**NORTH CAROLINA**

**Cabarrus County**

Boger—Hartsell Farm, Jct. of US–801 and NC1148, Concord vicinity, 98000890

**PENNSYLVANIA**

**Fayette County**

Gallatin School, 165 Gallatin Ave., Uniontown, 98000902

Newmyer, Peter and Jonathan, Farm, 3165 Richey Rd., Bullskin Township, 98000901

**Mifflin County**

Embassy Theatre, 6 S. Main St., Lewistown, 98000899

**Montgomery County**

Oak Park Historic District, Roughly along Oak Park Rd., Park Ave., Oak Blvd., Forest Ave., and Squirrel Ln., Hatfiels Township, 98000897

**Philadelphia County**

Fair Hill Burial Ground, Roughly along Germantown, and Indiana Aves., Ninth, and Cambria Sts., Philadelphia, 98000900

**Pike County**

Milford Historic District, Roughly along Broad, Harford, Ann, Catharine, High, and Fourth Sts., Milford, 98000898

**Westmoreland County**

Mount Pleasant Historic District, Roughly along Main, S. Church, Eagle, Walnut and College Sts., Mount Pleasant, 98000903

New Kensington Downtown Historic District (Aluminum Industry Resources of Southwestern Pennslyvania), Roughly bounded by 8th Ave., 3rd St., 11th Ave., and Barnes Ave., New Kensington, 98000904

**UTAH**

**Sanpete County**

Metcalf, James and Caroline M., House, 290 E 500 S, Gunnison, 98000905

**VERMONT**

**Orange County**

Fairlee Railroad Depot, Between US 5 and Boston and Maine Railroad Tracks, Failee, 98000906

**WYOMING**

**Albany County**

North Albany Clubhouse, Address Restricted, Garrett Route vicinity, 98000908

**Park County**

Ralston Community Clubhouse, 969 Carbon St., Ralston, 98000907

**Sweetwater County**

Taliaferro House, 106 Cedar St., Rock Springs, 98000909

A Request for Removal has been received for the following resources:

**OREGON**

**Lincoln County**

Drift Creek Covered Bridge (Oregon Covered Bridges TR), Drift Creek Rd., over Drift Creek, Lincoln City vicinity, 79002106

**Yamhill County**

Dayton Opera House (Dayton MPS), 318 Ferry St., Dayton, 87000342

Dayton Auto and Transfer Co. Building (Dayton MPS), 411 Ferry St., Dayton, 87000337

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## DEPARTMENT OF JUSTICE

## Office of Justice Programs

## Bureau of Justice Assistance

**[OJP(BJA)–1150]**

## Prison Industry Enhancement Certification Program Guideline

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

**ACTION:** Proposed Guideline for public comment.

**SUMMARY:** The Office of Justice Programs, Bureau of Justice Assistance (BJA), is issuing this proposed revision to the Prison Industry Enhancement Certification Program (PIECP) Guideline, 50 FR 12661–64 (March 29, 1985). Under Title 18 U.S.C. 1761(c), BJA 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 reflects efforts by the Bureau of Justice Assistance to enhance guidance to the field through amendments proposed to the initial guideline published in March 1985. Since that time, there have been amendments to the statutory authority governing the administration of the PIECP and operations issues emerging at cost accounting centers. As a result, BJA seeks to clarify for the field the applicable statutes and guidelines. This revision provides a more comprehensive and responsive document to promote compliance with and direction for PIECP.

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

**DATES:** All comments received on or before September 8, 1998 will be considered in drafting the Final Guideline.

**ADDRESSES:** Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, N.W., Washington, D.C. 20531.

**FOR FURTHER INFORMATION CONTACT:** J.A. Marshall, Acting Chief, Corrections Branch, Bureau of Justice Assistance (202) 616–3215.

**SUPPLEMENTARY INFORMATION:**

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### 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. 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, Pub.L. 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 prison-made goods, including the Ashurst-Sumners Act (18 U.S.C. 1761(a)) and the Walsh-Healey Act (41 U.S.C. 35).

PIECP has grown since its inception in 1979, with 38 prison work pilot projects now certified 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 inmate wage deductions result in reductions in incarceration costs. Inmate wages benefit society, generally, in that deduction 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 prison-made goods and from the Walsh-Healey Act prohibition against certain contract sales of prison-made goods to the Federal government.

BJA issued a Guideline to implement this program (50 FR 12661–64) on March 29, 1985 and now publishes revisions in this Proposed Guideline to provide programmatic clarification based on experience gained over the past 13 years. The legislative underpinnings of relevant laws are examined to ensure that program administration practices are consistent with Congressional intent and that the scope of their applicability is clearly defined. Refined administrative practices are set forth for comment.

