts will simultaneously be taken to enforce the continuing ban with respect to employers without certificates.

With the exception of one commenter who questioned the need to retain the federal ban where it is prohibited under State law, no criticisms of the mechanisms were received from commenters favoring lifting of the restrictions. The main criticism of the mechanisms from commenters opposed to the proposal was that they were not a panacea and could not solve all of the problems of compliance with the FLSA with respect to homeworkers. No suggestions were made, however, as to any revisions that could be made to alleviate perceived shortcomings in individual mechanisms. Following is a discussion of each mechanism with any significant comments made on them:

(1) Phase-in of industries. In order to more efficiently utilize available resources, the certificate program will be phased-in in the remaining restricted industries on an industry-by-industry basis. This will give the Department the time to implement the rule in an orderly fashion and allow the Department to conduct investigations of the employers who apply for certification promptly after the issuance of the certificate, thereby providing the necessary assistance to enable them to fully comply with the FLSA from the outset.

As set forth in § 530.101, the phase-in of the certification program will take place on a graduated basis, beginning with the gloves and mittens industry and the embroideries industry, immediately upon the effective date of the final rule, and the permissible operations in the jewelry industry and the button and buckle manufacturing and handkerchief manufacturing industries six months later. Although the certification program is already in place in the knitted outerwear industry, the additional requirements set forth herein apply upon the effective date of this rule, and new certificates will need to be obtained in accordance with the provisions.

(2) Issue no certificates in States prohibiting homework. Prior to the issuance of certificates pursuant to this rule, the Department will contact those States with statutes which appear to prohibit homework in the federally-restricted industries in order to confirm whether such homework employment is illegal under State law. The States will be afforded thirty days in which to reply. In accordance with § 530.201, the Department will not issue a certificate authorizing the employment of homeworkers where the Governor (or authorized representative) has advised the Administrator in writing that the use of homeworkers in a federally-restricted industry conflicts with a State labor standards or health and safety law. This will avoid any possible confusion for employers in such States and eliminate any potential impact on State agency enforcement efforts.

(3) Regular renewal of certificates. Section 530.101 provides that certificates issued to employers of homeworkers in the restricted industries will be renewable at two-year intervals. Also, at the time of application and at each renewal, § 530.102 requires employers to furnish the Department with a listing of the names, addresses, and languages (other than English) spoken by the homeworkers that are currently employed (if any) or expected to be employed. Thus, the Department will have an additional mechanism for close monitoring of certified employers of homeworkers in these industries, and a system for distributing information such as handbooks and pamphlets. In addition, this requirement will assist the Department in assigning bilingual compliance officers to investigations of such employers.

The ILGWU was critical of the requirement that homeworker employers list the names and addresses of their homeworkers when they apply for a certificate, on the grounds that some employers may not hire homeworkers until after they are certified and if they do, they may fail to list them because it would expose their employment in violation of the FLSA or other statutes.

The Department is aware that many employers will apply for certificates prior to the employment or identification of their homeworkers, in which case the employers will not furnish the information until the time of application for renewal of their certificates. In the interim, of course, the employer is required under current recordkeeping requirements to have on file and make available to the Wage and Hour Division, when requested, the names and addresses of all employees. This (together with any leads obtained) will continue to be Wage-Hour's primary source of information regarding homeworkers. The list of homeworkers provided with the certificate application will simply be a convenient means available for Wage-Hour to contact directly those employees and to learn about languages spoken (for handbooks and investigation scheduling). Finally, the Department recognizes that if an employer decides to operate in violation of labor standards he or she is not likely to provide an accurate list of employees. The purpose of the certificate program is to facilitate employment of homeworkers by employers who wish to comply with the FLSA. There are enforcement remedies available to deal with those who do not.

(4) Conditions of certification. To insure that employers of homeworkers are fully aware of their regulatory and statutory obligations in employing homeworkers, the rule at § 530.103 adds a requirement to the process of application for certification that the employer provide written assurance that all homeworkers will be employed in compliance with the provisions of the FLSA and all applicable regulations with respect to the payment of wages, employment of minors, and recordkeeping. The employer must further assure compliance with the requirements of Parts 516 and 530 with respect to maintenance of homeworker handbooks and calculation of piece rates, and encourage all homeworkers to cooperate with the Department in any investigation that may be made. The final rule has been revised to include that employers must assure that they will instruct homeworkers to accurately fill out homeworker handbooks and that employers in jewelry manufacturing must assure that homeworkers will be limited to certain nonhazardous activities.

Several commenters stated that the assurances would have no effect because employers either did not know the requirements of the law or did not observe the number of compensable hours their employees worked at home. The ILGWU commented that proof of a false assurance would be difficult and that it is inconsistent to require assurance of compliance with the law, implying knowledge of the law, and then at the same time consider ignorance of the law as a factor in assessment of civil money penalties. The majority members of the House Committee on Education and Labor commented that there is no penalty for knowingly making a false assurance.

The Department views the requirement of employer assurances as primarily a mechanism for assuring that employers are aware of their duties under the FLSA, and believes that their public acknowledgement of their legal responsibilities will focus their attention on the law's requirements and have a deterrent effect on violations. We also anticipate that execution of the assurances will assist the Department in

the establishment of willful or knowing violations for purposes of assessment of civil money penalties and collection of back wages and liquidated damages in litigation. With respect to the employer's ignorance of the law as a factor in setting civil money penalties, the Department recognizes that even conscientious employers may not be familiar with all the technicalities of the FLSA. As to the comment of the Committee, if it could be established that an employer gave false assurances, ordinarily his or her certificate would be denied or revoked. Civil money penalties are also available as a sanction against employers whose incorrect assurances are not so severe as to warrant denial or revocation of a certificate. Criminal sanctions for false assurances may also be available under 18 U.S.C. 1001 in appropriate cases.

(5) Wage-Hour investigation procedures. Under § 530.105, any employer in a restricted industry who requests certification to employ homeworkers will be investigated promptly after the issuance of the certificate by the Department's Wage and Hour Division. Where such an employer is found to be in violation of the FLSA, corrects the violation(s) and promises future compliance, the firm will be reinvestigated to further assure that full FLSA compliance has been achieved.

(6) Improved homeworker handbook. This rule contains a number of initiatives to promote the accuracy of hours worked records for all homeworkers (including those in industries in which homework is not restricted). A simplified homeworker handbook has been developed to enable homeworkers to accurately record daily and weekly hours worked. While the prior handbook required a fairly detailed description of work done, e.g., style or lot number, article worked on, operation performed, etc., with a single "hours worked" total for each line entry, the new handbook gives primary attention to accurate recording of daily and weekly hours worked by providing time sheets with sufficient space for a homeworker to log in and out several times a day. The Department believes that this recordkeeping tool more closely approximates the reality of the homework situation in that it recognizes that homeworkers frequently start and stop working a number of times over the course of a day. The new handbook affords homeworkers a simple means to record their hours as they work, rather than to reconstruct the hours worked at the end of the day or week. In addition, in contrast to the prior rule in 29 CFR Part 516 which required that the employer personally enter the information into the handbook, § 516.31(c) requires the employer to insure that the hours worked and other information are accurately entered by the homeworker.

In addition to revising the format of the homeworker handbook, the Department has revised the instructions for filling out the handbook and has included a brief explanation of what constitutes "hours worked" under the FLSA. The new homeworker handbook will be published in several foreign languages, which is expected to reduce enforcement problems associated with language barriers. Presently, the Department is making arrangements to translate the handbook into Spanish, Chinese, Korean, Vietnamese, Cambodian and Laotian.

Under the revised homework recordkeeping regulations, employers are required to insure that the homeworker handbooks are completed accurately and in a timely fashion. In this regard, § 516.31 requires employers to sign a statement in each homeworker handbook that the homeworker was instructed to accurately record all of the required information regarding such homeworker's employment, and that, to the best of his or her knowledge and belief, the information was recorded accurately. The Department believes that the signing of a statement attesting to the validity of the information in the handbook will encourage the maintenance of accurate records.

In addition, a number of clarifying changes have been made to the homework recordkeeping rules in § 516.31

Several commenters stated two reasons why improved handbooks would not result in more accurate records of hours worked by homeworkers. They contend that homeworkers, like other workers, find it inconvenient to write down every time they start and stop working, particularly at home with frequent interruptions; and even if they are willing to keep accurate records, fear of retaliation from their employers makes it unlikely that they will turn in records requiring their employers to pay more wages.

The Department does not dispute the inconvenience of accurate recordkeeping in the home. This is true, however, not only in the home but also with respect to virtually every job where employees work by themselves without supervision. It has been the Department's experience that homeworkers did not understand the handbooks used previously, particularly the need to record all hours worked. The explanation in the handbook of how to record "hours worked" in the homework setting will greatly alleviate this problem. Accurate records will also be facilitated by the log in—log out format and the instructions will provide that the records be kept as the day progresses, rather than reconstructed at a later time—the most difficult problem with recordkeeping by unsupervised employees. Furthermore, the instructions will advise that short rest breaks (less than 20 minutes) are hours worked and such breaks need not be recorded.

With regard to fear of retaliation, it is anticipated that education of employers and employees concerning the consequences of inaccurate records, i.e., that the employer will not be permitted to employ any homeworkers, will encourage accurate recordkeeping. It has been our experience with certified knitted outerwear employers of homeworkers that most come into compliance or substantial compliance with the recordkeeping requirements affter an initial investigation and explanation of the requirements by Wage-Hour compliance officers. Furthermore, employers will be required to submit a written assurance that the homeworkers were instructed to accurately record the required information, and to sign a statement in each handbook that to the best of the employer's knowledge, the entries in the handbook are accurate.

(7) Piece rates—work measurement. Experience in enforcement of the FLSA with respect to homeworkers has shown that many homeworkers do not earn sufficient amounts at piece rates to meet the minimum wage. One apparent reason is that employers have often not set their piece rates high enough to insure that all the homeworkers will be paid at least the required hourly minimum wage. Consequently, as a condition for obtaining a certificate, employers who wish to pay piece rates (as opposed to hourly rates) to their homeworkers are required under § 530.202 to establish the piece rates for the different types of items produced using stop watch time studies or other work measurement methods.

The ILGWU commented that it is inconsistent to admit that the Department's compliance officers had difficulties performing time studies while at the same time expecting employers to perform them properly. They argued that the reasons for the deficiencies in the Department's time studies likewise would apply to those performed by employers.

The Department recognizes that piece rates established by employer time studies will not provide a measurement of hours worked by employees. The requirement that employers set piece rates through time studies or other work measurement methods is intended to help ensure that employers use a rational basis for setting piece rates. A review of the time studies will also assist compliance officers in identifying employers whose practices must be closely examined to ensure compliance with the Act. For example, if the piece rate is set to yield earnings only slightly above the minimum wage, violations are likely with regard to less skilled employees. Finally, the regulation emphasizes that each worker must always earn at least the minimum wage for all hours worked, even if paid at piece rates.

