

109TH CONGRESS
1ST SESSION

H. R. 2965

To amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars, to provide a five-year period during which Federal Prison Industries adjusts to obtaining inmate work opportunities through other than its mandatory source status, to enhance inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize alternative inmate work opportunities in support of non-profit organizations and other public service programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2005

Mr. HOEKSTRA (for himself, Mr. FRANK of Massachusetts, Mrs. MALONEY, Mr. SENSENBRENNER, Mr. CONYERS, Mr. COBLE, Mr. MANZULLO, Mr. NADLER, Mr. EHLERS, Mr. TOM DAVIS of Virginia, Mr. DINGELL, Mr. JENKINS, Mr. EVERETT, Mr. RANGEL, Mr. HOSTETTTLER, Mr. FEENEY, Mr. KINGSTON, Ms. BALDWIN, Mr. INGLIS of South Carolina, Mr. UPTON, Mr. EMANUEL, Mr. BARTLETT of Maryland, Mr. KNOLLENBERG, Mr. FORBES, Mr. FLAKE, Mr. SESSIONS, Mr. OLVER, Mr. LOBIONDO, Mrs. MYRICK, Mr. ROYCE, Mr. LANTOS, Mr. MCGOVERN, Mr. PENCE, Mr. SOUDER, Mr. CAMP, Mr. DOYLE, Mr. BOEHNER, Mr. NEY, Mr. CARTER, Mr. NUSSLE, Mr. WEINER, Mr. NORWOOD, Mr. ROGERS of Michigan, Mr. BRADY of Pennsylvania, Mr. DUNCAN, Mr. MCCOTTER, Mr. MCKEON, Ms. HART, Mr. KUCINICH, Mr. THORNBERRY, Mr. RYAN of Wisconsin, Mr. LATHAM, Mrs. MILLER of Michigan, Mr. LEACH, Mr. SHADEGG, Ms. WOOLSEY, Mrs. BLACKBURN, Mr. CULBERSON, Mr. GINGREY, Mr. TERRY, Mr. WAMP, Mr. FERGUSON, Mrs. MUSGRAVE, Mr. CHOCOLA, Mr. BEAUPREZ, Mr. PORTER, Mr. OSBORNE, Mr. TIBERI, Mrs. BIGGERT, Mr. WILSON of South Carolina, Mr. SHUSTER, Mr. MORAN of Kansas, Mr. HAYES, Mr. KING of Iowa, Mrs. WILSON of New Mexico, Mr. BARRETT of South Carolina, Mr. PLATTS, and Mr. CANTOR) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars, to provide a five-year period during which Federal Prison Industries adjusts to obtaining inmate work opportunities through other than its mandatory source status, to enhance inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize alternative inmate work opportunities in support of non-profit organizations and other public service programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Federal Prison Industries Competition in Contracting
 6 Act of 2005”.

7 (b) TABLE OF CONTENTS.—The table of contents for
 8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Governmentwide procurement policy relating to purchases from Federal Prison Industries.
- Sec. 3. Public participation regarding expansion proposals by Federal Prison Industries.
- Sec. 4. Transitional mandatory source authority.
- Sec. 5. Authority to perform as a Federal subcontractor.
- Sec. 6. Inmate wages and deductions.
- Sec. 7. Clarifying amendment relating to services.
- Sec. 8. Conforming amendment.
- Sec. 9. Rules of construction relating to chapter 307.

- Sec. 10. Providing additional rehabilitative opportunities for inmates.
 Sec. 11. Restructuring the Board of Directors.
 Sec. 12. Providing additional management flexibility to Federal Prison Industries operations.
 Sec. 13. Transitional personnel management authority.
 Sec. 14. Federal Prison Industries report to Congress.
 Sec. 15. Independent study to determine the effects of eliminating the Federal Prison Industries mandatory source authority.
 Sec. 16. Sense of Congress.
 Sec. 17. Definitions.
 Sec. 18. Implementing regulations and procedures.
 Sec. 19. Rules of construction.
 Sec. 20. Effective date and applicability.
 Sec. 21. Clerical amendments.

1 **SEC. 2. GOVERNMENTWIDE PROCUREMENT POLICY RELAT-**
 2 **ING TO PURCHASES FROM FEDERAL PRISON**
 3 **INDUSTRIES.**

4 Section 4124 of title 18, United States Code, is
 5 amended to read as follows:

6 **“§ 4124. Governmentwide procurement policy relat-**
 7 **ing to purchases from Federal Prison In-**
 8 **dustries**

9 “(a) IN GENERAL.—Purchases from Federal Prison
 10 Industries, Incorporated, a wholly owned Government cor-
 11 poration, as referred to in section 9101(3)(E) of title 31,
 12 may be made by a Federal department or agency only in
 13 accordance with this section.

14 “(b) SOLICITATION AND EVALUATION OF OFFERS
 15 AND CONTRACT AWARDS.—(1) If a procurement activity
 16 of a Federal department or agency has a requirement for
 17 a specific product or service that is authorized to be of-
 18 fered for sale by Federal Prison Industries, in accordance
 19 with section 4122 of this title, and is listed in the catalog

1 referred to in subsection (g), the procurement activity
2 shall solicit an offer from Federal Prison Industries, if the
3 purchase is expected to be in excess of the micro-purchase
4 threshold (as defined by section 32(f) of the Office of Fed-
5 eral Procurement Policy Act (41 U.S.C. 428(f))).

6 “(2) A contract award for such product or service
7 shall be made using competitive procedures in accordance
8 with the applicable evaluation factors, unless a determina-
9 tion is made by the Attorney General pursuant to para-
10 graph (3) or an award using other than competitive proce-
11 dures is authorized pursuant to paragraph (7).

12 “(3) The procurement activity shall negotiate with
13 Federal Prison Industries on a noncompetitive basis for
14 the award of a contract if the Attorney General determines
15 that—

16 “(A) Federal Prison Industries cannot reason-
17 ably expect fair consideration to receive the contract
18 award on a competitive basis; and

19 “(B) the contract award is necessary to main-
20 tain work opportunities otherwise unavailable at the
21 penal or correctional facility at which the contract is
22 to be performed to prevent circumstances that could
23 reasonably be expected to significantly endanger the
24 safe and effective administration of such facility.

1 “(4) Except in the case of an award to be made pur-
2 suant to paragraph (3), a contract award shall be made
3 with Federal Prison Industries only if the contracting offi-
4 cer for the procurement activity determines that—

5 “(A) the specific product or service to be fur-
6 nished will meet the requirements of the procure-
7 ment activity (including any applicable
8 prequalification requirements and all specified com-
9 mercial or governmental standards pertaining to
10 quality, testing, safety, serviceability, and warran-
11 ties);

12 “(B) timely performance of the contract can be
13 reasonably expected; and

14 “(C) the contract price does not exceed a cur-
15 rent market price.

16 “(5) A determination by the Attorney General pursu-
17 ant to paragraph (3) shall be—

18 “(A) supported by specific findings by the war-
19 den of the penal or correctional institution at which
20 a Federal Prison Industries workshop is scheduled
21 to perform the contract;

22 “(B) supported by specific findings by Federal
23 Prison Industries regarding why it does not expect
24 to win the contract on a competitive basis; and

1 “(C) made and reported in the same manner as
2 a determination made pursuant to section 303(c)(7)
3 of the Federal Property and Administrative Services
4 Act of 1949 (41 U.S.C. 253(c)(7)).

5 “(6) If the Attorney General has not made the deter-
6 mination described in paragraph (3) within 30 days after
7 Federal Prison Industries has been informed of a con-
8 tracting opportunity by a procurement activity, the pro-
9 curement activity may proceed to conduct a procurement
10 for the product or service in accordance with the proce-
11 dures generally applicable to such procurements by the
12 procurement activity.

13 “(7) A contract award may be made to Federal Pris-
14 on Industries using other than competitive procedures if
15 such product or service is only available from Federal
16 Prison Industries and the contract may be awarded under
17 the authority of section 2304(c)(1) of title 10 or section
18 303(c) of the Federal Property and Administrative Serv-
19 ices Act of 1949 (41 U.S.C. 252(c)(1)), as may be applica-
20 ble, and pursuant to the justification and approval re-
21 quirements relating to such noncompetitive procurements
22 specified by law and the Governmentwide Federal Acquisi-
23 tion Regulation.

1 “(8) A contract award may be made to Federal Pris-
2 on Industries using other than competitive procedures by
3 the Federal Bureau of Prisons.

4 “(9) A contract award may be made to Federal Pris-
5 on Industries using other than competitive procedures if
6 the product or service to be acquired would otherwise be
7 furnished by a contractor performing the work outside of
8 the United States.

