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FEDERAL PRISON INDUSTRIES COMPETITION IN CONTRACTING ACT OF 2002

JULY 16, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1577]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1577) to amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with non-inmate workers and the firms that employ them and increasing the likelihood that Federal agencies get the best value for taxpayers dollars, to require that Federal Prison Industries fully and timely perform its Government contracts by empowering Federal contracting officers with the contract administration tools generally available to assure full and timely performance of other Government contracts, to enhance the opportunities for effective public participation in decisions to expand the activities of Federal Prison Industries, to provide to Federal agencies temporary preferential contract award authority to ease the transition of Federal Prison Industries to obtaining inmate work opportunities through other than its mandatory source status, to provide additional work opportunities for Federal inmates by authorizing Federal Prison Industries to provide inmate workers to nonprofit entities with protections against commercial activities, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Prison Industries Competition in Contracting Act of 2002".

SEC. 2. GOVERNMENTWIDE PROCUREMENT POLICY RELATING TO PURCHASES FROM FEDERAL PRISON INDUSTRIES.

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

"§ 4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries

"(a) IN GENERAL.—Purchases from Federal Prison Industries, Incorporated, a wholly owned Government corporation, as referred to in section 9101(3)(E) of title 31, may be made by a Federal department or agency only in accordance with this section.

"(b) SOLICITATION AND EVALUATION OF OFFERS AND CONTRACT AWARDS.—(1) If a procurement activity of a Federal department or agency has a requirement for a specific product or service that is authorized to be offered for sale by Federal Prison Industries, in accordance with section 4122 of this title, and is listed in the catalog referred to in subsection (g), the procurement activity shall solicit an offer from Federal Prison Industries, if the purchase is expected to be in excess of the micro-purchase threshold (as defined by section 32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f))).

"(2) A contract award for such product or service shall be made using competitive procedures in accordance with the applicable evaluation factors, unless a determination is made by the Attorney General pursuant to paragraph (3) or an award using other than competitive procedures is authorized pursuant to paragraph (7).

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

"(A) Federal Prison Industries cannot reasonably expect fair consideration to receive the contract award on a competitive basis; and

"(B) the contract award is necessary to maintain work opportunities otherwise unavailable at the penal or correctional facility at which the contract is to be performed to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility.

"(4) Except in the case of an award to be made pursuant to paragraph (3), a contract award shall be made with Federal Prison Industries only if the contracting officer for the procurement activity determines that—

"(A) the specific product or service to be furnished will meet the requirements of the procurement activity (including any applicable prequalification requirements and all specified commercial or governmental standards pertaining to quality, testing, safety, serviceability, and warranties);

"(B) timely performance of the contract can be reasonably expected; and

"(C) the contract price does not exceed a current market price.

"(5) A determination by the Attorney General pursuant to paragraph (3) shall be—

"(A) supported by specific findings by the warden of the penal or correctional institution at which a Federal Prison Industries workshop is scheduled to perform the contract;

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

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

"(6) If the Attorney General has not made the determination described in paragraph (3) within 30 days after Federal Prison Industries has been informed of a contracting opportunity by a procurement activity, the procurement activity may proceed to conduct a procurement for the product or service in accordance with the procedures generally applicable to such procurements by the procurement activity.

"(7) A contract award may be made to Federal Prison Industries using other than competitive procedures if such product or service is only available from Federal Prison Industries and the contract may be awarded under the authority of section 2304(c)(1) of title 10 or section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(1)), as may be applicable, and pursuant to the justification and approval requirements relating to such noncompetitive procurements specified by law and the Governmentwide Federal Acquisition Regulation.

"(c) OFFERS FROM FEDERAL PRISON INDUSTRIES.—A timely offer received from Federal Prison Industries to furnish a product or service to a Federal department or agency shall be considered for award without limitation as to the dollar value of the proposed purchase.

"(d) PERFORMANCE BY FEDERAL PRISON INDUSTRIES.—Federal Prison Industries shall perform its contractual obligations under a contract awarded by a Federal department or agency to the same extent as any other contractor.

"(e) FINALITY OF CONTRACTING OFFICER'S DECISION.—(1) A decision by a contracting officer regarding the award of a contract to Federal Prison Industries or relating to the performance of such contract shall be final, unless reversed on appeal pursuant to paragraph (2) or (3).

"(2) The Chief Executive Officer of Federal Prison Industries may appeal to the head of a Federal department or agency a decision by a contracting officer not to award a contract to Federal Prison Industries pursuant to subsection (b)(4). The decision of the head of a Federal department or agency on appeal shall be final.

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

"(A) alternative means of dispute resolution pursuant to subchapter IV of chapter 5 of title 5; or

"(B) final resolution by the board of contract appeals having jurisdiction over the procurement activity's contract performance disputes pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

"(f) REPORTING OF PURCHASES.—Each Federal department or agency shall report purchases from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4))) in the same manner as it reports to such System any acquisition in an amount in excess of the simplified acquisition threshold (as defined by section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

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

"(h) COMPLIANCE WITH STANDARDS.—Federal Prison Industries shall comply with Federal occupational, health, and safety standards with respect to the operation of its industrial operations.".

SEC. 3. PUBLIC PARTICIPATION REGARDING EXPANSION PROPOSALS BY FEDERAL PRISON INDUSTRIES.

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

(1) by redesignating paragraph (6) as paragraph (12); and

(2) by striking paragraphs (4) and (5) and inserting the following new paragraphs:

"(4) A decision to authorize Federal Prison Industries to offer a new specific product or specific service or to expand the production of an existing product or service shall be made by its board of directors in conformance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, and this chapter.

"(5)(A) Whenever Federal Prison Industries proposes to offer for sale a new specific product or specific service or to expand production of a currently authorized product or service, the Chief Operating Officer of Federal Prison Industries shall submit an appropriate proposal to the board of directors and obtain the board's ap-

proval before initiating any such expansion. The proposal submitted to the board shall include a detailed analysis of the probable impact of the proposed expansion of sales within the Federal market by Federal Prison Industries on private sector firms and their noninmate workers.

"(B)(i) The analysis required by subparagraph (A) shall be performed by an interagency team on a reimbursable basis or by a private contractor paid by Federal Prison Industries.

"(ii) If the analysis is to be performed by an interagency team, such team shall be led by the Administrator of the Small Business Administration or the designee of such officer with representatives of the Department of Labor, the Department of Commerce, and the Federal Procurement Data Center.

"(iii) If the analysis is to be performed by a private contractor, the selection of the contractor and the administration of the contract shall be conducted by one of the entities referenced in clause (ii) as an independent executive agent for the board of directors. Maximum consideration shall be given to any proposed statement of work furnished by the Chief Operating Officer of Federal Prison Industries.

"(C) The analysis required by subparagraph (A) shall identify and consider—

"(i) the number of vendors that currently meet the requirements of the Federal Government for the specific product or specific service;

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

"(iii) the share of the Federal market for the specific product or specific service projected for Federal Prison Industries for the fiscal year in which production or performance will commence or expand and the subsequent 4 fiscal years;

"(iv) whether the industry producing the specific product or specific service in the private sector—

"(I) has an unemployment rate higher than the national average; or

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

"(v) whether the specific product is an import-sensitive product;

"(vi) the requirements of the Federal Government and the demands of entities other than the Federal Government for the specific product or service during the previous 3 fiscal years;

"(vii) the projected growth or decline in the demand of the Federal Government for the specific product or specific service;

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

"(ix) whether authorizing the production of the new product or performance of a new service will provide inmates with the maximum opportunity to acquire knowledge and skill in trades and occupations that will provide them with a means of earning a livelihood upon release.

"(D)(i) The board of directors may not approve a proposal to authorize the production and sale of a new specific product or continued sales of a previously authorized product unless—

"(I) the product to be furnished is a prison-made product; or

"(II) the service to be furnished is to be performed by inmate workers.

"(ii) The board of directors may not approve a proposal to authorize the production and sale of a new prison-made product or to expand production of a currently authorized product if the product is—

"(I) produced in the private sector by an industry which has reflected during the previous year an unemployment rate above the national average; or

"(II) an import-sensitive product.

"(iii) The board of directors may not approve a proposal for inmates to provide a service in which an inmate worker has access to—

"(I) personal or financial information about individual private citizens, including information relating to such person's real property, however described, without giving prior notice to such persons or class of persons to the greatest extent practicable;

"(II) geographic data regarding the location of surface and subsurface infrastructure providing communications, water and electrical power distribution, pipelines for the distribution of natural gas, bulk petroleum products and other commodities, and other utilities; or

"(III) data that is classified.

"(iv)(I) Federal Prison Industries is prohibited from furnishing through inmate labor construction services, unless to be performed within a Federal correctional in-

stitution pursuant to the participation of an inmate in an apprenticeship or other vocational education program teaching the skills of the various building trades.

"(II) For purposes of this clause, the term 'construction' has the meaning given such term by section 2.101 of the Federal Acquisition Regulation (48 CFR part 2.101), as in effect on June 1, 2001, including the repair, alteration, or maintenance of real property in being.

"(6) To provide further opportunities for participation by interested parties, the board of directors shall—

"(A) give additional notice of a proposal to authorize the production and sale of a new product or service, or expand the production of a currently authorized product or service, in a publication designed to most effectively provide notice to private vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal, which notice shall offer to furnish copies of the analysis required by paragraph (5) and shall solicit comment on the analysis;

"(B) solicit comments on the analysis required by paragraph (5) from trade associations representing vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal to authorize the production and sale of a new product or service (or expand the production of a currently authorized product or service); and

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

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

"(8) Based on the comments received on the initial expansion proposal, the Chief Operating Officer of Federal Prison Industries may provide the board of directors a revised expansion proposal. If such revised proposal provides for expansion of inmate work opportunities in an industry different from that initially proposed, such revised proposal shall reflect the analysis required by paragraph (5)(C) and be subject to the public comment requirements of paragraph (6).