(8) Denial or revocation of a homework certificate. Upon finding violations of the FLSA, the Department has authority under sections 16(c) and 17 of the Act to seek back wages and injunctive relief through court action. The Administrator also has the authority, codified in section 11(d) of the Act, to ban homework if that is necessary to insure that homeworkers are not employed in violation of the minimum wage requirements of the Act. Instead of a total ban on homework, under this rule, the administrator will allow homework in four of the six remaining restricted industries and to a limited extent in a fifth (jewelry), upon the condition that the employer obtain a certificate and comply with the requirements of these regulations. In this regard, another means to obtain compliance with the FLSA is the denial or revocation of a homework certificate upon a determination by the Administrator of the failure of the applicant or certificate holder to comply with the FLSA, the regulations, and the assurances the applicant makes as a condition of obtaining a certificate. Since certificate holders have made certain assurances as a condition of obtaining a certificate, revocation of the certificate is appropriate when the certificate holder does not comply with these assurances. Depending on the circumstances, as described in the regulations, a certificate may be denied or revoked for a period of one to three years.

Several comments stated that the specific new criteria for denying or revoking a certificate will not promote the desired effect of increasing FLSA compliance because the Department has never fully utilized the remedies it has always had to achieve compliance: Back wage suites, injunction suits against the employment of homeworkers and denial of certificates in the knitted outerwear industry. The ILGWU commented that revocation of a certificate is less likely to occur under these specific standards than under the prior discretionary provisions for denial or revocation of a certificate. Several comments stated, on the other hand, that the discretion granted the Administrator not to revoke or deny a certificate under certain circumstances where FLSA compliance is assured means that the denial or revocation standards in the proposal are not truly mandatory.

The Department believes that, given the relatively small number of approximately 50 certified knitted outerwear employers in actual operation, the amount of activity in denial or revocation of certificates and in litigation is not inconsistent with normal enforcement efforts. With regard to the criteria themselves, the Department believes that enforcement of the Act will be best achieved by creation of specific standards of revocation and denial. We anticipate that the establishment of mandatory standards for revocation will be a significant deterrent against violations. The ILGWU comment that revocation is less likely than under the prior discretionary standard overlooks the fact that the rule maintains general discretionary authority in the administrator to deny or revoke a certificate if employment of homeworkers under that certificate is likely to result in violation of the FLSA. This provision may be utilized to deny or revoke a certificate in appropriate circumstances not otherwise subject to one of the specific denial or revocation standards.

With regard to the administrator's discretion not to revoke or deny a certificate where the otherwise mandatory criteria have been met, the circumstances in which such discretion can be exercised are very narrowly circumscribed. It is necessary that the employer not know or have reason to know of the violations, despite the exercise of due care, that all back wages and civil money penalties be paid, and that steps have been taken to prevent recurrence. In our judgement, the purposes of the FLSA and the certificate program are not served by denying or revoking certificates in such circumstances. The Department expects, however, that the cases satisfying the criteria necessary for application of the Administrator's discretion will be infrequent.

Finally, the ILGWU commented that the provision requiring denial or revocation of certificates where an employer has discriminated against homeworkers for engaging in protected activity designed to enforce their rights under the FLSA was unnecessary because homeworkers don't file complaints with the Department, because section 15(a)(3) of the FLSA already protects employees from discrimination, and because it is difficult to prove discrimination.

In the Department's view, providing protection to employees who seek to enforce their rights is essential to effective administration of the Act. Although such protection is provided already in section 15(a)(3) of the Act, including it in these regulations underscores its importance, and may also provide an additional deterrent to employers and alleviate some employees' fear of retailiation.

A revision has been made to § 530.205(g) to make it clear that if an employer fails to maintain the names and addresses of employees, this would be a serious recordkeeping violations and grounds for revocation or denial of a certificate.

(9) Civil money penalties. Section 530.301 establishes a system of civil money penalties to be assessed against applicants and certificate holders for any violation of the FLSA related to homework (except child labor) or for any violation of the homeworker regulations or the assurances made thereunder. (Part 579 of this chapter, issued pursuant to section 12 of the FLSA provides a separate system of civil money penalties for child labor violations.) In setting the amount of any penalty assessed under this rule, the Administrator will take into consideration the number of homeworkers affected, the history of prior violations, whether a violation was intentional or knowing, whether a violation was substantial (but not so serious as to warrant revocation of a certificate) or minor in nature, and any mitigating or extenuating circumstances. A schedule is prescribed in the rule for computation of such penalties, up to $500 per affected homeworker. Procedures for assessment and administrative hearings are also included in the rule.

Authority for imposition of civil money penalties may be found in section 11(d) of the Act, enacted in 1949, which authorizes the Secretary to make "such regulations and orders regulating, restricting, or prohibiting industrial homework *as are necessary or appropriate* to prevent the

circumvention or evasion of and to safeguard the minimum wage rate prescribed in the Act" (emphasis added). Even before this provision was added to the Act the Supreme Court upheld, in *Gemsco* v. *Walling*, 324 U.S. 244 (1945), the Wage-Hour Administrator's authority to prohibit, outright, the practice of industrial homework, where the statute authorized the prescription in industry wage orders of "such terms and conditions as the Administrator finds necessary * * * to safeguard the minimum wage rates * * *".

By the same rationale, section 11(d) authorizes the Secretary to impose remedies short of outright prohibition, namely civil money penalties, where this is a reasonable alternative to prohibition, and reasonably necessary or appropriate to safeguard payment of the minimum wage to homeworkers. (See also *Janik Paving & Construction, Inc.* v. *Brock*, 828 F.2d 84 (2nd Cir. 1987) wherein it was held that the Secretary is authorized to debar contractors under the Contract Work Hours and Safety Standards Act, pursuant to statutory authority "to prescribe appropriate standards, regulations, and procedures * * * with respect to compliance with the enforcement of such labor standards, as he deems desirable," following *Steuart & Bro.* v. *Bowles*, 322 U.S. 398 (1944).) As in *Gemsco*, the Secretary's utilization of a specially tailored remedy pursuant to this rule is necessitated by the special enforcement problems posed by industrial homework, where these problems cannot be readily resolved by the use of more routine back wage or injunctive remedies, yet the violations are not deemed to warrant revocation of the certificate.

The Department views the civil money penalty provisions of this rule as an important enforcement tool to encourage employers of homeworkers to pay not less than the minimum wage and overtime pay as required by the Act, and to keep proper records as required by the regulations. This device will be used in those instances when revocation of a certificate seems inappropriate or unduly harsh under the circumstances of the violations.

The civil money penalty system permits the imposition of relatively moderate administrative remedies for violations of recordkeeping requirements and for operating without certificates in situations where substantial back wages are not found to be due homeworkers. Full due process will be afforded to employers through prescribed administrative appeal procedures as discussed below.

A former Wage and Hour official stated that such penalties were tried unsuccessfully in the migrant farm labor area, but that employers just disappeared rather than face enforcement of the penalties.

The Department views migrant farm labor employment conditions, generally involving transient farm labor contractors, as providing no valid comparison with homework employment by certified employers. In the event an employer with a homeworker certificate fails to pay a civil money penalty, this final rule requires revoking the certificate. The Department views civil money penalties as an intermediate remedy for those violations of the FLSA which are not so severe as to require revocation of a certificate. In the enforcement of the FLSA, the Department has had experience with many types of employers who disappear, seek relief under the bankruptcy laws to avoid the payment of back wages, or refuse compliance with the Act.

(10) Administrative procedures. The final rule in Subpart E, §§ 530.401 through 530.414, provides an administrative process for review of a determination to deny or revoke a homework certificate and for review of a decision to assess a civil money penalty. The procedures include a right to a hearing before an Administrative Law Judge and an appeal of the Judge's decision to the Secretary.

Special procedures are included at § 530.411 for an expedited proceeding when a hearing has been requested following a determination to revoke a certificate on an emergency basis. In the case of a request for such a hearing, special time limits are provided for the Administrative Law Judge to hold a hearing and issue a decision, and for the Secretary to issue a final decision.

The final rule at § 530.410 also provides an informal procedure before the Administrator in lieu of a formal hearing before an Administrative Law Judge. This procedure is to be used when an applicant or certificate holder does not contest the factual findings of the Administrator and waives a formal hearing.

The House Committee on Education and Labor argued that it is inconsistent for the Department to create expedited procedures in this proposed and at the same time to be on record as opposed to the time frames for administrative proceedings in the Committee's bill to amend the Davis-Bacon Act, H.R. 2216.

There are significant differences between the expedited administrative procedures in § 530.411 and those contemplated by the legislation. The Department anticipates that the number of administrative hearings and appeals resulting from the Committee's Davis-Bacon bill would be far greater than the number of cases subject to the administrative procedures of this rule. Expedited procedures for routine Davis-Bacon cases would place a great burden on the resources of the Department, at the expense of other cases, whereas the expedited procedures of this rule are not expected to be invoked frequently. Unlike the Davis-Bacon bill, the expedited procedures in these regulations are not invoked for routine cases, but only in emergencies where the Administrator determines that immediate revocation is necessary to safeguard the payment of minimum wages to homeworkers.

(11) Bonding or security payments. Section 530.104 authorizes the Administrator to require employers to furnish a bond or cash security payment as a condition for issuance or renewal of a certificate. Such bond will be compulsory prior to issuance or renewal of a certificate in the case of any employer whose application for a certificate has previously been denied, or whose certificate has previously been revoked. Such bond or cash payment will be in an amount up to $2500 for each homeworker to be employed under a certificate, and will be subject to payment or forfeiture in the event the employer fails to pay any minimum wages or overtime pay due homeworkers. The Administrator will disburse any sums thus paid or forfeited to affected homeworkers in accordance with the procedures set forth in section 16(c) of the FLSA.

The Department considers a bonding or security requirement to be a significant enforcement tool which will not only provide a strong incentive for employers to pay homeworkers the minimum wage and overtime pay required by the FLSA, but also assure that in the event of nonpayment, funds will be available to satisfy the employer's back wage obligations.

In order to avoid unnecessary burdens on law-abiding employers, bonding will not be imposed as a routine requirement, but only in instances where it is questionable, based on Wage-Hour experience with the employers from past or current investigations, whether they will comply with their legal obligations, or whether money will be available to compensate homeworkers if violations occur.

Bonding will be imposed, for example, in cases where an employer in the past has needed an installment plan to pay the back wages due. In such cases, however, the Administrator may relieve the employer from the bonding obligation and refund any amounts held as security where it is subsequently determined that the employer is in compliance with the law and the Administrator is satisfied that the employer will be financially able to remedy any back wage violations which may occur.

The ILGWU commented that these requirements are not necessary because the Department can deny or revoke a certificate for an employer's failure to comply with the FLSA. The ILGWU also believes that bonding of employers is unlikely to be very useful or occur very often because of the difficulty in making the necessary findings concerning the ability of the employer to meet its obligations under the Act.

Under the regulatory scheme, not all first-time wage violations are necessarily so serious as to require revocation of a certificate, but the circumstances of those violations or the employer's ability to pay may lead to a conclusion that a bond is necessary for protection of the employees' wages. Furthermore, where a certificate has been previously denied or revoked, a bond will generally be a prerequisite to obtaining a certificate and additional findings would not be necessary.

II. Homework in the women's apparel industry.

Many comments were received on the August 1986 proposal opposing the lifting of the ban on homework in the women's apparel industry. The Department indicated in the March 1988 notice that it is still carefully reviewing all of the comments submitted on this issue. Accordingly, the August 1986 proposal to lift the ban in the women's apparel industry was withdrawn. Should the Department decide to take further action with respect to this industry, the March 1988 notice stated that separate rulemaking would be undertaken. Thus, the final rule has no effect on the current restrictions on the employment of homeworkers in the women's apparel industry.

III Freedom of choice.