9 “(c) OFFERS FROM FEDERAL PRISON INDUS-
10 TRIES.—A timely offer received from Federal Prison In-
11 dustries to furnish a product or service to a Federal de-
12 partment or agency shall be considered for award without
13 limitation as to the dollar value of the proposed purchase,
14 unless the contract opportunity has been reserved for com-
15 petition exclusively among small business concerns pursu-
16 ant to section 15(a) of the Small Business Act (15 U.S.C.
17 644(a)) and its implementing regulations.

18 “(d) PERFORMANCE BY FEDERAL PRISON INDUS-
19 TRIES.—Federal Prison Industries shall perform its con-
20 tractual obligations under a contract awarded by a Fed-
21 eral department or agency to the same extent as any other
22 contractor.

23 “(e) FINALITY OF CONTRACTING OFFICER’S DECI-
24 SION.—(1) A decision by a contracting officer regarding
25 the award of a contract to Federal Prison Industries or

1 relating to the performance of such contract shall be final,
2 unless reversed on appeal pursuant to paragraph (2) or
3 (3).

4 “(2) The Chief Executive Officer of Federal Prison
5 Industries may appeal to the head of a Federal depart-
6 ment or agency a decision by a contracting officer not to
7 award a contract to Federal Prison Industries pursuant
8 to subsection (b)(4). The decision of the head of a Federal
9 department or agency on appeal shall be final.

10 “(3) A dispute between Federal Prison Industries
11 and a procurement activity regarding performance of a
12 contract shall be subject to—

13 “(A) alternative means of dispute resolution
14 pursuant to subchapter IV of chapter 5 of title 5;
15 or

16 “(B) final resolution by the board of contract
17 appeals having jurisdiction over the procurement ac-
18 tivity’s contract performance disputes pursuant to
19 the Contract Disputes Act of 1978 (41 U.S.C. 601
20 et seq.).

21 “(f) REPORTING OF PURCHASES.—Each Federal de-
22 partment or agency shall report purchases from Federal
23 Prison Industries to the Federal Procurement Data Sys-
24 tem (as referred to in section 6(d)(4) of the Office of Fed-
25 eral Procurement Policy Act (41 U.S.C. 405(d)(4))) in the

1 same manner as it reports to such System any acquisition
 2 in an amount in excess of the simplified acquisition thresh-
 3 old (as defined by section 4(11) of the Office of Federal
 4 Procurement Policy Act (41 U.S.C. 403(11))).

5 “(g) CATALOG OF PRODUCTS.—Federal Prison In-
 6 dustries shall publish and maintain a catalog of all specific
 7 products and services that it is authorized to offer for sale.
 8 Such catalog shall be periodically revised as products and
 9 services are added or deleted by its board of directors (in
 10 accordance with section 4122(b) of this title).

11 “(h) COMPLIANCE WITH STANDARDS.—Federal Pris-
 12 on Industries shall be subject to Federal occupational,
 13 health, and safety standards with respect to the operation
 14 of its industrial operations.”.

15 **SEC. 3. PUBLIC PARTICIPATION REGARDING EXPANSION**
 16 **PROPOSALS BY FEDERAL PRISON INDUS-**
 17 **TRIES.**

18 Section 4122(b) of title 18, United States Code, is
 19 amended—

20 (1) by redesignating paragraph (6) as para-
 21 graph (12); and

22 (2) by striking paragraphs (4) and (5) and in-
 23 serting the following new paragraphs:

24 “(4) A decision to authorize Federal Prison Indus-
 25 tries to offer a new specific product or specific service or

1 to expand the production of an existing product or service
2 shall be made by its board of directors in conformance
3 with the requirements of subsections (b), (c), (d), and (e)
4 of section 553 of title 5, and this chapter.

5 “(5)(A) Whenever Federal Prison Industries pro-
6 poses to offer for sale a new specific product or specific
7 service or to expand production of a currently authorized
8 product or service, the Chief Operating Officer of Federal
9 Prison Industries shall submit an appropriate proposal to
10 the board of directors and obtain the board’s approval be-
11 fore initiating any such expansion. The proposal submitted
12 to the board shall include a detailed analysis of the prob-
13 able impact of the proposed expansion of sales within the
14 Federal market by Federal Prison Industries on private
15 sector firms and their non-inmate workers.

16 “(B)(i) The analysis required by subparagraph (A)
17 shall be performed by an interagency team on a reimburs-
18 able basis or by a private contractor paid by Federal Pris-
19 on Industries.

20 “(ii) If the analysis is to be performed by an inter-
21 agency team, such team shall be led by the Administrator
22 of the Small Business Administration or the designee of
23 such officer with representatives of the Department of
24 Labor, the Department of Commerce, and the Federal
25 Procurement Data Center.

1 “(iii) If the analysis is to be performed by a private
2 contractor, the selection of the contractor and the admin-
3 istration of the contract shall be conducted by one of the
4 entities referenced in clause (ii) as an independent execu-
5 tive agent for the board of directors. Maximum consider-
6 ation shall be given to any proposed statement of work
7 furnished by the Chief Operating Officer of Federal Prison
8 Industries.

9 “(C) The analysis required by subparagraph (A) shall
10 identify and consider—

11 “(i) the number of vendors that currently meet
12 the requirements of the Federal Government for the
13 specific product or specific service;

14 “(ii) the proportion of the Federal Government
15 market for the specific product or specific service
16 currently furnished by small businesses during the
17 previous 3 fiscal years;

18 “(iii) the share of the Federal market for the
19 specific product or specific service projected for Fed-
20 eral Prison Industries for the fiscal year in which
21 production or performance will commence or expand
22 and the subsequent 4 fiscal years;

23 “(iv) whether the industry producing the spe-
24 cific product or specific service in the private sec-
25 tor—

1 “(I) has an unemployment rate higher
2 than the national average; or

3 “(II) has a rate of unemployment for
4 workers that has consistently shown an increase
5 during the previous 5 years;

6 “(v) whether the specific product is an import-
7 sensitive product;

8 “(vi) the requirements of the Federal Govern-
9 ment and the demands of entities other than the
10 Federal Government for the specific product or serv-
11 ice during the previous 3 fiscal years;

12 “(vii) the projected growth or decline in the de-
13 mand of the Federal Government for the specific
14 product or specific service;

15 “(viii) the capability of the projected demand of
16 the Federal Government for the specific product or
17 service to sustain both Federal Prison Industries
18 and private vendors; and

19 “(ix) whether authorizing the production of the
20 new product or performance of a new service will
21 provide inmates with the maximum opportunity to
22 acquire knowledge and skill in trades and occupa-
23 tions that will provide them with a means of earning
24 a livelihood upon release.

1 “(D)(i) The board of directors may not approve a
2 proposal to authorize the production and sale of a new
3 specific product or continued sale of a previously author-
4 ized product unless—

5 “(I) the product to be furnished is a prison-
6 made product; or

7 “(II) the service to be furnished is to be per-
8 formed by inmate workers.

9 “(ii) The board of directors may not approve a pro-
10 posal to authorize the production and sale of a new prison-
11 made product or to expand production of a currently au-
12 thorized product if the product is—

13 “(I) produced in the private sector by an indus-
14 try which has reflected during the previous year an
15 unemployment rate above the national average; or

16 “(II) an import-sensitive product.

17 “(iii) The board of directors may not approve a pro-
18 posal for inmates to provide a service in which an inmate
19 worker has access to—

20 “(I) personal or financial information about in-
21 dividual private citizens, including information relat-
22 ing to such person’s real property, however de-
23 scribed, without giving prior notice to such persons
24 or class of persons to the greatest extent practicable;

1 “(II) geographic data regarding the location of
2 surface and subsurface infrastructure providing com-
3 munications, water and electrical power distribution,
4 pipelines for the distribution of natural gas, bulk pe-
5 troleum products and other commodities, and other
6 utilities; or

7 “(III) data that is classified.

8 “(iv)(I) Federal Prison Industries is prohibited from
9 furnishing through inmate labor construction services, un-
10 less to be performed within a Federal correctional institu-
11 tion pursuant to the participation of an inmate in an ap-
12 prenticeship or other vocational education program teach-
13 ing the skills of the various building trades.

14 “(II) For purposes of this clause, the term ‘construc-
15 tion’ has the meaning given such term by section 2.101
16 of the Federal Acquisition Regulation (48 C.F.R. part
17 2.101), as in effect on June 1, 2004, including the repair,
18 alteration, or maintenance of real property in being.

19 “(6) To provide further opportunities for participa-
20 tion by interested parties, the board of directors shall—

21 “(A) give additional notice of a proposal to au-
22 thorize the production and sale of a new product or
23 service, or expand the production of a currently au-
24 thorized product or service, in a publication designed
25 to most effectively provide notice to private vendors

1 and labor unions representing private sector workers
2 who could reasonably be expected to be affected by
3 approval of the proposal, which notice shall offer to
4 furnish copies of the analysis required by paragraph
5 (5) and shall solicit comment on the analysis;

6 “(B) solicit comments on the analysis required
7 by paragraph (5) from trade associations rep-
8 resenting vendors and labor unions representing pri-
9 vate sector workers who could reasonably be ex-
10 pected to be affected by approval of the proposal to
11 authorize the production and sale of a new product
12 or service (or expand the production of a currently
13 authorized product or service); and

14 “(C) afford an opportunity, on request, for a
15 representative of an established trade association,
16 labor union, or other private sector representatives
17 to present comments on the proposal directly to the
18 board of directors.