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

"(10) In conformity with the requirements of paragraphs (5) through (9) of this subsection, the board of directors may—

"(A) authorize the donation of products produced or services furnished by Federal industries and available for sale; or

"(B) authorize the production of a new specific product or the furnishing of a new specific service for donation.".

SEC. 4. TRANSITIONAL MANDATORY SOURCE AUTHORITY.

(a) IN GENERAL.—Notwithstanding the requirements of section 4124 of title 18, United States Code (as amended by section 2 of this Act), a Federal department or agency having a requirement for a product that is authorized for sale by Federal Prison Industries and is listed in its catalog (referred to in section 4124(g) of title 18, United States Code) shall first solicit an offer from Federal Prison Industries and make purchases on a noncompetitive basis in accordance with this section.

(b) PREFERENTIAL SOURCE STATUS.—Subject to the limitations of subsection (d), a contract award shall be made on a noncompetitive basis to Federal Prison Industries if the contracting officer for the procurement activity determines that—

(1) the product offered by Federal Prison Industries will meet the requirements of the procurement activity (including commercial or governmental standards or specifications pertaining to design, performance, testing, safety, serviceability, and warranties as may be imposed upon a private sector supplier of the type being offered by Federal Prison Industries);

(2) timely performance of the contract by Federal Prison Industries can be reasonably expected; and

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

(c) CONTRACTUAL TERMS.—The terms and conditions of the contract and the price to be paid to Federal Prison Industries shall be determined by negotiation between Federal Prison Industries and the Federal agency making the purchase. The negotiated price shall not exceed a fair and reasonable price determined in accordance with the procedures of the Federal Acquisition Regulation.

(d) PERFORMANCE OF CONTRACTUAL OBLIGATIONS.—

(1) IN GENERAL.—Federal Prison Industries shall perform the obligations of the contract negotiated pursuant to subsection (c).

(2) PERFORMANCE DISPUTES.—If the head of the contracting activity and the Chief Operating Officer of Federal Prison Industries are unable to resolve a contract performance dispute to their mutual satisfaction, such dispute shall be resolved pursuant to section 4124(e)(3) of title 18, United States Code (as added by section 2 of this Act).

(e) LIMITATIONS ON USE OF AUTHORITY.—

(1) IN GENERAL.—As a percentage of the sales made by Federal Prison Industries during the base period, the total dollar value of sales to the Government made pursuant to subsection (b) and subsection (c) of this section shall not exceed—

(A) 90 percent in fiscal year 2004;
(B) 85 percent in fiscal year 2005;
(C) 70 percent in fiscal year 2006;
(D) 55 percent in fiscal year 2007; and
(E) 40 percent in fiscal year 2008.

(2) SALES WITHIN VARIOUS BUSINESS SECTORS.—Use of the authority provided by subsections (b) and (c) shall not result in sales by Federal Prison Industries to the Government that are in excess of its total sales during the base year for each business sector.

(3) LIMITATIONS RELATING TO SPECIFIC PRODUCTS.—Use of the authorities provided by subsections (b) and (c) shall not result in contract awards to Federal Prison Industries that are in excess of its total sales during the base period for such product.

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

(f) DURATION OF AUTHORITY.—The preferential contracting authorities authorized by subsection (b) may not be used on or after October 1, 2008, and become effective on the effective date of the final regulations issued pursuant to section 17.

(g) DEFINITIONS.—For the purposes of this section—

(1) the term "base period" means the total sales of Federal Prison Industries during the period October 1, 2000, and September 30, 2001 (Fiscal Year 2001);

(2) the term "business sectors" means the eight product/service business groups identified in the 2001 Federal Prison Industries annual report as the Clothing and Textile Business Group, the Electronics Business Group, the Fleet Management and Vehicular Components Business Group, the Furniture Business Group, the Graphics Business Group, the Industrial Products Business Group, the Recycled Electronics Products and Services Business Group, and the Services Business Group; and

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

(h) FINDING BY ATTORNEY GENERAL WITH RESPECT TO PUBLIC SAFETY.—(1) Not later than 60 days prior to the end of each fiscal year specified in subsection (e)(1), the Attorney General shall make a finding regarding the effects of the percentage limitation imposed by such subsection for such fiscal year and the likely effects of the limitation imposed by such subsection for the following fiscal year.

(2) The Attorney General's finding shall include a determination whether such limitation has resulted or is likely to result in a substantial reduction in inmate industrial employment and whether such reductions, if any, present a significant risk of adverse effects on safe prison operation or public safety.

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

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

SEC. 5. AUTHORITY TO PERFORM AS A FEDERAL SUBCONTRACTOR.

(a) IN GENERAL.—Federal Prison Industries is authorized to enter into a contract with a Federal contractor (or a subcontractor of such contractor at any tier) to produce products as a subcontractor or supplier in the performance of a Federal procurement contract. The use of Federal Prison Industries as a subcontractor or supplier shall be a wholly voluntary business decision by the Federal prime contractor or subcontractor, subject to any prior approval of subcontractors or suppliers by the contracting officer which may be imposed by the Federal Acquisition Regulation or by the contract.

(b) COMMERCIAL SALES PROHIBITED.—The authority provided by subsection (a) shall not result, either directly or indirectly, in the sale in the commercial market of a product or service resulting from the labor of Federal inmate workers in violation of section 1762(a) of title 18, United States Code. A Federal contractor (or subcontractor at any tier) using Federal Prison Industries as a subcontractor or supplier in furnishing a commercial product pursuant to a Federal contract shall implement appropriate management procedures to prevent introducing an inmate-produced product into the commercial market.

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

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

(2) specifications requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract;

(3) any contract modification directing the use of Federal Prison Industries, its products or services; or

(4) any other means.

SEC. 6. INMATE WAGES AND DEDUCTIONS.

Section 4122(b) of title 18, United States Code (as amended by section 3 of this Act), is further amended by adding a new paragraph (11) as follows:

"(11)(A) The Board of Directors of Federal Prison Industries shall prescribe the rates of hourly wages to be paid inmates performing work for or through Federal Prison Industries. The Director of the Federal Bureau of Prisons shall prescribe the rates of hourly wages for other work assignments within the various Federal correctional institutions.

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

"(C) Wages earned by an inmate worker shall be paid in the name of the inmate. Deductions, aggregating to not more than 80 percent of gross wages, shall be taken from the wages due for—

"(i) applicable taxes (Federal, State, and local);

"(ii) payment of fines and restitution pursuant to court order;

"(iii) payment of additional restitution for victims of the inmate's crimes (at a rate not less than 10 percent of gross wages);

"(iv) allocations for support of the inmate's family pursuant to statute, court order, or agreement with the inmate;

"(v) allocations to a fund in the inmate's name to facilitate such inmate's assimilation back into society, payable at the conclusion of incarceration; and

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

"(D) Each inmate worker working for Federal Prison Industries shall indicate in writing that such person—

"(i) is participating voluntarily; and

"(ii) understands and agrees to the wages to be paid and deductions to be taken from such wages.".

SEC. 7. CLARIFYING AMENDMENT RELATING TO SERVICES.

(a) IN GENERAL.—Section 1761 of title 18, United States Code, is amended in subsection (a), by striking "any goods, wares, or merchandise manufactured, produced, or mined" and inserting "products manufactured, services furnished, or minerals mined".

(b) COMPLETION OF EXISTING AGREEMENTS.—Any prisoner work program operated by a prison or jail of a State or local jurisdiction of a State which is providing services for the commercial market through inmate labor on October 1, 2001, may continue to provide such commercial services until—

(1) the expiration date specified in the contract or other agreement with a commercial partner on October 1, 2001, or

(2) until September 30, 2004, if the prison work program is directly furnishing the services to the commercial market.

(c) APPROVAL REQUIRED FOR LONG-TERM OPERATION.—A prison work program operated with a correctional institution operated by State or local jurisdiction of a State may continue to provide inmate labor to furnish services for sale in the commercial market after the dates specified in subsection (b) if such program has been certified pursuant to section 1761(c)(1) of title 18, United States Code, and is in

compliance with the requirements of such subsection and its implementing regulations.

SEC. 8. CONFORMING AMENDMENT.

Section 4122(a) of title 18, United States Code, is amended by striking "production of commodities" and inserting "production of products or furnishing of services".

SEC. 9. RULES OF CONSTRUCTION RELATING TO CHAPTER 307.

Chapter 307 of title 18, United States Code, is further amended by adding the following:

"§ 4130. Construction of provisions

"Nothing in this chapter shall be construed—

"(1) to establish an entitlement of any inmate to—

"(A) employment in a Federal Prison Industries facility; or

"(B) any particular wage, compensation, or benefit on demand, except as otherwise specifically provided by law or regulation;

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

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

SEC. 10. PROVIDING ADDITIONAL OPPORTUNITIES FOR POST INCARCERATION VOCATIONAL AND REMEDIAL EDUCATIONAL OPPORTUNITIES FOR INMATES.