The Department received a great many comments from individuals who expressed a strong belief that the freedom to work at home is a basic right and explained their reasons for wanting to work at home: A homworker is free from direct supervision; work schedules can be adjusted to fit individual circumstances; and a homeworker can work at his or her own pace and time, resulting in a more satisfied person and a product of better quality. Several commenters mentioned that homework provided freedom from the noise and crowded conditions of a factory. Others claimed that the homework ban was unconstitutional in that it limited their "pursuit of happiness." A number of commenters acknowledged that there are benefits to working outside the home, but that the independence and flexibility of working at home outweigh any loss of these benefits.

In the Department's view, it is desirable for individuals to have the greatest freedom possible in selecting employment. Thus, the Department feels that it is appropriate to provide employers and employees the opportunity to arrange for individuals to work out of their homes, provided that the Department is able to effectively enforce the provisions of the FLSA and that the workers are paid in compliance with the Act.

IV. Impact on rural areas

Many commenters submitted views on the benefits of homework in rural areas. Some of the reasons cited by these commenters for lifting the ban were:

1. The agricultural economy is depressed and jobs are scarce;
2. Mass transportation is nonexistent;
3. Travel, especially in winter over rough roads, is difficult;
4. The distance from home to workplace is often considerable, thus making employment outside the home difficult and expensive;
5. Day care facilities are few and far between and are expensive where available;
6. Farm wives need to be available for farming activities during the busy parts of the year; and
7. The need for flexibility to perform farm chores at certain times is required every day.

Several commenters noted that income derived from homework made the diffence between holding on to a family farm or having it go under.

The Department agrees that homework may be the most viable type of employment for certain individuals, and that this is a valid reason for removing the restrictions on homework provided such individuals will be paid in compliance with the FLSA.

V. Impact on local and national economies

Many commenters argued that the ban has denied homeworkers opportunities to earn a living and thereby caused substantial personal hardships. They also stated that the prior rule impacted adversely on unemployment and productivity in the restricted industries at a time when imports are eroding traditional manufacturing bases. Some noted that the 1986 White House Conference on Small Business strongly recommended the repeal of the regulations restricting homework. Lifting the restrictions, many argued, would encourage the expansion of job opportunities, permit businesses to find ways to reduce costs, provide additional tax revenues for Federal, State and local governments, and place the United States in a more competitive position in the global economy.

While the Department agrees with the thrust of these comments, no reliable data are available to confirm any conclusions about the impact of the homework restrictions on employment opportunities or their economic effect on businesses in the restricted industries. Consequently, the Department's decisions in this rulemaking were not based on any consideratiopn of the net impact of the rule on employment opportunities.

Conversely, many clothing and textile manufacturers, associations of manufacturers, the ILGWU, the Amalgamated Clothing and Textile Workers Union, and others argued that traditional manufacturers cannot compete with employers who use homeworkers. A number argued that factories cannot compete with manufacturers who use homemakers because the costs associated with operating a factory are much greater, that lifting the homework restrictions would cause factories to close, and that responsible employers would have to move jobs to employees' homes in order to compete. They also argued that the Department had not considered the impact of the proposal on employees in factories. A number of associations of manufacturers stated that these industries are dying out as a result of foreign competition. One manufacturers' association pointed to the consequences of unfair foreign competition on these industries and argued that the proposal would eliminate protections that now exist against unfair competition at home. Some argued that the proposal would not produce any growth of employment opportunities, and that any gain in homeworker employment would be offset by losses in factory employment.

Several State Departments of Labor argued that the Department had not considered the impact on manufacturers in States that ban homework who will be forced to compete with homeworker employers in other States and stated

that the proposal would undermine their own State enforcement efforts.

The Department recognizes that factory manufacturers may pay wages and provide benefits to their employers in excess of those required by the FLSA. However, the FLSA provides the authority to restrict homework only to the extent necessary to safeguard the minimum wage. Many of the concerns about "unfair competition" with homeworker employers relate to higher operating costs for employers of factory workers. Provided the homeworkers are paid at least minimum wage and required overtime pay, the objections raised in the comments concerning "unfair competition" are not FLSA matters and, therefore, are not pertinent to these regulations. Finally, all other industries, other than the few restricted industries, have always been permitted to use homeworkers and such allegations have not been heard from these other industries.

In the Department's view, the ban on homework has been only partially effective and, thus, factory manufacturers have already been competing to some extent with employers of homeworkers in the restricted industries just as they have been competing in the non-restricted industries. Furthermore, homeworker employers in the restricted industries have had little incentive to comply with the FLSA minimum wage and overtime requirements, since their operations have been illegal under the Act. Under the ban it has been extremely difficult for the Department to locate and identify homeworkers or to obtain their cooperation in investigations. This problem should be ameliorated under a certification system. Through the Department's efforts to ensure that homeworkers legally employed by certified employers are paid legal wages and vigorous enforcement of the FLSA with respect to employers operating without certificates, the competitive position of factory employers should not be substantially impacted and may improve under the certification process.

This regulation will have no effect on any existing State restrictions on homework. Thus, under § 530.201, homework in these industries will continue to be prohibited under this rule in those States where, and to the extent that, State officials advise the Department that homework is restricted by State laws and rules. The fact that such State restrictions may work to the disadvantage of local factory manufacturers in competition with those in States who might utilize homeworkers in compliance with the FLSA is not an FLSA issue.

VI. Need for homework restrictions

Many commenters in favor of the proposed argued that while the regulations restricting homework might have been necessary when they were promulgated in the 1940's, the restrictions are obsolete and contrary to the needs of today's workers. As discussed above, some of these commenters pointed out inconsistencies in the prior rule, in that homework was prohibited in some industries but not others.

The Department appreciates the difficulty the public has in understanding why restrictions on the use of homeworkers should apply in certain industries, but not others. After the enactment of the FLSA, homework in certain industries was believed by the Department to be a threat to maintaining labor standards. A series of public hearings extending from 1941 through 1943 was held for seven industries in which homework was most prevalent and in which FLSA violations were believed to be a serious problem. As a result of these hearings, restrictions on the employment of homeworkers in the seven industries (including knitted outerwear) were established by regulation.

Today, with the growth of homework in other industries (such as telemarketing and word processing), the application of such restrictions to only a few specific industries is easily perceived as an anomaly which is hard to understand without the historical background and the appreciation that the prior rules remained essentially unchanged for over forty years.

Commenters opposed to the proposal pointed to the impediments to achieving FLSA compliance with respect to homeworker in these industries that were identified by the Administrator in the 1940's, and argued that nothing had changed over the years to diminish these impediments. Many commenters argued that certification of homeworkers employers would not work because only a handful of employers (those that are law-abiding) would seek to obtain certificates.

In the Department's view, the latter argument is precisely the point in permitting employers to obtain certificates to employ homeworkers. It is anticipated that, as a general matter, employers who come forward and identify themselves and agree to open their records to inspection, do, in fact, intend to comply with the law. It is to these and only these employers that this rule has any application.

While the Wage-Hour Administrator in 1942 concluded that a ban on homework was needed to protect homeworkers, it is evident that the 45-year ban did not eliminate homework. During those years the ban on homework fostered an underground, unchecked homework industry in which enforcement of minimum wage and overtime pay requirements has been very difficult. Employers of such homeworkers had little reason to comply with the FLSA (or meet any other Federal or State standards) since their operations were illegal under the FLSA in any event. In the Department's view, the certification system and enforcement mechanisms incorporated in the final rule are preferable and reasonable alternatives to a total ban.

VII. Homework permits individuals to combine work and family obligations

Among commenters in favor of the proposal, the flexibility provided by homework to combine work and family obligations was second only to the "freedom" issue as a reason to adopt the proposal. The consensus of these commenters was that working at home would enable parents to earn money and care for their children without incurring expenses for child care, transportation, or clothing suitable for work outside the home; would provide income opportunities for senior citizens and handicapped persons; would enable people to earn money and care for sick or elderly family members; and would help remove single parents from welfare rolls and place them in the work force. One commenter questioned the fairness of the government's prohibiting people from working at home, supporting themselves, and paying taxes, and at the same time paying out welfare funds for such people to stay home and be supported by taxpayers. Several people commented that homeworkers can earn less per hour than they would for the same work outside the home and still come out ahead because they have no child care, transportation, or clothing costs.

The Department would point out that elderly and handicapped persons who are unable to adjust to factory work and persons required to remain at home to care for invalids were permitted under the prior rule to work at home with individual certificates. In other respects the Department shares the concerns of these commenters, provided that the Department is able to assure compliance with the Act.

VIII. Homework in the jewelry industry

Many comments were received on the August 21, 1986, proposal opposing the lifting of the ban on jewelry homework based on safety and health issues. Specifically, the SEIU and other commenters expressed the opinion that permitting homework in the jewelry industry could impose a grave danger to the health and safety of workers, their families and the community. They alleged that a number of the processes involved in jewelry manufacturing expose workers to toxic fumes and acids, many of which are known cancer-causing agents or are harmful to the reproductive processes. It was also argued that significant fire hazards and the potential for explosions are present due to the use of flammable solvents, propane tanks and acetylene torches.

Comments in favor of lifting the ban on jewelry homework argued that its retention would result in loss of jobs, thereby exacerbating already depressed employment situations in certain parts of the country.

The Department carefully considered the comments submitted on this issue. In light of the potential for very serious safety and health hazards for homeworkers in the jewelry industry, and the Secretary's broad and multi-faceted responsibility for protecting and promoting the welfare of working people generally (29 U.S.C. 551), and in view of the potential adverse impact on the public at large, the March 1988 notice withdrew the Department's prior proposal to lift the ban on this industry except with regard to operations determined not to involve safety and health standards, and the notice indicated that the restrictions on other homework would be retained. Since there was no evidence in the rulemaking record of safety and health hazards in jewelry assembly operations limited to the stringing of beads and other jewelry, carding and packaging operations, and since a number of comments submitted on the August 1986 proposal advocated that homework should be permitted in such operations, the Department proposed in March 1988 that the ban be lifted with respect to such operations.

One jewelry manufacturer commented in favor of the proposed rule, stating that its operations are in accordance with its provisions. In addition, the Small Business Administration alleged that the rule is so restrictive that virtually all jewelry manufacturing is excluded, and stated that the proposal does not contain sufficient information to support its conclusion. However, neither the SBA nor any other commenter provided any information or suggestions in support of a broader rule.

The SEIU submitted subsequent comments opposed to the limited certification program in the jewelry industry. Among the issues raised, they stated that the terms "carding and packaging" as used in the industry include operations which could be hazardous in a home environment such as the use of industrial glues and epoxies for mounting backs or stems on earings and the use of heating elements to seal plastic wrapping. To avoid any such effect, § 530.101(a) clarifies that "carding and packaging" operations may include the use of common household glues available to the general public but do not include potentially hazardous operations such as the use of industrial glues, epoxies or heating elements. Also, § 530.103 has been amended to require employers in this industry to provide written assurances that their homeworkers will be exclusively engaged in the permitted operations.

IX. Enforcement experience in the knitted outerwear industry

Commenters in favor of the 1986 and 1988 proposals argued that the enforcement experience in knitted outerwear under the certification program had proven to be an effective means of ensuring employers' compliance with the FLSA. Many of these commenters expressed the view that the lifting of the ban together with the certification requirement would eliminate the fear of job loss for homeworkers who would, therefore, feel free to file complaints of wage underpayments with the Department.