## 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 prison-made products, anywhere, necessarily displaced a possible demand for the product of free labor. Free enterprise manufacturers were disturbed because manufacturers of prison-made goods did not bear the burden of overhead costs borne by private industry competitors, such goods were being sold at below market prices. The viability of private industry competition was thereby undercut. In December 1924, Herbert Hoover, as Secretary of Commerce, 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 in 1928 wherein Arthur Davenport, Chairman of the Advisory Committee on Prison Industries, submitted the following report conclusions to Congress:

> (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 obviously 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 prison-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, re-codified 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 prison-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 convict-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 prison-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 prison-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. 90–351, § 827(b) and codified at 41 U.S.C. 35, also controls the production of prison-made goods. This statute prohibits the use of prison labor to fulfill general government contracts which exceed $10,000. BJA certification pursuant to § 1761(c) excepts prison-made goods produced by 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 in the Senate in 1979 after the 1978 Pontiac, Illinois prison riot. In the wake of that uprising, Senator Charles Percy (R–IL) 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 businesses 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 Federally 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.
>
> 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 * * *.
>
> 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. Section 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 state or local 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 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 inmate employment under the program 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 agency acquires BJA certification, that agency is thereafter authorized to operate irrespective of Federal prohibitions on the marketing of state prison-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 prison 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 state and local departments of corrections have been 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 and Wisconsin.

Over 125 private sector businesses now work in partnership with these PIECP certified correctional agencies to employ a total of about 2,500 inmates. Either the correctional agency 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, drapery, 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 December 1996, PIECP projects generated approximately $75 million in gross wages for inmates. Nearly half of this amount was diverted to non-inmate recipients: $5.5 million was deducted for victims of crime, $16 million was deducted for room and board payments, $4.4 million was deducted for family support and about $8.9 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 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 utilized 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. 681(I), 101st Cong. 202 (1990).

BJA administers PIECP with the objective of making participation available to as many qualified applicants as possible, within the limit imposed by statutory ceiling. This Guideline provides applicants with clarity as to Federal participation requirements, as well as programmatic flexibility to allow for PIECP Project growth in ways that are responsive to local needs. The Federal requirements are intended to ensure that the interests of the private sector and organized labor are protected. In this way, BJA's administrative practices are intended to address the concerns reflected in the legislative history antecedent to the enactment of earlier Federal regulation of prison-made goods, the Hawes-Cooper Act.

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 a 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 prison industries are invited to participate in PIECP only as Cost Accounting Centers designated under the authority of certified public departments of correction.

*c. Request for Comments*

Comments on revisions described in this Proposed Guideline must be submitted to BJA no later than 60 days following the date of publication and will be considered in the drafting of the Final Guideline. Existing Certificate Holders and designated Cost Accounting Centers will be provided with a time period of one year, after the publication date of the Final Guideline, to make whatever program adjustments are necessary to come into full compliance.

## 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 for 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 prison-made goods and private sector goods.
- To prevent the exploitation of prison 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 management of 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 public 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 prison-made goods are produced within Cost Accounting Centers that a Certificate Holder designates within itself, its private prison agents 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 a provisional certifications to applicant projects. BJA certified projects are excepted from certain Federal marketability restraints on the transport of prison-made goods in interstate commerce, including 18 U.S.C. 1761(a), and sales to the Federal government in excess of $10,000, 41 U.S.C. 35.

*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. All designated 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 the CAC agency. 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.

*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 prevailing wage, 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* means 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 utilized by a PIECP CAC as long as the CAC meets the same program participation conditions as private sector participants.

*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 prison-made goods pursuant to and under the conditions set forth in 18 U.S.C. 1761(c) is excepted from certain Federal restraints imposed on the marketability of prison-made goods, including 18 U.S.C. 1761(a) and 41 U.S.C. 35.

*PIECP Inmate Worker* is a convict or prisoner who provides labor for a Prison Work Pilot Project certified under 18 U.S.C. 1761(c); the prisoner 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-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), or in any penal or reformatory institution.

*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 possible 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.

*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 correctional agencies 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 compliance with respect to those same centers.

*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 Prison Work Pilot Projects

(A) BJA may exercise discretionary authority to designate up to 50 PIECP 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 § 1761 (a) and (b) considerations, including whether a given prison-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 prison-made items are excepted from the prohibition set forth in § 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 Federal Government, the District of Columbia, the states (or political subdivisions thereof) and not-for-profit organizations and is not intended to benefit private prisons; 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 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 prison-made goods?

- Will there be transportation of prison-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 prison-made goods, or would 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 public departments of correction and juvenile justice agencies authorized by law to administer prison industry programs are eligible to apply for PIECP certification; such public 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 with which they contract for incarceration services and which are located in the same state. Private prison industries may participate in PIECP only as designated CACs and as part of certified PIECP Projects located within their respective states. 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 pursuant to its authority or risk losing certification.