19 “(7) The board of directors shall be provided copies
20 of all comments received on the expansion proposal.

21 “(8) Based on the comments received on the initial
22 expansion proposal, the Chief Operating Officer of Federal
23 Prison Industries may provide the board of directors a re-
24 vised expansion proposal. If such revised proposal provides
25 for expansion of inmate work opportunities in an industry

1 different from that initially proposed, such revised pro-
2 posal shall reflect the analysis required by paragraph
3 (5)(C) and be subject to the public comment requirements
4 of paragraph (6).

5 “(9) The board of directors shall consider a proposal
6 to authorize the sale of a new specific product or specific
7 service (or to expand the volume of sales for a currently
8 authorized product or service) and take any action with
9 respect to such proposal, during a meeting that is open
10 to the public, unless closed pursuant to section 552(b) of
11 title 5.

12 “(10) In conformity with the requirements of para-
13 graphs (5) through (9) of this subsection, the board of
14 directors may—

15 “(A) authorize the donation of products pro-
16 duced or services furnished by Federal industries
17 and available for sale;

18 “(B) authorize the production of a new specific
19 product or the furnishing of a new specific service
20 for donation; or

21 “(C) authorize a proposal to expand production
22 of a currently authorized specific product or specific
23 service in an amount in excess of a reasonable share
24 of the market for such product or service, if—

1 “(i) a Federal agency or department, pur-
2 chasing such product or service, has requested
3 that Federal Prison Industries be authorized to
4 furnish such product or service in amounts that
5 are needed by such agency or department; or

6 “(ii) the proposal is justified for other good
7 cause and supported by at least eight members
8 of the board.”.

9 **SEC. 4. TRANSITIONAL MANDATORY SOURCE AUTHORITY.**

10 (a) **IN GENERAL.**—Notwithstanding the require-
11 ments of section 4124 of title 18, United States Code (as
12 amended by section 2 of this Act), a Federal department
13 or agency having a requirement for a product that is au-
14 thorized for sale by Federal Prison Industries and is listed
15 in its catalog (referred to in section 4124(g) of title 18,
16 United States Code) shall first solicit an offer from Fed-
17 eral Prison Industries and make purchases on a non-
18 competitive basis in accordance with this section or in ac-
19 cordance with section 2410n of title 10, United States
20 Code, or section 318 of title III of the Federal Property
21 and Administrative Services Act of 1949 (as added by sub-
22 section (i)).

23 (b) **PREFERENTIAL SOURCE STATUS.**—Subject to
24 the limitations of subsection (d), a contract award shall
25 be made on a noncompetitive basis to Federal Prison In-

1 dustries if the contracting officer for the procurement ac-
2 tivity determines that—

3 (1) the product offered by Federal Prison In-
4 dustries will meet the requirements of the procure-
5 ment activity (including commercial or governmental
6 standards or specifications pertaining to design, per-
7 formance, testing, safety, serviceability, and warran-
8 ties as may be imposed upon a private sector sup-
9 plier of the type being offered by Federal Prison In-
10 dustries);

11 (2) timely performance of the contract by Fed-
12 eral Prison Industries can be reasonably expected;
13 and

14 (3) the negotiated price does not exceed a fair
15 and reasonable price.

16 (c) CONTRACTUAL TERMS.—The terms and condi-
17 tions of the contract and the price to be paid to Federal
18 Prison Industries shall be determined by negotiation be-
19 tween Federal Prison Industries and the Federal agency
20 making the purchase. The negotiated price shall not ex-
21 ceed a fair and reasonable price determined in accordance
22 with the procedures of the Federal Acquisition Regulation.

23 (d) PERFORMANCE OF CONTRACTUAL OBLIGA-
24 TIONS.—

1 (1) IN GENERAL.—Federal Prison Industries
2 shall perform the obligations of the contract nego-
3 tiated pursuant to subsection (c).

4 (2) PERFORMANCE DISPUTES.—If the head of
5 the contracting activity and the Chief Operating Of-
6 ficer of Federal Prison Industries are unable to re-
7 solve a contract performance dispute to their mutual
8 satisfaction, such dispute shall be resolved pursuant
9 to section 4124(e)(3) of title 18, United States Code
10 (as added by section 2 of this Act).

11 (e) LIMITATIONS ON USE OF AUTHORITY.—

12 (1) IN GENERAL.—As a percentage of the sales
13 made by Federal Prison Industries during the base
14 period, the total dollar value of sales to the Govern-
15 ment made pursuant to subsection (b) and sub-
16 section (c) of this section shall not exceed—

17 (A) 90 percent in fiscal year 2007;

18 (B) 85 percent in fiscal year 2008;

19 (C) 70 percent in fiscal year 2009;

20 (D) 55 percent in fiscal year 2010; and

21 (E) 40 percent in fiscal year 2011.

22 (2) SALES WITHIN VARIOUS BUSINESS SEC-
23 TORS.—Use of the authority provided by subsections
24 (b) and (c) shall not result in sales by Federal Pris-
25 on Industries to the Government that are in excess

1 of its total sales during the base year for each busi-
2 ness sector.

3 (3) LIMITATIONS RELATING TO SPECIFIC PROD-
4 UCTS.—Use of the authorities provided by sub-
5 sections (b) and (c) shall not result in contract
6 awards to Federal Prison Industries that are in ex-
7 cess of its total sales during the base period for such
8 product.

9 (4) CHANGES IN DESIGN SPECIFICATIONS.—
10 The limitations on sales specified in paragraphs (2)
11 and (3) shall not be affected by any increases in the
12 unit cost of production of a specific product arising
13 from changes in the design specification of such
14 product directed by the buying agency.

15 (f) DURATION OF AUTHORITY.—The preferential
16 contracting authorities authorized by subsection (b) may
17 not be used on or after October 1, 2011, and become effec-
18 tive on the effective date of the final regulations issued
19 pursuant to section 18.

20 (g) DEFINITIONS.—For the purposes of this sec-
21 tion—

22 (1) the term “base period” means the total
23 sales of Federal Prison Industries during the period
24 October 1, 2003, and September 30, 2004 (Fiscal
25 Year 2004);

1 (2) the term “business sectors” means the eight
2 product/service business groups identified in the
3 2002 Federal Prison Industries annual report as the
4 Clothing and Textiles Business Group, the Elec-
5 tronics Business Group, the Fleet Management and
6 Vehicular Components Business Group, the Graphics
7 Business Group, the Industrial Products Business
8 Group, the Office Furniture Business Group, the
9 Recycling Activities Business Group, and the Serv-
10 ices Business Group; and

11 (3) the term “fair and reasonable price” shall
12 be given the same meaning as, and be determined
13 pursuant to, part 15.8 of the Federal Acquisition
14 Regulation (48 C.F.R. 15.8).

15 (h) FINDING BY ATTORNEY GENERAL WITH RE-
16 SPECT TO PUBLIC SAFETY.—(1) Not later than 60 days
17 prior to the end of each fiscal year specified in subsection
18 (e)(1), the Attorney General shall make a finding regard-
19 ing the effects of the percentage limitation imposed by
20 such subsection for such fiscal year and the likely effects
21 of the limitation imposed by such subsection for the fol-
22 lowing fiscal year.

23 (2) The Attorney General’s finding shall include a de-
24 termination whether such limitation has resulted or is like-
25 ly to result in a substantial reduction in inmate industrial

1 employment and whether such reductions, if any, present
2 a significant risk of adverse effects on safe prison oper-
3 ation or public safety.

4 (3) If the Attorney General finds a significant risk
5 of adverse effects on either safe prison management or
6 public safety, he shall so advise the Congress.

7 (4) In advising the Congress pursuant to paragraph
8 (3), the Attorney General shall make recommendations for
9 additional authorizations of appropriations to provide ad-
10 ditional alternative inmate rehabilitative opportunities and
11 additional correctional staffing, as may be appropriate.

12 (i) PROCEDURAL REQUIREMENTS FOR CIVILIAN
13 AGENCIES RELATING TO PRODUCTS OF FEDERAL PRISON
14 INDUSTRIES.—Title III of the Federal Property and Ad-
15 ministrative Services Act of 1949 (41 U.S.C. 251 et seq.)
16 is amended by adding at the end the following new section:

17 **“SEC. 318. PRODUCTS OF FEDERAL PRISON INDUSTRIES:**
18 **PROCEDURAL REQUIREMENTS.**

19 “(a) MARKET RESEARCH.—Before purchasing a
20 product listed in the latest edition of the Federal Prison
21 Industries catalog under section 4124(d) of title 18,
22 United States Code, the head of an executive agency shall
23 conduct market research to determine whether the Federal
24 Prison Industries product is comparable to products avail-
25 able from the private sector that best meet the executive

1 agency’s needs in terms of price, quality, and time of deliv-
2 ery.