The Department agrees that FLSA enforcement among employers of homeworkers in the knitted outerwear industry has been more effective under the certification program than under the prior ban. The certification program has identified homeworker employers in the industry, permitted employers who wished to comply with the FLSA and employ knitted outerwear homeworkers a legal avenue to do so, and provided an incentive for employees and employers to furnish the Department with information about other companies in the industry operating without certificates.

The Department has identified far more knitted outerwear employers of homeworkers than was possible under the prior restrictions. The certification program established a channel of enforcement and public information to a segment of the knitted outerwear industry that was largely out of reach under the prior restrictions. Without this program, it is likely that many of the knitted outerwear firms investigated would not have been contacted by the Department.

By contrast, many of the commenters opposed to the 1986 and 1988 proposals presented a sharply critical view of the Department's investigations of knitted outerwear manufacturers under the certification program. The thrust of these comments was that these investigations demonstrated that the Department did not and could not properly enforce the FLSA.

The ILGWU submitted a lengthy narrative discussion on each of the two proposals. Accompanying each of these submissions was a separate volume of attachments (photos, affidavits, etc.). In addition a private consulting firm's analysis of Wage-Hour time studies was submitted. Also submitted were 57 appendix volumes consisting of reproductions of Wage-Hour files and documents provided the ILGWU in response to requests for disclosure under the Freedom of Information Act.

The Department recognizes the extraordinary levels of effort and resources the ILGWU expended in analyzing the disclosable portions of the knitted outerwear files and preparing comments on these investigations. The major issues raised in the ILGWU comments on the knitted outerwear enforcement program are discussed below.

The ILGWU argued that the Department's identification of approximately 665 homeworkers in the knitted outerwear industry between 1984 and 1986 does not establish its ability to identify and locate the remainder of the universe of homeworkers in that industry. The union concluded that this inability to locate homeworkers would be exacerbated if the certification system were extended to the remaining restricted industries due to an anticipated growth of illegal homework in those industries. Few employers of homeworkers in these industries, they submit, would obtain certificates, because as a regular practice such employers pay their homeworkers subminimum wages and would not expose this practice to the Department.

In fact, only those employers who come forward and identify themselves through the certification procedure are affected by this rule. Those employers who fail to obtain certificates will remain subject to the restrictions on the use of homeworkers applicable under the prior rule. The impact of the new regulations is neutral with respect to employers of homeworkers who operate

outside the certification system. Lifting the restrictions on those employers who do obtain certificates should not lead to an increase in illegal homework. The Department will continue its efforts to locate and investigate illegal homework and obtain compliance with the law.

The ILGWU argued that many of the knitted outerwear investigation files were deficient in that the compliance officers did not follow three Wage-Hour Field Operations Handbook (FOH) "mandates" for homework investigations, namely, records review, time studies, and interviews. In comments submitted on the 1986 proposal, the ILGWU also argued that based on a review of investigatory records, the Department disregarded or overlooked evidence of monetary violations involving seven certified employers, and understated violations involving five others.

The Department carefully reviewed its enforcement experience in knitted outerwear based on these and other comments. As a result of this review, the Department conducted training in the Summer of 1987 of its Wage-Hour compliance officers concerning enforcement techniques to use in such investigations. A review of investigations conducted since the training was completed disclosed some errors in knitted outerwear files. However, the Department does not agree with the ILGWU assessment of the overall success of the knitted outerwear investigation program under the certification process, in comparison with the success of the prior total ban on homework in that industry. It has been the Department's experience that compliance has improved as certified employers are further educated about the requirements of the Act.

The ILGWU claims are based primarily on assumptions concerning the lack of investigation file documentation in the areas of wage and handbook transcription, interviews, time spent in setting up and putting away equipment and materials, and employee expenses. While compliance officers are expected to follow FOH guidance in the conduct of homework investigations, these instructions are not intended to be "mandates" in all cases. It is generally understood throughout the Wage and Hour Division and by the public that considerable judgment and discretion is to be used by compliance officers in determining the amount of factfinding to devote to a case and selecting the most appropriate investigation techniques to apply. Many of the decisions made by compliance officers must be made on the spot in view of the particular circumstances of a case.

Furthermore, an investigation file is merely a record of the compliance officer's findings and conclusions about an investigation and, as explained below, does not present a comprehensive picture of all the records which were reviewed or all the questions which were asked in employee interviews. Thus, while compliance officers are expected to review records of hours of work, they are not, contrary to the ILGWU assertion, expected to include *transcribed* records in the investigation file unless there is some reason to do so, e.g., to illustrate or document minimum wage and overtime pay violations. Similarly, while oral interviews of employees are normally taken, field staff are not in any way expected to take a verbatim transcription of everything discussed with an employee.

To an outside observer it may appear that portions of the investigation process were omitted in error while it is likely that a judgment was made that further factfinding was not necessary in order to make determination concerning the employer's status of compliance. For example, where it is clear that employees earn well in excess of the minimum wage, details concerning the time spent in setting up are not necessary. For these reasons, the Department believes the ILGWU conclusions about the "mandates" relating to knitted outerwear investigations are overstated.

Several commenters, including a consultant retained by the ILGWU, argued that time studies cannot be used by Wage-Hour as a tool to determine FLSA compliance in homeworker investigations. They pointed out that it is impossible to study every style produced or to insure that the styles time-studied are, in fact, the more difficult patterns. They also stated that time studies only result in approximations of the average time required by employees to produce a given style and do not take into account vast differences in the skill levels of employees. They also argued that the time studies conducted in the knitted outerwear investigations were not used effectively.

In the Department's view, compliance officer time studies (which are now more accurately termed "work observations") can serve as a tool in homeworker investigations in confirming or negating information obtained from employer records, homeworker handbooks, homeworker interviews, and other sources. However, compliance determinations cannot be and are not based solely on work observations in any type of investigation, including homework investigations.

Furthermore, upon review of its experience in knitted outerwear investigations, the Department has concluded it is not necessary or appropriate to conduct work observations in all homeworker investigations or to observe the work of each homeworker. For example, where records and interviews otherwise clearly indicate compliance, and where there is no reason to suspect falsification, work observations serve little, if any, purpose. Where, for example, an employee works part-time and clearly earns in excess of the minimum wage, there is no need to ascertain whether a certain item takes forty or fifty minutes to make or whether the employee is earning $8.00 or $8.25 an hour. All that is necessary is to determine that the employee is paid at least the minimum wage for each hour of work. This is a matter of judgment and discretion by the compliance officers and their supervisors, based on the facts and circumstances of a given case.

X. Enforcement Resources

Many commenters on the August 1986 proposal argued that the Department's resources (approximately 900 compliance officers) were inadequate to enforce the FLSA in the restricted industries. Most of these commenters pointed to the relatively small size of the knitted outerwear industry in comparison with the women's apparel industry. Many argued that the annual inspection program in knitted outerwear could not be carried over to the remaining industries without draining resources away from non-homework investigations of all other industries, as well as homework investigations of unscrupulous employers who do not obtain certificates. A number of commenters pointed to a GAO report finding of a 20 percent reduction in compliance officer staff years between 1980 and 1984 and the addition of 7.5 million covered State and local government workers as a result of the decision in *Garcia* v. *San Antonio Metropolitan Transit Authority et al.* (*Garcia*), 469 U.S. 528 (1985). In response to the March 1988 proposal some argued that the 20 additional compliance officer staff years included in the 1989 Budget for homework enforcement is inadequate.

Since it is presently illegal to employ homeworkers in the restricted industries, there are no reliable

estimates as to the number of such homeworkers. Based on the 1980 census, the Bureau of the Census estimates that there are 8,711 homeworkers in the six industries (including women's apparel). The Bureau of Labor Statistics places the figure at approximately 122,000. Both studies have certain limitations in their effectiveness in identifying homeworkers in the precise industries restricted by the prior rule. However, assuming that, in fact, 122,000 homeworkers are employed in the six industries, the size of the work force is a very small fraction of the total number of workers subject to the FLSA minimum wage, which is estimated at 73 million. Moreover, while precise data are not available, it is likely that relatively few of these homeworkers are in the industries affected by this rule and in States which permit such homework.

Furthermore, contrary to these comments, the number of Wage-Hour compliance officers has not dropped sharply since 1980:

Date	On board compliance officers
Sept. 30, 1980	1,059
Sept. 30, 1981	953
Sept. 30, 1982	914
Sept. 30, 1983	928
Sept. 30, 1984	916
Sept. 30, 1985	950
Sept. 30, 1986	908
Sept. 30, 1987	951
Sept. 30, 1988	[1] 985
Sept. 30, 1989	[1] 1,028

[1] Estimated.

The workload impact of the *Garcia* decision has not strained available compliance officer staff resources. For example, in FY 1987 the Wage and Hour Division received a total of only 1,300 complaints from State and local government workers while 62,000 were received from workers in the private sector.

The NCFLL asserts that the Wage and Hour Division program operational plan inhibits the ability of compliance officers to conduct homeworker investigations, contending that homeworker investigations require significantly more time than other Wage and Hour investigations. The Department has recognized that homeworker investigations require more compliance officer investigation time. The request for additional compliance officer resources was based on the Department's estimate that the typical homeworker investigation requires 35 hours to complete, compared to 20–22 hours as an average for all other FLSA investigations. In addition, it is important to note that program operational plans establish production goals for field offices, not individual compliance officers. The plan is based on average investigation time and recognizes that some investigations require more time than others.

It is the Department's view that the additional compliance officer resources requested in the 1989 Budget will provide sufficient resources to conduct an effective enforcement program in the restricted industries. Within current resources, the Department has been able to conduct approximately 375 homeworker investigations annually. The additional compliance officers will permit an increase in the number of investigations to 1,150, more than triple the current level. While a higher percentage of covered homeworker employers are investigated than are employers in many other enforcement programs, the Department believes that the devotion of a higher level of resources is warranted.

Whether the Department has sufficient resources to investigate homeworker employers certified under this rule will depend, in part, on the number of employers who request certificates and the level of compliance with the FLSA such employers achieve and maintain. Also, while the Department does not anticipate any increase in illegal homework, it recognizes that additional leads may also require the use of additional resources to vigorously enforce the FLSA with respect to uncertified employers. The resources needed may change over time and will be examined regularly (as they are presently examined for all Wage and Hour Division activities). As necessary, the Department will include additional resources in its budget requests. The fact that the Department cannot identify the precise resource impact of permitting a relatively small number of employees to work at home is not a valid reason to ban such work.

XI. Rate of violations

Many commenters argued that adoption of the proposal would result in widespread FLSA violations. Some stated that lifting the ban would be an abdication of the Department's statutory responsibility to workers in these industries because such action would foster FLSA violations. Others argued that children would be used to help increase the family income by doing some of the work, to the detriment of their studies.

The Department believes that the FLSA itself provides strong safeguards to assure compliance by employers generally, including homeworker employers. Specifically, the Secretary has authority to assess civil money penalties for child labor violations, to file lawsuits to compel compliance through injunctions and obtain the payment of back wages, and to pursue criminal penalties through the U.S. Justice Department.

The Department also believes that the certification program will foster FLSA compliance to a greater extent than occurred under the homework ban among those employers who will come forward to obtain certificates. Most importantly, such employers will have a new incentive to comply with the FLSA, namely, the opportunity to operate legally. Under the prior rule such employers had little incentive to comply since their operations were illegal irrespective of any wages paid or compliance with child labor rules. The Department also agrees with commenters (both in favor of and opposed to the proposals) that generally only those employers who intend to pay their homeworkers properly will come forward to obtain certificates. As previously pointed out, only those who do so are affected by this rule. Employers who do not obtain certificates remain subject to the ban on homework.

