

requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington DC 20436.

By order of the Commission.

Issued: March 6, 1997.

Donna R. Koehnke,

Secretary.

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DEPARTMENT OF JUSTICE

Federal Prison Industries

Product Development and Production: Public Involvement Procedures

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Department of Justice.

ACTION: Notice.

SUMMARY: In this document, Federal Prison Industries, Inc. (FPI) announces new interim definitions of three key terms: New product, specific product, and significant expansion of an existing product.

ADDRESSES: Federal Prison Industries, Inc., 320 First Street, NW., Washington, DC. 20534.

EFFECTIVE DATE: March 12, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Baldau (202) 305-3582.

SUPPLEMENTARY INFORMATION: Last year, FPI published notices in the Federal Register and *Commerce Business Daily* proposing revisions to the definitions of "specific product," "new product" and "significant expansion of production" for use with the FPI expansion guidelines. The Federal Register notice was printed on August 7, 1996 (61 FR 41248). The *Commerce Business Daily* notice was printed on September 20, 1996. Each notice asked interested parties to review the revised definitions and submit comments on the proposed revisions to FPI. FPI received submissions from the following individuals and organizations:

U.S. Representative Mac Collins (Georgia, 3rd District);
The American Defense Preparedness Association;
The Business and Institutional Furniture Manufacturers Association;
Trussbilt, Inc.;

The Coalition for Government Procurement;
The American Apparel Manufacturers Association;
Tennessee Apparel Corporation;
Furniture By Thurston; and
The Quarters Furniture Manufacturers Association.

FPI wishes to thank each of the respondents for taking the time to submit their comments. Many of the submissions included suggestions which FPI has incorporated into the revised definitions. Also among the submissions were several comments helpful to FPI in understanding potential implications of the proposed revised definitions. Some of these comments led FPI to adjust its original proposal.

For the purposes of this notice, FPI has separated all the comments we received into one of four groups: (1) Ideas, recommendations or suggestions FPI has adopted in the revised definitions; (2) Ideas, recommendations or suggestions with which FPI respectfully disagrees and has not adopted in the revised definitions; (3) Comments that are more relevant to other aspects of FPI's operations, such as issues concerning mandatory source; and (4) Comments which are vague, broad or general in nature. Such comments do not make a specific point, making it difficult for FPI to address. Below is a summary of all comments received by FPI. In many instances, similar comments from multiple parties have been combined. Also included are some of FPI's responses, where appropriate.

(I) Ideas, Recommendations or Suggestions FPI Has Adopted

The following are ideas, recommendations or suggestions provided by commenters which FPI found useful or constructive, and incorporated, in whole or in part, into the revised expansion definitions.

A commenter noted FPI's initial announcement stated "FPI announces revised definitions of two key terms: New product and specific product." However, "significant expansion of production" is also revised. FPI acknowledges the oversight, and has reflected this correction in the new announcement. This notice refers to all three revised definitions.

Commenters suggested FPI defer issuing the new definitions, raising the possibility Congress may require FPI to modify the terms again, resulting in another revision in a short period of time. The commenter stated a delay in issuing the definitions would permit interested parties to take up Rep.

McCollum's offer to discuss FPI's operations and regulations next year. FPI appreciates the willingness to accept Rep. McCollum's invitation. Nonetheless, the current definitions present a myriad of problems that need to be addressed. With the commenter's suggestion in mind, FPI is publishing the new definitions as an "interim rule." This will allow time for experience and encourage comments during its implementation.

A commenter suggested amending the provision dealing with cases of extreme public exigency, where FPI would be empowered with the authority to increase production without penalty when asked to do so. The commenter advised that FPI explicitly state that its production levels are temporary, and will not be used as the baseline for future calculations of what is deemed a significant expansion of production. FPI has incorporated such language into the revised definitions.

Several commenters objected to the provision allowing FPI to supply new items of limited duration or volume. The commenters felt this provision did not allow for sufficient private industry input, would be detrimental to small businesses who sell to the Federal government and did not provide adequate safeguards to prevent FPI from misuse of the provision. FPI recognizes the concerns raised by the commenters and has withdrawn the provision from the revised definition.

Commenters suggested the definitions should not eliminate an item's predominant material of manufacture as a determinant of whether an item is a separate specific product. FPI agrees, and notes the new definitions do not make such an elimination. Rather, the predominant material "will not ordinarily" be a factor in determining whether an item is a separate specific product. FPI did not mean to imply the predominant material of manufacture is not an important consideration, only that in most cases, it would not result in an item being deemed a separate specific product. An item's predominant material will always be considered, and unless deemed to be significant, will not typically result in a distinction for a separate specific product.