2. *Prevailing Wage.* 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 private businesses from unfair competition that would otherwise stem from the flow of low-cost, prison-made goods into the marketplace. PIECP participants must, therefore, implement the prevailing wage requirements under like conditions experienced by private sector competition. In this regard, 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. The statute 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 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 transfer of private sector jobs 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.

(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 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. When evaluating such circumstances, 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) 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.*

(D) 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 the state 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 CAC's are not required to take deductions from PIECP inmate wages. However, if a CAC exercises its discretion 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 with respect to determining appropriate room and board charges that may be deducted from PIECP inmate workers' gross wages.

(1) Consistent with 18 U.S.C. § 1761(c)(2)(B), BJA requires only that such charges be reasonable as determined by regulations issued by the Chief State Correctional Officer, in the case of state prisoners. In the case of non-state prisoners, this determination shall be made in accordance with regulations issued by the Chief Correctional Officer of the state in which the PIECP inmate is incarcerated.

(2) 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 such a proposed deduction from the Chief State Correctional Officers for the states in which the PIECP inmate workers were convicted.

(D) 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. Amounts deducted by private prison CACs should be deposited in the crime victim compensation funds established in those states in which the PIECP inmates were convicted.

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 have members which may be affected by the types of work to be performed by the PIECP inmates. If there are no local union bodies or labor organizations, consultation must be made with 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 businesses 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 statutory 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 C.F.R. pt. 1500. *See also* 28 C.F.R. pt. 61 (Department of Justice procedures for implementing NEPA); 28 C.F.R. 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 C.F.R. § 1508.18 of the Council on Environmental Quality's (CEQ) regulations for implementing NEPA. Consistent with the 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 C.F.R. 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 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 public 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 designate CACs within private prisons with which they contract for incarceration services and which are located in their respective states. 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 CACs operating under its authority, including in private prisons with which it contracts for incarceration services and which are located in its respective state. 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 verification;

(9) Identification of deductions to be taken and percentage of each from PIECP inmate's gross wages;

(10) Documentation of private sector partner's agreement not to displace its non-inmate employees with PIECP inmate labor determination;

(11) Documentation of non-displacement verification;

(12) As to any CACs within private prisons, written state approval of a proposed room and board deduction, in compliance with Section III.d.5.(D) of this Guideline, supra; and

(13) 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 regulatory 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. 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: June 26, 1998.

**Nancy Gist,**

*Director, Bureau of Justice Assistance.*

[FR Doc. 98–17757 Filed 7–6–98; 8:45 am]

BILLING CODE 4410–18–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 98–087]**

### NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

**DATES:** Wednesday, July 29, 1998, 8:30 a.m. to 5:30 p.m.; Thursday, July 30, 1998, 8:00 a.m. to 6:00 p.m.; Friday, July 31, 1998, 8:30 a.m. to 12:30 p.m.

**ADDRESSES:** MIC 6, NASA Headquarters, 300 E Street, SW, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jeffrey Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2470.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—OSS Program and Budget Status
—Science Metrics/FY 2000 Performance Plan
—Final Report of the R&A and MO&DA Task Force
—Theme Status Reports/Reports from Subcommittees
—Research Program Update
—Technology Program Status and Planning

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 24, 1998.

**Matthew Crouch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 98–17953 Filed 7–6–98; 8:45 am]

BILLING CODE 7510–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–295 and 50–304]**

### Commonwealth Edison Company; (Zion Nuclear Power Station, Units 1 and 2); Exemption

**I**

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. DPR–39 and DPR–48, which authorize operation of the Zion Nuclear Power Station, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

**II**

In its letter dated March 12, 1998, ComEd requested an exemption from the Commission's regulations. Pursuant to 10 CFR 50.34(b), each application for a license to operate a facility shall include a Final Safety Analysis Report (FSAR). This report shall include information that describes the facility, presents the design bases and the limits on its operation and presents a safety analysis of the structure, systems and components of the facility.

Title 10 of the *Code of Federal Regulations*, Part 50, Section 71 (10 CFR 50.71), ''Maintenance of records, making of reports,'' states that all light-water nuclear power reactors shall update their FSAR periodically. Pursuant to 10 CFR 50.71(e)(4), the time interval for the subsequent FSAR updates must not exceed 24 months. The last full update of the Zion FSAR was submitted to the NRC on July 5, 1996. Consequently, the next update would be required to be submitted no later than July 1998. However, ComEd is requesting an exemption from this requirement to allow them to update the FSAR to reflect the present condition of the units.

By letters dated February 13, 1998, and March 9, 1998, ComEd informed the NRC that Zion Nuclear Power Station, Units 1 and 2, have permanently ceased operations and both units are completely defueled and all fuel has been placed in the spent fuel pool for long-term storage. By letter dated May 4, 1998, the NRC acknowledged Zion's permanent cessation of power operation and permanent removal of fuel from the reactor vessels.

Many of the systems and components previously required for safety are no longer needed because the Zion units are permanently shut down. Therefore, updating the current FSAR will provide