Moreover, the final rule incorporates significant enforcement mechanisms to address commenters' concerns about the difficulty of enforcing the FLSA among employers of homeworkers. The Department believes, since the ban has been ineffective in eliminating homework, on balance, the more effective means to achieve FLSA compliance for homeworkers in these industries is to implement the strong new enforcement mechanisms in this rule for employers who seek to comply with the FLSA and come forward to obtain certificates, rather than to continue the ban on such employment. The prior rule did not eliminate homework, foreclosed opportunities to work at home legally, fostered an underground homework industry comprised of employers with little incentive to comply with FLSA standards, and reduced the likelihood that the Department would identify homeworkers and monitor their activities.

XII. Inadequate Recordkeeping

Many commenters argued that no methods exist to accurately measure hours worked by homeworkers, that the sporadic and unsupervised nature of homework precludes any accurate or complete recordkeeping, and that it is

too easy for employers to falsify hours records on homeworkers. Some argued that homeworkers underestimate their actual hours of work (and thus overstate their earnings per hour) in order to avoid "make-up" pay needed to provided them with the minimum wage and thus eliminate the risk of losing their jobs. The ILGWU quoted the Department's 1959 report on homework: "It is to the advantage of the employer to maintain inadequate records of their employees' wages and hours. Any attempt to reconstruct hours or wages in the absence of required records in many cases is an exercise in futility."

The Department agrees that recordkeeping has been a common problem area among employers of homeworkers. However, compliance officers over the years have conducted a variety of non-homeworker investigations where records are inaccurate, incomplete, or nonexistent, where employees work at multiple locations, and where wages are paid based on piece rates. In the construction industry, for example, it is common to find so-called "independent contractors" paid so much per square foot of wall-board or so much per square foot of roofing. Similar recordkeeping problems are common with respect to taxicab drivers, home service and repair workers, resident managers, maintenance engineers, irrigation installation and repair workers, insurance adjusters, and other employees subject to unscheduled "on-call" work outside their normal workday.

Furthermore, many Wage and Hour investigations involve employees whose employers incorrectly assume they are exempt pursuant to FLSA section 13(a)(1) and 29 CFR 541 as "managers", administrative personnel, or other salaried white collar workers. Frequently, such employees work outside normal schedules, including working at home, and there are no records of hours worked. Thus, the problems of recordkeeping and the need to reconstruct hours are not, by any means, unique to homeworker cases.

Experience in the initial round of investigations under the knitted outerwear certification program showed a high rate of recordkeeping violations, as discussed in the ILGWU comments. The high percentage of employers with recordkeeping violations closely parallels the Department's historic experience with homeworker employers as cited by a number of commenters.

However, the effectiveness of the homeworker certification program in fostering improved recordkeeping should not be measured on the basis of the initial investigations of certified employers as the ILGWU contended. The Department's initial investigations of knitted outerwear employers immediately following certification covered time periods largely or entirely prior to the employers' certifications. (Investigations generally covered a two-year period from the last payroll completed before the opening of the investigation.)

A better measurement of the effectiveness of the certification program in improving recordkeeping by employers using homeworkers is to be found in the status of recordkeeping compliance in investigations subsequent to the initial one. In fact, both the number and severity of recordkeeping violations found in the reinvestigations of certified employers have been reduced from those found in the initial investigations. Most certified employers substantially improved their recordkeeping compliance (or came into full compliance) once the relatively complex recordkeeping rules peculiar to homeworker employers were adequately explained. Under this rule, certified employers of homeworkers have an incentive to keep proper records that uncertified employers do not have, namely, the desire to retain their certification. Thus, the Department believes that homeworkers are better protected under the certification program than under the prior ban.

Unquestionably, determining hours worked is an important aspect of any investigation where accurate time records have not been kept. Though burdensome, it is not an impossible task. Wage and Hour compliance officers have been trained to make determinations of hours worked by employees in their normal day-to-day investigations through the use of employee interviews and other techniques. Moreover, since the FLSA was enacted, the courts have placed great weight on the Administrator's estimates of the hours worked in calculating back wages. Inaccurate or missing records have provided little defense to employers who objected to the size of such estimates. (See, for example, *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946) and *Donovan* v. *Grantham*, 690 F.2d 453 (5th Cir. 1982).) The FLSA provides penalties, including injunctive relief, for continued recordkeeping violations. The final rule includes civil money penalties and certificate revocation as tools for the Department to improve compliance in this area by certified homeworker employers.

The Department believes the regulatory changes put into effect by this rule will improve the accuracy of recordkeeping by certified homeworker employers, as well as homeworker employers in all the unrestricted industries. The homeworker handbook has been simplified to facilitate recording of daily and weekly hours worked. The revised handbook includes instructions for filling it out and a brief explanation of what constitutes "hours worked" under the FLSA. The handbook will be available in English and six foreign languages. Finally, the recordkeeping rules (29 CFR 516) have been revised to clarify the types of information to be kept and to require employers to insure that homeworkers make the required entries into the handbooks.

XIII. Language Barriers and the Widespread Use of Immigrants

A great many commenters pointed to the widespread employment of immigrants in the restricted industries as a basis for maintaining the ban. Some argued that because of language differences and other social barriers, newly-arrived immigrants are not fully aware of their rights, and are especially vulnerable to manipulation and abuse. Others stated that language barriers effectively would eliminate the Department's ability to interview and do time studies and pointed out that the prior homeworker handbook, as discussed above, was not generally available in languages other than English. Many commenters argued that illegal aliens are often employed as homeworkers and that such workers will not complain to the Department out of fear of deportation.

The Department has to deal with language barriers as part of its overall enforcement activities under all the various laws it administers, and in all types of industries. Even if this rule were not implemented, the challenge of language barriers would remain in investigations of employers of homeworkers both in these industries and in the unrestricted industries, and of factory employers. The ban imposed under the prior rule offered no assistance in addressing the problem of language barriers among homeworkers in any industry (restricted or not restricted). By contrast, this rule requires that certified employers provide the Department with information about the languages spoken by their employees. Advance steps can be taken, therefore, to insure that compliance officer staff who have the necessary language skills are assigned to conduct these investigations. The Wage and Hour Division has extensive bilingual

capabilities, with approximately one-fourth of the current field staff having some proficiency in one or more languages other than English. However, when a compliance officer does not possess the language skills required in a particular investigation, a variety of other sources is used, including Federal, State, and local governments, and service organizations. Furthermore, as indicated above, arrangements are being made to print and distribute the new homework handbooks in Spanish, Chinese, Korean, Vietnamese, Cambodian, and Laotian. On balance, the Department believes the certification program in this rule provides more tools to address language barriers with respect to homeworkers of certified employers than did the ban under the prior rule.

There are a great number of industries in which illegal aliens have been employed (e.g., factories, restaurants, agriculture, construction, maintenance and service industries) and the same challenges apply to investigations in these industries.

Furthermore, the Immigration Reform and Control Act (IRCA) of 1986 addresses these problems by providing civil money penalties for employers of illegal aliens and criminal penalties under certain circumstances. (The Wage and Hour Division is responsible for making inspections of certain employer records under IRCA and providing information to the Immigration and Naturalization Service.) It seems apparent that unscrupulous employers who employ illegal aliens as homeworkers at substandard wages will not apply for certification and thus will not be affected by this rule. Such employers will continue to be subject to the ban on homework as under the prior rule. On the other hand, employers who apply for certificates, the only employers affected by this rule, are likely to avoid hiring illegal aliens because of the possible exposure of such workers to a Federal Government agency which has inspection functions under IRCA within its assigned area of responsibility. Therefore, in the Department's view, this rule is more effective, on balance, than the prior ban in addressing the issue of illegal alien employment and exploitation.

Model Garment Programs

Home sewing retailers (fabric stores) have for some time conducted model garment programs, which have been found to be in violation of the FLSA homework restrictions.

Typical model garment programs involve employees of retail fabric stores making garments in their homes for display in the stores.

While there are many variations, usually the employee is given free patterns, notions and materials, and is allowed to keep the garment after the display period, which usually lasts three to six weeks. Such programs are voluntary, and the employee typically has wide discretion in selecting patterns, fabrics and notions.

Such display garment programs are considered beneficial by employers and employees. The employees find the program beneficial because many of them are enthusiastic home sewers. The display garment programs are of advantage to consumers because they can see finished products. The employers are pleased since they can display model garments—which are constructed with personal care—to their customers.

The Department believes that a special provision is appropriate for model garment programs and, therefore, in the March 1988 notice proposed to adopt a policy whereby the Department would not take any action in situations where certain criteria are met. The Department received no comments specifically opposed to the adoption of a special policy for model garment programs. However, a number of comments argued that the policy should be incorporated into the text of the regulation, and that the employer should not be required to (1) provide all materials at no cost, (2) pay the employee for the time spent making the garment, and, at the same time, (3) permit the employee to keep the garment after the display period.

The Department believes it is generally not appropriate to incorporate special enforcement policies in the text of regulations. However, the policy regarding model garment programs will be included in the Wage and Hour Division's procedural instructions to field enforcement staff, and information regarding this policy will be available to representatives of the industry and the general public. In addition, the Department agrees that employers in such programs should be permitted to charge the employees for the employer's cost of materials (e.g., patterns, fabrics, notions) used in producing the garments, since this policy requires that the employee retain the model garment.

It must be emphasized that time spent by employees in sewing model garments is hours worked under the FLSA and that such hours must be combined with hours worked at the establishment in recording the total hours in the workweek and calculating the payment of the minimum wage and overtime pay. The enforcement policy applies only where:

(1) The employees' work is voluntary;

(2) The materials (e.g., patterns, fabrics, and notions) are provided to the employees free or at no more than their cost to the employer;

(3) The employees retain ownership of the model garments after the display period;

(4) An accurate record in homeworker handbooks is maintained of all hours worked in the home-sewing activities; and

(5) The employees are paid for all hours worked, both in the stores and in the home-sewing activities, in accordance with the provisions of the FLSA.

Discussion of Historical Impediments to Enforcement

Many commenters addressed the historical impediments to FLSA enforcement identified by the appeals court in *ILGWU* v. *Donovan*, 722 F.2d 795 (DC Cir. 1983). The prior ban on homework in the restricted industries was adopted in the 1940s largely due to these impediments. However, as discussed above, the ban has not eliminated such homework. In developing the final rule, the Department carefully weighed its experience under the certification program and under the prior ban to determine which of these approaches better addresses the impediments to FLSA enforcement among homeworkers in these industries.

1. Difficulty of locating and identifying homeworkers

The Department believes those employers who apply for certification are motivated to comply with the Act's requirements and will maintain records of the names and addresses of their homeworkers. Furthermore, such employers will be required under this rule to provide the names and addresses of their homeworkers to the Department at the time of the initial certification and at each biannual certification. (Falsification of this information is grounds for denial or revocation of a certificate.) The final rule also provides an incentive for certified employers to furnish the Department information regarding uncertified competitor employers.

By contrast, the ban on homework imposed under the prior rule provided little incentive for homework employers and employees to contact the Department and identify themselves or others in the restricted industries.