A commenter suggested that FPI state its sales goals in units, not dollars. FPI appreciates the suggestion and will attempt to include production information on units where feasible, as well as dollars, for impact studies. The nature of some of FPI's work makes stating production goals in units difficult. It should be noted that in past impact studies, FPI has attempted to differentiate between inflation and real

growth in projecting the corporation's future sales and market share.

Several commenters suggested FPI revise the provision relating to announcements in the *Commerce Business Daily* (CBD). One commenter argued it was an undue burden on small business owners to have to check the CBD every day. Another suggested the time period in which interested parties may submit comments should be lengthened beyond 10 days. FPI acknowledges there may be difficulties associated with checking the CBD, especially for a small business. We appreciate the comments, and have amended the revised definitions so that they now allow 21 days for interested parties to comment.

Regarding submissions from interested parties in response to the CBD announcements referenced in the prior paragraph, a commenter disagreed with the restriction on submissions stating that comments related to market share and/or the impact resulting from such a production decision would not ordinarily be considered relevant to whether an item should be considered a new product. FPI recognizes the importance that data relating to a reasonable share of the market has to the expansion process. FPI appreciates the comment and agrees to modify the provision so that all information will be considered. The contested reference in the provision has been deleted.

A commenter expressed approval of the provision to have FPI make CBD announcements for items FPI does not consider to be a new product, but which an affected party may reasonably construe to be a new product. The commenter noted the purpose of the revision is to give private industry an added level of input into such decisions made by FPI. The commenter regarded this as "a very constructive approach and again will build a great deal of trust and goodwill between FPI and the private sector." FPI appreciates the acceptance of this provision.

A commenter noted the revised definitions will not require FPI to initiate the guidelines process when FPI's market share increases as a result of factors other than an increase in FPI's production. The commenter recognized that "asking FPI to continually track its market share for every product is a burdensome job." The commenter suggested that industry be encouraged to track market size and be allowed to petition FPI's Board of Directors for production relief in the event that a significant reduction in the size of the market can be demonstrated. FPI appreciates the comment and concludes that the new definitions do allow for

such action on the part of members of the private sector.

Commenter questioned whether the new significant expansion definition would allow FPI to increase production until it captures 25% of the market before it triggers the expansion process as long as FPI makes only incremental increases. FPI acknowledges that while the circumstances described are theoretically possible, we do not believe it is very likely. First, such a scenario would only occur over a several year period, since any sales increase over 10% would lead to an FPI examination of market share, and trigger the guidelines process if FPI exceeded the 15% and 20% market share thresholds. As a result of the elapsed time, any impact would be minimized. As a potential safeguard against such a scenario, FPI has encouraged potentially affected industries to petition the Board if they believe the FPI growth is having an adverse impact on their particular industry. This encourages the industry to monitor FPI growth, via annual sales and market share reports published by FPI, in conjunction with their own market data, and bring their concerns to the Board's attention, as circumstances warrant.

A commenter suggested changing the provision on cases where FPI's sales inadvertently or insubstantially exceed authorized levels. The commenter suggested strengthening the language regarding FPI's obligation to adjust its sales levels if the corporation exceeds its authorized sales level. FPI has amended the language accordingly.

(II) Ideas, Recommendations or Suggestions With Which FPI Respectfully Disagrees and Has Not Adopted

Though the following comments were not incorporated into the revised guidelines, FPI wishes to emphasize its appreciation for the careful review by all commenters in providing their submissions. In the interest of making this process as visible and open to public scrutiny as possible, FPI has included its reasons for choosing not to accept the following ideas, recommendations or suggestions.

Most of the comments with which FPI disagrees and has not adopted deal with the availability of data under the current definitions or the proposed use of 4-digit Federal Supply Class (FSC) codes as the primary basis for determining a "specific product."

Commenters questioned whether there really is unavailability of data under the current definitions. Commenters suggested the procurement data sought by FPI is already collected

by GSA's Single Item Numbers (SINs). FPI respectfully disagrees with both comments. The current definitions make use of the Standard Industrial Classification (SIC) system's 7-digit item codes. The government does *not* collect Federal procurement data by 7-digit SIC codes. Rather, Federal purchases are categorized by the FSC system. FPI also reiterates the limitations of GSA's SIN data. GSA does not have schedules for every industry in which FPI operates. Also, through research for past impact studies, FPI has found that while information from GSA's schedules provide an important piece of the Federal market puzzle, data from the schedules do not reflect all Federal buys, and often fail to include large segments of the Federal market.