3 “(b) COMPETITION REQUIREMENT.—If the head of
4 the executive agency determines that a Federal Prison In-
5 dustries product is not comparable in price, quality, or
6 time of delivery to products available from the private sec-
7 tor that best meet the executive agency’s needs in terms
8 of price, quality, and time of delivery, the agency head
9 shall use competitive procedures for the procurement of
10 the product or shall make an individual purchase under
11 a multiple award contract. In conducting such a competi-
12 tion or making such a purchase, the agency head shall
13 consider a timely offer from Federal Prison Industries.

14 “(c) IMPLEMENTATION BY HEAD OF EXECUTIVE
15 AGENCY.—The head of an executive agency shall ensure
16 that—

17 “(1) the executive agency does not purchase a
18 Federal Prison Industries product or service unless
19 a contracting officer of the agency determines that
20 the product or service is comparable to products or
21 services available from the private sector that best
22 meet the agency’s needs in terms of price, quality,
23 and time of delivery; and

1 “(2) Federal Prison Industries performs its
2 contractual obligations to the same extent as any
3 other contractor for the executive agency.

4 “(d) MARKET RESEARCH DETERMINATION NOT SUB-
5 JECT TO REVIEW.—A determination by a contracting offi-
6 cer regarding whether a product or service offered by Fed-
7 eral Prison Industries is comparable to products or serv-
8 ices available from the private sector that best meet an
9 executive agency’s needs in terms of price, quality, and
10 time of delivery shall not be subject to review pursuant
11 to section 4124(b) of title 18.

12 “(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A
13 contractor or potential contractor of an executive agency
14 may not be required to use Federal Prison Industries as
15 a subcontractor or supplier of products or provider of serv-
16 ices for the performance of a contract of the executive
17 agency by any means, including means such as—

18 “(A) a contract solicitation provision requiring
19 a contractor to offer to make use of products or
20 services of Federal Prison Industries in the perform-
21 ance of the contract;

22 “(B) a contract specification requiring the con-
23 tractor to use specific products or services (or class-
24 es of products or services) offered by Federal Prison
25 Industries in the performance of the contract; or

1 “(C) any contract modification directing the use
2 of products or services of Federal Prison Industries
3 in the performance of the contract.

4 “(2) In this subsection, the term ‘contractor’, with
5 respect to a contract, includes a subcontractor at any tier
6 under the contract.

7 “(f) PROTECTION OF CLASSIFIED AND SENSITIVE
8 INFORMATION.—The head of an executive agency may not
9 enter into any contract with Federal Prison Industries
10 under which an inmate worker would have access to—

11 “(1) any data that is classified;

12 “(2) any geographic data regarding the location
13 of—

14 “(A) surface and subsurface infrastructure
15 providing communications or water or electrical
16 power distribution;

17 “(B) pipelines for the distribution of nat-
18 ural gas, bulk petroleum products, or other
19 commodities; or

20 “(C) other utilities; or

21 “(3) any personal or financial information
22 about any individual private citizen, including infor-
23 mation relating to such person’s real property how-
24 ever described, without the prior consent of the indi-
25 vidual.

1 “(g) DEFINITIONS.—In this section:

2 “(1) The term ‘competitive procedures’ has the
3 meaning given such term in section 4(5) of the Of-
4 fice of Federal Procurement Policy Act (41 U.S.C.
5 403(5)).

6 “(2) The term ‘market research’ means obtain-
7 ing specific information about the price, quality, and
8 time of delivery of products available in the private
9 sector through a variety of means, which may in-
10 clude—

11 “(A) contacting knowledgeable individuals
12 in government and industry;

13 “(B) interactive communication among in-
14 dustry, acquisition personnel, and customers;
15 and

16 “(C) interchange meetings or pre-solicita-
17 tion conferences with potential offerors.”.

18 **SEC. 5. AUTHORITY TO PERFORM AS A FEDERAL SUBCON-**
19 **TRACTOR.**

20 (a) IN GENERAL.—Federal Prison Industries is au-
21 thorized to enter into a contract with a Federal contractor
22 (or a subcontractor of such contractor at any tier) to
23 produce products as a subcontractor or supplier in the per-
24 formance of a Federal procurement contract. The use of
25 Federal Prison Industries as a subcontractor or supplier

1 shall be a wholly voluntary business decision by the Fed-
2 eral prime contractor or subcontractor, subject to any
3 prior approval of subcontractors or suppliers by the con-
4 tracting officer which may be imposed by the Federal Ac-
5 quisition Regulation or by the contract.

6 (b) COMMERCIAL SALES PROHIBITED.—The author-
7 ity provided by subsection (a) shall not result, either di-
8 rectly or indirectly, in the sale in the commercial market
9 of a product or service resulting from the labor of Federal
10 inmate workers in violation of section 1761(a) of title 18,
11 United States Code. A Federal contractor (or subcon-
12 tractor at any tier) using Federal Prison Industries as a
13 subcontractor or supplier in furnishing a commercial prod-
14 uct pursuant to a Federal contract shall implement appro-
15 priate management procedures to prevent introducing an
16 inmate-produced product into the commercial market.

17 (c) PROHIBITIONS ON MANDATING SUBCONTRACTING
18 WITH FEDERAL PRISON INDUSTRIES.—Except as author-
19 ized under the Federal Acquisition Regulation, the use of
20 Federal Prison Industries as a subcontractor or supplier
21 of products or provider of services shall not be imposed
22 upon prospective or actual Federal prime contractors or
23 a subcontractors at any tier by means of—

1 (1) a contract solicitation provision requiring a
2 contractor to offer to make use of Federal Prison
3 Industries, its products or services;

4 (2) specifications requiring the contractor to
5 use specific products or services (or classes of prod-
6 ucts or services) offered by Federal Prison Indus-
7 tries in the performance of the contract;

8 (3) any contract modification directing the use
9 of Federal Prison Industries, its products or serv-
10 ices; or

11 (4) any other means.

12 **SEC. 6. INMATE WAGES AND DEDUCTIONS.**

13 Section 4122(b) of title 18, United States Code (as
14 amended by section 3 of this Act), is further amended by
15 adding after paragraph (10) a new paragraph (11) as fol-
16 lows:

17 “(11)(A) The Board of Directors of Federal Prison
18 Industries shall prescribe the rates of hourly wages to be
19 paid inmates performing work for or through Federal
20 Prison Industries. The Director of the Federal Bureau of
21 Prisons shall prescribe the rates of hourly wages for other
22 work assignments within the various Federal correctional
23 institutions. In the case of an inmate whose term of im-
24 prisonment is to expire in not more than 2 years, wages
25 shall be earned at an hourly rate of not less than \$2.50,

1 but paid at the same rate and in the same manner as to
2 any other inmate, and any amount earned but not paid
3 shall be held in trust and paid only upon the actual expira-
4 tion of the term of imprisonment.

5 “(B) The various inmate wage rates shall be reviewed
6 and considered for increase on not less than a biannual
7 basis.

8 “(C) The Board of Directors of Federal Prison In-
9 dustries shall—

10 “(i) not later than September 30, 2005, in-
11 crease the maximum wage rate for inmates per-
12 forming work for or through Federal Prison Indus-
13 tries to an amount equal to 50 percent of the min-
14 imum wage prescribed by section 6(a)(1) of the Fair
15 Labor Standards Act of 1938 (29 U.S.C.
16 206(a)(1));

17 “(ii) not later than September 30, 2010, in-
18 crease such maximum wage rate to an amount equal
19 to such minimum wage; and

20 “(iii) request the Secretary of Labor to estab-
21 lish, not later than October 1, 2005, an ‘inmate
22 training wage’ pursuant to that Act.

23 “(D) Wages earned by an inmate worker shall be paid
24 in the name of the inmate. Deductions, aggregating to not

1 more than 80 percent of gross wages, shall be taken from
2 the wages due for—

3 “(i) applicable taxes (Federal, State, and local);

4 “(ii) payment of fines and restitution pursuant
5 to court order;

6 “(iii) payment of additional restitution for vic-
7 tims of the inmate’s crimes (at a rate not less than
8 10 percent of gross wages);

9 “(iv) allocations for support of the inmate’s
10 family pursuant to statute, court order, or agree-
11 ment with the inmate;

12 “(v) allocations to a fund in the inmate’s name
13 to facilitate such inmate’s assimilation back into so-
14 ciety, payable at the conclusion of incarceration; and

15 “(vi) such other deductions as may be specified
16 by the Director of the Bureau of Prisons.

17 “(E) Each inmate worker working for Federal Prison
18 Industries shall indicate in writing that such person—

19 “(i) is participating voluntarily; and

20 “(ii) understands and agrees to the wages to be
21 paid and deductions to be taken from such wages.”.

