DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(BJA)–1213]

RIN 1121–AA36

Prison Industry Enhancement Certification Program Guideline

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA), Justice.

ACTION: Issuance of final guideline.

SUMMARY: The Office of Justice Programs, Bureau of Justice Assistance (BJA), is issuing this final revision to its Prison Industry Enhancement Certification Program (PIECP) Guideline proposed for public comment on July 7, 1998, 63 FR 36710–36719. Under Title 18 U.S.C. 1761(c), BJA PIECP certification excepts participating agencies from certain Federal restraints placed on the marketability of prison-made goods by permitting the transport of such goods in interstate commerce and the sale of such goods to the Federal government. This Guideline addresses statutory amendments and reflects administrative experience gained by BJA since the last final PIECP Guideline published on March 29,1985 (50 FR 12661–64).

The publication of this Final Guideline is considered to be a Federal action that will not significantly affect the quality of the human environment. Therefore, preparation of an environmental impact statement is not necessary.

EFFECTIVE DATE: This Guideline is effective April 7, 1999; existing participants will have until April 7, 2000 to achieve compliance with all of the new requirements set forth in this Guideline except for those relating to the National Environmental Policy Act (NEPA). The new requirements implementing NEPA are effective immediately.

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SUPPLEMENTARY INFORMATION:

Scope of Program Announcement

I. Introduction: Program Purposes and Objectives

The Prison Industry Enhancement Certification Program (PIECP), codified at 18 U.S.C. 1761(c), was first authorized by the Justice System Improvement Act of 1979, Pub. L. No. 96–157, 93 Stat. 1215. The PIECP was expanded from 7 to 20 pilot projects under the Justice Assistance Act of 1984, Pub. L. 98–473 § 609k(a)(1), 98 Stat. 2077, 2102. In 1990, The Crime Control Act of 1990, Public Law 101–647 § 2906, 104 Stat. 4789,4914, raised to 50 the number of PIECP projects that may be excepted by the Bureau of Justice Assistance (BJA) from certain Federal restrictions on the marketability of prisoner-made goods, including the Ashurst-Sumners Act (18 U.S.C. 1761(a)) and the Walsh-Healey Act (41 U.S.C. 35).

Since its inception in 1979, the PIECP program has certified 38 work pilot projects throughout the country. Prison administrators find PIECP participation an effective way to address idleness among ever-increasing prison populations and as a cost-efficient method for providing inmates with marketable job skills. Taxpayers benefit because PIECP wage deductions result in reductions in incarceration costs. Inmate wages benefit society, generally, in that deducted amounts are authorized to address victim compensation, inmate family support needs and taxes. Lastly, PIECP industries obtain broad market access for their products because they are excepted from the Ashurst-Sumners Act prohibition against the interstate transport of prisoner-made goods and from the Walsh-Healey Act prohibition against certain contract sales of prisoner-made goods to the Federal government.

BJA first issued a Final Guideline to implement this program on March 29, 1985, 50 FR 12661–64. After providing an opportunity for public comment on the revised Guideline on July 7, 1998 (63 FR 36710–19), the agency now publishes this Final Guideline to offer updated program clarification. In so doing, the legislative underpinnings of relevant laws are examined and the scope of their applicability is defined. Compliance expectations are explained as program guidance. Refined administrative practices reflect experience gained by BJA over the past 14 years. The background history, guidance definitions and administrative requirements described in this Guideline are specific only to the PIECP and have no bearing on or relationship to the development, goals or administrative practices of any other prison industry program.

II. Background of the Prison Industry Enhancement Certification Program (PIECP)

a. Legislative History

1. Unregulated Prison Labor

The 19th Century evolution of industrial capitalism and private sector use of prisoner labor spawned a number of conditions that adversely affected several major segments of society. By the turn of the 20th Century, these segments joined in an organized appeal to Congress and state legislatures nationwide. They collectively asserted that the production and distribution of unregulated prisoner-made goods in interstate commerce needed to be

eliminated or, at a minimum, controlled.

Human rights activists turned the public's attention to poor prison work conditions and inmate exploitation. Organized labor argued that the demand for prisoner-made products, anywhere, necessarily displaced a possible demand for the product of free labor. Free enterprise manufacturers at the time were disturbed because manufacturers of prisoner-made goods did not bear the burden of overhead costs borne by private industry competitors. Prisoner-made goods were sold at below market prices. The viability of private industry competition was thereby undercut. In December 1924, Secretary of Commerce Herbert Hoover held a conference on the subject of the ''ruinous and unfair competition between prison-made products and free industry and labor.'' 70 *Cong. Rec.* S656 (1928).

Then-Secretary Hoover authorized an advisory committee to study the problem. This committee issued a report to Congress in 1928 wherein Chairman of the Advisory Committee on Prison Industries, Arthur Davenport, submitted the following conclusions:

(1) Certain major factors in the normal cost of production which must be met by all manufacturers are entirely absent in the case of prison industries. If anything approaching normal efficiencies of operation can be attained with the use of prison facilities and labor, the total costs of production are . . . below those of the manufacturer who must meet large overhead expenses as well as employ free labor.

(2) It is the universal belief that prisoners should be usefully occupied whether as a part of their punishment or as a means of rehabilitation by teaching them the habits of industry. To this end nearly every State . . . provid[es] productive work for their prisoners . . .

(3) The volume of goods produced by prison labor is already very large in some lines, but as more prisoners are put to work, and the industries become more efficient, the output of our prisons will be greatly increased.

(4) The effect of placing on the open market a volume of goods which have been produced below normal costs, is to lower prices and disorganize the market * * * The increase in prison production which is predicted will exaggerate this evil and make it difficult if not impossible for manufacturers employing free labor to exist in trade where the prison output becomes heavy.

(5) The solution of this problem, if prison production is to continue * * * would seem to be the elimination, in one way or another, of the direct price competition of the prison products with so called ''free products''* * *. 70 *Cong. Rec.* S656 (1928).

In closing, Chairman Davenport urged that solutions be found, ''[o]therwise either prison industries must cease and prisoners kept in idleness or the manufacture of products competing with prison output will become impossible. Either of these developments would be disastrous * * *.'' *See* S. Rep. No. 344, 70th Cong., 1st Sess., re-printed, *Cong. Rec.* S656 (Dec. 15, 1928), ''Statement of Prison Labor Problems as Shown by Report of Senate Committee.''

Even if a state prohibited its own correctional institutions from producing and marketing prisoner-made goods, that same state had no jurisdiction to control such goods produced in other states, transported in interstate commerce and sold within its boundaries. As an initial solution to this problem, Congress enacted the Hawes-Cooper Act in 1929, Pub. L. 70–669, 45 Stat. 1084, recodified by Pub. L. 95–473, 92 Stat. 1449 (1978) [formerly codified at 49 U.S.C. 11507, omitted in the revision of Title 49 by Pub. L. 104–88, Title I § 102(a), 109 Stat. 804 (effective January 1, 1996); *See* S. Rep. No. 104–176]. This law divested prisoner-made products of their interstate character upon their arrival in the state of their destination and permitted the laws of that state to become operative with respect to the sale and distribution of such products. It was described, at the time of enactment, as an enabling act because it did not prohibit the transportation of prisoner-made goods or force the enactment of state legislation.

In 1935, Congress enacted the Ashurst-Sumners Act, Pub. L. 74–215, 49 Stat. 494 (1935), which authorized Federal criminal prosecutions of violations of state laws enacted pursuant to the Hawes-Cooper Act. Subsequent amendments to this law, including Pub. L. 76–851, 54 Stat. 1134 (1940), strengthened Federal enforcement authority by making any transport of prisoner-made goods in interstate commerce a Federal criminal offense. As amended, 18 U.S.C. 1761(a) now provides:

> Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution, shall be fined under this title or imprisoned not more than two years, or both [herein referred to as the Ashurst-Sumners Act].

Certain prisoner-made products were excepted, by statute, from the Ashurst-Sumners Act prohibition, including ''agricultural commodities or parts for the repair of farm machinery'' as well as ''commodities manufactured in a Federal, District of Columbia or State institution for use by the Federal Government, or by the District of Columbia, or by any State or Political subdivision of a State or not-for-profit organizations.'' Title 18 U.S.C. 1761(b).

The Walsh-Healey Act, 49 Stat. 2036 (1936), as amended in 1979 by Pub. L. No. 90–351, § 827(b) and codified at 41 U.S.C. 35, also controls the production of prisoner-made goods. This statute prohibits the use of prisoner labor to fulfill general government contracts which exceed $10,000. BJA certification pursuant to § 1761(c) excepts prisoner-made goods produced at PIECP work pilot projects from the Walsh-Healey Act contracting restrictions, as well as the Ashurst-Sumners Act interstate transportation restrictions.

2. Prisoner Idleness and Prisoners' Need for Job Skills Training

The PIECP exception to the Ashurst-Sumners and the Walsh-Healey Act restrictions was introduced into the Senate in 1979 after the 1978 Pontiac, Illinois prison riot. In the wake of that uprising, Senator Charles Percy (R–Ill.) stated:

> [L]ast summer in Pontiac, Illinois, our worst fears about the conditions in the Nation's prisons erupted into a nightmarish reality. The Pontiac prison riot of 1978 ended with three guards dead, three others seriously wounded, and $4 million in property damage * * *.
>
> The shopping list of problems and deficiencies in our prison system is long and well known. Overcrowding, old and obsolete facilities, lack of training or educational programs, crime within prison walls, frustration on the part of guards and inmates are all a part of the dreary picture * * *. Recidivism is now a substantial element in our overall crime rate, and prisons are often accurately characterized as a ''school for crime,'' rather than a deterrent to crime * * *. 125 *Cong. Rec.* S11834 (1979).