Regarding the FSC system, commenters felt an FSC code would be too broad and encompass too many separate items to be validly considered a specific product. Commenters also expressed concern over the revised definitions allowing FPI to combine FSC codes where multiple codes comprise a single industry. Commenters contended that in such instances, FPI's true impact would be severely understated.

FPI recognizes these concerns and agrees that in some instances, FSC categories are too broad to be accurate measure of an item's Federal market. However, the revised definitions make provisions for such cases. The new definitions state, "FPI will announce in the CBD its intent to produce any item that could reasonably be construed to be a new product, regardless of the fact that such an item falls in the same 4-digit category as an item that FPI is currently making, or has made within the recent past, and is not considered by FPI to be sufficiently different from an existing item to be considered a new product. Moreover, borderline cases will be announced in the CBD in order to allow for the full public scrutiny." The new definitions also state, "In some instances, an item may be considered separate from another product in the same 4-digit FSC category, if its function differs substantially."

Regarding the combination of FSC codes, it is incumbent upon FPI to be as accurate as possible in determining its impact on the private sector. When an industry's operations encompass multiple FSC codes, FPI is obligated to combine the codes in the effort to measure the corporation's true impact. Further, FPI's authorizing legislation directs FPI to guard against placing an undue burden on any single industry, not individual companies.

FPI believes the industry involvement guidelines process addresses concerns

that the use of FSC codes would allow FPI to expand in a few limited items without seeming to have an impact on the industry as a whole. Under both the current and new definitions, the guidelines process provides ample opportunity for public comment and input, so that FPI's Board of Directors can be made aware of particular situations that may create undue impact on private industry.

Beyond the principal objections mentioned above, commenters raised other questions regarding the new definitions. One commenter stated they lack confidence in a system which, by FPI's admission, does not "develop a simple, single principle that can be applied in every situation to determine when to delete unrelated items from a 4-digit FSC category and when to combine categories." FPI recognizes the desire for a "one size fits all" approach. However, in the absence of a viable alternative, we believe the revised guidelines offer a fair, reasonable and logical set of standards to examine FPI's growth.

A commenter questioned the use of 4-digit SIC codes as a secondary determinant for a specific product, in those instances where there are multiple items within a single FSC code. The commenter felt 4-digit SICs do not represent any substantial protection beyond the FSC codes. The commenter asserted that specific product distinctions are found at the 7-digit SIC level. As mentioned earlier in this section, limitations of the SIC system were one of many factors leading to the revision of the definitions. FPI's initial notice proposing the revised definitions discussed the difficulties FPI has experienced with SIC codes, the primary problem being the lack of available data. For this reason, the new definitions will not be based upon the SIC system. Instead, the 4-digit SIC code will be used as a secondary determinant for a specific product. In such cases, cross-referencing the 4-digit SIC codes against the FSC codes will allow FPI to more accurately separate items that should be considered a separate "specific product."

Several comments touched on the provision concerning FPI announcements in the *CBD* regarding the planned production of items that may reasonably be considered a new product. One commenter doubted that a heightened effort by FPI would provide any meaningful restraint. The new definitions have FPI make such announcements when an item may be reasonably construed to be a new product. In cases which are questionable, FPI will err on the side of

announcing in the *CBD* in order to allow for full public scrutiny. In addition, the new rules would provide much greater visibility to these decisions and determinations than is afforded under the current guidelines.

A commenter questioned how the new rule helps FPI meet its mission of "diversification so that no single industry shall be forced to bear an undue burden of competition?" FPI believes the new definitions are a significant step forward in meeting this objective. Among the primary benefits of the revised definitions is that they are aimed toward measuring FPI's impact on an *industry*. The corporation's authorizing legislation states that FPI is to operate so that no single industry is forced to bear an undue burden of competition. Most private vendors competing for Federal business offer an array of different items across the industry in which they operate. Most producers of office furniture do not limit themselves to just credenzas. They offer tables, desks, bookcases, etc. Suppliers of shirts may also produce pants, coveralls, etc.

