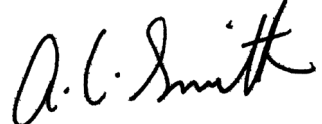




Department of  
Rehabilitation & Correction

SUBJECT: <b>Prison Industry Enhancement Certification Program</b>	PAGE <u>  1  </u> OF <u>  8  </u>
	NUMBER: <b>25-OPI-06</b>
RULE/CODE REFERENCE: ORC 5120.01	SUPERSEDES: 25-OPI-06 dated 04/29/2019
RELATED ACA STANDARDS: 2-CI-6G-1; 2-CI-6G-2	EFFECTIVE DATE: <b>January 4, 2021</b>
	APPROVED: 

## I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

## II. PURPOSE

The purpose of this policy is to comply with the mandatory program criteria for the Prison Industry Enhancement Certification Program participation.

## III. APPLICABILITY

This policy applies to all employees and those under contract as full and/or part-time employees with Ohio Penal Industries (OPI) that are involved in the Prison Industry Enhancement Certification Program.

## IV. DEFINITIONS

**Interstate Commerce** - The buying, selling, or moving of products, services, or money across state borders.

**Cost Accounting Center (CAC)** - A specific Prison Industry Enhancement Certification Program (PIECP) unit of OPI that is managed as a separate accounting entity under OPI authority. All PIECP production activities are conducted and related to the designated CAC.

**Customer Model** - The private sector partner purchases all or a significant portion of the finished product. The partner has no major role in the industry operation, does not direct production and has no control over inmate labor.

**Employer Model** - The private sector owns and operates the CAC by controlling the hiring, firing, training, supervision and compensation for inmate labor. OPI has no direct role with production and minimal control over inmate labor.

**Locality** - The geographic area impacted by the presence of a PIECP CAC operation.

**Minimum Wage** - The lowest possible wage that can be paid to a private sector employee. The requirement of paying an inmate assigned to a PIECP operation does not imply that the inmate is an employee of the State of Ohio, OPI or the private sector partner. NEPA – National Environmental Policy Act. Pub. L. 91-190,83 Stat.852 (1970) (Modified as amended at 42 U.S.C. 4321-4347; implemented under 40 C.F.R. pt. 1500).

**PIECP** - Prison Industry Enhancement Certification Program.

**Prevailing Wage** - A wage rate that mirrors or matches a rate being paid for similar work in the locality in which the PIECP work will be performed.

## V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (ODRC) to ensure OPI establishes a practice of maintaining relations with industry, labor, state and community organizations within guidelines of Interstate Commerce. This allows OPI to participate in the Prison Industry Enhancement Certification Program (PIECP). OPI will follow the guidelines set by the Bureau of Justice Assistance (BJA) and will comply with National Environmental Policy Act (NEPA) and other related Federal environmental requirements, as well as State or local environment laws or regulations, prior to any CAC start-up.

## VI. PROCEDURES

### A. Inmate Wages

1. OPI shall pay PIECP incarcerated individual worker's wages at a rate that mirrors or matches a rate being paid for similar work in the locality in which the PIECP work will be performed. OPI will contact the Ohio Department of Commerce (ODC), Division of Labor and Worker Safety, Wage and Hour Bureau to obtain the information to meet this requirement.
2. OPI shall annually update the wage rate with ODC. Any wage change shall be implemented not less than one year after the anniversary date of the last update. The wage determination must be based only on a comparable non-incarcerated individual worker wage for performing work of a similar nature.
3. If ODC cannot determine the wage, then OPI shall pay a reasonable prevailing wage, which will be at least the Federal minimum wage and reflect a realist community wage rate. In such circumstances, OPI shall retain on file for the Bureau of Justice Assistance review:
  - a. Relevant wage data from at least two competitors, if available, in the locality;
  - b. Data analysis for determining a reasonable prevailing wage result;
  - c. If possible, a written assessment of the reasonableness of the resulting prevailing wages determination by ODC.

4. Overtime shall be paid at time and a half for PIECP incarcerated individual workers for hours worked in excess of forty hours per week.
5. PIECP incarcerated individual workers may receive wage increases due to experience, seniority and performance.

#### **B. Non-Inmate Worker Displacement**

1. Prior to CAC start-up, OPI must obtain a written projection from the Ohio Department of Job and Family Services (ODJFS) that the CAC will not result in the displacement of non-incarcerated individual workers performing the same work, regardless of wage rate. The ODJFS non-displacement projection must be tied to the private sector wage requirement, such that the non-displacement determination reflects a realistic community wage rate for similar work performed in the locality.
2. In cases where ODJFS cannot make a non-displacement determination, the OPI should propose and confer with BJA on a case-by-case basis, as an alternative to address this requirement.
3. Prior to CAC start-up, OPI must obtain written documentation reflecting the private sector partner's agreement not to displace its non-incarcerated individual workers with PIECP incarcerated individual labor within the identified locality, if applicable.
4. Private sector jobs may not be transferred to a PIECP CAC.