(a) FEDERAL REENTRY CENTER DEMONSTRATION.—

(1) AUTHORITY AND ESTABLISHMENT OF DEMONSTRATION PROJECT.—From funds made available to carry out this section, the Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, shall establish the Federal Reentry Center Demonstration project. The project shall involve appropriate prisoners from the Federal prison population and shall utilize community corrections facilities, home confinement, and a coordinated response by Federal agencies to assist participating prisoners in preparing for and adjusting to reentry into the community.

(2) PROJECT ELEMENTS.—The project authorized by paragraph (1) shall include the following core elements:

(A) A Reentry Review Team for each prisoner, consisting of representative from the Bureau of Prisons, the United States Probation System, the United States Parole Commission, and the relevant community corrections facility, who shall initially meet with the prisoner to develop a reentry plan tailored to the needs of the prisoner.

(B) A system of graduated levels of supervision within the community corrections facility to promote community safety, provide incentives for prisoners to complete the reentry plan, including victim restitution, and provide a reasonable method for imposing sanctions for a prisoner's violation of the conditions of participation in the project.

(C) Substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and educational training, life skills instruction, conflict resolution skills training, batterer intervention programs, assistance obtaining suitable affordable housing, and other programming to promote effective reintegration into the community as needed.

(3) PROBATION OFFICERS.—From funds made available to carry out this section, the Director of the Administrative Office of the United States Courts shall assign one or more probation officers from each participating judicial district to the Reentry Demonstration project. Such officers shall be assigned to and stationed at the community corrections facility and shall serve on the Reentry Review Teams.

(4) PROJECT DURATION.—The Reentry Center Demonstration project shall begin not later than 6 months following the availability of funds to carry out this subsection, and shall last 3 years.

(b) DEFINITIONS.—For the purposes of this section, "Appropriate prisoner" shall mean a person who is considered by prison authorities—

(1) to pose a medium to high risk of committing a criminal act upon reentering the community, and

(2) to lack the skills and family support network that facilitate successful reintegration into the community.

(c) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated, to remain available until expended—

(1) to the Federal Bureau of Prisons—

(A) $1,375,000 for fiscal year 2003;

(B) $1,110,000 for fiscal year 2004;

(C) $1,130,000 for fiscal year 2005;

(D) $1,155,000 for fiscal year 2006; and
(E) $1,230,000 for fiscal year 2007;
(2) to the Federal Judiciary—
(A) $3,380,000 for fiscal year 2003;
(B) $3,540,000 for fiscal year 2004;
(C) $3,720,000 for fiscal year 2005;
(D) $3,910,000 for fiscal year 2006; and
(E) $4,100,000 for fiscal year 2007.

SEC. 11. PROVIDING ADDITIONAL TRAINING AND EDUCATIONAL OPPORTUNITIES FOR INMATES.

(a) AMENDMENT REGARDING THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.—Section 524(c)(1) of title 28, United States Code, is amended—

(1) by redesignating the second appearance of subparagraph (I) as subparagraph (J); and

(2) by amending subparagraph (J) (as redesignated by paragraph (2)) to read as follows:

"(J) payments to the Bureau of Prisons exclusively for the purpose of establishing the Federal Enhanced In-Prison Vocational Assessment and Training Program in all Federal institutions, which shall provide in-prison assessments of prisoners' needs and aptitudes, enhanced work skills developed, enhanced release readiness programming, and other components as appropriate to reduce inmate idleness and prepare Federal prisoners for release and reentry into the community;"; and

(4) by adding at the end the following new subparagraph:

"(K) payments to the Bureau of Prisons exclusively for the purpose of establishing a nonprofit component for inmate work in all Federal institutions, in carrying out which Federal Prison Industries shall (i) work actively to identify and donate to nonprofit organizations that provide goods and services to low income individuals who can use Federal Prison Industry products and have difficulty purchasing these products on their own, and (ii) focus on organizations that would not otherwise be available to purchase such products.".

(b) PRIORITY ESTABLISHED.—During each fiscal year after fiscal year 2002, the Attorney General shall, to carry out the programs described in subparagraphs (J) and (K) of section 524(c)(1) of title 28, United States Code (as added by subsection (a)), allocate such funds as may be appropriate, but in no event less than $75,000,000, from the excess unobligated balance in the Department of Justice Assets Forfeiture Fund. If the unobligated balance of the Fund is less than such amount or such funds are otherwise unavailable from the Fund, such allocation shall be made from the General Treasury.

SEC. 12. RESTRUCTURING THE BOARD OF DIRECTORS.

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

"§ 4121. Federal Prison Industries; Board of Directors: executive management

"(a) Federal Prison Industries is a government corporation of the District of Columbia organized to carry on such industrial operations in Federal correctional institutions as authorized by its Board of Directors. The manner and extent to which such industrial operations are carried on in the various Federal correctional institutions shall be determined by the Attorney General.

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

"(2) In making appointments to the Board, the President shall assure that 3 members represent the business community, 3 members represent organized labor, 1 member shall have special expertise in inmate rehabilitation techniques, 1 member represents victims of crime, 1 member represents the interests of Federal inmate workers, and 2 additional members whose background and expertise the President deems appropriate. The members of the Board representing the business community shall include, to the maximum extent practicable, representation of firms furnishing services as well as firms producing products, especially from those industry categories from which Federal Prison Industries derives substantial sales. The members of the Board representing organized labor shall, to the maximum practicable, include representation from labor unions whose members are likely to be most affected by the sales of Federal Prison Industries.

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

"(A) 2 members representing the business community shall be appointed for a term of 3 years;

"(B) 2 members representing labor shall be appointed for a term of 3 years;

"(C) 2 members whose background and expertise the President deems appropriate for a term of 3 years;

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

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

"(F) 1 member representing the business community shall be appointed for a term of 4 years;

"(G) 1 member representing the business community shall be appointed for a term of 4 years; and

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

"(4) The President shall designate 1 member of the Board as Chairperson. The Chairperson may designate a Vice Chairperson.

"(5) Members of the Board may be reappointed.

"(6) Any vacancy on the Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

"(7) The members of the Board shall serve without compensation. The members of the Oversight Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, to attend meetings of the Board and, with the advance approval of the Chairperson of the Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Board.

"(8)(A) The Chairperson of the Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.

"(B) Upon request of the Chairperson of the Board, a Federal agency may detail a Federal Government employee to the Board without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

"(9) The Chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

"(c) The Director of the Bureau of Prisons shall serve as Chief Executive Officer of the Corporation. The Director shall designate a person to serve as Chief Operating Officer of the Corporation.".

SEC. 13. PRE-RELEASE EMPLOYMENT ASSISTANCE.

(a) IN GENERAL.—The Director of the Bureau of Prisons shall, to the maximum extent practicable, afford to inmates opportunities to participate in programs and activities designed to help prepare such inmates to obtain employment upon release.

(b) PRE-RELEASE EMPLOYMENT PLACEMENT ASSISTANCE.—Such pre-release employment placement assistance required by subsection (a) shall include—

(1) training in the preparation of resumes and job applications;

(2) training in interviewing skills;

(3) training and assistance in job search techniques;

(4) conduct of job fairs; and

(5) such other methods deemed appropriate by the Director of the Bureau of Prisons.

(c) PRIORITY PARTICIPATION.—Priority in program participation shall be accorded to inmates who are participating in work opportunities afforded by Federal Prison Industries and are within 12 months of release from incarceration.

SEC. 14. PROVIDING ADDITIONAL MANAGEMENT FLEXIBILITY TO FEDERAL PRISON INDUSTRY OPERATIONS.

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

(1) by striking "(3)" and inserting "(3)(A)"; and

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

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

"(C) Federal Prison Industries may operate a workshop outside of a correctional facility if all of the inmates working in such workshop are classified as minimum security inmates.".

SEC. 15. FEDERAL PRISON INDUSTRIES REPORT TO CONGRESS.

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

"§ 4127. Federal Prison Industries report to Congress

"(a) IN GENERAL.—Pursuant to chapter 91 of title 31, the board of directors of Federal Prison Industries shall submit an annual report to Congress on the conduct

of the business of the corporation during each fiscal year and the condition of its funds during the fiscal year.

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

"(1) a statement of the amount of obligations issued under section 4129(a)(1) of this title during the fiscal year;

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

"(3) an analysis of—

"(A) the corporation's total sales for each specific product and type of service sold to the Federal agencies and the commercial market;

"(B) the total purchases by each Federal agency of each specific product and type of service;

"(C) the corporation's share of such total Federal Government purchases by specific product and type of service; and

"(D) the number and disposition of disputes submitted to the heads of the Federal departments and agencies pursuant to section 4124(e) of this title;

"(4) an analysis of the inmate workforce that includes—

"(A) the number of inmates employed;

"(B) the number of inmates utilized to produce products or furnish services sold in the commercial market;

"(C) the number and percentage of employed inmates by the term of their incarceration; and

"(D) the various hourly wages paid to inmates employed with respect to the production of the various specific products and types of services authorized for production and sale to Federal agencies and in the commercial market; and

"(5) data concerning employment obtained by former inmates upon release to determine whether the employment provided by Federal Prison Industries during incarceration provided such inmates with knowledge and skill in a trade or occupation that enabled such former inmate to earn a livelihood upon release.

"(c) PUBLIC AVAILABILITY.—Copies of an annual report under subsection (a) shall be made available to the public at a price not exceeding the cost of printing the report.".

SEC. 16. DEFINITIONS.