One commenter stated FPI's commitment to report in the *CBD* all items which could reasonably be construed to be a separate specific product will be the determinant of FPI's good faith. The commenter stated that if FPI faithfully observes this commitment by announcing its intent considerably more liberally than is required and treats comments objectively (i.e., acts in favor of both FPI and the private sector about 50 % of the time) industry will likely gain confidence in the process. FPI appreciates the commenter's trust in our ability to faithfully and accurately fulfill the requirements of this provision. Yet the fair treatment of comments received from the private sector does not automatically translate into a quota system whereby the finding will be in the private sector's favor 50% of the time. FPI commits that the Board of Directors will decide each case on its own merits, regardless of any other such decisions. FPI points out that the revised definitions will have FPI "announce in the *CBD* its intent to produce any item that could reasonably be construed to be a new product." FPI's commitment to make such announcements considerably more often than is required is beyond the letter of the revised definitions. However, in seeking to build good faith with the private sector, FPI will attempt to fulfill this additional requirement.

Objections were raised to the provision reading "Items that are essentially the same product, or those that are variations of an existing FPI

product. * * * would not be subject to announcement of any kind." Commenters felt FPI is unable to make such definitions without industry's assistance. FPI respectfully disagrees with this suggestion. FPI has the technical and engineering knowledge to accurately determine when items are essentially the same or are variations of an existing FPI product. FPI currently makes these determinations under the existing expansion guidelines.

A commenter suggested "new product" be defined as a "specific product which FPI has not produced within the last three years." FPI respectfully disagreed with this suggestion. The nature of some Federal purchases is cyclical, so that items bought in large amounts one year, may be purchased in very small quantities, if at all, for three or four years thereafter. FPI believes defining a "new product" as a "specific product FPI has not produced within the past three years" is overly restrictive, and the five year figure is reasonable and more consistent with Federal buying patterns.

Commenters felt the revised "significant expansion" definition would greatly affect what FPI can do without initiating the guidelines process. One commenter expressed opposition to *any* planned expansion of FPI's production without significant industry input. FPI believes a primary benefit of the new "significant expansion" definition is that it clarifies exactly what is "significant" by changing the measure from capacity to actual sales. Under the old definitions, FPI could potentially increase sales by a higher margin without it being considered significant if FPI did not expand capacity. FPI opposes the suggestion that industry input is necessary before *any* planned FPI expansion. Rather, we defer to the statute, which cites "significant" expansion. The language does not say FPI can not have any expansion without industry input. Both the current and revised definitions allow for exactly the type of private industry input suggested. The process calls for FPI to notify known Federal vendors and relevant trade associations, requesting input and relevant data for use in the upcoming impact study. Following FPI's issuing of the preliminary study, interested parties may submit comments in reaction to it. Comments may also be submitted in response to the revised study, and private sector representatives have the opportunity to appear and speak before FPI's Board of Directors.

Commenters objected to the proposed market share levels limiting FPI's expansion. Commenters noted that new

definitions allow FPI to increase a product's market share up to 15% without initiating the industry involvement guidelines process. FPI believes this is reasonable. To provide some background, in both public testimony and private discussions with FPI, several industry representatives have stated their idea of what constitutes a "reasonable share of the market" for FPI. Almost uniformly, these officials state that a 15%-20% market share is reasonable for FPI. In legislation submitted by Rep. Collins, a 20% market share is referenced as the market share acceptable for FPI's production. Thus, allowing FPI to boost production of an existing product without initiating the guidelines process until its market share reaches 15% is not unreasonable.

Commenters objected to allowing FPI to increase its market share up to 15% of a specific product, since this may result in FPI providing 100% of certain items upon which small businesses may be dependent. FPI acknowledges that among the goods and services it provides are some items bought in relatively low quantities. For FPI to provide these items, as would be the case for any business, in a self-sustaining manner (as the corporation is mandated to operate), it must achieve certain economies of scale. In some instances, this may result in FPI supplying much, or even all, of a single Federal contract. There is no guarantee of further Federal demand for the exact same item. Thus, while buys of the "specific product" continue, a small buy for a single item may be supplied exclusively by FPI. FPI will monitor the potential for such situations as it has in the past.

A commenter noted the revised significant expansion sliding scale allows for a hypothetical situation in which FPI could boost its production of an item from \$5 million and 10% of the Federal market (out of \$50 million) to \$7.5 million in sales and a 15% share without initiating the expansion process. The interpretation of the revised market share scale is correct. FPI believes this is a fair and reasonable formula. Under this hypothetical scenario, the value of Federal buys available to private vendors decreases only slightly from \$45 million to \$42.5 million. It should be noted that, in the scenario described, this would be the maximum impact FPI could have for a given year under the new rules.