#### **C. Benefits**

1. PIECP operations must provide incarcerated individual workers with benefits comparable to those made available by the Federal or State government to similarly situated private sector employees, including work-related injury insurance and social security for Employer Model industry operations. The Employer Model operations must deduct for FICA unless a written exemption is obtained from the Internal Revenue Service and the Social Security Administration for the PIECP operation.
2. Customer Model operations are not required to offer Social Security coverage to incarcerated individual workers.

#### **D. Deductions**

1. The CAC shall take deductions from the PIECP incarcerated individual worker's gross wages for the following authorized purposes:
  - a. Taxes: Federal, State, and Local, including Social Security under the Employer Model.
  - b. Cost of incarceration as approved by the Director of the Ohio Department of Rehabilitation and Correction (ODRC).

- c. Family support pursuant to state statute, court order, or agreement by incarcerated individual.
  - d. Compensation to Ohio Victims of Crime Fund, pursuant to state statute, court order, or agreement by incarcerated individual.
2. Such deductions, in aggregate, cannot exceed 80% of gross wages.
3. PIECP incarcerated individual workers must be paid and credited the remaining 20%. OPI may direct the 20% to an institutional incarcerated individual account. These funds can be used but not limited to, payment of fines, restitution, medical co-pays, Rules Infraction Board dispositions and court costs.
4. Each PIECP incarcerated individual worker must indicate in writing, that they agreed voluntarily and in advance to specific deductions from their gross wages, as well as all other financial arrangements made as to the earned PIECP wages.

**E. Voluntary Participation**

Each PIECP incarcerated individual worker must indicate in writing that they agree voluntarily to participate in the PIECP operation.

**F. Consultation and Organized Labor**

1. OPI shall consult with representatives of local unions or similar labor-union organizations prior to the start-up of a PIECP CAC. OPI should consult all such organizations that may have an interest in the trade or skill to be performed by the PIECP incarcerated individuals. If there are no local unions or labor organizations, notification and consultation must be made with statewide unions and/or labor organizations.
2. In the consultation, the following information shall be provided, but not limited to:
  - a. Scope of work of operation;
  - b. Projected start date;
  - c. Local of Operation;
  - d. Consultation is required;
  - e. Comments are invited.
3. OPI shall retain documentation reflecting provision of adequate consultation. Copies of public notices or minutes from the Office of Enterprise Development Advisory Board meetings may serve as alternative forms of consultation per ODRC Policy.

**G. Consultation with Local Private Industries**

1. OPI shall consult with representatives of local business that may be economically impacted by the CAC operation prior to the start-up of the PIECP CAC.

2. In the consultation the following information shall be provided, but not limited to:
  - a. Scope of work of operation;
  - b. Projected start date;
  - c. Local of Operation;
  - d. Consultation is required;
  - e. Comments are invited.
3. OPI shall retain documentation reflecting provision of adequate consultation. Copies of public notices or minutes from the Office of Enterprise Development Advisory Board meetings may serve as alternative forms of consultation.

#### **H. National Environmental Policy Act Requirements**

1. Prior to any CAC start-up, OPI shall submit for BJA review, environmental data and information regarding its proposed activities and, if necessary environmental assessments are needed. If an environmental impact statement is required, OPI will assist BJA in developing the statement. OPI may be eligible for Categorical Exclusion to NEPA requirements. BJA shall decide based upon OPI's submitted Notice of CAC Designation and Certificate of Compliance form and NEPA form, regarding this exclusion.
2. Operations that involve minor renovation or remodeling to physically implement a CAC will not normally require an environmental impact statement or an environmental assessment. However, if the renovations could potentially affect the following sites:
  - a. Flood Plain;
  - b. Wetland;
  - c. Listed Species;
  - d. Habitat of Endangered Species;
  - e. Property Listed on or Eligible for Listing on the National Register of Historic Places.
3. Operations that normally require an environmental assessment, but not necessarily an environmental impact statement include:
  - a. Renovation and expansion that changes basic prior use of facility;
  - b. Change in size to facility;
  - c. Change to facility that increases production of liquid, gaseous, or solid waste;
  - d. New construction;
  - e. Anticipated and Future application could influence the environment;
  - f. New operation use of odorous, toxic, radioactive or hazardous materials.

