

ATLANTA FILES, 2005-2006 7/2

HOUSE LABOR & COMMERCE 1158

(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.

[[Page 17012]]

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 environmental 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).

[[Page 17013]]

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

[[Page 17014]]

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

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