Commenters objected to having market activities independent of FPI's activities irrelevant in determining what is FPI's reasonable share of the market. The new definitions do not change the

factors used by the Board of Directors to determine what is a reasonable share of the market. As in the original rules, the proposal does not hold FPI responsible for a "significant expansion" when the corporation's market share increase is due to market dips outside of FPI's control.

Commenters expressed concern that the definitions have FPI's Board of Directors serve as the ultimate authority for decisions on issues related to FPI's expansion efforts. It was suggested an independent body would be a more appropriate body for such responsibilities. FPI notes such concerns, but does not agree. It was Congress' intent to have FPI's Presidentially-appointed Board of Directors oversee and direct FPI's operations, insuring the credibility of the industry involvement guidelines process. By statute, the Board is called upon to make such decisions, after balancing the often numerous and complex concerns of all parties involved. The Board's job is to review and analyze *all* information presented to them as part of each proposal, including data from FPI and private industry. The new definitions make no change from the current rules on this issue.

Several commenters expressed concern that the revised guidelines would allow FPI to ignore, nullify or modify previous new product or expansion decisions made by FPI's Board of Directors. FPI points out the revised definitions specifically state that prior decisions by FPI's Board would not be affected. Thus, recent Board decisions regarding FPI expansion proposals relating to shipping/storage containers, dormitory and quarters furniture, office case goods, etc., all still apply.

(III) Comments That Are More Relevant to Other Aspects of FPI's Operations

The following are ideas, recommendations or suggestions provided by commenters which, though often insightful and/or constructive, are more relevant to other aspects of FPI's operations, and do not directly address the merits of the revised expansion definitions. In the interest of being open to public scrutiny, FPI has included a brief response to each of the comments below.

A commenter noted that the revised definitions do not alter FPI's mandatory source status. FPI recognizes that its status as a mandatory source of supply for the Federal government is an important issue for many commenters. However, the mandatory source issue is more relevant to the discussions (mentioned in the previous section) that

are planned by Rep. McCollum and other members in the Congress.

A commenter suggested FPI ought to consider the production of other mandatory source operations, such as NIB, NISH and 8A firms, when considering the ability of the Federal market to sustain FPI and private vendors. FPI appreciates the suggestion, which is more relevant to the manner in which the corporation prepares its actual impact studies. FPI agrees that data relating to production by sources such as NIB and NISH is an important piece of information.

A commenter argued FPI should not use comparisons of the Federal market and total domestic market as justification for production of a new product or a significant expansion of production for an existing product. FPI recognizes the importance of all factors involved in determining what constitutes a reasonable share of the Federal market. Under both the existing guidelines and the new definitions, it is up to FPI's Board of Directors to determine what is a reasonable share. The statute calls for consideration of several factors in the impact studies, including the size of the Federal market as well as the size of the total domestic market.

A commenter objected to FPI lumping together Federal purchases from civilian agencies and the Department of Defense (DoD). FPI's authorizing legislation restricts the corporation to selling its goods and services to the Federal government. There is no distinction made between DoD and any other Federal department or agency. On this issue, the revised definitions make no change from the current guidelines.

A commenter claimed the option of manufacturing for the commercial market has eroded for many products supplied by FPI. The commenter stated that when FPI produces an item previously supplied by private vendors, private sector jobs are almost certain to be lost. FPI notes that the ability of private vendors to find non-Federal markets for their goods is one of the factors FPI's Board of Directors assess when they consider the level of FPI's impact on the private sector. This responsibility is not changed from the existing definitions.

A commenter contended that much of the machinery used by private vendors to produce goods for the Federal government is specialty equipment not easily converted to manufacture other products. FPI recognizes some vendors buy equipment specifically to compete for Federal contracts and in some cases, such equipment is not easily converted to other uses. Such decisions are the

responsibility of each vendor. Removing FPI as a supplier of Federal goods would not eliminate all the competition and risk from competing for Federal contracts. Both the current and revised definitions are designed to help insure that FPI's operations do not place an undue burden on any one industry. When assessing FPI's impact, one of the many factors FPI's Board of Directors take into account is the ability of the affected vendors to produce similar items for non-Federal customers or make other items with the same machinery.