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

"§ 4131. Definitions

"As used in this chapter—

"(1) the term 'assembly' means the process of uniting or combining articles or components (including ancillary finished components or assemblies) so as to produce a significant change in form or utility, without necessarily changing or altering the component parts;

"(2) the term 'current market price' means, with respect to a specific product, the fair market price of the product within the meaning of section 15(a) of the Small Business Act (15 U.S.C. 644(a)), at the time that the contract is to be awarded, verified through appropriate price analysis or cost analysis, including any costs relating to transportation or the furnishing of any ancillary services;

"(3) the term 'import-sensitive product' means a product which, according to Department of Commerce data, has experienced competition from imports at an import to domestic production ratio of 25 percent or greater;

"(4) the term 'labor-intensive manufacture' means a manufacturing activity in which the value of inmate labor constitutes at least 10 percent of the estimate unit cost to produce the item by Federal Prison Industries;

"(5) the term 'manufacture' means the process of fabricating from raw or prepared materials, so as to impart to those materials new forms, qualities, properties, and combinations;

"(6) the term 'reasonable share of the market' means a share of the total purchases by the Federal departments and agencies, as reported to the Federal Procurement Data System for—

"(A) any specific product during the 3 preceding fiscal years, that does not exceed 20 percent of the Federal market for the specific product; and

"(B) any specific service during the 3 preceding fiscal years, that does not exceed 5 percent of the Federal market for the specific service; and

"(7) the term 'services' has the meaning given the term 'service contract' by section 37.101 of the Federal Acquisition Regulation (48 C.F.R. 36.102), as in effect on July 1, 2001.".

SEC. 17. IMPLEMENTING REGULATIONS AND PROCEDURES.

(a) FEDERAL ACQUISITION REGULATION.—

(1) PROPOSED REVISIONS.—Proposed revisions to the Governmentwide Federal Acquisition Regulation to implement the amendments made by this Act shall be published not later than 60 days after the date of the enactment of this Act and provide not less than 60 days for public comment.

(2) FINAL REGULATIONS.—Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of publication.

(3) PUBLIC PARTICIPATION.—The proposed regulations required by subsection (a) and the final regulations required by subsection (b) shall afford an opportunity for public participation in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

(b) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The Board of Directors of Federal Prison Industries shall issue regulations defining the terms specified in paragraph (2).

(2) TERMS TO BE DEFINED.—The Board of Directors shall issue regulations for the following terms:

(A) Prison-made product.

(B) Prison-furnished service.

(C) Specific product.

(D) Specific service.

(3) SCHEDULE FOR REGULATORY DEFINITIONS.—

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

(B) Final regulations relating to the matters described in subsection (b)(2) shall be published not less than 180 days after the date of enactment of this Act and shall be effective on the date that is 30 days after the date of publication.

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

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

(B) ENHANCED OUTREACH.—The Board of Directors shall use means designed to most effectively solicit public comment on proposed regulations, procedures, and policies and to inform the affected public of final regulations, procedures, and policies.

(C) OPEN MEETING PROCESSES.—The Board of Directors shall take all actions relating to the adoption of regulations, operating procedures, guidelines, and any other matter relating to the governance and operation of Federal Prison Industries based on deliberations and a recorded vote conducted during a meeting open to the public, unless closed pursuant to section 552(b) of title 5, United States Code.

SEC. 18. RULE OF CONSTRUCTION.

Subsection (e) of section 4124 of title 18, United States Code, as amended by section 2, is not intended to alter any rights of any offeror other than Federal Prison Industries to file a bid protest in accordance with other law or regulation in effect on the date of the enactment of this Act.

SEC. 19. EFFECTIVE DATE AND APPLICABILITY.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICABILITY.—Section 4124 of title 18, United States Code, as amended by section 2, shall apply to any requirement for a product or service offered by Federal Prison Industries needed by a Federal department or agency after the effective date of the final regulations issued pursuant to section 16(a)(2), or after September 30, 2003, whichever is earlier.

SEC. 20. CLERICAL AMENDMENTS.

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

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

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

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

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

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

"4127. Federal Prison Industries report to Congress.";

and

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

"4130. Construction of provisions.
"4131. Definitions.".

SEC. 21. INDEPENDENT STUDY TO DETERMINE THE EFFECTS OF ELIMINATING THE FEDERAL PRISON INDUSTRIES MANDATORY SOURCE AUTHORITY.

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

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

(c) SUBMISSION.—Not later than January 31, 2003, the Comptroller General shall submit the results of the study to Congress, including any recommendations for legislation.

PURPOSE AND SUMMARY

H.R. 1577 would fundamentally amend Federal Prison Industries' (FPI) 1934 authorizing statute. This bill would gradually phase out the exclusive right of FPI, deemed "mandatory source," to sell goods to Federal agencies by October 1, 2008. The bill changes the manner in which FPI sells its products and services to the various Federal departments and agencies. During the phase-out period, FPI would be required to provide the agencies with a product that meets its needs at a "fair and reasonable price" in a timely manner.

Today, FPI's offered price meets the "current market" price standard if it does not exceed the highest price offered to the Government for a comparable item, even if no actual sales have been made at that price. Under the Federal Acquisition Regulations (FAR), the buying agency must obtain FPI's permission through a "waiver" to solicit competitive offers from the private sector.

This legislation would establish new competitive procedures for Government procurement of products or services that are offered for sale by FPI. H.R. 1577 would require that FPI sales to its Federal agency customers be made through contracts won on a competitive basis, for both products and services. Like other suppliers to the Federal Government, FPI would be required to fulfill its contractual obligations in a timely manner.

To enable FPI to adjust to the requirement that it obtain contracts on a competitive basis, H.R. 1577 provides FPI with a 5-year transitional period to phase-out its sole-source dealings with its Federal agency customers. Under this authority, Federal agencies could continue to contract with FPI on a noncompetitive basis, subject to annually declining caps on the use of the preferential contracting authority. During the first transitional year, FY 2004, Federal agencies could make noncompetitive awards to FPI in an amount not to exceed 90 percent of FPI's sales in FY 2001. The

percentage decreases to 85 percent in FY 2005, 70 percent in FY 2006, 55 percent in FY 2007, and 40 percent in the final transitional year FY 2008.

To assure that the loss of a contract by FPI does not endanger the safety of a Federal Correctional Institution (FCI), H.R. 1577 contains a provision that permits the Attorney General to authorize a sole source contract award to prevent idleness "that could reasonably be expected to significantly endanger the safe and effective administration" of the FCI at which the work required by the contract is scheduled to be performed. To prevent abuse of this sole-source authority by FPI, the provision requires that the Attorney General's decision to authorize the sole source contract award be supported by findings by the FCI's warden.

H.R. 1577 does not alter a broad array of advantages that FPI enjoys when it competes with private sector firms. Inmates working for FPI will continue to be paid at sub-minimum wage rates, the highest of which is $1.15 per hour. FPI factory space is provided by the host FCI, and is constructed at taxpayer expense. Similarly, FPI receives its utilities from the host FCI. As a Government corporation, FPI may receive industrial equipment excess without cost from other Departments and agencies, including the substantial quantities of industrial equipment returned to the Department of Defense by its contractors. FPI has had a $20 million line-of-credit from the U.S. Treasury on an interest-free basis since 1988.

In addition to requiring that FPI competes for its Federal agency sales, H.R. 1577 improves the process by which FPI's Board of Directors considers proposals from FPI's career management staff to authorize production expansion. The bill provides clearer standards to guide the Board deliberations regarding expansion proposals. It improves, and makes independent, the process by which the impact on private sector suppliers is evaluated. It increases the opportunities for public comment on the proposed expansions and assures that FPI has direct access to those comments. For the first time, it extends the process to proposals to offer a new service as well as a new product or to expand the production of a currently authorized product or service.

The legislation substantially modifies the structure of FPI's Board of Directors. Currently, the FPI Board of Directors is composed of six-members, appointed by the President. Two are public members, one representing the Attorney General and another representing the Secretary of Defense. Of the four private sector members, one represents "industry," one represents "labor," one represents "agriculture" (although FPI does not sell agricultural products), and one represents "retailers and consumers" (although FPI is not authorized to sell products or services in the commercial market).

H.R. 1577 replaces the current Board with an 11-member Board, with three members representing business, three members representing labor, one member with special expertise in inmate rehabilitation techniques, one member representing victims of crime, one member representing inmate workers, and two additional members "whose background and expertise the President deems appropriate." The restructuring of the Board was modeled after the Internal Revenue Service Oversight Board, enacted as part of the Internal Revenue Service Restructuring and Reform Act of 1998.

Most important, H.R. 1577 requires that the Board deliberate and make decisions in public rather than in closed session as they do today.

SENSENBRENNER-FRANK AMENDMENT
IN THE NATURE OF A SUBSTITUTE

The amendment in the nature of a substitute offered by Mr. Sensenbrenner and Mr. Frank was based upon the text of H.R. 1577 with a series of substantive modifications based upon detailed discussions with Federal Prison Industries (FPI) designed to address concerns regarding the phase-out of mandatory source.

MR. CONYERS AMENDMENT

Mr. Conyers offered an amendment to the amendment in the nature of the substitute, which was adopted by the Committee, that will expand upon the provisions of the legislation that provide alternative rehabilitative opportunities for more Federal inmates to better prepare them for a successful return to society. It allows a demonstration project for a Federal Reentry program to be established to protect communities and help prisoners reintegrate into society after release. The amendment provides increased opportunities to participate in programs providing fundamental remedial education as well as modern hands-on vocational and apprenticeship training. Additionally, the amendment provides alternative paid work opportunities by authorizing FPI to produce products for donation to nonprofit organizations that provide goods and services to low income individuals who can use these goods and have difficulty purchasing these products on their own.