**I. OPI Monitoring Responsibilities**

OPI shall be responsible for all reporting and evaluation of activities necessary to ensure continuing compliance for the designated CAC. OPI shall respond to all BJA requests for information to ensure PIECP compliance.

**J. Cost Accounting Center Responsibilities**

The CAC must comply with all PIECP participation requirements to OPI and BJA, including:

1. Maintaining continuous compliance with the requirements set forth in 18 U.S.C. 1761(C) AND BJA's PIECP Guidelines
2. Respond to all monitoring requests from BJA, National Correctional Industries Association (NCIA), and or OPI for information to ensure continued compliance of all mandatory requirements.

**K. Quarterly Financial Reports**

Within 30 days following the close of each calendar quarter, each CAC must submit a PIECP Quarterly Consolidated Statistical Report, with an attached copy of the quarterly report to BJA and NCIA.

**L. On-Site Monitoring Reviews**

BJA and NCIA are authorized to perform a paper or on-site review of OPI CACs as deemed necessary. Immediate corrective actions must be taken to address non-compliance and / or to respond to issues that raise compliance related concerns from BJA.

**M. Notice of CAC Designation, Certificate of Compliance, and NEPA Categorical Exclusion**

The Notice of CAC Designation and Certificate of Compliance form and NEPA for identify the information that OPI must provide to BJA prior to any CAC start-up.

**N. Work-Related Injury Insurance**

1. Coverage
  - a. Under the Employer Model, the private sector employer shall purchase and be solely responsible for providing a policy of insurance to cover the PIECP incarcerated individual worker. The private sector employer shall provide proof of coverage to the Office of Enterprise Development Advisory Board prior to the start-up of PIECP CAC.

- b. The policy of insurance shall provide benefit payments for any PIECP incarcerated individual worker who sustains a compensable injury while participating in PIECP. Such benefit payments shall not be awarded until the incarcerated individual's release from prison by parole or expiration of definite sentence.

2. Eligibility

- a. Any PIECP incarcerated individual worker is eligible if they would have temporary or permanent loss of earning capacity resulting from a diagnosable injury occurring during work activities while assigned to a PIECP operation. If the disability is present at the time of incarcerated individual's release from prison by parole or expiration of definite sentence, the incarcerated individual is eligible to apply for liability insurance benefits under the policy coverage of the private sector employer.
- b. The PIECP incarcerated individual worker shall not be eligible to apply for insurance benefits for injuries occurring as a result of:
  - i. Fight, assault or horseplay;
  - ii. Purposely self-inflicted injury;
  - iii. Use of alcohol, illegal drugs or misuse of a prescription drug;
  - iv. Any other activity that is prohibited by the ODRC incarcerated individual conduct rules or the private employer's work rules.

3. PIECP incarcerated individual workers covered under this policy are not employees of the ODRC or the private sector employer. Nothing in this policy shall be construed as creating a contract between the incarcerated individual worker and any other entity. PIECP incarcerated individual workers are not eligible to receive compensation or benefits under the state workers' compensation system for any injury, death or occupational disease sustained during participation in a PIECP operation. Any claim for an injury arising from an incarcerated individual's participation in PIECP is statutorily excluded from the jurisdiction of the Ohio Bureau of Workers Compensation and the Industrial Commission of Ohio.

4. Reporting of Injuries

- a. The PIECP incarcerated individual worker will immediately report any injury to their immediate supervisor of the CAC. The incarcerated individual shall complete and sign the PIECP Inmate Injury/Illness Report by the end of the shift in which the injury occurred. An ODRC Inmate Accident form (DRC4198) shall also be completed.
- b. The incarcerated individual's failure to timely report the injury may result in termination from the PIECP operation and any other disciplinary measures of the ODRC.

5. Investigating the Injury

The private sector employer is responsible for:

- a. Have incarcerated individual and staff complete the PIECP Inmate Injury/Illness Report on the day of injury;
- b. Inspect work area and remove any hazards;
- c. Investigating and / or verifying any allegation of work injuries, death or occupational disease;
- d. Obtaining written statements from any witness having knowledge of the work injuries, death or occupational disease;
- e. Complying with any ODRC and institution policy and procedure that applies to such investigation.

6. Fraudulent Claims

A PIECP incarcerated individual worker shall not knowingly make any false or misleading statement, alter, falsify, destroy or conceal any document in order to be eligible to receive insurance benefits. Any PIECP incarcerated individual found to have made a claim resulting from fraudulent behavior or conduct shall be terminated from the PIECP operation and shall be subject to all other disciplinary measures of ODRC.

**Related Department Forms:**

Inmate Accident

DRC4198