A commenter suggested that a consistent definition of "reasonable share of the market" must be established. The commenter stated that until then, expediting the expansion process would only allow FPI to take bigger bites of new or existing markets more quickly. FPI acknowledges the inability of interested parties to reach an agreement on what constitutes a reasonable share of the market for FPI. This is particularly frustrating in light of the fact that FPI has worked extensively with various private sector vendors, trade associations and public policy groups on this and related prison industry issues for the past seven years. This is why the Congress left the final decision of what constitutes a reasonable share to the FPI Board of Directors, upon weighing the issues and concerns of all parties.

(IV) Comments Which are Vague, Broad or General in Nature

The following are ideas, recommendations or suggestions provided by commenters which are vague, broad or general in nature. The comments do not always make a specific point and FPI is not in a position to appropriately address each of the comments. Nevertheless, the corporation has included a brief response to each comment.

A commenter suggested that the revised definitions threaten small businesses. Though respectfully disagreeing with this statement, FPI finds its vague in that it fails to explain how the revised definitions have a particular effect on small businesses that is different from how the rule would affect any other business.

Several commenters expressed their belief that FPI proposed the revised definition to allow FPI greater freedom to expand into new product areas. While disagreeing with this comment, FPI also finds it ironic. In the past, most of the vendors and trade associations with which FPI has worked have suggested that FPI make a greater effort to diversify its operations, so as to

alleviate its impact on industries in which FPI already operates. This comment suggests these parties have changed their position, and do not wish further diversification by FPI.

One commenter stated that new definitions are especially disconcerting in light of FPI's "public rhetoric about partnering and cooperation with industry." The commenter suggested the revised definitions signify that FPI "is not truly interested in partnering and will continue to expand, absent a high-profile, bluntly adversarial campaign." It is FPI's belief that the new definitions are a step forward in the corporation's efforts toward greater cooperation and more partnerships with private industry. The new definitions help address the problems related to the availability of data, while also providing a number of safeguards for potentially affected industries.

A commenter stated the revised definitions are more arbitrary and less transparent than the current system. Other commenters suggested the revised definitions, if implemented, would only make it easier for FPI to arrive at the results it desires. While disagreeing with these sentiment, FPI finds them to be broad comments. FPI has spelled out the problems associated with the existing rules, the corporation's rationale for change, and the protections built into the process to safeguard the concerns of industry and enhance the opportunity for public comment. The revised definitions are a sincere attempt by FPI to rectify some of the existing problems, and we believe they will result in improvements to the process for all concerned. Since the rule will be published for implementation as an interim measure, allowing further comment during implementation, we believe FPI has maximized the chances for the process to work for all parties as intended.

As mentioned earlier, FPI is announcing implementation of these revised definitions on an interim basis. Until such time that FPI's Board of Directors determines that the definition should be made final, the corporation reserves the right to make further modifications based on input from any of the following sources:

(1) The ongoing independent audit of FPI's use of and compliance with the original expansion guidelines being conducted by the accounting firm of Urbach, Kahn and Werlin;

(2) The examination of FPI's methodology use to calculate the Federal market for goods and services supplied by FPI. This analysis is currently underway and is being

conducted by a panel of independent Federal procurement experts;

(3) Comments relating to the revised definitions and procedures received by FPI from private industry or organized labor; and,

(4) FPI's own experience as the corporation works with the revised definitions.

Any further comments on these definitions may be submitted to FPI at the address listed above. Any such comments will be considered and noted, but will not necessarily receive a response in the Federal Register or *Commerce Business Daily*.

FPI now publishes the following definitions of "specific product", "new product", and "significant expansion of an existing product". These are interim definitions. The decision to further modify these definitions, and/or institute the definitions on a permanent basis is solely at the discretion of FPI's Board of Directors.

Revise Definitions

1. Specific Product

A specific product refers to the aggregate of items which are similar in function (e.g., bags and sacks), or which are frequently purchased for use in groupings (e.g., dormitory and quarters furniture) to the extent provided by the most current Federal Supply Classification (FSC) Code. There are currently 685 federal supply classes designated within the Federal Procurement Data System. FPI currently produces within 74 of these classes.

Specific products will equate to the most current 4-digit FSC Code, published by the General Services Administration, Federal Procurement Data Center (FPDC). As a general rule, products will be deemed to be different specific products if they are identified by a distinct 4-digit FSC code.