2. Inadequate or nonexistent recordkeeping by employers and employees

Experience in the knitted outerwear industry under the certification program has shown that most certified employers substantially improve their recordkeeping compliance after certification. By contrast with employers who operate illegally in the restricted industries, certified employers of homeworkers will have strong incentives to keep proper records, namely, the desire to retain their certification and avoid civil money penalties. In addition, the revised homeworker handbook, as discussed above, will facilitate the recording of the hours of work by improving the format and instructions for completing the handbook. Employers will be required to provide written assurance that they will instruct their homeworkers to maintain accurate records in the handbooks and will also be required to sign a statement in each handbook indicating that to the best of their knowledge the entries made are accurate. Thus, the Department believes that the certification program is a reasonable alternative to a total ban with respect to improving compliance with the FLSA recordkeeping rules.

3. Strain on Departmental resources required by excessive investigative time in homework cases

As discussed above, the Department believes that in view of the size of the affected industries, and the exclusion of the employers in States where homework is prohibited, the scope of the final rule adopted herewith is small.

Furthermore, the phasing in of the certification program in the industries affected will help to spread the burden of performing prompt investigations after initial certificates are issued.

Since 1980, despite budgetary constraints, the Department has maintained an increased enforcement effort directed at FLSA compliance among both legal and illegal employers of homeworkers. This effort has resulted in far more annual investigations of such employers. With its eight-year experience under this special effort, the Department believes, the certification program under the final rule with its new enforcement mechanisms will provide a better opportunity to achieve FLSA compliance with available resources than would any of the other alternatives considered. In particular, the prior ban provided no mechanisms for locating homeworker employers in these industries and little incentive for such employers (or their homeworkers) to cooperate in investigations. The FY 1989 Budget includes an additional 20 full-time equivalent (FTE) positions for the Wage and Hour Division's compliance activities among employers of homeworkers (certified and noncertified). At the present time, the Department believes this increase to the current resources available should be sufficient. The Department has committed itself to maintaining a strong enforcement program for all homeworkers and will include further additional resources, as necessary, in its annual Budget requests to the Congress.

4. Difficulty in recovering back wages when violations were discovered

The Department recognizes that certified homeworker employers in the industries affected by this rule are mostly small entities, often with few assets to pay the back wages found due. However, there are thousands of small business employers in many other industries who have few cash reserves to pay back wage bills, and their operations have never been banned under the FLSA.

In the Department's view, employers of homeworkers in the restricted industries who come forward and obtain certificates are generally more likely to comply with the FLSA's requirements, and, in the event of violations, will be more responsive than other homeworker employers in achieving future compliance and paying any back wages due in order to retain their certificates.

Moreover, the final rule specifically addresses this problem by providing a mechanism whereby the Administrator can require that employers with poor compliance histories, as a condition for initial certification or certificate renewal, post bonds to cover potential back wage claims. The rule further establishes improved recordkeeping systems which will assist in identifying violations and permitting more precise back wage calculations. Finally, the rule establishes remedies (including the potential denial or revocation of certificates and civil money penalties) in addition to the basic FLSA sanctions for back wage liabilities.

Based on its experience in homework investigations since 1980, the Department believes the final rule, on balance, will result in the restoration of any back wages found due more effectively among certified employers than was the case under the prior rule with respect to homeworker employers in these industries.

Consideration of Alternatives to Certification

Prior to the promulgation of the final rule lifting the ban on the employment of homeworkers in the knitted outerwear industry, the Department carefully considered various alternatives to a total rescission of the ban (49 FR 44268). These alternatives were rejected and the certification system was adopted. Although comments on alternatives were specifically invited, the current rulemaking record provided no significant comments on these or other alternatives to the certification program. Following are the alternatives which were considered and rejected:

A. *Remove the restrictions on homework in rural areas but retain restrictions for urban areas.* Under this alternative proposal, only persons residing in rural areas, as defined by the Secretary, would be permitted to engage in homework in the restricted industries.

The Department has concluded that the alternative of removing the restrictions on homework in rural areas and retaining the restrictions in urban areas is not appropriate. Many of the comments favoring the proposals were received from individuals in rural areas, and these indicated the need to permit homework in such areas. Moreover, it would be difficult to devise a workable definition of the terms "rural" and "urban" that would avoid inequitable treatment of employees. The distinctions between "urban" and "rural" would be further complicated by urban employers who hired rural homeworkers, and vice versa. Finally, the Act authorizes the Department to restrict homework only to the extent necessary to safeguard the minimum wage. The Department believes that under the certification system with the additional enforcement mechanisms included in this rule, enforcement of the minimum wage provisions of the Act with respect to both urban and rural homeworkers is feasible and that compliance among certified urban and rural employers is more likely under this rule than under the prior ban.

B. *Expand the conditions for granting certificates permitting homework employment in the restricted industries.* Under this alternative proposal, the existing system for granting special individual employee certificates authorizing homework in the restricted industries would be expanded to include various additional categories of need, such as the following: The need to care for children or other family members; the lack of accessible factory employment; the lack of public transportation; and economic need.

The Department has concluded that this alternative is not feasible. It would be difficult to define what constitutes a "legitimate" need for an employee to

work at home and yet avoid inequities, and it could be difficult to monitor and guard against abuses (as, for example, situations in which the homeworker's "legitimate" needs changed over time or were seasonal or temporary) while providing the necessary flexibility to take into account individual circumstances.

C. *Transfer homework certification and enforcement responsibilities to the States.* The Department decided not to adopt this alternative as it is not feasible. The FLSA requires that the Secretary issue such rules regulating or restricting homework as are needed, without regard to State boundaries. Because of the possibility of different certification requirements among States, the Department is concerned that a transfer of certification and enforcement responsibilities to the States would be contrary to the statutory purpose of the FLSA to establish minimum uniform labor standards so as to prevent unfair competition. However, in keeping with the principle of federalism, and the Department's desire to avoid undermining any State homeworker rules, the certification program will not apply in States that ban homework in these industries. In such States, the federal ban on homework is retained.

Scope of the Final Rule

Under these regulations, employers in the restricted industries (other than those in women's apparel and in certain operations in the jewelry industry, and in States which restrict such homework) who obtain certificates are permitted to employ homeworkers, while employers without such certificate continue to be subject to the prohibitions on the employment of homeworkers. Employers legally utilizing homeworkers in these industries will be known to the Department; their homeworkers' names, addresses, and languages will be known to the Department through the biannual certification renewal process; such employers will be required to make written assurances of FLSA compliance, conduct time studies (or other work measurements) to establish piece rates; and post bonds if requested. Their compliance with the FLSA will be determined by investigation. Such employers will also be subject to civil money penalties and certificate revocation for violations. Employers who do not obtain certificates remain subject to the ban on the use of homeworkers. The Department is committed to continue its efforts to locate and investigate such employers. Homeworkers of certified employers in these industries who are paid properly will not be deprived of employment opportunities, and employers of homeworkers in these industries who fail to identify themselves and their homeworker will not be able to legally employ homeworkers.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets. Therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

This rule will not have a significant effect on a substantial number of small entities. This conclusion is based on all information presently available to the Department concerning the employment of homeworkers. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

The Chief Counsel for Advocacy filed comments in support of the proposed rule and the amended proposal and indicated the belief that the certification program would provide significant benefits for small businesses by improving their competitive position and increasing their ability to offer flexibility in employment. In light of his view that the rule would likely have a substantial impact on a significant number of small businesses seeking to employ homeworkers, he urged that a regulatory impact analysis be published with the final rule. The Department has reviewed its preliminary conclusion that the rule will not have a significant effect on a substantial number of small entities in light of the record, and finds no reason to depart from that conclusion. No persuasive data have been identified by the Department or submitted by commenters which would quantify the potential impact on small entities (including factory employers) that would or would not employ homeworkers under this rule.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 516

Minimum wage, Reporting and recordkeeping requirements.

29 CFR Part 530

Employment, Investigations, Labor, Law enforcement, Minimum wages, Wages, Licenses.

For the reasons set forth above, 29 CFR Parts 530 and 516 are amended as set forth below.

Signed at Washington, DC, on this 7th day of November 1988.

Ann McLaughlin,

Secretary of Labor.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

1. The authority citation for Part 530 is revised to read as set forth below and the authority citations following all of the sections in Part 530 are removed.

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by Sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 6–84, 49 FR 32473, August 14, 1984; and Employment Standards Order No. 85–01, June 5, 1985.

2. The table of contents is revised to read as follows:

Subpart A—General

Sec.
530.1 Definitions.
530.2 Restriction of homework.
530.3 Application forms for individual homeworker certificates.
530.4 Terms and conditions for the issuance of individual homeworker certificates.
530.5 Investigation.
530.6 Termination of individual homeworker certificates.
530.7 Revocation and cancellation of individual homeworker certificates.
530.8 Preservation of individual homeworker certificates.
530.9 Records and reports.
530.10 Delegation of authority to grant, deny, or cancel an individual homeworker certificate.
530.11 Petition for review.
530.12 Special provisions.

Subpart B—Homeworker Employer Certificates

530.101 General.
530.102 Requests for employer certificates.
530.103 Employer assurances.
530.104 Bonding or security payments.
530.105 Investigations.

Subpart C—Denial/Revocation of Homeworker Employer Certificates

530.201 Conflict with State law
530.202 Piece rates—work measurement
530.203 Outstanding violations and open investigations.
530.204 Discretionary denial or revocation.
530.205 Mandatory denial or revocation.
530.206 Special circumstances.

Subpart D—Civil Money Penalties

530.301 General.
530.302 Amounts of civil money penalties.
530.303 Considerations in determining amounts.
530.304 Procedures for assessment.

Subpart E—Administrative Procedures

530.401 Applicability of procedures and rules.
530.402 Notice of determination.
530.403 Request for hearing.
530.404 Referral to Administrative Law Judge.
530.405 General.
530.406 Decision and order of Administrative Law Judge.
530.407 Procedures for initiating and undertaking review.
530.408 Notice of the Secretary to review decision.
530.409 Final decision of the Secretary.
530.410 Special procedures.
530.411 Emergency certificate revocation procedures.
530.412 Alternative summary proceedings
530.413 Certification of the record.
530.414 Equal Access to Justice Act.

Subpart A—General

3. Sections 530.1 through 530.12 are retitled: Subpart A—General.

4. In § 530.1 paragraphs (b) through (j) are redesignated as (c) through (k) and a new paragraph (b) is added as follows:

§ 530.1 Definitions.

* * * * *

(b) "Administrator" as used in this part means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or an authorized representative of the Administrator.

* * * * *

5. Section 530.2 is revised to read as follows:

§ 530.2 Restriction of homework.

Except as provided in Subpart B of this part, no work in the industries defined in paragraphs (e) through (k) of § 530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless a special homework certificate issued and in effect pursuant to this part has been obtained for each homeworker or unless the homeworker is so engaged under the supervision of a Sheltered Workshop, as defined in § 525.2 of this chapter.

6. The headings to § 530.3, 530.4, 530.6, 530.7, 530.8, and 530.10 are revised as follows:

§ 530.3 Application forms for individual homeworker certificates.

§ 530.4 Terms and conditions for the issuance of individual homeworker certificates.

§ 530.6 Termination of individual homeworker certificates.

§ 530.7 Revocation and cancellation of individual homeworker certificates.

§ 530.8 Preservation of individual homeworker certificates.

§ 530.10 Delegation of authority to grant, deny, or cancel an individual homeworker certificate.

§ 530.4 [Amended]

7. In § 530.4, paragraph (c) in its entirety is removed.

8. The OMB information collection approval, which is displayed in parentheses at the end of § 530.4, is amended by removing the second sentence which refers to paragraph (c).