These concerns caused Congress to take measures to encourage prison industries, provided that they not engage in unfair competition with private sector business and labor. Senator Percy's bill, now referred to as the Prison Industries Enhancement Act, Section 827 of the Justice System Improvement Act of 1979, Pub. L. 96–157, § 827(a), 93 Stat. 1215, was enacted on December 27, 1979. As amended, it now offers 50 certified projects an opportunity to participate in the

interstate market, provided certain safeguards to free-world labor and industry, and to prisoner-workers themselves, are met. *See* The Crime Control Act of 1990, Pub. L. 101–647, § 2906, 104 Stat. at 4914.

In describing the purpose of his introduced legislation, Senator Percy explained (125 *Cong. Rec.* S11834 (1979)):

> My amendment would do two basic things: First, it would authorize the [BJA] to encourage development of pilot demonstration projects for prison industry at the State level, involving private sector industry * * *. Under this approach, prison programs benefit from the private business, develop access to new markets, and attract needed capital. The goal of these pilot projects would be to create as realistic a working environment as possible within the prison walls, while enabling an inmate to become more self-sufficient to the benefit of himself, the prison system, and the taxpayer.
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> Secondly, my amendment creates a partial exemption to two Federal laws which severely restrict the ability of State prison industries to market their goods * * *. When these laws were enacted decades ago, they represented significant reforms against exploitation of prison labor. Over the years, however, they have developed into heavy-handed roadblocks to growth among * * * prison industry programs * * *.
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> My amendment would provide limited exemptions to these restrictions where inmates have been paid a wage comparable to that paid for similar work in the private sector in the locality * * *.

The statutory exception that was enacted to establish PIECP is codified at 18 U.S.C. 1761(c):

> * * * [the Federal marketability prohibitions] shall also not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners who—
>
> (1) Are participating in one of not more than 50 non-Federal prison work pilot projects designated by the Director of the Bureau of Justice Assistance; * * *

To become eligible for Bureau of Justice Assistance (BJA) certification, an applicant department of corrections must comply with specified statutory requirements. It must pay participating prisoners ''wages not less than that paid for work of a similar nature in the locality in which the work was performed'' and cannot take more than 80 percent in deductions from gross wages for specified purposes including taxes, reasonable charges for room and board, family support and victims' compensation. 18 U.S.C. 1761(c)(2).

Certain other conditions of employment must also be met. An eligible applicant cannot deprive participating offenders, solely because of their status as offenders, of the right to participate in benefits made available by the Federal or state government to other individuals on the basis of their employment, such as workmen's compensation. Title 18 U.S.C. 1761(c)(3). PIECP inmates must also participate on a voluntary basis and must have agreed to the specific deductions made from gross wages pursuant to 18 U.S.C. 1761(c)(2), and all other financial arrangements resulting from participation in such employment. Title 18 U.S.C. 1761(c)(4).

The note following 18 U.S.C. 1761, although not codified, is public law and adds two additional PIECP requirements on certified prison industries. The note requires participating prison industries to consult with local union organizations prior to initiating any project qualifying for a 1761(c) exemption. Also, the qualifying applicant must ensure that paid PIECP inmate employment will not result in the ''displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services.'' The Justice System Improvement Act of 1979 added these provisions which became § 827(c) of the Omnibus Crime Control and Safe Streets Act of 1968. *See* Pub. L. 96–157, 93 Stat. 1215, reprinted in 1979 U.S.C.C.A.N. 2471. In 1984, § 827(c) was redesignated § 819 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. *See* Pub. L. 98–473, 98 Stat. 2093.

If all eligibility requirements are met and an applicant acquires BJA certification, the agency is thereafter authorized to operate irrespective of Federal prohibitions on the marketing of state prisoner-made goods. Conversely, non-compliance with these statutory eligibility requirements could expose an industry to criminal prosecution under the Ashurst-Sumners Act. Title 18 U.S.C. 1761(a).

b. The PIECP Program

1. Current State of the Program

Currently, 38 departments of correction or umbrella authorities are PIECP Certificate Holders. Under the Justice System Improvement Act of 1979, Arizona, California, Idaho, Kansas, Minnesota, Nevada and Utah were certified. In 1984, under the Justice Assistance Act of 1984, 13 prisons work pilot projects were certified in: Alaska, Belnap County (NH), Connecticut, Iowa, Maine, Missouri, Nebraska, New Mexico, Oklahoma, Oregon, South Carolina, Strafford County (NH) and Washington State. Under the Crime Control Act of 1990, the following additional departments of correction were certified: Colorado, Delaware, Florida, Hawaii, Indiana, Louisiana, Maryland, Montana, North Carolina, Ohio, Red River County (TX), South Dakota, Tennessee, Texas, the Texas Youth Commission, Vermont, Virginia, Washington State Jail Industries Board and Wisconsin.

About 145 private sector businesses now work in partnership with PIECP certified projects to employ about 2,800 inmates. Either the department of corrections or the private sector enterprise retains project authority to direct and control inmate labor, depending on the management model used. Project implementation has resulted in the production of myriad products including such items as furniture, sheet metal, video equipment, clothing, food products, office products, mattresses, draperies, crutches and road signs. In addition, although service industries were not a threat to the private sector in 1935 and thus, were not included within the scope of the Ashurst-Sumners prohibition, a number of service industries have elected to comply with the PIECP requirements.

Between January 1979 and September 1998, PIECP projects generated approximately $113.7 million in gross inmate wages. Nearly half of this amount was diverted to non-inmate recipients: $8.9 million was deducted for victims of crime, $25.7 million was deducted for room and board payments, $5.8 million was deducted for family support and about $13.7 million was withheld in local, State and Federal taxes.

BJA monitors the performance of PIECP work pilot projects to ensure that they operate in full compliance with all legislative and administrative program requirements. Under a grant to the Correctional Industries Association (CIA), prison industry and other professionals conduct regular, on-site reviews of all PIECP projects. BJA responds to matters involving possible non-compliance by taking appropriate remedial action such as providing technical assistance or proposing a corrective action plan.

2. Future Challenges

PIECP is used nationwide as a cost-efficient way to provide inmates with work experience and training in marketable job skills, as well as to reduce idleness among growing prison populations.

Over time, the limit on the authorized number of pilot projects has been raised to meet the demands of interested applicants. When Congress last increased the project ceiling to 50, the House took into consideration a waiting

list of states and counties that had wanted to participate and noted that ''the demand for certification by state and local governments indicates a need for this amendment which will enable the program to expand and other jurisdictions to apply.'' H.R. (I), 101st Cong. 202 (1990).

BJA administers PIECP with the objective of making participation available to as many qualified applicants as possible, within limits imposed by the statutory ceiling. This Guideline provides projects with clarity as to Federal participation requirements, as well as programmatic flexibility to allow for PIECP Project growth in ways that respond to local needs. The Federal requirements are intended to ensure that the interests of local business and organized labor are protected. In this way, BJA's administrative practices address concerns reflected in the legislative history pre-dating the onset of Federal regulation of prisoner-made goods.

Finally, this revised Guideline addresses novel issues presented by new PIECP participants, the private sector prisons. These entities are unique in that they render an essential service traditionally undertaken by public agencies and they do so for profit. Thus, BJA has altered some PIECP program requirements to insure program implementation remains consistent with Congressional intent. Congress enacted PIECP to introduce public departments of correction to private sector profit-making enterprises. Therefore, private prisons are invited to participate in PIECP only as Cost Accounting Centers (CACs) designated under the authority of departments of correction.

c. Discussion of Comments

BJA published a proposed Guideline in the **Federal Register** on July 7, 1998 for public comment. Written comments from public and private organizations were received. All comments have been considered by the BJA in this publication. This Guideline is final. The following is a summary of substantive comments and BJA's response.

1. Background on PIECP

Comment: BJA should retain the legislative history and background section. It is informative and useful.

BJA should explain that the background section does not accurately describe present day political, social or economic concerns regarding the implementation of prison industry programs.

Response: BJA provides the background and legislative history section to illustrate social, political and economic concerns that were predominant prior to 1940, before the Federal government first began regulating, as a criminal matter, the interstate transport of prisoner-made goods, as well as such concerns as they existed prior to the 1979 enactment of the PIECP exception to 18 U.S.C. 1761(a). BJA provides this background to inform PIECP Cost Accounting Centers about Congress' intent when developing the program's statutory requirements and exception authority.

Accordingly, no substantive change was made in the background section of the Guideline.

2. Program Purposes

Comment: BJA should modify its program purposes to add, as a purpose, introducing government to private sector profit-making enterprises. More specifically, BJA should endorse private sector prison options as a specific way to introduce state and local government agencies to private sector profit-making enterprises.

Response: Consistent with the legislative history of the PIECP, BJA exercises its administrative authority only to endorse PIECP as a cost-efficient means to address inmate idleness and to provide inmates with work experience and training in marketable job skills. Whether private sector partnerships or private prison contracts are suitable prison industry options for any given jurisdiction, is a state and or local matter for determination. State and local interests are uniquely poised to identify appropriate private sector profit-making enterprises, if any, to partner with prison industries. Thus, as a Federal agency, BJA is not prepared to adopt such a program purpose.

Accordingly, no change was made in the program purposes provision of the Guideline.

3. Definitions

Comment: BJA should modify the definitions so that references to departments of corrections include public or not-for-profit agencies sanctioned under state law to administer the Prison Industry Enhancement Certification Program.

BJA should add a definition of ''chief state correctional officer,'' as the term is used in reference to the room and board deduction, so that it encompasses umbrella authorities where such models have been certified by BJA as prison work pilot projects.