HYDE AMENDMENT

Mr. Hyde offered an amendment to the amendment in the nature of a substitute that was approved by the Committee, after being modified by an amendment offered by Mr. Frank, which would require the Attorney General to make a finding regarding the effects of the phase-out of mandatory source authority on inmate employment and safety in the prisons and of the public. If the Attorney General finds a significant risk of adverse effects, he would notify the Congress and postpone any further phase-out of mandatory source for 1 year. The phase-out postponed shall resume 1 year later if the Attorney General makes a finding 60 days prior to the start of that fiscal year that it will not result in a substantial reduction in inmate employment or will not present significant threats to prison operations or public safety.

FRANK AMENDMENT

The Committee approved an amendment offered by Mr. Frank to the Hyde amendment to the amendment in the nature of a substitute to allow for a study and report to Congress by the Attorney General, but did not allow the Attorney General to postpone the phase-out.

JACKSON LEE AMENDMENT

The Committee adopted an amendment to the amendment in the nature of a substitute offered by Ms. Jackson Lee to allow the

Comptroller General to have an independent study performed on the effects of eliminating mandatory source contracting.

GREEN AMENDMENT

Mr. Green offered an amendment to the amendment in the nature of the substitute, which was adopted by the Committee, that would add two additional members to the Board of Directors, one member to represent victims of crime and another to represent Federal inmate workers.

WATT AMENDMENT

The Committee adopted an amendment offered by Mr. Watt to the amendment in the nature of a substitute that would alter the first of two determinations that the Attorney General must make to allow procurement activity to be had on a noncompetitive basis by FPI to require a determination that FPI cannot reasonably expect fair consideration to receive the contract award on a competitive basis.

SCOTT AMENDMENT

Mr. Scott offered an amendment to the amendment in the nature of a substitute that the Committee adopted which would require the Attorney General to include information in his annual report to Congress (adopted by the Hyde amendment) on the impact of the loss of prison industry jobs on the safety and work environment of the workers.

BACKGROUND AND NEED FOR THE LEGISLATION

The Federal Bureau of Prisons (BOP) has approximately 150,000 prisoners convicted of Federal crimes in custody. The BOP operates 98 institutions that hold more than 126,000 prisoners. Prisoners who are physically able must work in some capacity 5 days a week. The Federal Prison Industries (FPI), a Government corporation that operates the BOP's correctional program, employs approximately 17 percent of the Federal prison population to manufacture goods for, and provide services to, Federal agencies.

FPI is a large and growing Government-owned corporation. It currently operates 102 factories at 67 of its correctional institutions where it produces products in over 150 different product lines under the trade name UNICOR. It offers products and services through eight business groups. They are the Clothing and Textile Business Group, the Electronics Business Group, the Fleet Management and Vehicular Components Business Group, the Furniture Business Group, the Graphics Business Group, the Industrial Products Business Group, the Recycled Electronics Products and Services Business Group, and the Services Business Group.

In Fiscal Year 2001, FPI had sales of $583.5 million, up from $546.4 million in FY 2000. These sales place FPI among the top 40 contractors to the Federal Government, in the same league with Motorola and Dell Computer Corporation. By contrast, FPI sales were $29 million in 1960. They reached $117 million in 1980. By 1985, they had grown to $240 million. Although total Federal procurement expenditures were dropping, FPI sales were $339 million in 1990 and climbed to $459.1 million by 1995.

Federal agencies are required by law, under 18 U.S.C. § 4124, to purchase FPI products if a product is available that meets the agencies' requirements and does not exceed current market prices. Under FPI's 1934 authorizing statute Federal agencies "shall purchase at not to exceed current market prices, such products . . . as meet their requirements and may be available" (18 U.S.C. § 4124). This provision in the law, deemed 'mandatory source preference,' does not specify how the current market price should be determined. The General Accounting Office (GAO) concluded in a 1998 report to Congress that "the only limitation on FPI's price is that it may not exceed the upper end of the current market price range."

The "mandatory preference" given FPI is viewed as an exception to the Federal Acquisition Regulation standards established for a "fair and reasonable price." Agencies are required to purchase products from FPI regardless of whether FPI provides the agency with a price it considers reasonable or factually supports the price it offered. An agency must obtain a waiver from FPI to purchase a product from another source; however, differences in price alone cannot sustain the request for a waiver.

Under FPI's mandatory source status, FPI, rather than the buying Federal agency, determines if FPI's offered product and proposed delivery schedule meet the mission needs of the buying agency and whether FPI's offered price meets the "current market" price standard. Thus, FPI's mandatory source status deprives the Federal agencies from using competitive procurement procedures to get the "best value" for the tax dollars they expend. Private sector businesses, and their non-inmate workers, are deprived of even the opportunity to bid on a broad array of contracting opportunities funded with their tax dollars.

Although FPI is precluded from selling its goods in the commercial market under 18 U.S.C. § 1761, the Bureau of Prisons (BOP) has taken the position that the language prohibiting interstate transport of goods does not prohibit it from selling services in the commercial market. Many private companies and small business have trouble competing with the advantages the prison industry enjoys such as a guaranteed market for its products and reduced costs for labor and capital.

Opponents of this legislation maintain that FPI is completely self-sufficient and serves a vital purpose. FPI provides inmates with employment skills and the opportunity to learn a trade that will help them obtain a job upon release. Some studies have shown that inmates who participate in work programs are less likely to commit new offenses. Additionally, allowing prisoners to work helps productivity and minimizes opportunities for conflict within the prison. Some wages paid to the prisoners are directed toward restitution payments owed to victims.

B. Legislative History

H.R. 1577, the "Federal Prison Industries Competition in Contracting Act of 2001" was introduced on April 24, 2001 and referred to the House Subcommittee on Crime, Terrorism, and Homeland Security on April 25, 2001. The bill is similar to two different bills that were introduced in the 106th Congress to address the mandatory source preference in FPI. Hearings were held on these bills in

the Subcommittee and H.R. 1577 was forwarded to the House Committee on the Judiciary.

HEARINGS

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held 1 day of hearings on H.R. 1577 on April 26, 2001. During that hearing Rep. Peter Hoekstra (MI–2d), the sponsor of H.R. 1577, testified and submitted for the record the printed hearing records from five oversight hearings conducted by the Subcommittee on Oversight and Investigations of the Committee on Education and the Workforce during the 104th, 105th, and 106th Congress. Testimony was received from three other witnesses, representing business and labor organizations, with additional material submitted by two individuals and organizations.

COMMITTEE CONSIDERATION

On April 18, 2002 and April 24, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 1577 with amendments by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

1. Mr. Conyers offered an amendment to the amendment in the nature of the substitute which would provide funds for additional vocational and educational opportunities for inmates during their incarceration and establish a demonstration project for a Federal offender reentry program after release to assist prisoners in adapting to life outside of prison, including skills training. The amendment would also allow FPI to donate products to nonprofit organizations that serve low income individuals. This amendment was adopted by voice vote.

2. Mr. Green of Wisconsin offered an amendment to the amendment in the nature of a substitute which would allow FPI to sell on a noncompetitive basis to agencies only in accordance with the applicable laws and regulations and not in accordance with the procedures described in the amendment in the nature of a substitute. It would also require agencies to solicit bids from FPI for any purchase even those under the micro-purchase threshold. This amendment was defeated on a rollcall vote, 8–18.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Bryant			
Mr. Chabot	X		
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Graham			
Mr. Bachus	X		
Mr. Hostettler		X	
Mr. Green	X		

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Keller		X	
Mr. Issa	X		
Ms. Hart		X	
Mr. Flake			
Mr. Pence			
Mr. Conyers		X	
Mr. Frank		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt		X	
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff			
Mr. Sensenbrenner, Chairman		X	
Total	8	18	

3. Mr. Hyde offered an amendment to the amendment in the nature of a substitute that would require the Attorney General to make a finding regarding the effects of the phase-out of mandatory source authority on inmate employment and safety within the prisons and to the public. If the Attorney General finds a significant risk of adverse effects, he would notify the Congress and postpone for 1 year any further phase-out of mandatory source. The phase-out postponed shall resume 1 year later if the Attorney General makes a finding 60 days prior to the start of that fiscal year that it will not result in a substantial reduction in inmate employment or will not present significant threats to prison operations or public safety. The Hyde amendment was adopted by voice vote after being modified by an amendment offered by Mr. Frank.

4. Mr. Frank offered an amendment to the Hyde amendment to the amendment in the nature of a substitute to allow for a study and report to Congress by the Attorney General, but did not allow the Attorney General to postpone the phase-out. The Frank amendment to the Hyde amendment was adopted by a rollcall vote, 18–9.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte			
Mr. Bryant			
Mr. Chabot		X	
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Cannon	X		

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Graham	X		
Mr. Bachus		X	
Mr. Hostettler	X		
Mr. Green		X	
Mr. Keller	X		
Mr. Issa		X	
Ms. Hart	X		
Mr. Flake		X	
Mr. Pence			
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott		X	
Mr. Watt	X		
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner	X		
Mr. Schiff		X	
Mr. Sensenbrenner, Chairman	X		
Total	18	9	

5. Ms. Jackson Lee offered an amendment to the amendment in the nature of a substitute to allow the Comptroller General to have an independent study performed on the effects of eliminating mandatory source contracting. This amendment was adopted by a voice vote.

6. Mr. Green offered an amendment in the nature of a substitute that would add two additional members to the Board of Directors, one member to represent victims of crime and another to represent Federal inmate workers. This amendment was adopted by a voice vote.