22 **SEC. 7. CLARIFYING AMENDMENT RELATING TO SERVICES.**

23 (a) IN GENERAL.—Section 1761 of title 18, United
24 States Code, is amended in subsection (a), by striking
25 “any goods, wares, or merchandise manufactured, pro-

1 duced, or mined” and inserting “products manufactured,
2 services furnished, or minerals mined”.

3 (b) COMPLETION OF EXISTING AGREEMENTS.—Any
4 prisoner work program operated by a prison or jail of a
5 State or local jurisdiction of a State which is providing
6 services for the commercial market through inmate labor
7 on October 1, 2004, may continue to provide such com-
8 mercial services until—

9 (1) the expiration date specified in the contract
10 or other agreement with a commercial partner on
11 October 1, 2004, or

12 (2) until September 30, 2008, if the prison
13 work program is directly furnishing the services to
14 the commercial market.

15 (c) APPROVAL REQUIRED FOR LONG-TERM OPER-
16 ATION.—A prison work program operated by a correc-
17 tional institution operated by a State or local jurisdiction
18 of a State may continue to provide inmate labor to furnish
19 services for sale in the commercial market after the dates
20 specified in subsection (b) if such program has been cer-
21 tified pursuant to section 1761(c)(1) of title 18, United
22 States Code, and is in compliance with the requirements
23 of such subsection and its implementing regulations.

1 **SEC. 8. CONFORMING AMENDMENT.**

2 Section 4122(a) of title 18, United States Code, is
3 amended by striking “production of commodities” and in-
4 serting “production of products or furnishing of services”.

5 **SEC. 9. RULES OF CONSTRUCTION RELATING TO CHAPTER**
6 **307.**

7 Chapter 307 of title 18, United States Code, is fur-
8 ther amended by adding the following:

9 **“§ 4130. Construction of provisions**

10 “Nothing in this chapter shall be construed—

11 “(1) to establish an entitlement of any inmate
12 to—

13 “(A) employment in a Federal Prison In-
14 dustries facility; or

15 “(B) any particular wage, compensation,
16 or benefit on demand, except as otherwise spe-
17 cifically provided by law or regulation;

18 “(2) to establish that inmates are employees for
19 the purposes of any law or program; or

20 “(3) to establish any cause of action by or on
21 behalf of any inmate against the United States or
22 any officer, employee, or contractor thereof.”.

23 **SEC. 10. PROVIDING ADDITIONAL REHABILITATIVE OPPOR-**
24 **TUNITIES FOR INMATES.**

25 (a) **ADDITIONAL EDUCATIONAL, TRAINING, AND RE-**
26 **LEASE-PREPARATION OPPORTUNITIES.—**

1 (1) PROGRAM ESTABLISHED.—There is hereby
2 established the Enhanced In-Prison Educational and
3 Vocational Assessment and Training Program within
4 the Federal Bureau of Prisons.

5 (2) COMPREHENSIVE PROGRAM.—In addition to
6 such other components as the Director of the Bu-
7 reau of Prisons deems appropriate to reduce inmate
8 idleness and better prepare inmates for a successful
9 reentry into the community upon release, the pro-
10 gram shall provide—

11 (A) in-prison assessments of inmates’
12 needs and aptitudes;

13 (B) a full range of educational opportuni-
14 ties;

15 (C) vocational training and apprentice-
16 ships; and

17 (D) comprehensive release-readiness prepa-
18 ration.

19 (3) AUTHORIZATION OF APPROPRIATIONS.—For
20 the purposes of carrying out the program established
21 by paragraph (1), \$75,000,000 is authorized for
22 each fiscal year after fiscal year 2005, to remain
23 available until expended. Funds shall be allocated
24 from the gross profits within the Federal Prison In-

1 dustries Fund, and, to the extent such amounts are
2 inadequate, from the General Treasury.

3 (4) SCHEDULE FOR IMPLEMENTATION.—All
4 components of the program shall be established—

5 (A) in at least 25 percent of all Federal
6 prisons not later than 2 years after the date of
7 the enactment of this Act;

8 (B) in at least 50 percent of all Federal
9 prisons not later than 4 years after such date
10 of enactment;

11 (C) in at least 75 percent of all Federal
12 prisons not later than 6 years after such date
13 of enactment; and

14 (D) in all Federal prisons not later than 8
15 years after such date of enactment.

16 (b) ADDITIONAL INMATE WORK OPPORTUNITIES
17 THROUGH PUBLIC SERVICE ACTIVITIES.—

18 (1) IN GENERAL.—Chapter 307 of title 18,
19 United States Code, is further amended by inserting
20 after section 4124 the following new section:

21 **“§ 4124a. Additional inmate work opportunities**
22 **through public service activities**

23 **“(a) IN GENERAL.—**Inmates with work assignments
24 within Federal Prison Industries may perform work for
25 an eligible entity pursuant to an agreement between such

1 entity and the Inmate Work Training Administrator in ac-
2 cordance with the requirements of this section.

3 “(b) DEFINITION OF ELIGIBLE ENTITIES.—For the
4 purposes of this section, the term ‘eligible entity’ means
5 an entity—

6 “(1) that is an organization described in section
7 501(c)(3) of the Internal Revenue Code of 1986 and
8 exempt from taxation under section 501(a) of such
9 Code and that has been such an organization for a
10 period of not less than 36 months prior to inclusion
11 in an agreement under this section;

12 “(2) that is a religious organization described
13 in section 501(d) of such Code and exempt from tax-
14 ation under section 501(a) of such Code; or

15 “(3) that is a unit of local government, a school
16 district, or another special purpose district.

17 “(c) INMATE WORK TRAINING ADMINISTRATOR.—

18 “(1) The Federal Prison Industries Board of
19 Directors shall designate an entity as the Inmate
20 Work Training Administrator to administer the
21 work-based training program authorized by this sec-
22 tion.

23 “(2) In selecting the Inmate Work Training
24 Administrator, the Board of Directors shall select an
25 entity—

1 “(A) that is an organization described in
2 section 501(c)(3) of the Internal Revenue Code
3 of 1986 and exempt from taxation under sec-
4 tion 501(a) of such Code; and

5 “(B) that has demonstrated, for a period
6 of not less than 5 years, expertise in the theory
7 and practice of fostering inmate rehabilitation
8 through work-based programs in cooperation
9 with private sector firms.

10 “(3) With respect to the formation and per-
11 formance of an agreement authorized by this section,
12 the Director of the Bureau of Prisons and the Chief
13 Operating Officer of Federal Prison Industries shall
14 be responsible only for—

15 “(A) maintaining appropriate institutional
16 and inmate security; and

17 “(B) matters relating to the selection and
18 payment of participating inmates.

19 “(d) PROPOSED AGREEMENTS.—An eligible entity
20 seeking to enter into an agreement pursuant to subsection
21 (a) shall submit a detailed proposal to the Inmate Work
22 Training Administrator. Each such agreement shall speci-
23 fy—

24 “(1) types of work to be performed;

1 “(2) the proposed duration of the agreement,
2 specified in terms of a base year and number of op-
3 tion years;

4 “(3) the number of inmate workers expected to
5 be employed in the specified types of work during
6 the various phases of the agreement;

7 “(4) the wage rates proposed to be paid to var-
8 ious classes of inmate workers; and

9 “(5) the facilities, services and personnel (other
10 than correctional personnel dedicated to the security
11 of the inmate workers) to be furnished by Federal
12 Prison Industries or the Bureau of Prisons and the
13 rates of reimbursement, if any, for such facilities,
14 services, and personnel.

15 “(e) REPRESENTATIONS.—

16 “(1) ELEEMOSYNARY WORK ACTIVITIES.—Each
17 proposed agreement shall be accompanied by a writ-
18 ten certification by the chief executive officer of the
19 eligible entity that—

20 “(A) the work to be performed by the in-
21 mate workers will be limited to the eleemosy-
22 nary work of such entity in the case of an enti-
23 ty described in paragraph (1) or (2) of sub-
24 section (b);

1 “(B) the work would not be performed but
2 for the availability of the inmate workers;

3 “(C) the work performed by the inmate
4 workers will not result, either directly or indi-
5 rectly, in the production of a new product or
6 the furnishing of a service that is to be offered
7 for other than resale or donation by the eligible
8 entity or any affiliate of the such entity.

9 “(2) PROTECTIONS FOR NON-INMATE WORK-
10 ERS.—Each proposed agreement shall also be ac-
11 companied by a written certification by the chief ex-
12 ecutive officer of the eligible entity that—

13 “(A) no non-inmate employee or volunteer
14 of the eligible entity (or any affiliate of the enti-
15 ty) will have his or her job abolished or work
16 hours reduced as a result of the entity being
17 authorized to utilize inmate workers; and

18 “(B) the work to be performed by the in-
19 mate workers will not supplant work currently
20 being performed by a contractor of the eligible
21 entity.