With respect to the minimum wage definition, BJA should state that this PIECP program wage threshold is in no way intended, in and of itself, to ascribe to inmate workers ''employee'' status for purposes of other state and Federal laws.

BJA should re-define the locality definition. The proposed definition, which defers to state agencies for the making of such determinations, is too vague and subjective.

Response: BJA concurs with a number of recommendations to enhance the clarity of terms used in the Guideline. A definition for the term ''departments of correction'' is incorporated to clarify that state and local government agencies, and the instrumentalities thereof, including not-for-profit entities sanctioned under state law to administer PIECP, are eligible as potential PIECP Certificate Holders. A definition of the term ''chief state correctional officer'' is added to enhance guidance with respect to model specific implementation of the room and board deduction. Also, the scope of the minimum wage definition is more specifically defined in relation to PIECP purposes and the operation of other laws.

The locality definition has implications both with respect to the inmate wage requirement and the prohibition against private sector employee displacement. BJA directs all Cost Accounting Centers to obtain non-displacement projections and prevailing wage determinations from their appropriate state agencies and, in so doing, extends to the states an opportunity to locally influence implementation of the Federally authorized PIECP Project. BJA expects that by extending this opportunity, the states will exercise their authority so as to protect the interests of local labor groups and private sector competition. This approach was adopted to vest state agencies with authority and flexibility to respond to uniquely local economic trends and conditions. Accordingly, no change to the locality definition was made.

4. Eligibility

Comment: BJA should allow private prisons to independently qualify as Certificate Holders. Alternatively, restrictions affecting the designation of private prison industries, as Cost Accounting Centers (CAC), should be eased.

Umbrella authorities should not be allowed to qualify as eligible Certificate Holders. The certification of umbrella authorities circumvents the 50 project limit imposed on the program by Congress.

Response: Title 18 U.S.C. 1761(c)(1) authorizes BJA to exercise broad discretion in certifying PIECP prison work pilot projects. Two significant

considerations, however, weigh in favor of limiting Certificate Holder eligibility only to departments of correction and not private prisons. First, the legislative history of the PIECP reflects Congress' desire to craft an inmate work vehicle to advance state and local government interests, and specifically their need to gainfully occupy growing prison populations in marketable job skills. Second, as PIECP implementation could impact state and local private sector interests, BJA believes that the protection of those interests would be best served by reserving certification for those agencies which, by their very nature, are accountable to the public.

BJA will not authorize any PIECP certified project to designate CACs outside of its jurisdictional boundaries because the Bureau defers to individual state legislatures for determinations as to whether PIECP should be authorized within their jurisdictions. If a state legislature decides not to authorize PIECP implementation in public facilities, private facilities ought not be authorized to implement PIECP, in that same state, through a designation authorized by a Certificate Holder located in another state. BJA, however, incorporates amendments to the Final Guideline to allow any given state Certificate Holder to designate CACs within private prisons operating within that same state, even in the absence of a contract for incarceration services between that state and the private prison seeking to participate in PIECP. The BJA form used to accomplish the designation of a CAC within a private prison must reflect express approval of the designation by the Chief State Correctional Officer for the state in which the private prison CAC is located. *See* Section IV.(a)(5), *infra.*

CACs designated within private prisons must also retain on-file documentation reflecting approval of PIECP inmate worker participation by the state and local jurisdictions in which the PIECP inmate workers were convicted. In order to issue such approvals, the remanding state and local jurisdictions must also hold PIECP certificates. This requirement insures continuity of the necessary PIECP project authorization vis-a-vis the PIECP inmate workers, and is responsive to the statutory project ceiling number.

If inmate workers could not participate in PIECP within the boundaries of the state and local jurisdictions in which they were convicted, they should not be allowed to participate in PIECP in another state or local jurisdiction through an agreement for private prison incarceration services. Alternatively stated, state and local jurisdictions cannot be allowed to participate in PIECP indirectly through a contract with a private prison that has a PIECP-designated CAC, if they choose not to participate in PIECP directly, *i.e.*, had they incarcerated their inmates within their own state and local jurisdictional boundaries.

Title 18 U.S.C. 1761(c) offers BJA broad discretion with respect to defining a prison work pilot project for PIECP eligibility purposes. Umbrella authorities may represent a mix of agency members such as state and local departments of correction, and youth authorities. Any of these agency members may, through their respective umbrella authorities, designate CACs within themselves or private prisons located in their jurisdictional areas. In order to qualify for PIECP certification, umbrella authorities must be able to assure BJA that a central administration of the CACs can be accomplished to insure project-wide compliance with the guideline and the statute as well as responsible exercises of designation/undesignation authority. Since the inception of PIECP in 1980, BJA has certified several umbrella authorities. During that same period of time, Congress was advised of such projects and consistently increased the project ceiling. BJA interprets such action as tacit approval of BJA's certification of umbrella authority models.

Accordingly, changes are made in the eligibility provisions to ease restrictions on Certificate Holder designation of CACs within private prisons located within the Certificate Holder's jurisdiction. Private prisons are ineligible as independent PIECP Certificate Holders.

5. Inmate Wages

Comment: Authors of two comments claim that PIECP wage rates do not equal labor costs: BJA should allow Cost Accounting Centers (CACs) to make adjustments in prevailing wage rates to address the hidden, unusual costs of doing business in a prison environment such as the cost of transportation to rural areas, reduced production levels due to rapid turnover, and added expenses of worker training and start-up. Because these cost variables are significant and inherent in doing business within prisons, the PIECP wage requirement is not necessary to ''level the playing field'' with private sector competition.

From the perspective of one organized labor group, the proposed Guideline is an improvement over the 1985 PIECP guideline. BJA, however, is urged not only to encourage, but to require CACs to implement salary wage plans based on worker competency and seniority.

Regarding the wage self-determination option, in the proposed guideline, the following diverse comments were received: this option is an improvement in that it allows for CAC implementation in instances where state agencies are non-responsive to requests for prevailing wage determinations; this option imposes too great of an administrative burden on CACs; this option provides participants with an opportunity to avoid obtaining state agency wage determinations.

In instances where a private sector partner has both a non-inmate operation and a PIECP CAC in the same locality, the partner should be permitted to bypass a state agency's wage determination and use relevant non-inmate wage scales with respect to PIECP inmate workers performing the same job function.

BJA should clarify the meaning of the term of ''notable tasks,'' as it is used in the Guideline with respect to identifying which inmate workers should be paid a PIECP wage.

Response: Title 18 U.S.C. 1761(c)(1) expressly states that PIECP wages must be paid at a rate which ''is not less than that paid for work of a similar nature in the locality in which the work is performed.'' PIECP wage determinations must be based only on comparable non-inmate worker wages for performing work of a similar nature. Gross wages earned by PIECP inmate workers may be reduced only through an application of the four authorized wage deductions specified in 18 U.S.C. 1761(c)(2). Thus, the plain language of the PIECP exception statute provides BJA with no authority to allow wage deductions in addition to those set forth in 18 U.S.C. 1761(c)(2) and for the purpose of addressing the unusual costs of doing business in a prison environment, however meritorious such proposed adjustments might be.

The language of 18 U.S.C. 1761(c)(3) requires PIECP projects to pay wages based only on private sector wage amounts for performing similar work and it does not, as a matter of law, require the implementation of salary plans. BJA added this policy-based encouragement to advance program objectives.

The self-determination option, as reflected in the proposed guideline, was presented to address a recurring challenge confronting many PIECP Cost Accounting Centers (CACs). On occasion and through no fault of their own, CACs are unable to obtain timely, state agency responses to requests for wage determinations. The self-

determination option, which is available only when state non-responsiveness occurs, assists CACs to achieve compliance without relying on a determination by a third party. The method presented requires only the minimum amount of data collection and analysis necessary to yield a defensible, rationally-based wage determination. Availability of the self-determination option prevents CACs from paying a Federal minimum wage—the lowest possible PIECP wage, indefinitely, when payment of such a wage rate is unwarranted and the state remains non-responsive to wage determinations requests.

To ease the impact of PIECP implementation on any given locality's ecomony and labor force, BJA reserves two opportunities for states to affect the implementation of the Federal PIECP program within state boundaries. The requirement that proposed CACs must obtain wage rates from the relevant state agencies, is one of those opportunities. BJA reserves this opportunity for state participation in the program, without exception, to insure CACs respond to relevant, locally-based input from an objective source.

BJA introduces the Guideline concept of ''notable tasks'' as a way to assist CACs in identifying inmate workers to whom a PIECP prevailing wage should be paid. Questions arise as to whether inmates performing support functions, such as janitorial and maintenance services, necessary to CAC operations must be paid a PIECP wage. A more specific definition, in this regard, is not possible without compromising flexibility in the application. The Guideline offers specific administrative direction by identifying relevant considerations for determining whether a given task is ''notable.''

Accordingly, no change was made in the wage payment provisions of the Guideline.

6. Non-Inmate Worker Displacement

Comment: One representative from organized labor claimed that prisoner labor should never be allowed to compete with free-world labor because it undermines the private sector labor force and inmate rehabilitation. Another representative of organized labor generally endorsed the Guideline and the revised non-inmate worker displacement requirement, stating that it is an improvement over that which was issued in 1985.

The presumption of non-compliance, applicable when a private sector partner employs non-inmate and inmate workers in the same locality, is too vague and too restrictive on private sector partners.

The general language of this requirement makes it difficult to measure displacement in instances where other non-employee, non-inmate workers perform similar jobs or skills in the same locality. Any PIECP operation is likely to affect the private sector marketplace and, consequently, private sector jobs. The requirement ought not be construed in such a way so as to prohibit PIECP companies from engaging in normal business operations such as bidding for contracts on the open market after they have been designated as participating in a PIECP project. Also, BJA should not impede or discourage successful PIECP operations, already designated, from continuing operations even when there is a subsequent general downturn in the economy and, arguably, *de facto* displacement of non-inmate workers performing similar work in the locality.