7. Mr. Watt offered an amendment to the amendment in the nature of the substitute that would alter the first of two determinations that the Attorney General must make to allow procurement activity to be had on a noncompetitive basis by FPI to require a determination that FPI cannot reasonably expect fair consideration to receive the contract award on a competitive basis. This amendment was adopted by a voice vote.

8. Mr. Issa offered an amendment that would have allowed Federal Prison Industries to continue to utilize mandatory source if 80 percent of the products are manufactured by inmates within 2 years of release or in a pre-release program. This amendment was defeated by a rollcall vote, 5–22.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde			
Mr. Gekas		X	
Mr. Coble		X	

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Smith (Texas)		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Bryant		X	
Mr. Chabot	X		
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Graham			
Mr. Bachus			
Mr. Hostettler		X	
Mr. Green	X		
Mr. Keller		X	
Mr. Issa	X		
Ms. Hart		X	
Mr. Flake		X	
Mr. Pence			
Mr. Conyers		X	
Mr. Frank		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott	X		
Mr. Watt		X	
Ms. Lofgren	X		
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin		X	
Mr. Weiner			
Mr. Schiff		X	
Mr. Sensenbrenner, Chairman		X	
Total	5	22	

9. Mr. Scott offered an amendment that would require the Attorney General to include information in his annual report to Congress (as added by the Hyde amendment) on the impact of the loss of prison industry jobs on the safety and work environment of the workers. This amendment was adopted by voice vote.

10. Mr. Scott offered an amendment that would allow the Board of Directors to approve a proposal authorizing FPI to exceed a "reasonable share of the market," as defined in the Sensenbrenner-Frank amendment in the nature of a substitute, if it is specifically requested by the agency and the contract award is made using competitive procedures. This amendment was defeated by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

The legislation as amended includes an authorization of funds to improve vocational training and educational opportunities within the Federal prison system and to allow a demonstration project for a Federal offender reentry program. The goal is to ensure that with the phase-out of mandatory source, inmates in prison are still receiving skills training to improve job opportunities after release. Additionally, the Federal reentry program will establish plans for individual prisoners to address community safety, substance abuse/mental health treatment, vocational and educational training, and programming to assist with successful reintegration into the community.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1577, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 27, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1577, the Federal Prison Industries Competition in Contracting Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1577—Federal Prison Industries Competition in Contracting Act of 2002.

SUMMARY

H.R. 1577 would amend the laws that authorize the Federal Prison Industries (FPI), a Government-owned corporation that produces products for the Federal Government with prison labor. Under current law, Federal agencies are required to purchase products from FPI if products are available to meet the agencies' needs and the cost would not exceed current market prices. Such products

include office furniture, textiles, vehicle tags, and fiber optics. Under the bill, this requirement would be reduced over the next several years, and the share of the Federal market that FPI holds for the products and services it provides would be limited to 20 percent and 5 percent, respectively.

Section 11 would authorize the Attorney General to establish a Federal Enhanced In-Prison Vocational Assessment and Training Program in all Federal institutions and establish an FPI program that would produce products to be donated to nonprofit organizations. The bill also would appropriate a minimum of $75 million per year for such programs. Based on information from the Department of Justice (DOJ) and major FPI customers, CBO estimates that enacting this provision would result in direct spending of about $1.9 billion over the 2003–2007 period and $5.3 billion over the 2003–2012 period. Because enactment of H.R. 1577 would affect direct spending, pay-as-you-go procedures would apply to the bill.

The bill also would authorize the appropriation of $4 million to $5 million each year over the 2003–2007 period for the Bureau of Prisons and the Federal courts to establish a Federal Reentry Center Demonstration project. CBO estimates that implementing this provision would cost $24 million over the 2003–2007 period to establish and operate the program, assuming the appropriation of the authorized amounts.

H.R. 1577 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1577 is shown in the following table. The cost of this legislation falls within budget function 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars				
	2003	2004	2005	2006	2007
CHANGES IN DIRECT SPENDING					
FPI Donation Program					
Estimated Budget Authority	177	276	387	441	497
Estimated Outlays	177	276	387	441	497
Enhanced Vocational Assessment and Training					
Estimated Budget Authority	28	29	29	30	30
Estimated Outlays	25	28	29	30	30
Total Cost					
Estimated Budget Authority	205	305	416	471	528
Estimated Outlays	202	304	416	471	528
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Federal Reentry Demonstration Project					
Authorization Level	4	5	5	5	5
Estimated Outlays	4	5	5	5	5

BASIS OF ESTIMATE

CBO assumes that H.R. 1577 will be enacted near the end of fiscal year 2002 and that amounts authorized by the bill will be appropriated. The bill's effects on direct spending and spending subject to appropriation are described in the following paragraphs.

Direct Spending

H.R. 1577 would authorize the Attorney General to spend no less than $75 million a year to establish and administer the programs authorized in section 11. CBO estimates that direct spending as a result of enacting H.R. 1577 would exceed that minimum level and would total about $1.9 billion over the 2003–2007 period and $5.3 billion over the next 10 years. Our estimate is based primarily on the assumption that all able inmates continue to work as under current law.

FPI Donation Program. The bill would facilitate developing a significant donation program by restricting the portion of the Federal market for goods and services that FPI can serve and by reducing the requirement for Federal agencies to purchase such goods and services from FPI. H.R. 1577 would limit the portion of the Federal market for any product or service that FPI can provide to the government to 20 percent and 5 percent, respectively. For example, FPI provides 94 percent of all mail carrier bag repair for the U.S. Postal Service. H.R. 1577 would prevent FPI from providing more than 5 percent of that service. In addition, the bill would gradually reduce the requirement for Federal agencies to purchase FPI products and services. Based on information from DOJ and major Federal customers of FPI, we expect that FPI's total sales to the Federal Government would decrease under the bill by 20 percent of projected sales in 2003 and that such sales would continue to decline—eroding by 50 percent of anticipated sales by 2008.

H.R. 1577 also would authorize the Attorney General to establish a new FPI program in every Federal institution that would produce goods and services to be donated to nonprofit organizations instead of being offered for purchase to the Federal Government. Because the Bureau of Prisons requires all able inmates to work, CBO assumes that the loss in production due to reduced demand by Federal agencies for FPI products and services would be offset by the production of goods and services for donation under this new program.

CBO estimates that the donation program would cost $137 million in fiscal year 2003, about $1.1 billion over the 2003–2007 period, and about $3.1 billion over the 2003–2012 period to operate in existing facilities. Costs would include inmate and civilian salaries, raw materials, maintenance, and other expenses to convert manufacturing facilities to produce products desirable to nonprofit organizations.

The cost of operating the FPI donation program would increase as more prison facilities are added to the Federal system. DOJ anticipates that about 25 new Federal prison facilities will open during the next 10 years. Based on information from DOJ, CBO estimates that implementing the FPI donation program in those new facilities would cost $700 million over the 2003–2007 period and about $1.9 billion over the 2003–2012 period.

Enhanced In-Prison Vocational Assessment and Training. Section 11 would authorize the Attorney General to establish a Federal Enhanced In-Prison Vocational Assessment and Training Program in all Federal institutions. Federal institutions currently participate in vocational assessment and training programs, and we assume that the program that would be authorized by H.R. 1577 would be an expanded version of the current program. Based on information from DOJ, CBO estimates that the enhanced program would cost $28 million to $30 million per year to increase the number of inmates who participate in the training and expand the services provided by the program.

Spending Subject to Appropriation

Section 10 would authorize the appropriation of $1 million each year to the Bureau of Prisons and $3 million to $4 million each year to the Federal courts to establish the Federal Reentry Center Demonstration project. The project would include substance abuse treatment, vocation and educational training, conflict resolution skills training, and assistance with affordable housing. CBO estimates that this provision would cost $24 million over the 2003–2007 period, assuming the appropriation of the authorized amounts.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The changes in direct spending that would be subject to pay-as-you-go procedures are shown in the following table. For the purposes of pay-as-you-go procedures, only the effects through 2006 are counted.

	By Fiscal Year, in Millions of Dollars										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in outlays	0	205	305	416	471	528	624	647	670	693	717
Changes in receipts	Not applicable										

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1577 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no cost on State, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Lanette J. Walker (226–2860)
Impact on State, Local, and Tribal Governments: Angela Seitz (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clauses 3, 14 and 18, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title. The short title of this bill is the "Federal Prison Industries Competition in Contracting Act of 2002."

Section 2. Government-Wide Procurement Policy Relating to Purchases from Federal Prison Industries. Amends Title 18 to replace provisions regarding the purchase of prison-made products by Federal departments with provisions establishing a Government-wide procurement policy relating to purchases from FPI, which will generally require the use of competitive procedures.

This section includes a provision to allow FPI to make sales on a noncompetitive basis if the Attorney General makes two findings regarding the ability of FPI to receive the contract and the need for the contract to maintain safety in the prison and the community. Additionally, this section requires the Attorney General to study the effects of the phase-out of mandatory source and provide a report to Congress with recommendations regarding the need for further appropriations to provide additional staffing for prison safety and inmate rehabilitation.

Section 3. Public Participation Regarding Expansion Proposals by Federal Prison Industries. Requires that, whenever FPI proposes to authorize the sale of a new product or service or to expand production of a current product or service, an analysis of the probable impact of the proposed expansion on private sector firms be performed.

Section 4. Transitional Mandatory Source Authority. Establishes a 5-year phase-out of the Federal Prison Industries mandatory source preference. It requires that during the phase-out period Federal agencies must solicit contracts from FPI first, if FPI has a product that meets the agency's needs, can provide that product in a timely manner, and can provide it at a fair and reasonable price.