The following means will be used to determine how items should be treated:

- Items classified within the same 4-digit FSC code will be presumed to comprise a single specific product (unless otherwise determined by FPI, or with input from the relevant industry).
- The predominant material of manufacture (e.g., nylon vs. canvas) will not ordinarily be a factor in defining an item as a separate specific product. (Material will be considered as part of routine review.)

In certain instances, with approval of its Board of Directors, FPI may combine FSC codes where multiple FSC's comprise a particular industry. In requesting the Board to combine FSC's, FPI will give careful consideration, and

be especially sensitive to, companies that manufacture products (such as various items of apparel) in multiple FSC codes. Moreover, situations should be avoided by FPI where it would have to request Board approval of production and/or expansion in several "specific products" (e.g., office seating, case goods, and systems furniture), each of which often involves many of the same companies within a single potentially affected industry (e.g., office furniture).

The rationale for any proposed combining of FSC's will be published by FPI in the *Commerce Business Daily* to seek input from the potentially affected industry. In all cases, input received in its submission will be forwarded by FPI to the Board of Directors for consideration and final determination.

In some instances, an item may be considered separate from another product in the same 4-digit FSC category, if its function differs substantially. In such cases, the 4-digit Standard Industrial Classification (SIC) code may be used as a back-up measure to more accurately define the product.

SIC codes will continue to be used at the 4-digit level to determine the size of the domestic market for a particular product. For purposes of product definition in the domestic market, FPI will combine 4-digit SIC codes when the data suggests the product under examination may encompass several different 4-digit SIC codes, with no substantial difference in the product (e.g., men's vs. women's apparel).

2. New Product

A new product is a 'specific product' which FPI has not manufactured or produced within the past five years.

In cases where it has been determined that more than one specific product exists within a 4-digit FSC, the 4-digit SIC code will be used as a secondary indicator to determine whether the product is "new". In such cases, a new product will be defined as a 'specific product' in the four-digit SIC which FPI has not produced within the past five years.

"Good Faith" CBD Announcements—Items not deemed by FPI to be a New Product.

Under current rules, management decisions as to whether production of an item constitutes a new product are made by FPI staff, based on the SIC classification system, without public involvement. Under the proposed new rules, there may be circumstances in which FPI plans to produce items that FPI does not consider to be a new product, but which an affected party may reasonably construe to be a new product. In these circumstances, the

items will be announced for comment in the *Commerce Business Daily*. The purpose of this provision is to give private industry an added level of input into such decisions made by FPI, since it is not possible to anticipate every possible situation or question that could arise within the proposed definition.

The parameters for publishing such internal decisions that are made and announced subject to this provision will be as follows: items that a reasonable person could construe to be a product separate and distinct from another item which FPI is making or recently made would be subject to announcement even though their function is similar. As an example, the production of extreme cold weather trousers would be announced, although FPI already produces bullet resistant fragmentation vests, and both are items of protective clothing.

Items that are essentially the same product, or those that are variations of an existing FPI product (e.g., a new style of seating) would not be subject to announcement of any kind. However, FPI will resolve any question as to whether to announce in favor of announcement.

In submitting comments to FPI, the following guidelines will apply:

- Comments will be due within 21 days of the date of publication;
- Relevant comments will focus on and address why the item should be considered a new product, separate and distinct from a similar item currently being produced by FPI. Comments may include such factors as: The manufacture of the item involves substantially different material and processes; companies that produce this item specialize in manufacturing only that item; the manufacturing processes are unique and are not easily adaptable to produce other similar items;
- While the primary purpose of the comment provision will be to determine if an item should be defined as a new product, comments related to market share and/or the impact that such a production decision may have on the firm will also be considered as they are relevant;
- All comments received in response to these announcements will be considered by FPI. The commenter will be advised whether FPI decides to go through the guidelines process.

As always, any interested party has a right to raise any question at any time with the Board of Directors (see 28 CFR 301.2), and thus may appeal to FPI's Board of Directors any issue or decision relating to whether a product is a new

product. However, pending such review, FPI may proceed with its plans in accordance with the decision as announced in this process described above, unless and until the decision is reversed.

3. Significant Expansion of an Existing Product

Proposed production increases by FPI which may increase its market share will be reviewed during the Corporation's annual planning cycle and be deemed a significant product expansion under the following circumstances:

(1) Sales (measured in constant dollars) for the specific product will increase by more than 10 percent, or \$1 million, in any given year, whichever is greater; or

(2) In any case where FPI's market share is greater than 25%, any increase in FPI's market share resulting from an increase in FPI production would be deemed to be significant for purposes of triggering the guidelines process.