This requirement is too restrictive in that it prohibits PIECP partners from outsourcing entry level jobs and redirecting their current private sector workforce toward higher skill level jobs.

The Guideline encourages potential Cost Accounting Centers to develop new jobs in a locality; this should not be implemented so as to adversely affect a CAC which decides not to follow the encouragement.

Response: Congress directs BJA to implement the PIECP program, a prison industry program that places prison made goods in competition with the private sector. BJA has no discretion to exercise in determining whether or not to implement this program.

One BJA purpose in revising the Guideline is to improve the program's responsiveness to organized labor's concerns. The agency is pleased that a segment of the labor community views its interests as better served through the re-issuance of the PIECP Guideline.

BJA acknowledges that implementing the non-inmate worker displacement prohibition may appear to work at cross purposes with encouraging the commercial success of PIECP Cost Accounting Centers (CACs). The agency must respond to a broad statutory mandate to insure that PIECP does not impair or displace private sector workers and is not applied in skills in which there is a surplus of available gainful labor. However, BJA cannot accomplish PIECP implementation if CAC's are prevented from attaining commercial success by engaging in typical competitive market practices. To address this concern, the guidance language is modified to reflect BJA's expectation that PIECP CACs will engage in typical business operations, such as bidding for contracts on the open market after project initiation.

While compliance is a continuing CAC responsibility, a violation of the non-displacement requirement is more likely to occur and is more discernable just prior to and immediately following CAC implementation than thereafter. For this reason, BJA will scrutinize CAC compliance with this provision just prior to and within one year following CAC implementation.

The agency devised a presumption of displacement which may be applicable in instances where a private sector partner retains non-inmate workers in the same locality. This presumption is modified in this Final Guideline to provide partners with a degree of flexibility to reallocate resources to their optimum use. Specifically, the presumption may be overcome if the private sector partner can demonstrate that non-inmate workers have been retained by the private sector partner in jobs at pay rates equal to or greater than that received in the previous position, that non-inmate employees have been provided an adequate opportunity for effective training in any new job skills and that the subject non-inmate employees are being retained by the private sector partner under reasonably similar or improved employment conditions.

BJA policy encouragement regarding the creation of new PIECP jobs is not a mandate. CACs which do not bring new jobs to their localities will not be penalized. For obvious reasons, however, CACs generating new jobs are easier for BJA to evaluate and are less likely to be the subject of local criticism.

Accordingly, changes are made in the non-inmate worker displacement provision to clarify the scope of the prohibition and to not unduly impede business decisions that lend themselves to effective commercial management and success of PIECP Cost Accounting Centers.

7. Benefits Requirement

Comment: A resolution of inconsistent Social Security requirements imposed on PIECP models should be accomplished at the Federal level between BJA, the Social Security Administration and the Internal Revenue Service. The disparate treatment of customer and employer models is arbitrary. Both models should be treated the same way for purposes of requiring projects to provide inmates with Social Security coverage.

BJA should clarify its position with respect to imposing the Federal

Unemployment Tax Act on PIECP models as a benefits requirement.

Response: The benefits requirement, as outlined in the proposed Guideline, elicited the greatest number of comments. Several Federal laws apply to wages earned by inmates in penal institutions. BJA, therefore, sought a Guideline review from both the Social Security Administration (SSA) and the Internal Revenue Service (IRS) to ascertain whether the PIECP benefits requirement, as proposed, was consistent with comparable laws administered by those Federal agencies.

Both the IRS and the SSA concluded that BJA's benefits requirement is consistent with comparable laws set forth in the Social Security Act, 42 U.S.C. 410(a)(7) and 418(c)(6)(B), and the Internal Revenue Code. Services performed in an institution by an inmate in the employ of a State, a political subdivision, or a wholly-owned instrumentality are excepted from Social Security employment by 26 U.S.C. 3121(b)(7). Section 3121(u)(2)(B)(ii)(II) also provides that such services are not subject to the Medicare tax.

In contrast to those inmate services performed in the employ of a state or governmental entity, there is no IRS or SSA exception for services of inmates performing services in the employ of a non-governmental entity (for example, a private corporation operating a prison or a private corporation operating under the PIECP employer model). PIECP Employer models must generally provide inmates with Social Security coverage.

BJA retains the customer and employer models to implement the PIECP benefits provision, 18 U.S.C. 1761(c)(3), in a manner consistent with other Federal laws addressing inmate wages. Specifically, the models are necessary in order to accord states and other governmental entities the Social Security employment or coverage exception status, as recognized by the IRS and the SSA. BJA will monitor and evaluate Cost Accounting Centers (CACs) in accordance with the guidance set forth in this Guideline, but will defer to the expertise of both the IRS and SSA should either of those agencies reach another conclusion with respect to the appropriate benefits treatment of inmate wages earned at any given CAC.

In the case of services performed by PIECP inmates, regardless of whether services are being performed under the customer or employer model, Federal Unemployment Tax Act taxes do not apply to such services. *See* Section 26 U.S.C. 3306(c)(21) which excepts from employment ''service performed by a person committed to a penal institution.''

Accordingly, no changes are made in the benefits requirement of the Guideline.

8. Deductions

Comment: BJA ought to expressly authorize the use of room and board deduction funds for the purpose of lowering costs otherwise incurred to maintain and operate a PIECP program.

The term ''Chief State Correction Officer'' should be amended to also include ''responsible umbrella authorities.''

Private prisons managing PIECP Cost Accounting Centers (CACs) should be required to demonstrate that any benefit derived through the taking of room and board deductions is passed on to states which provide public funds to cover such costs.

The authorized deduction for victims compensation ought to be made available to address a PIECP inmate's legal obligations to pay victim restitution.

Response: Consistent with the statutory mandate addressing the room and board deduction, BJA defers to state determinations—as reflected in regulations issued by Chief State Correctional Officers—with respect to determining the amounts of such deductions as well as identifying the specific needs to which such deducted amounts may be directed. BJA has authority to review room and board deductions to insure the amounts deducted are reasonable and are used to defray the costs of inmate incarceration. Specific amount determinations and budget line item uses are issues more appropriately determined at the state and local level.

In instances where the Certificate Holder is an umbrella authority, possibly composed of diverse state as well as local agencies, the umbrella authority may itself issue policy on this matter to guide its multijurisdictional membership. A definition of ''Chief State Correctional Officer'' is added to accommodate the administration of this deduction by such models.

The room and board deduction was authorized by Congress to lower incarceration costs otherwise borne by the public. Since private prison PIECP inmates' room and board expenses might otherwise be addressed in contracts for incarceration services between private prisons and public agencies, BJA requires private prison CACs to obtain written approval from their respective public agency clients before taking the room and board deduction. In devising this requirement, BJA insures notice of this possible revenue source is received by appropriate public agencies without unduly burdening contractual relations to which it is not a party.

BJA broadens its interpretation of the victims compensation authorized deduction to also include deductions deposited in funds established by law to facilitate victim restitution. Compensation and restitution serve substantially the same purpose in providing victims with financial redress for expenses incurred as a result of crime.

Although the statutory PIECP authorization, 18 U.S.C. 1761(c), does not require CACs to make tax deductions, the Internal Revenue Code requires federal income tax withholding if payments of wages are made to employees. BJA encourages all CACs to take whatever deductions, which may be necessary to comply with all Federal laws, including the Internal Revenue Code. As with the PIECP benefits provision, BJA defers to the IRS as the final authority with respect to making CAC tax withholding determinations.

Accordingly, changes are made in the deductions provision to clarify that the victims deduction may, in some instances, be used to address a PIECP worker's restitution obligations. Guidance regarding room and board deduction is simplified because of the inclusion of a definition for the term ''Chief State Correctional Officer.'' Clarification is also provided with respect to tax deductions which may be necessary to facilitate CAC compliance with the Internal Revenue Code.

9. Voluntary Inmate Participation

Comment: BJA should accept inmate signatures on deduction notices as evidence of voluntary inmate participation. BJA should not require the execution of new inmate voluntary participation agreements each time the deductions affecting inmate wages are changed.

Response: The 18 U.S.C. 1761(c) expressly requires not only voluntary inmate employment, but also inmate agreement, in advance, of all deductions and financial arrangements affecting gross wages. While an inmate's signature on a notice form may signify receipt of notice, it does not necessarily reflect inmate agreement. Thus, the proposal is inadequate to insure compliance with the statutory requirement.

Accordingly, no change is made to the voluntary participation provision.

10. Consultation With Local Labor and Business

Comment: The consulation requirements reflected in the guideline exceed BJA's statutory authority. The requirements are overly burdensome and should not be implemented so as to compromise the competitive capablity of the Cost Accounting Centers (CACs).

BJA should accept as compliance with the labor consultation requirement, the presence of an organized labor representative on the board of an umbrella authority PIECP project.

With respect to consulation with organized labor, BJA should routinely require CAC consultation with both state and local union representatives. CACs should also be required to maintain documentation of such consultation, on file.

Response: BJA's labor consultation requirement is consistent with the mandate reflected in the statutory note to 18 U.S.C. 1761(c). The provision requiring notice to local business, is consistent with a provision reflected in the 1985 guideline as well as the legislative history of the program exception. In this revised Guideline, BJA provides specific guidance on the minimum amount of information necessary to insure provision of adequate consultation; it includes general information on the scope and nature of the proposed Cost Accounting Center, the proposed initiation date as well as notice of the requirement and an invitation to comment. Implementation of the consultation requirements is not intended to compromise the market competitiveness of a CAC, but to advise local economic interests which may be impacted by the project.