Section 5. Authority to Perform as a Federal Subcontractor. Authorizes FPI to enter into a contract with a Federal contractor to produce products as a subcontractor or supplier in the performance of a Federal procurement contract. The use of FPI as a subcontractor or supplier must be a voluntary business decision by the Federal prime contractor or subcontractor.

Section 5 prohibits commercial sales of a product or service either directly or indirectly, resulting from the labor of inmate workers. It also requires a Federal contractor using FPI as a subcontractor to implement appropriate management procedures to prevent introducing an inmate-produced product into the commercial market.

The use of FPI as a subcontractor or supplier of products or provider of services cannot be imposed upon Federal prime contractors or subcontractors as a condition of the contract requiring it to make use of Federal Prison Industries, its products or services.

Section 6. Inmate Wages and Deductions. Requires the director of the BOP to establish the rates of hourly wages to be paid inmates

performing work for FPI and other work assignments within the correctional institutions.

Wages earned by an inmate worker will be paid in the name of the inmate. Deductions will be taken from the wages as follows: (1) applicable taxes (Federal, State, and local); (2) payment of fines and restitution pursuant to court order; (3) payment of additional restitution for victims of the inmate's crimes; (4) allocations for support of the inmate's family pursuant to statute, court order, or agreement with the inmate; (5) allocations to a fund in the name of the inmate to facilitate assimilation back into society, payable at the conclusion of incarceration; and (6) such other deductions as may be specified by the Director of the Bureau of Prisons.

Section 7. Clarifying Amendment Relating to Services. Amends section 1761(a) of Title 18, United States Code, to clarify that the prohibition on the results of inmate labor being introduced into interstate commerce extends to services as well as products. The section also provides transitional authority to hold harmless prison industry programs operated by the states and their units of local government, which may have engaged in the commercial sale of inmate services in reliance on the February 1998 memorandum opinion from a special counsel in the Criminal Division of the U.S. Department of Justice.

Section 8. Conforming Amendment. Provides FPI with explicit statutory authority to offer services to the various Federal departments and agencies. Presently, FPI's authorizing statute only specifically addresses the sale of products to Federal agencies.

Section 9. Rules of Construction Relating to Chapter 307. Establishes a series of rules of construction relating to Chapter 307 (Employment, Prisons and Prisoners) to prevent causes of action by inmates with regard to employment in the Federal prisons.

Section 10. Providing Additional Opportunities for Vocational and Remedial Educational Opportunities for Inmates. Authorizes appropriations to the Federal Bureau of Prisons and the Federal Judiciary to establish a Federal Reentry Center Demonstration to develop prisoner reentry plans to ensure the safety of the community and assist prisoners in successful reintegration into the community after release.

Section 11. Allocation of Profits to Vocational Training. Amends the United States Code, regarding the Department of Justice Assets Forfeiture Fund, to authorize disbursements to the BOP exclusively for the purpose of providing vocational assessments and training, paid work opportunities for FPI to donate goods to nonprofits, and remedial educational training for inmates.

Section 12. Restructuring the Board of Directors. Restructures FPI's Board of Directors by increasing it from its current 6-member board to 11 members appointed by the President including 3 members to represent the business community, 3 members to represent organized labor, and 1 member with special expertise in inmate rehabilitation techniques, 1 member representing the interests victims of crime, 1 member representing Federal inmates, and 2 members "whose background and expertise the President deems appropriate."

Section 13. Pre-Release Employment Assistance. Requires the director of the BOP, to the extent practicable, to provide inmates op-

portunities to participate in programs and activities designed to help prepare such inmates to obtain employment upon release.

The pre-release employment placement assistance required by this section will include(1) training in the preparation of resumes and job applications; (2) training in interviewing skills; (3) training and assistance in job search techniques; (4) conduct of job fairs; and (5) such other methods deemed appropriate by the director.

Section 14. Providing Additional Management Flexibility to Federal Prison Industry Operations. Allows FPI to locate more than one workshop at a facility and also allows Federal Prison Industries to operate a workshop outside a correctional facility if all of the inmates in such workshop are classified as minimum security inmates.

Section 15. Federal Prison Industries Report to Congress. Requires the Board of Directors of FPI to submit an annual report to Congress on the conduct of the business of the corporation during each fiscal year and the condition of its funds during the fiscal year. The report will include an analysis of the number of inmates served by the program and the products and services offered.

Section 16. Definitions. This section defines relevant terms in the bill.

Section 17. Implementing Regulations and Procedures. Establishes a time line for revisions to the Federal Acquisition Regulations and other regulations, consistent with this legislation.

Section 18. Rule of Construction. Specifies this legislation does not alter the rights of any offerer other than FPI to file a bid protest.

Section 19. Effective Date and Applicability. Establishes the effective date for the various provisions of the bill. It also provides a time line for the issuance of proposed and final regulations, spanning approximately a 1-year period, to assure ample time for public comment on proposed regulations and time to revise the proposed regulations in response to public comments.

Section 20. Clerical Amendments. This section makes clerical changes to Title 18 consistent with the changes in the legislation.

Section 21. Independent Study to Determine the Effects of Eliminating The Federal Prison Industries Mandatory Source Authority. Allows the Comptroller General to have an independent study performed on the effects of eliminating mandatory source contracting.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 85—PRISON-MADE GOODS

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§ 1761. Transportation or importation

(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States [any goods, wares, or merchandise manufactured, produced, or mined] *products manufactured, services furnished, or minerals mined*, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution, shall be fined under this title or imprisoned not more than two years, or both.

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PART III—PRISONS AND PRISONERS

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CHAPTER 307—EMPLOYMENT

Sec.
[4121. Federal Prison Industries; board of directors.]
4121. Federal Prison Industries; Board of Directors: executive management.

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[4124. Purchase of prison-made products by Federal departments.]
4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries.

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[4127. Prison Industries report to Congress.]
4127. Federal Prison Industries report to Congress.

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4130. Construction of provisions.
4131. Definitions.

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[§ 4121. Federal Prison Industries; board of directors

[“Federal Prison Industries”, a government corporation of the District of Columbia, shall be administered by a board of six directors, appointed by the President to serve at the will of the President without compensation.

[The directors shall be representatives of (1) industry, (2) labor, (3) agriculture, (4) retailers and consumers, (5) the Secretary of Defense, and (6) the Attorney General, respectively.]

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

(a) Federal Prison Industries is a government corporation of the District of Columbia organized to carry on such industrial operations in Federal correctional institutions as authorized by its Board of Directors. The manner and extent to which such industrial operations are carried on in the various Federal correctional institutions shall be determined by the Attorney General.

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

(2) In making appointments to the Board, the President shall assure that 3 members represent the business community, 3 members represent organized labor, 1 member shall have special expertise in inmate rehabilitation techniques, 1 member represents victims of crime, 1 member represents the interests of Federal inmate workers, and 2 additional members whose background and expertise the President deems appropriate. The members of the Board representing the business community shall include, to the maximum extent practicable, representation of firms furnishing services as well as firms producing products, especially from those industry categories from which Federal Prison Industries derives substantial sales. The members of the Board representing organized labor shall, to the maximum practicable, include representation from labor unions whose members are likely to be most affected by the sales of Federal Prison Industries.

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

(A) 2 members representing the business community shall be appointed for a term of 3 years;

(B) 2 members representing labor shall be appointed for a term of 3 years;

(C) 2 members whose background and expertise the President deems appropriate for a term of 3 years;

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

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

(F) 1 member representing the business community shall be appointed for a term of 4 years;

(G) 1 member representing the business community shall be appointed for a term of 4 years; and

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

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

(5) Members of the Board may be reappointed.

(6) Any vacancy on the Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

(7) The members of the Board shall serve without compensation. The members of the Oversight Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, to attend meetings of the Board and, with the advance approval of the Chairperson of the Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Board.

(8)(A) The Chairperson of the Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.

(B) Upon request of the Chairperson of the Board, a Federal agency may detail a Federal Government employee to the Board

without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

(9) The Chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(c) The Director of the Bureau of Prisons shall serve as Chief Executive Officer of the Corporation. The Director shall designate a person to serve as Chief Operating Officer of the Corporation.

§ 4122. Administration of Federal Prison Industries

(a) Federal Prison Industries shall determine in what manner and to what extent industrial operations shall be carried on in Federal penal and correctional institutions for the [production of commodities] *production of products or furnishing of services* for consumption in such institutions or for sale to the departments or agencies of the United States, but not for sale to the public in competition with private enterprise.

(b)(1) * * *

* * * * * * *

(3)*(A)* Federal Prison Industries shall diversify its products so that its sales are distributed among its industries as broadly as possible.

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

(C) Federal Prison Industries may operate a workshop outside of a correctional facility if all of the inmates working in such workshop are classified as minimum security inmates.

[(4) Any decision by Federal Prison Industries to produce a new product or to significantly expand the production of an existing product shall be made by the board of directors of the corporation. Before the board of directors makes a final decision, the corporation shall do the following:

[(A) The corporation shall prepare a detailed written analysis of the probable impact on industry and free labor of the plans for new production or expanded production. In such written analysis the corporation shall, at a minimum, identify and consider—

[(i) the number of vendors currently meeting the requirements of the Federal Government for the product;

[(ii) the proportion of the Federal Government market for the product currently served by small businesses, small disadvantaged businesses, or businesses operating in labor surplus areas;

[(iii) the size of the Federal Government and non-Federal Government markets for the product;

[(iv) the projected growth in the Federal Government demand for the product; and

[(v) the projected ability of the Federal Government market to sustain both Federal Prison Industries and private vendors.