22 “(f) APPROVAL BY BOARD OF DIRECTORS.—

23 “(1) IN GENERAL.—Each such proposed agree-
24 ment shall be —presented to the Board of Directors,
25 be subject to the same opportunities for public com-

1 ment, and be publicly considered and acted upon by
2 the Board in a manner comparable to that required
3 by paragraphs (6) and (7) of section 4122(b).

4 “(2) MATTERS TO BE CONSIDERED.—In deter-
5 mining whether to approve a proposed agreement,
6 the Board shall—

7 “(A) give priority to an agreement that
8 provides inmate work opportunities that will
9 provide participating inmates with the best
10 prospects of obtaining employment paying a liv-
11 able wage upon release;

12 “(B) give priority to an agreement that
13 provides for maximum reimbursement for in-
14 mate wages and for the costs of supplies and
15 equipment needed to perform the types of work
16 to be performed;

17 “(C) not approve an agreement that will
18 result in the displacement of non-inmate work-
19 ers or volunteers contrary to the representa-
20 tions required by subsection (e)(2) as deter-
21 mined by the Board or by the Secretary of
22 Labor (pursuant to subsection (i)); and

23 “(D) not approve an agreement that will
24 result, either directly or indirectly, in the pro-

1 duction of a new product or the furnishing of
2 a service for other than resale or donation.

3 “(g) WAGE RATES AND DEDUCTIONS FROM INMATE
4 WAGES.—

5 “(1) IN GENERAL.—Inmate workers shall be
6 paid wages for work under the agreement at a basic
7 hourly rate to be negotiated between the eligible en-
8 tity and Federal Prison Industries and specified in
9 the agreement. The wage rates set by the Director
10 of the Federal Bureau of Prisons to be paid inmates
11 for various institutional work assignments are spe-
12 cifically authorized.

13 “(2) PAYMENT TO INMATE WORKER AND AU-
14 THORIZED DEDUCTIONS.—Wages shall be paid and
15 deductions taken pursuant to section
16 4122(b)(11)(C).

17 “(3) VOLUNTARY PARTICIPATION BY INMATE.—
18 Each inmate worker to be utilized by an eligible en-
19 tity shall indicate in writing that such person—

20 “(A) is participating voluntarily; and

21 “(B) understands and agrees to the wages
22 to be paid and deductions to be taken from
23 such wages.

24 “(h) ASSIGNMENT TO WORK OPPORTUNITIES.—As-
25 signment of inmates to work under an approved agree-

1 ment with an eligible entity shall be subject to the Bureau
2 of Prisons Program Statement Number 1040.10 (Non-
3 Discrimination Toward Inmates), as contained in section
4 551.90 of title 28 of the Code of Federal Regulations (or
5 any successor document).

6 “(i) ENFORCEMENT OF PROTECTIONS FOR NON-IN-
7 MATE WORKERS.—

8 “(1) PRIOR TO BOARD CONSIDERATION.—Upon
9 request of any interested person, the Secretary of
10 Labor may promptly verify a certification made pur-
11 suant subsection (e)(2) with respect to the displace-
12 ment of non-inmate workers so as to make the re-
13 sults of such inquiry available to the Board of Direc-
14 tors prior to the Board’s consideration of the pro-
15 posed agreement. The Secretary and the person re-
16 questing the inquiry may make recommendations to
17 the Board regarding modifications to the proposed
18 agreement.

19 “(2) DURING PERFORMANCE.—

20 “(A) IN GENERAL.—Whenever the Sec-
21 retary deems appropriate, upon request or oth-
22 erwise, the Secretary may verify whether the
23 actual performance of the agreement is result-
24 ing in the –displacement of non-inmate workers

1 or the use of inmate workers in –a work activity
2 not authorized under the approved agreement.

3 “(B) SANCTIONS.—Whenever the Sec-
4 retary determines that performance of the
5 agreement has resulted in the displacement of
6 non-inmate workers or employment of an in-
7 mate worker in an unauthorized work activity,
8 the Secretary may—

9 “(i) direct the Inmate Work Training
10 Administrator to terminate the agreement
11 for default, subject to the processes and
12 appeals available to a Federal contractor
13 whose procurement contract has been ter-
14 minated for default; and

15 “(ii) initiate proceedings to impose
16 upon the person furnishing the certifi-
17 cation regarding non-displacement of non-
18 inmate workers required by subsection
19 (d)(2)(B) any administrative, civil, and
20 criminal sanctions as may be available.”.

21 (2) AUTHORIZATION OF APPROPRIATION.—
22 There is authorized to be appropriated \$5,000,000
23 for each of the fiscal years 2006 through 2010 for
24 the purposes of paying the wages of inmates and
25 otherwise undertaking the maximum number of

1 agreements with eligible entities pursuant to section
2 4124a of title 18, United States Code, as added by
3 paragraph (1).

4 (3) CLERICAL AMENDMENT.—The table of sec-
5 tions for chapter 307 of title 18, United States
6 Code, is amended by inserting after the item relating
7 to section 4124 the following new item:

“4124a. Additional inmate work opportunities through public service activities.”.

8 (c) INMATE WORK OPPORTUNITIES IN SUPPORT OF
9 NOT-FOR-PROFIT ENTITIES.—

10 (1) PROPOSALS FOR DONATION PROGRAMS.—

11 The Chief Operating Officer of Federal Prison In-
12 dustries shall develop and present to the Board of
13 Directors of Federal Prison Industries proposals to
14 have Federal Prison Industries donate products and
15 services to eligible entities that provide goods or
16 services to low-income individuals who would likely
17 otherwise have difficulty purchasing such products
18 or services in the commercial market.

19 (2) SCHEDULE FOR SUBMISSION AND CONSID-
20 ERATION OF DONATION PROGRAMS.—

21 (A) INITIAL PROPOSALS.—The Chief Oper-
22 ating Officer shall submit the initial group of
23 proposals for programs of the type described in
24 paragraph (1) within 180 days after the date of
25 the enactment of this Act. The Board of Direc-

1 tors of Federal Prison Industries shall consider
2 such proposals from the Chief Operating Officer
3 not later than the date that is 270 days after
4 the date of the enactment of this Act.

5 (B) ANNUAL OPERATING PLAN.—The
6 Board of Directors of Federal Prison Industries
7 shall consider proposals by the Chief Operating
8 Officer for programs of the type described in
9 paragraph (1) as part of the annual operating
10 plan for Federal Prison Industries.

11 (C) OTHER PROPOSALS.—In addition to
12 proposals submitted by the Chief Operating Of-
13 ficer, the Board of Directors may, from time to
14 time, consider proposals presented by prospec-
15 tive eligible entities.

16 (3) DEFINITION OF ELIGIBLE ENTITIES.—For
17 the purposes of this subsection, the term “eligible
18 entity” means an entity—

19 (A) that is an organization described in
20 section 501(c)(3) of the Internal Revenue Code
21 of 1986 and exempt from taxation under sec-
22 tion 501(a) of such Code and that has been
23 such an organization for a period of not less
24 than 36 months prior to inclusion in a proposal
25 of the type described in paragraph (1), or

1 (B) that is a religious organization de-
2 scribed in section 501(d) of such Code and ex-
3 empt from taxation under section 501(a) of
4 such Code.

5 (4) AUTHORIZATION OF APPROPRIATIONS.—

6 There are authorized to be appropriated \$7,000,000
7 for each of the fiscal years 2006 through 2010 for
8 the purposes of paying the wages of inmates and
9 otherwise carrying out programs of the type de-
10 scribed in paragraph (1).

11 (d) MAXIMIZING INMATE REHABILITATIVE OPPOR-
12 TUNITIES THROUGH COGNITIVE ABILITIES ASSESS-
13 MENTS.—

14 (1) DEMONSTRATION PROGRAM AUTHORIZED.—

15 (A) IN GENERAL.—There is hereby estab-
16 lished within the Federal Bureau of Prisons a
17 program to be known as the “Cognitive Abili-
18 ties Assessment Demonstration Program”. The
19 purpose of the demonstration program is to de-
20 termine the effectiveness of a program that as-
21 sses the cognitive abilities and perceptual
22 skills of Federal inmates to maximize the bene-
23 fits of various rehabilitative opportunities de-
24 signed to prepare each inmate for a successful
25 return to society and reduce recidivism. The

1 demonstration program shall be undertaken by
2 a contractor with a demonstrated record of ena-
3 bling the behavioral and academic improvement
4 of adults through the use of research-based sys-
5 tems that maximize the development of both the
6 cognitive and perceptual capabilities of a par-
7 ticipating individual, including adults in a cor-
8 rectional setting.

9 (B) SCOPE OF DEMONSTRATION PRO-
10 GRAM.—The demonstration program shall to
11 the maximum extent practicable, be—

12 (i) conducted during a period of three
13 consecutive fiscal years, commencing dur-
14 ing fiscal year 2006;

15 (ii) conducted at 12 Federal correc-
16 tional institutions; and

17 (iii) offered to 6,000 inmates, who are
18 categorized as minimum security or less,
19 and are within five years of release.