Labor consultation cannot automatically be achieved through labor participation on the board of a PIECP project. Such representation does not necessarily insure notice of the proposed CAC activities to the relevant local union representative in the locality to be affected.

While BJA issues this guidance to insure provision of consultation to a labor organization (*i.e.*, notice to a state labor organization, in the event a local organization cannot be identified or does not exist), BJA has no statutory authority to require notice to both state and local labor organizations on a routine basis.

Accordingly, no change is made to the consultation provisions.

11. Compliance With the National Environmental Policy Act (NEPA)

BJA should allow PIECP projects to defer to state environmental requirements and not impose a new national requirement.

BJA should provide Cost Accounting Centers (CACs) with technical assistance to facilitate compliance with this program requirement.

Response: BJA has no authority to allow CAC applicants to defer to state environmental requirements as a substitute for implementing the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347 (NEPA). BJA decisions on proposed PIECP certifications and designations consitute ''Federal actions'' as defined by 40 C.F.R. 1508.18 of the Council on Environmental Quality's (CEQ) regulations for implementing NEPA. As such, BJA has a federal obligation to insure that prior to decisions being made on requested certifications and designations, BJA implements the appropriate provisions of the CEQ regulations. These Federal implementation responsibilities, which can be shared with but cannot be delegated to Federal program applicants, have existed since the enactment of NEPA.

The technical assistance needs of CACs will be addressed through BJA, itself, as well as its contractor, the Correctional Industries Association.

Accordingly, no change was made to the proposed PIECP provision implementing the NEPA.

As a result of public review and comment, the final ''Prison Industry Enhancement Certification Program'' Guideline is revised to read as follows:

III. Program Guidance

a. PIECP Purposes

- To provide a cost-efficient means to address inmate idleness and to provide inmates with work experience and training in marketable job skills. BJA encourages private sector PIECP partners to consider post-incarceration employment to PIECP inmate workers.
- Through inmate wage deductions, to increase advantages to the public by providing departments of correction with a means for collecting taxes and partially recovering inmate room and board costs, by providing crime victims with a greater opportunity to obtain compensation, as well as by promoting inmate family support.
- Through PIECP participation conditions, to prevent unfair competition between prisoner-made goods and private sector goods.
- To prevent the exploitation of prisoner labor.

b. Definitions

Benefits refers to inmate benefit coverage required by 18 U.S.C. 1761(c)(3). PIECP projects must provide inmate workers appropriate benefits comparable to those made available by the Federal or state government to private sector employees. The scope of appropriate benefits coverage is impacted by whether the Cost Accounting Center is structured as an employer or customer model and whether the inmate labor work force is controlled by a public agency or the private sector.

BJA refers to the Bureau of Justice Assistance within the Office of Justice Programs, U.S. Department of Justice.

Certificate Holder refers to a department of corrections, or an alternate umbrella authority, which is approved by BJA for PIECP Project certification. Certificate Holders assume monitoring and designation responsibilities with respect to their designated Cost Accounting Centers. All PIECP prisoner-made goods are produced within Cost Accounting Centers that a Certificate Holder designates within itself, private prisons located in the same state or jurisdiction or, in the case or an umbrella authority, within its membership agencies.

Certification refers to an exercise of BJA's discretionary authority to designate a Prison Work Pilot Project pursuant to Title 18 U.S.C. 1761(c). BJA may issue either standard or provisional certifications to applicant projects. BJA certified projects are excepted from certain Federal marketability restraints on the transport of prisoner-made goods in interstate commerce, as provided in 18 U.S.C. 1761(a), and sales to the Federal government in excess of $10,000, 41 U.S.C. 35.

Chief State Correctional Officer refers either to the highest correctional officer for the jurisdiction in which the certified work pilot project is located or, with respect to umbrella authorities that control PIECP CACs within a mix of state and local jurisdictions, the authorities themselves.

Cost Accounting Center (CAC) refers to a distinct PIECP goods production unit of the industries system that is managed as a separate accounting entity under the authority of a Certificate Holder. All PIECP production activities are conducted within the context of a designated CAC which, generally, is structured either as a customer or employer model for purposes of determining PIECP inmate benefits. All CACs must operate in compliance with the provisions set forth in 18 U.S.C. § 1761(c) and this Guideline.

Customer Model is a form of a PIECP Cost Accounting Center management structure. In this model, the private sector is engaged in a CAC enterprise only to the extent that it purchases all or a significant portion of the output of a prison-based business owned and operated by a governmental entity, political subdivision or an instrumentality thereof. A customer model private sector partner assumes no major role in industry operations, does not direct production and has no control over inmate labor. These functions are performed, rather, by a department of corrections.

Deductions. CACs may elect to take deductions from a PIECP inmate worker's wages for certain authorized items. Deductions from PIECP inmate gross wages, if taken, may be made only for those items specified in 18 U.S.C. 1761(c)(2), including: payment of taxes, reasonable charges for room and board, allocations for family support and contributions to any funds established by law to compensate victims of crime (no less than 5 percent and no more than 20 percent). In no event may a PIECP inmate worker's total deductions exceed 80 percent of gross wages and each and every PIECP inmate worker must agree, in advance, to all deductions from gross wages.

Department of Corrections refers to state or local governmental entity or a political subdivision or instrumentality thereof, including not-for-profit entities, that are legally sanctioned by state legislatures to administer prison industries.

Designation is an exercise of a Certificate Holder's discretionary authority to bring a CAC within its certified PIECP Project. This exercise of authority results in an extension of PIECP exception status and an imposition of compliance requirements on an identified CAC operating within the certified PIECP Project.

Employer Model is a form of a PIECP management structure. In this model, the private sector owns and operates the CAC by controlling the hiring, firing, training, supervision, and payment of the inmate work force. The department of corrections assumes no major role in industry operations, does not direct production, and exercises minimum control over inmate labor performance. These functions are performed, rather, by the private sector.

Goods include tangible items, wares, and merchandise.

Locality means the geographic area impacted by the presence of a PIECP CAC operation. For PIECP CACs, it is relevant with regard to: determining inmate wages, providing consultation to appropriate labor and private sector organizations, and determining whether a PIECP CAC operation will displace the private sector labor force. All locality determinations must be documented as part of a Notice of Designation. As used in the calculation of CAC wage rates, *locality* is usually a matter for definition by the appropriate state agency which normally determines wage rates (*i.e.*, the State Department of Economic Security).

Minimum wage refers to the Federal minimum wage which is the lowest possible wage that can be paid to private sector employees under the Fair Labor Standards Act, 29 U.S.C. 206. Any special wage program, excepted by law from the minimum wage requirement in the private sector, may be used by a PIECP CAC as long as the CAC meets the same program participation conditions as private sector participants. The requisite payment of at least a minimum wage, by a CAC, is in no way intended by BJA to imply that PIECP inmate workers are employees for purposes of the PIECP statute or any other Federal law.

Monitoring refers to the process of examining Prison Work Pilot Project activities to ensure continuing compliance with 18 U.S.C. 1761(c) and this Guideline. It includes, at a minimum, BJA's receipt and analysis of performance reports and on-site CAC monitoring visits by BJA, BJA contractors and Certificate Holders.

NEPA means the National Environmental Policy Act, Pub. L. 91–190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. 4321–4347; implemented under 40 C.F.R. pt. 1500).

Participation means engaging in the activities and operations of an 18 U.S.C. 1761(c) excepted PIECP Project.

PIECP means the Prison Industry Enhancement Certification Program as authorized by 18 U.S.C. 1761(c).

PIECP Exception Status. Any PIECP Project which produces prisoner-made goods pursuant to 18 U.S.C. 1761(c) is excepted from certain Federal restraints imposed on the marketability of prisoner-made goods, including 18 U.S.C. 1761(a) and 41 U.S.C. 35.

PIECP Inmate Worker is a convict or prisoner who performs notable tasks necessary to produce or transport goods in interstate commerce and for a Prison Work Pilot Project certified under 18 U.S.C. 1761(c). The PIECP Inmate Worker benefits from PIECP by receiving training and work experience.

Prevailing wage is a wage rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed, 18 U.S.C. 1761(c)(2).

Prison Industry means an organized utilization of inmate labor to produce goods or render services.

Prison Work Pilot Project (PIECP Project) refers to one of 50 non-Federal prison work pilot projects which may be designated by the Director of BJA under 18 U.S.C. 1761(c). This term encompasses the operations of the Certificate Holder's designated Cost Accounting Centers (CACs). Any Prison Work Pilot Project may consist of one or more CACs.

Prisoner includes prison and jail inmates, convicts and incarcerated juvenile offenders, and does not include prisoners on parole, probation, or supervised release. Title 18 U.S.C. 1761(a) does not regulate the transport of goods produced by prisoners on parole, supervised release, or probation.

Prisoner-made goods include all goods, wares, and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners (except convicts or prisoners on parole or probation).

Production is the forming anew or transforming of marketable goods. The term includes mining and manufacture and excludes services.

Provisional Certification is issued by BJA in instances where an applicant has not yet come into full compliance with all PIECP requirements, but such compliance appears imminent. It entitles the holder to PIECP exception status for an identified period of time, may be made contingent upon the occurrence of identified conditions, and may or may not be renewed by BJA.

Statutory Exception Status refers to a prison industry which meets the statutory requirements set forth in 18 U.S.C. 1761(b), and is thereby entitled to an exception from the prohibition set forth in 18 U.S.C. 1761(a).