§ 530.13 [Removed]

9. Section 530.13 is removed.

10. New subparts B, C, D, and E are added as follows:

Subpart B—Homeworker Employer Certificates

§ 530.101 General.

(a) Except as provided in subpart C, a certificate may be issued to an employer authorizing the employment of homeworkers in

(1) The knitted outerwear, gloves and mittens, and embroideries industries as defined in paragraphs (g), (h), and (k), respectively, at § 530.1, effective January 9, 1989;

(2) in the button and buckle and handkerchief manufacturing industries as defined in paragraphs (i) and (j), respectively, of § 530.1, effective July 9, 1989; and

(3) in the jewelry industry as defined in paragraph (f) of § 530.1, effective July 9, 1989, but only where the employer's homeworkers are engaged exclusively in the stringing of beads and other jewelry and the carding and packaging of jewelry. The terms "carding and packaging of jewelry" include the attaching of jewelry to cards, boxing and wrapping, and the use of common household glues available to the general public, but do not include potentially hazardous operations such as the use of industrial glues, epoxies, soldering irons, or heating elements.

(b) This certificate may be issued irrespective of whether individual homeworkers meet the conditions set forth in paragraph (a) of § 530.4 of Subpart A. Unless suspended or revoked, such certificates are valid for two-year periods. Applications for renewals must be submitted no later than thirty (30) days prior to the expiration date of the current certificate. Except as provided in subpart A, in the absence of a certificate, the employment of homeworkers in these industries is prohibited, and an employer violating this prohibition is subject to all the sanctions provided in the Fair Labor Standards Act and in this part, including an injunction restraining the employment of homeworkers.

(c) Certificates authorizing such employment may be issued on the following terms and conditions upon written application to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

§ 530.102 Requests for employer certificates.

The initial request for certification or renewal application shall be signed by the employer and shall contain the name of the firm, its mailing address, the physical location of the firm's principal place of business and a description of the business operations and items produced. In addition, the initial or renewal application shall contain the names, addresses, and languages (if other than English) spoken by the homeworkers that are currently employed (if any) or expected to be employed. The employer shall also provide the Administrator, within thirty (30) days, a notice of each change of address of the principal place of business. The notification shall be in writing and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

§ 530.103 Employer assurances.

In order to be granted a certificate authorizing the employment of industrial homeworkers, the employer must provide written assurances concerning the employment of homeworkers subject to section 11(d) of the Fair Labor Standards Act to the effect that:

(a) All homeworkers shall be paid in accordance with the monetary provisions of the Act.

(b) All homeworkers shall be employed in compliance with the child labor provisions contained in section 12 of the Act and regulations and orders issued pursuant to section 12. All

homeworkers will be instructed not to permit minors to work in violation of such provisions.

(c) Records of hours worked and wages paid shall be maintained in accordance with section 11 of the Act and Part 516 of this chapter.

(d) All homeworkers shall complete homeworker handbooks in accordance with § 516.31 of Part 516.

(e) All homeworkers will be instructed to accurately record all hours worked, piece work information, and business-related expenses in the handbooks.

(f) All records shall be made available for inspection and transcription by the Administrator or a duly authorized and designated representative, or transcription by the employer upon written request.

(g) Piece rates paid to homeworkers shall be established using stop watch time studies or other work measurement methods.

(h) All homeworkers shall be encouraged to cooperate with the Department in any investigation that may be made.

(i) With respect to jewelry manufacturing, no operations other than the stringing of beads and other jewelry and the carding and packaging of jewelry will be performed by homeworkers.

§ 530.104 Bonding or security payments.

(a) Where in the Administrator's judgment there is not sufficient reason to believe that the Act will be complied with or that money will be available if violations of the Act occur, the Administrator may condition issuance or renewal of a certificate to an employer upon the furnishing of a bond with a surety or sureties satisfactory to the Administrator.

(b) The Administrator shall condition issuance or reinstatement of a certificate to any employer whose application for a certificate had previously been denied, or whose certificate had been revoked, upon the furnishing of a bond.

(c) Any bond required by the Administrator under paragraph (a) or (b) of this section shall be in an amount determined by the Administrator, up to $2500 for each homeworker to be employed by such employer under the certificate. In lieu of a bond, the employer may furnish a cash payment of equal amount, to be held in a special deposit account by the Administrator for the period during which the certificate is in effect. Such bond, or cash payment, shall be subject to payment or forfeiture, in whole or in part, upon a final determination that the employer has failed to pay minimum wages or overtime compensation to homeworkers in accordance with the Act. Any sums thus paid or forfeited to the Administrator shall be disbursed to affected homeworkers in accordance with section 16(c) of the Act.

(d) At the Administrator's discretion, the obligation of a bond may be relieved, and any cash payment held as security in lieu thereof may be refunded (together with any interest accrued thereon), upon a subsequent determination that the employer is in compliance with the Act and that sufficient funds will be available to meet back wage payment obligations in the event of violations of the Act.

§ 530.105 Investigations.

Any employer in a restricted industry who requests certification to employ homeworkers will be investigated promptly after the issuance of the certificate by the Wage and Hour Division. Where such an employer is found to be in violation of the FLSA, and the violations are corrected and future compliance is promised, the firm will be reinvestigated to assure that full FLSA compliance has, in fact, been achieved.

Subpart C—Denial/Revocation of Homeworker Employer Certificates

§ 530.201 Conflict with State law.

No certificate will be issued pursuant to § 530.101 of subpart B above authorizing the employment of homeworkers in an industry in a State where the Governor (or authorized representative) has advised the Administrator of the Wage and Hour Division in writing that the employment of homeworkers in such industry, as defined in paragraphs (f) through (k) of § 530.1, is illegal by virtue of a State labor standards or health and safety law.

§ 530.202 Piece rates—work measurement.

(a) No certificate will be issued pursuant to § 530.101 of subpart B to an employer who pays homeworkers based on piece rates unless the employer establishes the piece rates for the different types of items produced using stop watch time studies or other work measurement methods. Documentation of the work measurements used to establish the piece rates, and the circumstances under which such measurements were conducted shall be retained for three years and made available on request to the Wage and Hour Division.

(b) The fact that an employer bases piece rates on work measurements which indicate that the homeworkers would receive at least the minimum wage at such piece rate(s) does not relieve the employer from the Act's requirement that *each* homeworker actually receive not less than the minimum wage for all hours worked.

§ 530.203 Outstanding violations and open investigations.

A homework certificate will not be issued or renewed by the Administrator if, within the previous three years, the Administrator has found and notified the applicant of a monetary violation of the Fair Labor Standards Act in an amount certain, or the Administrator has assessed a civil money penalty pursuant to subpart D of these regulations or Part 579 of this chapter (child labor), and such amounts are unpaid, or if the applicant is the subject of a revocation proceeding at the time of the application for renewal, or the applicant is the subject of an open investigation.

§ 530.204 Discretionary denial or revocation.

Where the Administrator finds that the employment of homeworkers under a certificate is likely to result in violations of the Fair Labor Standards Act, the regulations issued thereunder, or the assurances required by this part, the Administrator may deny or revoke the certificate.

§ 530.205 Mandatory denial or revocation.

The Administrator shall deny or revoke a certificate in accordance with the following standards and for the period specified in the standards:

(a) *Serious wage violations.* Upon a finding by the Administrator of a serious wage violation, a certificate shall be denied (including refusal to renew) or revoked for one year. A serious wage violation is defined as minimum wage or overtime pay violations of the Act totalling $10,000 or more with respect to homeworkers; or minimum wage violations where 10 percent or more of a certificate holder's homeworkers (but in all cases at least two homeworkers) failed to receive at least 80 percent of the minimum wage for all hours worked for 6 or more weeks in any 3 month period; or minimum wage or overtime pay violations affecting more than half of the homeworkers of the certificate holder for 6 or more weeks in any 3 month period. All other wage violations are deemed non-serious wage violations for purposes of this section.

(b) *Repeated wage violations.* For repeated wage violations found by the Administrator, a certificate shall be denied or revoked for one to three years, depending on the seriousness and frequency of the violations.

(c) *Child labor violations.* Upon a finding by the Administrator of a violation of the child labor provisions of section 12 of the Fair Labor Standards Act and the regulations at Part 570 of this title, a certificate shall be denied or revoked for one year. Upon a second finding by the Administrator of such a violation, the certificate shall be denied or revoked for three years.

(d) *Failure to pay back wages or civil money penalties judged owing.* Upon the failure of a certificate holder to pay within 60 days back wages or civil money penalties finally judged by a court, administrative law judge or other appropriate authority, as the case may be, to be owed by the certificate holder, or agreed to be paid by the certificate holder, or within such longer period as may be specified in the final order or agreement, a certificate shall be denied or revoked for up to one year or for such period as such obligation shall remain unpaid if longer than one year.

(e) *Failure to cooperate in an investigation.* Where the Administrator finds obstruction of or other failure to cooperate in a Wage and Hour investigation by a certificate holder which impedes the investigation, the certificate shall be denied or revoked for a period of one to three years, depending on the circumstances. For purposes of this regulation, cooperation includes providing records upon request to Wage and Hour compliance officers, identifying homeworkers of the certificate holder, and encouraging homeworkers to make themselves available in connection with an investigation.

(f) *Serious recordkeeping violations.* Upon a finding by the Administrator that a certificate holder has engaged in a serious recordkeeping violation, the certificate may be revoked for up to one year. Upon a second finding by the Administrator of a serious recordkeeping violation, a certificate shall be denied or revoked for one to three years. A serious recordkeeping violation is defined as one where, either through errors in or omissions of required information, the name and current address of homeworkers and the data which is necessary for the accurate determination of hours worked by or wages paid to homeworkers or data necessary for the computation of wages owed to homeworkers is unavailable with respect to 10 percent or more of the homeworkers.

(g) *Deliberate misstatement in an application for a certificate or in other documents.* Upon a finding by the Administrator of a deliberate misstatement of a material fact in an application for a certificate, in payroll records, or in any other information submitted to the Wage and Hour Division or maintained by the employer pursuant to these regulations, the certificate shall be denied or revoked for one to three years.

(h) *Discrimination against a homeworker.* Upon a finding by the Administrator that a certificate holder has discharged or otherwise discriminated against a homeworker with respect to the homeworker's compensation or terms, conditions, or privileges of employment because the homeworker engaged in protected activity, the certificate shall be denied or revoked for three years. Protected activity is defined as: (1) Any complaint of a violation of the Act to the employer, the Department or other appropriate authority, or (2) any action which furthers the enforcement of or compliance with the Act, such as giving information to a Wage and Hour compliance officer.

§ 530.206 Special circumstances.

At the discretion of the Administrator, a certificate need not be denied or revoked pursuant to §§ 530.204 or 530.205 of this subpart if the Administrator finds all of the following:

(a) The certificate holder, despite the exercise of due care, did not know and did not have reason to know of the violations;

(b) All back wages and civil money penalties found by the Administrator to be owing by the certificate holder have been paid; and

(c) The certificate holder has taken appropriate steps to prevent recurrence of the violations.

Subpart D—Civil Money Penalties

§ 530.301 General.