20 (C) REPORT ON RESULTS OF PROGRAM.—
21 Not later than 60 days after completion of the
22 demonstration program, the Director shall sub-
23 mit to Congress a report on the results of the
24 program. At a minimum, the report shall in-
25 clude an analysis of employment stability, sta-

1 bility of residence, and rates of recidivism
2 among inmates who participated in the program
3 after 18 months of release.

4 (2) AUTHORIZATION OF APPROPRIATIONS.—

5 There is authorized to be appropriated \$3,000,000
6 in each of the three fiscal years after fiscal year
7 2005, to remain available until expended, for the
8 purposes of conducting the demonstration program
9 authorized by subsection (a).

10 (e) PRERELEASE EMPLOYMENT ASSISTANCE.—

11 (1) IN GENERAL.—The Director of the Federal
12 Bureau of Prisons shall, to the maximum extent
13 practicable, afford to inmates opportunities to par-
14 ticipate in programs and activities designed to help
15 prepare such inmates to obtain employment upon re-
16 lease.

17 (2) PRERELEASE EMPLOYMENT PLACEMENT
18 ASSISTANCE.—Such prerelease employment place-
19 ment assistance required by subsection (a) shall in-
20 clude—

21 (A) training in the preparation of resumes
22 and job applications;

23 (B) training in interviewing skills;

24 (C) training and assistance in job search
25 techniques;

1 (D) conduct of job fairs; and

2 (E) such other methods deemed appro-
3 priate by the Director.

4 (3) PRIORITY PARTICIPATION.—Priority in pro-
5 gram participation shall be accorded to inmates who
6 are participating in work opportunities afforded by
7 Federal Prison Industries and are within 24 months
8 of release from incarceration.

9 **SEC. 11. RESTRUCTURING THE BOARD OF DIRECTORS.**

10 Section 4121 of title 18, United States Code, is
11 amended to read as follows:

12 **“§ 4121. Federal Prison Industries; Board of Direc-**
13 **tors: executive management**

14 “(a) Federal Prison Industries is a government cor-
15 poration of the District of Columbia organized to carry
16 on such industrial operations in Federal correctional insti-
17 tutions as authorized by its Board of Directors. The man-
18 ner and extent to which such industrial operations are car-
19 ried on in the various Federal correctional institutions
20 shall be determined by the Attorney General.

21 “(b)(1) The corporation shall be governed by a board
22 of 11 directors appointed by the President.

23 “(2) In making appointments to the Board, the
24 President shall assure that 3 members represent the busi-
25 ness community, 3 members represent organized labor, 1

1 member shall have special expertise in inmate rehabilita-
2 tion techniques, 1 member represents victims of crime, 1
3 member represents the interests of Federal inmate work-
4 ers, and 2 additional members whose background and ex-
5 pertise the President deems appropriate. The members of
6 the Board representing the business community shall in-
7 clude, to the maximum extent practicable, representation
8 of firms furnishing services as well as firms producing
9 products, especially from those industry categories from
10 which Federal Prison Industries derives substantial sales.
11 The members of the Board representing organized labor
12 shall, to the maximum practicable, include representation
13 from labor unions whose members are likely to be most
14 affected by the sales of Federal Prison Industries.

15 “(3) Each member shall be appointed for a term of
16 5 years, except that of members first appointed—

17 “(A) 2 members representing the business com-
18 munity shall be appointed for a term of 3 years;

19 “(B) 2 members representing labor shall be ap-
20 pointed for a term of 3 years;

21 “(C) 2 members whose background and exper-
22 tise the President deems appropriate for a term of
23 3 years;

24 “(D) 1 member representing victims of crime
25 shall be appointed for a term of 3 years;

1 “(E) 1 member representing the interests of
2 Federal inmate workers shall be appointed for a
3 term of 3 years;

4 “(F) 1 member representing the business com-
5 munity shall be appointed for a term of 4 years;

6 “(G) 1 member representing the business com-
7 munity shall be appointed for a term of 4 years; and

8 “(H) the members having special expertise in
9 inmate rehabilitation techniques shall be appointed
10 for a term of 5 years.

11 “(4) The President shall designate 1 member of the
12 Board as Chairperson. The Chairperson may designate a
13 Vice Chairperson.

14 “(5) Members of the Board may be reappointed.

15 “(6) Any vacancy on the Board shall be filled in the
16 same manner as the original appointment. Any member
17 appointed to fill a vacancy occurring before the expiration
18 of the term for which the member’s predecessor was ap-
19 pointed shall be appointed for the remainder of that term.

20 “(7) The members of the Board shall serve without
21 compensation. The members of the Board shall be allowed
22 travel expenses, including per diem in lieu of subsistence,
23 at rates authorized for employees of agencies under sub-
24 chapter I of chapter 57 of title 5, United States Code,
25 to attend meetings of the Board and, with the advance

1 approval of the Chairperson of the Board, while otherwise
2 away from their homes or regular places of business for
3 purposes of duties as a member of the Board.

4 “(8)(A) The Chairperson of the Board may appoint
5 and terminate any personnel that may be necessary to en-
6 able the Board to perform its duties.

7 “(B) Upon request of the Chairperson of the Board,
8 a Federal agency may detail a Federal Government em-
9 ployee to the Board without reimbursement. Such detail
10 shall be without interruption or loss of civil service status
11 or privilege.

12 “(9) The Chairperson of the Board may procure tem-
13 porary and intermittent services under section 3109(b) of
14 title 5, United States Code.

15 “(c) The Director of the Bureau of Prisons shall
16 serve as Chief Executive Officer of the Corporation. The
17 Director shall designate a person to serve as Chief Oper-
18 ating Officer of the Corporation.”.

19 **SEC. 12. PROVIDING ADDITIONAL MANAGEMENT FLEXI-**
20 **BILITY TO FEDERAL PRISON INDUSTRIES OP-**
21 **ERATIONS.**

22 Section 4122(b)(3) of title 18, United States Code,
23 is amended—

24 (1) by striking “(3)” and inserting “(3)(A)”;
25 and

1 (2) by adding at the end the following new
2 paragraphs:

3 “(B) Federal Prison Industries may locate more than
4 one workshop at a Federal correctional facility.

5 “(C) Federal Prison Industries may operate a work-
6 shop outside of a correctional facility if all of the inmates
7 working in such workshop are classified as minimum secu-
8 rity inmates.”.

9 **SEC. 13. TRANSITIONAL PERSONNEL MANAGEMENT AU-**
10 **THORITY.**

11 Any correctional officer or other employee of Federal
12 Prison Industries being paid with nonappropriated funds
13 who would be separated from service because of a reduc-
14 tion in the net income of Federal Prison Industries during
15 any fiscal year specified in section 4(e)(1) shall be—

16 (1) eligible for appointment (or reappointment)
17 in the competitive service pursuant to title 5, United
18 States Code;

19 (2) registered on a Bureau of Prisons reemploy-
20 ment priority list; and

21 (3) given priority for any other position within
22 the Bureau of Prisons for which such employee is
23 qualified.

1 **SEC. 14. FEDERAL PRISON INDUSTRIES REPORT TO CON-**
2 **GRESS.**

3 Section 4127 of title 18, United States Code, is
4 amended to read as follows:

5 **“§ 4127. Federal Prison Industries report to Congress**

6 “(a) IN GENERAL.—Pursuant to chapter 91 of title
7 31, the board of directors of Federal Prison Industries
8 shall submit an annual report to Congress on the conduct
9 of the business of the corporation during each fiscal year
10 and the condition of its funds during the fiscal year.

11 “(b) CONTENTS OF REPORT.—In addition to the
12 matters required by section 9106 of title 31, and such
13 other matters as the board considers appropriate, a report
14 under subsection (a) shall include—

15 “(1) a statement of the amount of obligations
16 issued under section 4129(a)(1) of this title during
17 the fiscal year;

18 “(2) an estimate of the amount of obligations
19 that will be issued in the following fiscal year;

20 “(3) an analysis of—

21 “(A) the corporation’s total sales for each
22 specific product and type of service sold to the
23 Federal agencies and the commercial market;

24 “(B) the total purchases by each Federal
25 agency of each specific product and type of
26 service;

1 “(C) the corporation’s share of such total
2 Federal Government purchases by specific prod-
3 uct and type of service; and

4 “(D) the number and disposition of dis-
5 putes submitted to the heads of the Federal de-
6 partments and agencies pursuant to section
7 4124(e) of this title;

8 “(4) an analysis of the inmate workforce that
9 includes—

10 “(A) the number of inmates employed;

11 “(B) the number of inmates utilized to
12 produce products or furnish services sold in the
13 commercial market;

14 “(C) the number and percentage of em-
15 ployed inmates by the term of their incarcer-
16 ation; and

17 “(D) the various hourly wages paid to in-
18 mates employed with respect to the production
19 of the various specific products and types of
20 services authorized for production and sale to
21 Federal agencies and in the commercial market;
22 and

23 “(5) data concerning employment obtained by
24 former inmates upon release to determine whether
25 the employment provided by Federal Prison Indus-

1 tries during incarceration provided such inmates
2 with knowledge and skill in a trade or occupation
3 that enabled such former inmate to earn a livelihood
4 upon release.