Supervised Release. 18 U.S.C. 1761(a) states that the Ashurst-Sumners Act prohibition does not apply to ''convicts on parole, supervised release, or probation.'' The reference to ''supervised release'' was added to 1761(a) in 1984, Pub. L. 98–473, 223, and is responsive to changes made at that same time in state and Federal Sentencing Guidelines. Policy statements issued by the U.S. Sentencing Commission explain that supervised release is a ''new form of post-imprisonment supervision created by the Sentencing Reform Act.'' *See* Federal Sentencing Guidelines, 18 U.S.C.A. ch. 7, pt. A (1997).

Umbrella Authority refers to a type of Certificate Holder which is authorized by law to administer a PIECP Project and which consists of state and/or local departments of correction located

within the same state. A certified umbrella authority may designate CACs within its membership agencies, as well as within members' private prisons, and assumes responsibility for monitoring CAC compliance.

c. BJA's Initial Considerations for Determining Propriety of Work Pilot Project Certification

1. BJA's Exercise of Discretionary Authority To Define and Certify 50 Work Pilot Projects

(A) BJA may exercise discretionary authority to designate up to 50 non-Federal work pilot projects, 18 U.S.C. 1761(c).

(B) BJA may define PIECP eligibility qualifications and, in accordance with its own definitions, may exercise agency discretion to extend or withdraw certification privileges, as it deems appropriate.

2. Threshold Inquiry for Determining Applicability of PIECP Exception Status

Appropriate PIECP participants include prison industries whose activities would likely violate the 18 U.S.C. 1761(a) prohibition and would likely not fit within an 18 U.S.C. 1761(b) exception. BJA has devised an administrative approach for identifying such industries. This approach incorporates relevant sections 1761 (a) and (b) considerations, including whether a given prisoner-made item qualifies as an excepted agricultural product, whether a given prison industry activity qualifies as an unregulated service, and whether a product distribution activity qualifies as an intrastate distribution of goods. These considerations are reflected in the following threshold inquiry, which BJA will use to determine whether a prison industry should be encouraged to apply for PIECP exception status:

(A) Is a statutory exception applicable under 18 U.S.C. 1761(b)? The following prisoner-made items are excepted from the prohibition set forth in section 1761(a):

- Parts for the repair of farm machinery; or
- Commodities manufactured in a Federal, District of Columbia, or state institution for use by the Federal Government, or by the District of Columbia or by any state or political subdivision of a state or not-for-profit organizations. This exception is intended to inure to the benefit of the public; or
- Agricultural commodities grown or cultivated on a farm which retain continuing substantial identity through processing stages, if any. In making the determination as to whether a processing stage changes a product from an agricultural commodity to a manufactured commodity, a relevant consideration is whether the processing is incidental or ancillary to agricultural commodity growth and or cultivation. If the processing is incidental or ancillary in nature and is commonly undertaken by agricultural enterprises, then it would likely fall within the scope of the statutory exception.

(B) Could the contemplated activity trigger 18 U.S.C. 1761(a) by resulting in a production of goods by inmates in any penal or reformatory institution? The production of goods, which is regulated by 18 U.S.C. 1761(a), must be distinguished from inmate services which are not regulated by the criminal prohibition. The following factors are relevant in determining whether a given activity results in the production of prison-made goods:

- Has a tangible item been produced, manufactured or mined?
- Has a tangible item been formed or transformed?
- Has the activity resulted in the creation of property or in a new, marketable item?

(C) Could the contemplated activity trigger 18 U.S.C. 1761(a) by resulting in a post-production, interstate transportation of prisoner-made goods?

- Will there be transportation of prisoner-made goods into the flow of interstate commerce, *i.e.*, across state lines or from a foreign country into the United States?
- Is there a commercial economic enterprise present?

BJA will use this preliminary threshold inquiry to instill greater consistency in PIECP eligibility decision-making. If a prison industry activity falls within the scope of the § 1761(b) statutory exception, the involved industry need not seek § 1761(c) exception status to avoid § 1761(a) criminal sanctions. Additionally, if a prison industry activity would not result in the production of goods, interstate transport of prisoner-made goods, or does not in any other way trigger § 1761(a), the involved industry need not seek compliance with the requirements set forth in § 1761(c) or this Guideline.

This threshold inquiry was devised only for 18 U.S.C. 1761(c) programmatic purposes and does not reflect the Department of Justice's 18 U.S.C. 1761(a) prosecution guidelines. Thus, reliance on this Guideline, or any BJA determination based thereon, is not a complete defense to any civil or criminal action, but would depend on other factors as well.

d. Mandatory Program Criteria for PIECP Participation

1. Eligibility

All departments of correction and juvenile justice agencies authorized by law to administer prison industry programs are eligible to apply for PIECP certification; such governmental agencies are also eligible members of umbrella authorities, authorized by law to administer prison industry programs, that are seeking certification. PIECP Certificate Holders may designate CACs within themselves, as well as within private prisons located in the same state. A private prison industry may participate in PIECP only as designated CAC of the certified PIECP Project in its respective state and upon the approval of the Chief State Correctional Officer of that same state. CACs designated within private prisons must also retain on-file documentation reflecting approval of PIECP inmate worker participation by the state and local jurisdictions in which the PIECP inmate workers were convicted. In order to issue such approvals, the remanding state and local jurisdictions must also hold PIECP certificates. Non-compliance by any one designated CAC may result in PIECP exception status suspension and/or termination as to that CAC, and if warranted, its respective Certificate Holder. Also, within a reasonable period of time after certification, each Certificate Holder must have at least one CAC producing goods and operating under its authority or risk losing certification.

2. Inmate Wages

PIECP inmate workers must receive wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed. This requirement benefits society by allowing for the development of prison industries while protecting the private sector labor force and business from unfair competition that could otherwise stem from the flow of low-cost, prisoner-made goods into the marketplace. PIECP participants must, therefore, implement the prevailing wage requirements under like conditions experienced by private sector competition. Toward this end, the following requirements are applicable:

(A) Section 1761(c) requires that the PIECP wage amount be set exclusively in relation to the amount of pay received by similarly

situated non-inmate workers. In deriving the appropriate PIECP wage, 18 U.S.C. 1761(c)(2) does not allow other cost variables to be taken into consideration, such as unique expenses incurred as a result of undertaking production within the prison environment.

(B) Prevailing wage verification must be obtained by the appropriate state agency which determines wage rates (usually the Department of Economic Security).

(C) When making PIECP prevailing wage verifications and annual re-verifications, the responsible state agency should recommend the utilization of a non-inmate wage scale which will not result in the displacement of non-inmate workers performing similar work in the relevant locality.

(D) The PIECP prevailing wage must be received by those inmate workers performing notable tasks necessary to produce and/or transport goods in interstate commerce. If a similarly situated, private sector company is paying wages to obtain services that are necessary to production, *e.g.* refuse pickup, then the PIECP CAC must also pay such wages to the inmate provider of like services. In determining which tasks are covered, the following considerations are relevant: the amount of inmate time involved, effort and skill necessary to accomplish the task, the regularity of task performance, and whether the task would have been performed by the inmate absent PIECP production.

(E) The prevailing wage must be verified prior to the initiation of PIECP participation. Annually, thereafter, the PIECP participant must re-verify the adopted wage to ensure that it continues to be comparable to wages paid for work of a similar nature in the locality in which the project is located.

(F) If no such verification can be obtained from the State Department of Economic Security, or other similar department, the PIECP participant is responsible for establishing a reasonable prevailing wage. In such instances, the participant should retain on file, for BJA's review:

(1) relevant wage data from a sufficient number of competitors in the locality;

(2) data analyses for determining a reasonable prevailing wage result; and

(3) if possible, a written assessment of the reasonableness of the resulting prevailing wage determination by an appropriate state agency which normally determines wage rates.

(G) The PIECP prevailing wage can not be set below the Federal minimum wage, as defined in the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* Payment of the Federal minimum wage, however, does not automatically achieve compliance with the prevailing wage requirement unless the prevailing wage for the comparable private sector industries is, in fact, the Federal minimum wage.

(H) Overtime, at one and a half times the rate of regular or prevailing wage, must be paid for prisoner hours worked in excess of 40 hours per week. *See* 29 U.S.C. 207(a) (a payment standard imposed on private sector competition).

(I) If a CAC pays a wage based on piece work, the project must apply a calculation to convert regular wages paid into a comparable hourly wage. The calculation should be used as a routine check to ensure that inmate workers, paid according to piece rate work, do not receive less than the Federal minimum wage. In instances where the CAC is paying Federal minimum wage and such a wage is less than the industry standard for the prevailing wage, the CAC must be able to identify inmate worker performance variances as justification for the wage rate.

(J) BJA strongly encourages the use of wage plans that take into consideration a PIECP worker's experience, seniority, and performance.

3. Non-Inmate Worker Displacement.

PIECP CAC operations must not result in displacement of employed workers; be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; or significantly impair existing contracts. The term ''displacement,'' as used in this provision, includes all such prohibited activities, as well as the inappropriate transfer of private sector job functions to PIECP inmates. This prohibition is intended to protect the private sector partner's non-inmate employees, as well as all other non-inmate workers who perform work of a similar nature in the same locality in which the CAC is located. This prohibition is not, however, intended to prohibit PIECP CACs from engaging in typical business operations, such as competing for business or bidding on contracts on the open market after their designation as Cost Accounting Centers.

(A) Regarding the possibility of displacement among non-inmate employees of private sector partners in the same locality as the CAC:

(1) BJA will presume non-compliance where there is a non-inmate worker's job function replacement by a PIECP inmate worker or where a non-inmate worker's job function is eliminated or adversely impacted, to a significant degree, and there is a concomitant assumption of a similar job function by a PIECP inmate worker. This presumption may be overcome if it can be demonstrated that the non-inmate workers have been retained by the private sector partner in jobs at pay rates equal to or greater than that received in previous positions, that non-inmate employees have been provided an adequate opportunity for effective training in any new job skills and that the subject non-inmate employees are being retained by the private sector partner under reasonably similar or improved employment conditions. When making this compliance evaluation, BJA will not consider the private sector partner's intent or economic viability.