A system of civil money penalties is established to provide a remedy for any violation of the FLSA related to homework (except child labor violations, which are subject to civil money penalties pursuant to Part 579 of this chapter), or for any violation of the homeworker regulations or employers' assurances pursuant to this Part, which are not so serious as to warrant denial or revocation of a certificate. Accordingly, no civil money penalty will be assessed for conduct which serves as the basis of proposed denial or revocation of a certificate. (See Subpart C of this part.) Civil money penalties will be assessed only against employers who are operating under a certificate or who are seeking certification.

§ 530.302 Amounts of civil money penalties.

(a) A civil money penalty, not to exceed $500 per affected homeworker for any one violation, may be assessed for any violation of the Act or of this Part or of the assurances given in connection with the issuance of a certificate.

(b) The amount of civil money penalties shall be determined per affected homeworker within the limits set forth in the following schedule, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature:

Nature of violation	Penalty per affected homeworker		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping	$10–100	$100–200	$200–500
Monetary violations	10–100	100–200	.....
Employment of homeworkers without a certificate	.....	100–200	200–500
Other violations of statutes, regulations or employer assurances	10–100	100–200	200–500

§ 530.303 Considerations in determining amounts.

(a) In determining the amount of a penalty within any range, the Administrator shall take into account the presence or absence of circumstances such as the following:

(1) Good faith attempts to comply with the Act or regulations;

(2) Extent to which the violation is under the employer's control;

(3) Non-culpable ignorance of the requirements of the Act or regulations;

(4) False documents or representations; and

(5) Exercise of due care.

(b) An employer's financial inability to meet obligations under the Act shall not constitute a mitigating or extenuating circumstance.

(c) No civil money penalty shall be assessed against an employer, who applies for a certificate, solely for employing homeworkers, provided the employer is not currently under investigation by the Wage and Hour Division.

§ 530.304 Procedures for assessment.

Assessment of penalties pursuant to this section, including administrative proceedings, shall be in accordance with

the procedures set out in Subpart E of this part.

Subpart E—Administrative Procedures

§ 530.401 Applicability of procedures and rules.

The procedures and rules contained herein prescribe the administrative process which will be applied with respect to a determination to deny (including refusal to renew) or revoke a certificate and to a determination to assess civil money penalties. Special rules and procedures for the emergency revocation of certificates are prescribed in § 530.412 of this subpart.

§ 530.402 Notice of determination.

Whenever the Administrator determines to deny or revoke a certificate or determines to assess a civil money penalty, the person affected by such determination shall be notified of the determination in writing, by certified mail to the last known address. The notice required shall:

(a) Set forth the determination of the Administrator, including the specific statutory or regulatory provision or assurance violated, the reasons for denying or revoking a certificate, or the amount of any civil money penalty assessment and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 530.403 of this subpart.

(d) Inform any affected person or persons that in lieu of formal proceedings there is available an alternative summary proceeding under § 530.412 of this subpart.

(e) Inform any affected persons that in the absence of a timely request for a hearing the determination of the Administrator shall become final and unappealable.

§ 530.403 Request for hearing.

(a) Except in the case of an emergency revocation under § 530.411 of this subpart, a request for an administrative hearing on a determination referred to in § 530.402 of this subpart shall be made in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington DC 20210, and must be received no later than thirty (30) days after issuance of the notice referred to in § 530.402 of this subpart.

(b) No particular form is prescribed for any request for a hearing permitted by this part. However, any such request shall be typewritten or legibly written; specify the issue or issues stated in the notice of determination giving rise to such request; state the specific reason or reasons why the person requesting the hearing believes such determination is in error; be signed by the person making the request or by an authorized representative of such person; and include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) In the case of an emergency revocation, a request for an administrative hearing shall be made in writing to the Chief Administrative Law Judge, U.S. Department of Labor, 1111 20th Street, NW., Suite 700, Washington, DC 20036, and must be received no later than 20 days after the issuance of the notice referred to in § 530.402 of this subpart.

§ 530.404 Referral to Administrative Law Judge.

Upon receipt of a timely request for a hearing, the request and a copy of the notice of administrative determination complained of, shall, by Order of Reference, be referred to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceedings, subject to any amendment that may be permitted under 29 CFR Part 18.

§ 530.405 General.

Except as specifically provided in these regulations, the "Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges" established by the Secretary at 29 CFR Part 18 shall apply to administrative proceedings described in this subpart.

§ 530.406 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, after completion of the hearing and closing of the record, a decision on the issues referred by the Administrator.

(b) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. If the Administrative Law Judge finds that the Administrator has established by a preponderance of the evidence the factual basis for the determination to deny or revoke a certificate or to assess a civil money penalty, that determination shall be affirmed. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator. The reason or reasons for such order shall be stated in the decision.

(c) The decision shall be served on all parties and the Secretary in person or by certified mail. The decision when served by the Administrative Law Judge shall constitute the final order of the Department of Labor unless the Secretary, as provided for in § 530.407 of this subpart, determines to review the decision.

§ 530.407 Procedures for initiating and undertaking review.

Any party desiring review of the decision of the Administrative Law Judge may petition the Secretary to review the decision. To be effective, such petition must be received by the Secretary within 30 days of the date of the decision of the Administrative Law Judge. Copies of the petition shall be served on all parties and on the Chief Administrative Law Judge. If the Secretary does not issue a notice accepting a petition for review within 30 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition has been received, the decision of the Administrative Law Judge shall be deemed the final agency action.

§ 530.408 Notice of the Secretary to review decision.

Whenever the Secretary determines to review the decision and order of an Administrative Law Judge, the Secretary shall notify each party of the issue or issues raised; the form in which submission shall be made (i.e., briefs, oral argument, etc.); and, the time within which such presentation shall be submitted.

§ 530.409 Final decision of the Secretary.

The Secretary's final decision shall be served upon all parties and the Administrative Law Judge, in person or by certified mail.

§ 530.410 Special procedures.

In a revocation proceeding pursuant to § 530.205(d) of subpart C of this part arising as a result of a certificate holder's failure to pay back wages or civil money penalties judged owing, the Administrator may file a motion for expedited decision, attaching to the notice, by affidavit or other means, evidence that a final order has been entered or agreement signed requiring

respondent to pay back wages or civil money penalties and that the back wages or civil money penalties have not been paid. The respondent in the proceeding shall have 20 days in which to file a countering affidavit or other evidence. If no evidence countering the material assertions of the Administrator has been submitted within 20 days, the Administrative Law Judge shall, within 30 days thereafter, affirm the revocation or denial of the certificate. If the respondent does timely file such evidence, the Administrative Law Judge shall schedule a hearing pursuant to § 530.411(c) of this subpart and the case shall be subject to the expeditious procedures following therein.

§ 530.411 Emergency certificate revocation procedures.

(a) When the Administrator determines that immediate revocation of a homework certificate is necessary to safeguard the payment of minimum wages to homeworkers, a notice of proposed emergency revocation of a certificate shall be sent to the certificate holder pursuant to § 530.402 of this subpart setting forth reasons requiring emergency revocation of the certificate.

(b) If no request for a hearing pursuant to § 530.403 of this subpart is received within 20 days of the date of receipt of the notice by the certificate holder, the proposed revocation of the certificate shall become final.

(c) The Office of Administrative Law Judges shall notify the parties at their last known address, of the date, time and place for the hearing, which shall be no more than 60 days from the date of receipt of the request for the hearing. All parties shall be given at least 5 days notice of such hearing. No requests for postponement shall be granted except for compelling reasons.

(d) The Administrative Law Judge shall issue a decision pursuant to § 530.406 of this subpart within 30 days after the termination of a proceeding at which evidence was submitted. The decision shall be served on all parties and the Secretary by certified mail and shall constitute the final order of the Department of Labor unless the Secretary determines to review the decision.

(e) Any party desiring review of the decision of the Administrative Law Judge may petition the Secretary to review the decision of the Administrative Law Judge. To be effective, such petition must be received by the Secretary within 30 days of the date of the decision of the Administrative Law Judge. If the Secretary does not issue a notice accepting a petition for review within 15 days after receipt of a timely filing of the petition, or within 30 days of the date of the decision if no petition is filed, the decision of the Administrative Law Judge shall be deemed the final agency action.

(f) The Secretary's decision shall be issued within 60 days of the notice by the Secretary accepting the submission, and shall be served upon all parties and the Administrative Law Judge, in person or by certified mail.

§ 530.412 Alternative summary proceedings.

In lieu of an administrative hearing before an Administrative Law Judge under the above procedures, an applicant or certificate holder who does not dispute the factual findings of the Administrator may, within 30 days of the date of issuance of the notice of denial, revocation, or assessment (or within 20 days in the case of a notice of emergency revocation) petition the Administrator instead to reconsider the denial or revocation of the certificate or the assessment of civil money penalties. An applicant or certificate holder electing this informal procedure may appear before the Administrator in person, make a written submission to the Administrator, or both. Such reconsideration by the Administrator shall be available only upon waiver by the applicant or certificate holder of the formal hearing procedures provided by the above regulations.

§ 530.413 Certification of the record.

Upon receipt of a complaint seeking review of a final decision issued pursuant to this part filed in a United States District Court, after the administrative remedies have been exhausted, the Chief Administrative Law Judge shall promptly index, certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

§ 530.414 Equal Access to Justice Act.

Proceedings under this part are not subject to the provisions of the Equal Access to Justice Act. In any hearing conducted pursuant to these regulations, Administrative Law Judges shall have no power or authority to award attorney fees or other litigation expenses pursuant to the Equal Access to Justice Act.

PART 516—RECORDS TO BE KEPT BY EMPLOYERS

11. The authority citation for Part 516 continue to read as follows:

Authority: Sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211 516.33 also issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.*

12. Paragraphs (b) and (c) of § 516.31 are revised to read as follows:

§ 516.31 Industrial homeworkers.

* * * * *

(b) *Items required.* In addition to all of the records required by § 516.2, every employer of homeworkers shall maintain and preserve payroll or other records containing the following information and data with respect to each and every industrial homeworker employed (excepting those homeworkers to whom section 13(d) of the Act applies and those homeworkers in Puerto Rico to whom Part 545 of this chapter applies, or in the Virgin Islands to whom Part 695 of this chapter applies):

(1) With respect to each lot of work:

(i) Date on which work is given out to worker, or begun by worker, and amount of such work given out or begun;

(ii) Date on which work is turned in by worker, and amount of such work;

(iii) Kind of articles worked on and operations performed;

(iv) Piece rates paid;

(v) Hours worked on each lot of work turned in;

(vi) Wages paid for each lot of work turned in.

(2) With respect to any agent, distributor, or contractor: The name and address of each such agent, distributor, or contractor through whom homework is distributed or collected and the name and address of each homeworker to whom homework is distributed or from whom it is collected by each such agent, distributor, or contractor.

(c) *Homeworker handbook.* In addition to the information and data required in paragraph (b) of this section, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by such employer to each worker) shall be kept for each homeworker. The employer is required to insure that the hours worked and other information required therein is entered by the homeworker when work is performed and/or business-related expenses are incurred. This handbook must remain in the possession of the homeworker except at the end of each pay period when it is to be submitted to the employer for transcription of the hours worked and other required information and for computation of wages to be paid. The handbooks shall include a provision for written verification by the employer attesting that the homeworker was instructed to accurately record all of the required information regarding such

homeworker's employment, and that, to the best of his or her knowledge and belief, the information was recorded accurately. Once no space remains in the handbook for additional entries, or upon termination of the homeworker's employment, the handbook shall be returned to the employer. The employer shall then preserve this handbook for at least two years and make it available for inspection by the Wage and Hour Division on request.

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