5 “(c) PUBLIC AVAILABILITY.—Copies of an annual re-
6 port under subsection (a) shall be made available to the
7 public at a price not exceeding the cost of printing the
8 report.”.

9 **SEC. 15. INDEPENDENT STUDY TO DETERMINE THE EF-**
10 **FECTS OF ELIMINATING THE FEDERAL PRIS-**
11 **ON INDUSTRIES MANDATORY SOURCE AU-**
12 **THORITY.**

13 (a) STUDY REQUIRED.—The Comptroller General
14 shall undertake to have an independent study conducted
15 on the effects of eliminating the Federal Prison Industries
16 mandatory source authority.

17 (b) SOLICITATION OF VIEWS.—The Comptroller Gen-
18 eral shall ensure that in developing the statement of work
19 and the methodology for the study, the views and input
20 of private industry, organized labor groups, Members and
21 staff of the relevant Congressional committees, officials of
22 the executive branch, and the public are solicited.

23 (c) SUBMISSION.—Not later than June 30, 2006, the
24 Comptroller General shall submit the results of the study

1 to Congress, including any recommendations for legisla-
2 tion.

3 **SEC. 16. SENSE OF CONGRESS.**

4 It is the sense of Congress that it is important to
5 study the concept of implementing a “good time” release
6 program for non-violent criminals in the Federal prison
7 system.

8 **SEC. 17. DEFINITIONS.**

9 Chapter 307 of title 18, United States Code, is
10 amended by adding at the end the following new section:

11 **“§ 4131. Definitions**

12 “As used in this chapter—

13 “(1) the term ‘assembly’ means the process of
14 uniting or combining articles or components (includ-
15 ing ancillary finished components or assemblies) so
16 as to produce a significant change in form or utility,
17 without necessarily changing or altering the compo-
18 nent parts;

19 “(2) the term ‘current market price’ means,
20 with respect to a specific product, the fair market
21 price of the product within the meaning of section
22 15(a) of the Small Business Act (15 U.S.C. 644(a)),
23 at the time that the contract is to be awarded,
24 verified through appropriate price analysis or cost

1 analysis, including any costs relating to transpor-
2 tation or the furnishing of any ancillary services;

3 “(3) the term ‘import-sensitive product’ means
4 a product which, according to Department of Com-
5 merce data, has experienced competition from im-
6 ports at an import to domestic production ratio of
7 25 percent or greater;

8 “(4) the term ‘labor-intensive manufacture’
9 means a manufacturing activity in which the value
10 of inmate labor constitutes at least 10 percent of the
11 estimate unit cost to produce the item by Federal
12 Prison Industries;

13 “(5) the term ‘manufacture’ means the process
14 of fabricating from raw or prepared materials, so as
15 to impart to those materials new forms, qualities,
16 properties, and combinations;

17 “(6) the term ‘reasonable share of the market’
18 means a share of the total purchases by the Federal
19 departments and agencies, as reported to the Fed-
20 eral Procurement Data System for—

21 “(A) any specific product during the 3 pre-
22 ceding fiscal years, that does not exceed 20 per-
23 cent of the Federal market for the specific
24 product; and

1 “(B) any specific service during the 3 pre-
2 ceding fiscal years, that does not exceed 5 per-
3 cent of the Federal market for the specific serv-
4 ice; and

5 “(7) the term ‘services’ has the meaning given
6 the term ‘service contract’ by section 37.101 of the
7 Federal Acquisition Regulation (48 C.F.R. 36.102),
8 as in effect on July 1, 2004.”.

9 **SEC. 18. IMPLEMENTING REGULATIONS AND PROCEDURES.**

10 (a) **FEDERAL ACQUISITION REGULATION.**—

11 (1) **PROPOSED REVISIONS.**—Proposed revisions
12 to the Governmentwide Federal Acquisition Regula-
13 tion to implement the amendments made by this Act
14 shall be published not later than 60 days after the
15 date of the enactment of this Act and provide not
16 less than 60 days for public comment.

17 (2) **FINAL REGULATIONS.**—Final regulations
18 shall be published not later than 180 days after the
19 date of the enactment of this Act and shall be effec-
20 tive on the date that is 30 days after the date of
21 publication.

22 (3) **PUBLIC PARTICIPATION.**—The proposed
23 regulations required by subsection (a) and the final
24 regulations required by subsection (b) shall afford
25 an opportunity for public participation in accordance

1 with section 22 of the Office of Federal Procurement
2 Policy Act (41 U.S.C. 418b).

3 (b) BOARD OF DIRECTORS.—

4 (1) IN GENERAL.—The Board of Directors of
5 Federal Prison Industries shall issue regulations de-
6 fining the terms specified in paragraph (2).

7 (2) TERMS TO BE DEFINED.—The Board of Di-
8 rectors shall issue regulations for the following
9 terms:

10 (A) Prison-made product.

11 (B) Prison-furnished service.

12 (C) Specific product.

13 (D) Specific service.

14 (3) SCHEDULE FOR REGULATORY DEFINI-
15 TIONS.—

16 (A) Proposed regulations relating to the
17 matter described in subsection (b)(2) shall be
18 published not later than 60 days after the date
19 of enactment of this Act and provide not less
20 than 60 days for public comment.

21 (B) Final regulations relating to the mat-
22 ters described in subsection (b)(2) shall be pub-
23 lished not less than 180 days after the date of
24 enactment of this Act and shall be effective on

1 the date that is 30 days after the date of publi-
2 cation.

3 (4) ENHANCED OPPORTUNITIES FOR PUBLIC
4 PARTICIPATION AND SCRUTINY.—

5 (A) ADMINISTRATIVE PROCEDURE ACT.—
6 Regulations issued by the Board of Directors
7 shall be subject to notice and comment rule-
8 making pursuant to section 553 of title 5,
9 United States Code. Unless determined wholly
10 impracticable or unnecessary by the Board of
11 Directors, the public shall be afforded 60 days
12 for comment on proposed regulations.

13 (B) ENHANCED OUTREACH.—The Board
14 of Directors shall use means designed to most
15 effectively solicit public comment on proposed
16 regulations, procedures, and policies and to in-
17 form the affected public of final regulations,
18 procedures, and policies.

19 (C) OPEN MEETING PROCESSES.—The
20 Board of Directors shall take all actions relat-
21 ing to the adoption of regulations, operating
22 procedures, guidelines, and any other matter re-
23 lating to the governance and operation of Fed-
24 eral Prison Industries based on deliberations
25 and a recorded vote conducted during a meeting

1 open to the public, unless closed pursuant to
2 section 552(b) of title 5, United States Code.

3 **SEC. 19. RULES OF CONSTRUCTION.**

4 (a) AGENCY BID PROTESTS.—Subsection (e) of sec-
5 tion 4124 of title 18, United States Code, as amended by
6 section 2, is not intended to alter any rights of any offeror
7 other than Federal Prison Industries to file a bid protest
8 in accordance with other law or regulation in effect on the
9 date of the enactment of this Act.

10 (b) JAVITS-WAGNER-O'DAY ACT.—Nothing in this
11 Act is intended to modify the Javits-Wagner-O'Day Act
12 (41 U.S.C. 46 et seq.).

13 **SEC. 20. EFFECTIVE DATE AND APPLICABILITY.**

14 (a) EFFECTIVE DATE.—Except as provided in sub-
15 section (b), this Act and the amendments made by this
16 Act shall take effect on the date of enactment of this Act.

17 (b) APPLICABILITY.—Section 4124 of title 18, United
18 States Code, as amended by section 2, shall apply to any
19 requirement for a product or service offered by Federal
20 Prison Industries needed by a Federal department or
21 agency after the effective date of the final regulations
22 issued pursuant to section 18(a)(2), or after September
23 30, 2006, whichever is earlier.

1 **SEC. 21. CLERICAL AMENDMENTS.**

2 The table of sections for chapter 307 of title 18,
3 United States Code, is amended—

4 (1) by amending the item relating to section
5 4121 to read as follows:

“4121. Federal Prison Industries; Board of Directors: executive management.”;

6 (2) by amending the item relating to section
7 4124 to read as follows:

“4124. Governmentwide procurement policy relating to purchases from Federal
Prison Industries.”;

8 (3) by amending the item relating to section
9 4127 to read as follows:

“4127. Federal Prison Industries report to Congress.”;

10 and

11 (4) by adding at the end the following new
12 items:

“4130. Construction of provisions.

“4131. Definitions.”.

○