(2) Prior to CAC initiation, the CAC applicant must provide BJA with written documentation reflecting the private sector partner's agreement not to displace its non-inmate employees with PIECP inmate labor in violation of the 18 U.S.C. 1761(c) statutory note.

(B) Prior to project initiation, all CAC applicants must show through written verification by the State Department of Economic Security (or other appropriate state agency) that the PIECP project will not result in displacement of non-inmate workers performing the same work, regardless of wage rate. In cases where an appropriate state agency cannot provide this service, the applicant CAC should propose to and confer with BJA as to alternative measures to address this requirement.

(C) While compliance is a continuing CAC obligation, BJA will scrutinize CAC compliance with the non-displacement requirement just prior to and within one year after the initiation date of CAC operations.

(D) In instances where BJA finds that CAC implementation results in private sector worker displacement, the CAC must either cease its operations or comply with a BJA-approved corrective action plan, if BJA proposes such a plan under Section IV. f. of this Guideline, *infra*.

(E) BJA strongly recommends that CAC job development be oriented toward the creation of new jobs within the locality.

4. Benefits.

PIECP projects must provide inmate workers appropriate benefits comparable to those made available by the Federal or State Government to private sector employees, including workers' compensation and, under certain circumstances, Social Security.

(A) By statute, in some states, inmates are not eligible to participate in workers' compensation programs. Provision of comparable workers' compensation benefits is acceptable as long as the CAC can demonstrate comparability of such benefits with those secured by the Federal or state Government for private sector employees.

(B) The PIECP CAC management model impacts whether the CAC must provide Social Security benefits to PIECP inmate workers. Where the employer model is utilized and the private sector directs and controls the PIECP inmate worker, the PIECP participant must provide PIECP inmate workers with Social Security benefits. Where a customer model is utilized and a governmental, or instrumentality thereof, directs or controls the PIECP inmate worker, BJA recognizes the applicability of other provisions of Federal law which may operate to preclude the provision of PIECP inmates with certain benefits, including Social Security.

5. Deductions.

Participating CACs are not required under 18 U.S.C. 1761(c) to take deductions from PIECP inmate wages. Deductions, however, may be required under other Federal statutes, such as the Internal Revenue Code. If a CAC elects to take deductions from a PIECP inmates' gross wages, such deductions can be taken only under the following conditions:

(A) Deductions from gross wages, if made, may be withheld only for the following authorized purposes:
(1) taxes (Federal, state, local);
(2) in the case of a state prisoner, reasonable charges for room and board as determined by regulations issued by the Chief State Correctional Officer;
(3) allocations for support of family pursuant to state statute, court order, or agreement by the offender; and
(4) contributions of not more than 20 percent, but not less than 5 percent of gross wages to any fund established by law to compensate the victims of crime.

Such deductions, in aggregate, cannot exceed 80 percent of gross wages.

(B) PIECP inmate workers must be paid, credited with, or otherwise benefit legally from, the 20 percent gross remainder. In this regard, the CAC may direct the 20 percent gross remainder to a PIECP inmate worker's expense accounts, savings accounts, or toward the settling of the worker's legal obligations, including the payment of fines and restitution.

(C) Each Certificate Holder, through its respective Chief State Correctional Officer, retains flexibility in determining appropriate room and board charges that may be deducted from PIECP inmate workers' gross wages. Except as to CACs within private prisons, the applicable regulations for determining this deduction are those issued by the Chief State Correctional Officer of the state in which the PIECP inmate is incarcerated.

(D) The legislative history of 18 U.S.C. 1761(c) reflects a Congressional intent to permit the use of the room and board deduction to lower costs otherwise incurred by the public for inmate incarceration. Thus, prior to making room and board deductions, private prison CACs must obtain written approval of any such proposed deductions from the Chief State Correctional Officers for those states from which the PIECP inmate workers were remanded.

(E) A PIECP inmate's gross wages may be subjected to a deduction for the purpose compensating crime victims if the deducted amount is deposited into a fund established by law for the purpose of providing crime victim compensation. State crime victim compensation funds typically qualify as authorized recipients of such deducted amounts.

The victims compensation deduction may also be used to address victim restitution as long as the deducted amounts are deposited into a fund established by law to address such victim interests. Amounts deducted by private prison CACs should be deposited in those crime victim compensation or restitution funds in states from which the PIECP inmates were remanded.

6. Voluntary PIECP Inmate Worker Participation

The Inmate Worker must indicate, in writing, that he or she:

(A) agrees voluntarily to participate in the PIECP project, and

(B) agrees voluntarily, and in advance, to specific deductions made from gross wages, as well as all other financial arrangements made as to earned PIECP wages.

7. Consultation With Organized Labor

PIECP CACs must:

(A) consult with representatives of local union central bodies or similar labor union organizations prior to the initiation of any certified or designated CAC project. CACs should consult with as many of such organizations as may have an interest in the trade or skill to be performed by the PIECP inmates. If there are no local union bodies or labor organizations, consultation must be made with the state union bodies or similar state-wide labor organizations.

(B) provide adequate information about the contemplated PIECP participation such as, at a minimum, an identification of the scope of the intended CAC and projected initiation date, as well as an explanation of the fact that statutory consultation is required and comments are invited. CACs should retain documentation reflecting provision of adequate consultation.

8. Consultation With Local Private Industry

PIECP CACs must:

(A) consult with representatives of local business that may be economically impacted by CAC production prior to beginning operations, and

(B) provide adequate information about the contemplated PIECP participation such as, at a minimum, an identification of the scope of the intended CAC and projected initiation date as well as an explanation of the fact that consultation is required and comments are invited. CACs should retain documentation reflecting provision of adequate consultation.

9. Compliance With the National Environmental Policy Act (NEPA)

The review and approval of PIECP certification applications as well as the designation of PIECP CACs must comply with NEPA and other related Federal environmental review requirements. *See* NEPA, 42 U.S.C.

4321–4347 and 40 CFR pt. 1500. *See also* 28 CFR pt. 61 (Department of Justice procedures for implementing NEPA); 28 CFR pt. 61 App. D (procedures specific to Federal actions undertaken by the Office of Justice Programs).

(A) A BJA PIECP certification, or a CAC designation under an issued certification, constitutes a ''Federal action,'' as defined by 40 CFR 1508.18 of the Council on Environmental Quality's (CEQ) regulations for implementing NEPA. Consistent with CEQ regulations, PIECP applicants and CACs are required to submit for BJA review environmental data and information regarding their proposed activities and, if necessary, environmental assessments. Applicants and CACs must also assist BJA in the preparation of any required environmental impact statements.

(B) Title 28 CFR Part 61 App. D provides NEPA compliance guidance to PIECP applicants and CACs, including the following:

(1) Actions entailing minor renovation projects or remodeling do not normally require an environment impact statement or an environmental assessment, unless, for example the actions would be located in or potentially affect a floodplain; a wetland; a listed species or critical habitat for an endangered species; or a property that is listed on or may be eligible for listing on the National Register of Historic Places.

(2) Actions that normally require an environmental assessment, but not necessarily an environmental impact statement, include: renovations and expansions that change the basic prior use of a facility or substantially change its size; change in use of an existing facility that results in the increased production of liquid, gaseous, or solid wastes; new construction; research and technology whose anticipated and future application could be expected to have an effect on the environment; and new operations involving the use of hazardous, toxic, radioactive, or odorous materials. Assessments of such activities which result in BJA ''findings of significant impact'' will necessitate the preparation of environmental impact statements in compliance with NEPA and its implementing regulations.

(3) Additionally, no certification will be approved nor can any designation be provided or maintained if the application or designation includes a facility in non-compliance with any Federal, state, or local environmental law or regulation.

IV. PIECP Administration

a. Certificate Holders

BJA may exercise its discretionary authority to certify up to 50 Non-Federal PIECP Projects. Eligible applicants may seek certification by submitting an application to BJA in accordance with the requirements set forth in BJA's PIECP Certification Application, which will be provided upon request, and subpart IV.a.2, *infra*. BJA's review of submitted applications will be conducted as outlined in subparts IV.a.3 and a.4, *infra*. Once a certificate is issued, the holder assumes the authority and responsibilities set forth in subparts IV.a.5 and a.6, *infra*.

1. Project Structure

All departments of correction, authorized by law to administer prison industry programs, are eligible to apply for BJA certification. Certified applicants may designate one or a number of Cost Accounting Centers (CACs) under their authority. Certificate Holders may also under certain conditions designate CACs within private prisons located in their respective states or jurisdictions. BJA will consider alternative program structures suggested by certification applicants, including, but not limited to, applicant umbrella authorities, as described in subpart III. d.1, *supra*.

2. Application Content

All applications for PIECP Project Certification shall include the following:

(A) *Assurances of Authority*. The Certificate Holder must provide written assurance to BJA that it has in place appropriate statutory and administrative authority to meet all mandatory program criteria and, in particular, to monitor CAC compliance throughout the proposed PIECP Project.

(B) *Documentation to Show Compliance With Mandatory Program Criteria*. The applicant must submit all documentation necessary to show CAC compliance with the nine mandatory program criteria outlined in Section III. d., *supra*.

(C) *Project Description*. The applicant must describe key project elements, including the process to be used to designate and monitor compliance of CACs with 18 U.S.C. 1761(c) and this Guideline.