Discussion: When either criterion is met, an analysis of the federal government market for the specific product will be conducted and an estimate of FPI's current and projected market share will be developed. The production increase will be deemed "significant" when FPI's market share position changes in accordance with the following sliding scale. If FPI currently has a 15% or less share of the federal market, any increase in market share would be permissible, provided that the particular increase does not result in FPI exceeding a 15% market share. If FPI has a market share greater than 15%, but less than 20%, FPI could increase its market share to 20%, before the increase would be deemed to be significant. If FPI has a market share of greater than 20%, but less than 25%, FPI could increase its market share to 25%, before the increase would be deemed to be significant.

The allowable increase in market share from 15 to 20% in one year, should not allow FPI to (assuming its sales increases by more than 10%) increase its share again from 20 to 25% in a subsequent year without going through the guidelines process.

Market shares will be calculated on the basis of FSC's for planning purposes. If based on initial assessment, it is determined that a comprehensive impact study, and Board approval, is likely to be required, a detailed in depth analysis of market share will be undertaken to fully assess potential impact.

Situations where FPI production remains constant, but market share

increases as a result of other factors, including market changes, will not require FPI to initiate the guidelines process. The fact that 25% may "trigger" the guidelines does not necessarily mean the Board of Directors cannot approve an FPI production level resulting in a federal market share above 25%.

The prior three years' data will be used to determine the share of the federal government market, to ensure that annual fluctuations are taken into account and normalized.

FPI may produce at the rate of previously achieved annual sales levels, adjusted for inflation, without initiating the guidelines process.

In cases where FPI sales inadvertently or insubstantially exceed Board authorized levels, FPI will make every effort to adjust its production by a corresponding amount among the following year. If FPI plans call for continued growth, it will invoke the guidelines process without delay and seek Board approval of future production levels. Should the Board decide on a production level lower than that which FPI already achieved, FPI will adjust its future plans and, if necessary scale back, to comply with the Board's decision.

In cases of extreme public exigency, such as national disaster or national defense emergency, such as during Operation Desert Storm, FPI may exceed guidelines thresholds, provided FPI receives specific orders or requests from senior Department of Defense and/or Executive Branch officials. Increased sales resulting from national exigencies will not be considered a violation of guidelines ceilings in the year which they occurred. In such cases, the higher production levels achieved by FPI will be temporary, and will not be used as part of FPI's baseline for future calculations of significant expansion. Such exceptional events will be subject to approval by FPI's Chief Operating Officer, with concurrence of FPI's Board of Directors.

Subject to other provisions noted in this procedure, FPI's sales for the current fiscal year will be utilized as the base year for future application.

Prior decisions of FPI's Board of Directors will remain unaffected by these changes to the definitions.

These proposed rules have been reviewed by FPI's Growth Strategies Implementation Committee. The following officials are represented on the Committee:

Executive Vice President, Envelope Manufacturers Association of America

Vice President—Government Affairs, Screen Printing and Graphic Imaging Association International
Manager, Break-Out Procurement Center Representative Program, Small Business Administration
Former Senior Staff Member, Brookings Institution
Head of Office of Wages and Industrial Relations, AFL-CIO
President, State/Federal Correctional Vendors Association

Their comments and suggestions have been incorporated into this proposed procedure.¹

All comments received in response to this proposed procedure have been provided to the FPI Board of Directors, which has approved these procedures for publication and implementation on an interim basis.

Robert Grieser,
Manager, Planning, Research and Activation Branch.

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Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Information Collection Under Review; Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program—"Aggregate Data Forms: Police and School."

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments. Public comments are encouraged and will be accepted until April 11, 1997. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory

Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to 202-395-7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202-514-1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

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

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

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

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

Overview of this information collection:

(1) Type of information collection: New collection.

(2) The title of the form/collection: Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program—"Aggregate Data Forms: Police and School."

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Not-for-Profit Institutions. Other: State, Local, or Tribal Government. The study will obtain interview and test information on youth background, social adjustment, deviancy/crime activity, self-esteem, and depression/personality adjustment. It will determine the effectiveness of the program, comparing program subjects to non-program gang youth of the same

¹ Of course, these officials and these organizations are not precluded from making further comment at this time.