3. BJA Review

PIECP applications will be reviewed by BJA on a first-come, first-served basis. Awards of certification are discretionary exercises of authority by BJA under 18 U.S.C. 1761(c). No certification will be awarded, however, unless there is a determination that the applicant has met the mandatory participation criteria outlined in this Guideline. Applicants will be notified in writing of BJA's award or denial of certification. The hearing and appeal procedures set forth in 28 C.F.R. Part 18 do not apply to denied PIECP applicants. Certified applicants will be informed of the effective date of BJA's certification.

4. Standard or Provisional Certification

A standard certification may be issued by BJA to an approved Certificate Holder applicant when all mandatory program criteria have been met. When one or more mandatory program criteria have not been met, but when steps have been taken to ensure that those criteria will be met within a reasonable period of time, then a provisional certification may be issued by BJA in instances where the withholding of certification would significantly impair the applicant's ability to further develop its project. The terms of the provisional certification will be made specific to the nature of the unmet mandatory criteria and may be made contingent upon the occurrence of identified conditions. Provisional certifications may be issued for no longer than one year from the date of issuance and may be subject to renewal, at BJA's discretion.

5. Certificate Holder Designation Authority

(A) The Certificate Holder may exercise CAC designation authority with respect to department of correction prison industries operating under its jurisdiction, including in private prisons which are located in its respective state or jurisdiction. CACs designated within private prisons must also retain on-file documentation reflecting approval of PIECP inmate worker participation by the state and local jurisdictions in which PIECP inmate workers were convicted. In order to issue such approvals, the remanding state and local jurisdictions must also hold PIECP certificates.

To exercise this authority, a Certificate Holder must first determine that a proposed CAC has complied with the requirements set forth in this Guideline and in 18 U.S.C. 1761(c).

Whenever the Certificate Holder elects to exercise this authority after certification application approval, it must submit a Notice of Designation Form to BJA that provides the following information and documentation:

(1) Cost Accounting Center Name and Location;
(2) Proposed number of workers;
(3) Item(s) to be produced;
(4) Proposed consumer market (including anticipated geographic distribution);
(5) Description of private sector involvement, including models that will be used in working with private enterprise;
(6) Locality determination, and supporting justification;
(7) Description of inmate compensation plans;
(8) Documentation of prevailing wage verification;
(9) Identification of deductions and percentage of each to be taken from PIECP inmates' gross wages;
(10) Documentation of private sector partner's agreement not to displace its non-inmate employees in the same locality with PIECP inmate labor, if applicable;
(11) Documentation of non-displacement verification; and
(12) As to any CACs within private prisons, written approval from remanding jurisdiction of any proposed room and board deduction, in compliance with Section III.d.5.(E)of this Guideline, *supra*;
(13) As to any CACs within private prisons, written approval of the designation by the Chief State Correctional Officer for the jurisdiction in which the CAC is located; and
(14) Documentation of the environmental impacts of the CAC's existing and proposed activities.

(B) The Certificate Holder may, in its own discretion, undesignate any previously designated CAC. In such instances, the Certificate Holder must submit to BJA an Undesignation Form providing the following information:

(1) Cost Accounting Center Name and Location;
(2) Reasons for Undesignation; and
(3) Effective Date of Undesignation.

(C) BJA may, at any time deemed necessary to resolve compliance concerns and upon the issuance of written notice, suspend a Certificate Holder's authority to designate additional Cost Accounting Centers.

6. Certificate Holder Monitoring Responsibilities

As to all designated CACs, the Certificate Holder must assume the following monitoring responsibilities:

(A) Undertake all reporting and evaluation activities deemed necessary to ensure continuing designated CAC compliance; and
(B) Respond to all BJA requests for information and cooperation aimed at ensuring Project compliance.

b. Cost Accounting Centers' PIECP Exception Status

A CAC is entitled to operate under PIECP exception status.

1. To retain this status, the CAC must comply with all PIECP participation obligations to its Certificate Holder and to BJA, including:

(A) Maintaining continuous compliance with the requirements set forth in 18 U.S.C. 1761(c) and in III.d), *supra*, of this Guideline; and
(B) Responding to all monitoring requests for information and cooperation aimed at maintaining continued compliance with this Guideline.

2. The CAC must promptly report to the Certificate Holder any contemplated change in operations which may affect its ability to maintain statutory and Guideline compliance.

c. Compliance Reviews

1. Performance Reports

Within 30 days following the close of each calendar quarter, each CAC must submit a quarterly performance report to its Certificate Holder in a form prescribed by BJA. The performance report describes activities undertaken during the prescribed period. A consolidated report of all CAC activity must be submitted to BJA by the Certificate Holder within 45 days following the close of each calendar quarter.

2. On-Site Monitoring Reviews

BJA and BJA technical assistance contractors are authorized to perform desk and on-site reviews of all PIECP participants, including all CACs, as deemed necessary. On-site reviewers may request access to any and all documentation necessary to assist in determining compliance with the requirements of this Guideline and 18 U.S.C. 1761. Monitored participants will be advised in writing of the results of any such reviews. Immediate corrective action must be taken to address determinations of non-compliance and/or to respond to issues that raise compliance related-concerns for BJA.

d. BJA's PIECP Administration

BJA's PIECP responsibilities include the following:

1. Review and approval of Certificate Holder PIECP applications;
2. Monitoring to determine compliance status of operations within all CACs;
3. PIECP exception status termination or suspension for cause related to substantial non-compliance;
4. Liaison with other Federal agencies that may affect PIECP operations;
5. Provision of compliance-related technical assistance; and
6. Any and all other functions necessary to administer the program in compliance with 18 U.S.C. 1761(c).

e. PIECP Exception Status Suspension/ Termination

1. Notice of Possible Compliance Violation

Alleged facts indicative of non-compliance shall be communicated in writing by BJA to the involved Certificate Holder and the involved designated CAC. These parties must respond to the allegations, in writing, within 15 days after receipt of the notice of non-compliance determination. Immediate corrective action must be taken to address determinations of non-compliance.

2. Voluntary Compliance Agreements

If BJA determines that noncompliant practices persist, BJA may, in its discretion, propose a voluntary compliance agreement to the involved Certificate Holder.

3. Failure To Achieve Compliance and Effect of Non-Compliance

If a voluntary compliance agreement is not presented by BJA or is not accepted or adequately implemented by the Certificate Holder within 30 days after receipt of such an agreement, BJA may suspend the Certificate Holder's certification and/or CAC exception status.

4. PIECP Exception Status Suspension and Termination

A certification may be terminated by BJA if it has been inactive (no production within a designated CAC) or suspended for six consecutive months. A certification and/or designation may be suspended, and six months thereafter, terminated upon: (1) issuance of a notice of a determination that the Certificate Holder and/or designated CAC is not acting in compliance with

the requirements of 18 U.S.C. 1761, this Guideline or the conditions set forth in its certificate; or (2) in the discretion of the Director of BJA and upon a re-definition of a PIECP Project authorized under 18 U.S.C. 1761(c). Termination or suspension of the exception status of one designated CAC will not automatically impact the PIECP exception status of other CACs under the same certification unless the PIECP Project certification is suspended or terminated. The hearing and appeal procedures set forth in 28 C.F.R. Part 18 do not apply to PIECP applicants or participants who have had PIECP exception status suspended or terminated under this provision.

Dated: March 31, 1999.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 99–8575 Filed 4–6–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY '99 for a cooperative agreement to fund a multi-year project entitled Gender-Specific Responses: Research Practice and Guiding Principles.

Purpose: The National Institute of Corrections is seeking proposals for a cooperative agreement to provide planning assistance in designing a multi-year project on gender responsive strategies for women offenders. The assistance will be provided to the National Institute of Corrections' (NIC) Women Offenders' Initiative, a five person, Institute-wide team comprised of representatives from each of the four program divisions. The multi-year project is entitled Gender-Specific Responses: Research, Practice and Guiding Principles, and is described on page 47 of the NIC Service Plan for Fiscal Year 1999.

Authority: Pub. L. 93–415.

Funds Available: The maximum amount available is $20,000 for one cooperative agreement for the planning/design phase of the project. The planning assistance must be completed within a three month period.

Deadline for Receipt of Applications: Applications must be postmarked by 4:00 p.m., Eastern daylight time on Friday, April 30, 1999.

Addresses and Further Information: Requests for the application kit, which includes details on the project's objectives, etc., should be directed to Judy Evens, Grants Control Office, National Institute of Corrections, 320 First St, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 159 or 202–307–3106, ext. 159. You may also obtain a copy of the kit by e-mailing Ms. Evens at *jevens@bop.gov*.

All technical and/or programmatic information on this announcement should be directed to Ms. Phyllis Modley at the above address or by calling 800–995–6423, ext. 133 or 202–307–3106, ext, or by e-mail at: *pmodley@bop.gov*.

Eligible Applicants: An eligible applicant may be: a private organization, non-profit organization, individual or institution.

Review Consideration: Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 99D02.

Other Information: The person or organization which is the successful applicant for this planning phase may not apply for the subsequent, multi-year development project.

Executive Order 12372:

This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit, along with further instructions on proposed projects serving more than on State.

The Catalog of Federal Domestic Assistance number is: 16.603

Dated: April 1, 1999.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 99–8529 Filed 4–6–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

National Institute of Corrections; Agency Information Collection Activities: Reinstatement, Without Change, of a Previously Approved Collection for Which Approval Has Expired

ACTION: Notice of information collection under review; Data base of offender job training and placement service providers.

The Department of Justice, Federal Bureau of Prisons, National Institute of Corrections has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 7, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact John E. Moore, 202–307–1300 Ext. 147, National Institute of Corrections, Office of Correctional Job Training and Placement, 320 First Street, N.W., Washington, D.C. 20534.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, without change, of a