[(B) The corporation shall announce in a publication designed to most effectively provide notice to potentially affected private vendors the plans to produce any new product or to significantly expand production of an existing product. The announcement shall also indicate that the analysis prepared

under subparagraph (A) is available through the corporation and shall invite comments from private industry regarding the new production or expanded production.

[(C) The corporation shall directly advise those affected trade associations that the corporation can reasonably identify the plans for new production or expanded production, and the corporation shall invite such trade associations to submit comments on those plans.

[(D) The corporation shall provide to the board of directors—

[(i) the analysis prepared under subparagraph (A) on the proposal to produce a new product or to significantly expand the production of an existing product,

[(ii) comments submitted to the corporation on the proposal, and

[(iii) the corporation's recommendations for action on the proposal in light of such comments.

In addition, the board of directors, before making a final decision under this paragraph on a proposal, shall, upon the request of an established trade association or other interested representatives of private industry, provide a reasonable opportunity to such trade association or other representatives to present comments directly to the board of directors on the proposal.

[(5) Federal Prison Industries shall publish in the manner specified in paragraph (4)(B) the final decision of the board with respect to the production of a new product or the significant expansion of the production of an existing product.]

(4) A decision to authorize Federal Prison Industries to offer a new specific product or specific service or to expand the production of an existing product or service shall be made by its board of directors in conformance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, and this chapter.

(5)(A) Whenever Federal Prison Industries proposes to offer for sale a new specific product or specific service or to expand production of a currently authorized product or service, the Chief Operating Officer of Federal Prison Industries shall submit an appropriate proposal to the board of directors and obtain the board's approval before initiating any such expansion. The proposal submitted to the board shall include a detailed analysis of the probable impact of the proposed expansion of sales within the Federal market by Federal Prison Industries on private sector firms and their non-inmate workers.

(B)(i) The analysis required by subparagraph (A) shall be performed by an interagency team on a reimbursable basis or by a private contractor paid by Federal Prison Industries.

(ii) If the analysis is to be performed by an interagency team, such team shall be led by the Administrator of the Small Business Administration or the designee of such officer with representatives of the Department of Labor, the Department of Commerce, and the Federal Procurement Data Center.

(iii) If the analysis is to be performed by a private contractor, the selection of the contractor and the administration of the contract shall be conducted by one of the entities referenced in clause (ii) as an independent executive agent for the board of directors. Maximum

consideration shall be given to any proposed statement of work furnished by the Chief Operating Officer of Federal Prison Industries.

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

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

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

(iii) the share of the Federal market for the specific product or specific service projected for Federal Prison Industries for the fiscal year in which production or performance will commence or expand and the subsequent 4 fiscal years;

(iv) whether the industry producing the specific product or specific service in the private sector—

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

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

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

(vi) the requirements of the Federal Government and the demands of entities other than the Federal Government for the specific product or service during the previous 3 fiscal years;

(vii) the projected growth or decline in the demand of the Federal Government for the specific product or specific service;

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

(ix) whether authorizing the production of the new product or performance of a new service will provide inmates with the maximum opportunity to acquire knowledge and skill in trades and occupations that will provide them with a means of earning a livelihood upon release.

(D)(i) The board of directors may not approve a proposal to authorize the production and sale of a new specific product or continued sales of a previously authorized product unless—

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

(II) the service to be furnished is to be performed by inmate workers.

(ii) The board of directors may not approve a proposal to authorize the production and sale of a new prison-made product or to expand production of a currently authorized product if the product is—

(I) produced in the private sector by an industry which has reflected during the previous year an unemployment rate above the national average; or

(II) an import-sensitive product.

(iii) The board of directors may not approve a proposal for inmates to provide a service in which an inmate worker has access to—

(I) personal or financial information about individual private citizens, including information relating to such person's real property, however described, without giving prior notice to

such persons or class of persons to the greatest extent practicable;

(II) geographic data regarding the location of surface and subsurface infrastructure providing communications, water and electrical power distribution, pipelines for the distribution of natural gas, bulk petroleum products and other commodities, and other utilities; or

(III) data that is classified.

(iv)(I) Federal Prison Industries is prohibited from furnishing through inmate labor construction services, unless to be performed within a Federal correctional institution pursuant to the participation of an inmate in an apprenticeship or other vocational education program teaching the skills of the various building trades.

(II) For purposes of this clause, the term 'construction' has the meaning given such term by section 2.101 of the Federal Acquisition Regulation (48 CFR part 2.101), as in effect on June 1, 2001, including the repair, alteration, or maintenance of real property in being.

(6) To provide further opportunities for participation by interested parties, the board of directors shall—

(A) give additional notice of a proposal to authorize the production and sale of a new product or service, or expand the production of a currently authorized product or service, in a publication designed to most effectively provide notice to private vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal, which notice shall offer to furnish copies of the analysis required by paragraph (5) and shall solicit comment on the analysis;

(B) solicit comments on the analysis required by paragraph (5) from trade associations representing vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal to authorize the production and sale of a new product or service (or expand the production of a currently authorized product or service); and

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

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

(8) Based on the comments received on the initial expansion proposal, the Chief Operating Officer of Federal Prison Industries may provide the board of directors a revised expansion proposal. If such revised proposal provides for expansion of inmate work opportunities in an industry different from that initially proposed, such revised proposal shall reflect the analysis required by paragraph (5)(C) and be subject to the public comment requirements of paragraph (6).

(9) The board of directors shall consider a proposal to authorize the sale of a new specific product or specific service (or to expand the volume of sales for a currently authorized product or service) and take any action with respect to such proposal, during a meeting

that is open to the public, unless closed pursuant to section 552(b) of title 5.

(10) In conformity with the requirements of paragraphs (5) through (9) of this subsection, the board of directors may—

(A) authorize the donation of products produced or services furnished by Federal industries and available for sale; or

(B) authorize the production of a new specific product or the furnishing of a new specific service for donation.

(11)(A) The Board of Directors of Federal Prison Industries shall prescribe the rates of hourly wages to be paid inmates performing work for or through Federal Prison Industries. The Director of the Federal Bureau of Prisons shall prescribe the rates of hourly wages for other work assignments within the various Federal correctional institutions.

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

(C) Wages earned by an inmate worker shall be paid in the name of the inmate. Deductions, aggregating to not more than 80 percent of gross wages, shall be taken from the wages due for—

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

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

(iii) payment of additional restitution for victims of the inmate's crimes (at a rate not less than 10 percent of gross wages);

(iv) allocations for support of the inmate's family pursuant to statute, court order, or agreement with the inmate;

(v) allocations to a fund in the inmate's name to facilitate such inmate's assimilation back into society, payable at the conclusion of incarceration; and

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

(D) Each inmate worker working for Federal Prison Industries shall indicate in writing that such person—

(i) is participating voluntarily; and

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

[(6)**]** *(12)* Federal Prison Industries shall publish, after the end of each 6-month period, a list of sales by the corporation for that 6-month period. Such list shall be made available to all interested parties.

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[§ 4124. Purchase of prison-made products by Federal departments

[(a) The several Federal departments and agencies and all other Government institutions of the United States shall purchase at not to exceed current market prices, such products of the industries authorized by this chapter as meet their requirements and may be available.

[(b) Disputes as to the price, quality, character, or suitability of such products shall be arbitrated by a board consisting of the Attorney General, the Administrator of General Services, and the President, or their representatives. Their decision shall be final and binding upon all parties.

[(c) Each Federal department, agency, and institution subject to the requirements of subsection (a) shall separately report acquisitions of products and services from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act) in the same manner as it reports other acquisitions. Each report published by the Federal Procurement Data System that contains the information collected by the System shall include a statement to accompany the information reported by the department, agency, or institution under the preceding sentence as follows: "Under current law, sales by Federal Prison Industries are considered intragovernmental transfers. The purpose of reporting sales by Federal Prison Industries is to provide a complete overview of acquisitions by the Federal Government during the reporting period.".

[(d) Within 90 days after the date of the enactment of this subsection, Federal Prison Industries shall publish a catalog of all products and services which it offers for sale. This catalog shall be updated periodically to the extent necessary to ensure that the information in the catalog is complete and accurate.]

§ 4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries

(a) IN GENERAL.—Purchases from Federal Prison Industries, Incorporated, a wholly owned Government corporation, as referred to in section 9101(3)(E) of title 31, may be made by a Federal department or agency only in accordance with this section.

(b) SOLICITATION AND EVALUATION OF OFFERS AND CONTRACT AWARDS.—(1) If a procurement activity of a Federal department or agency has a requirement for a specific product or service that is authorized to be offered for sale by Federal Prison Industries, in accordance with section 4122 of this title, and is listed in the catalog referred to in subsection (g), the procurement activity shall solicit an offer from Federal Prison Industries, if the purchase is expected to be in excess of the micro-purchase threshold (as defined by section 32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f))).

(2) A contract award for such product or service shall be made using competitive procedures in accordance with the applicable evaluation factors, unless a determination is made by the Attorney General pursuant to paragraph (3) or an award using other than competitive procedures is authorized pursuant to paragraph (7).

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

(A) Federal Prison Industries cannot reasonably expect fair consideration to receive the contract award on a competitive basis; and

(B) the contract award is necessary to maintain work opportunities otherwise unavailable at the penal or correctional facility at which the contract is to be performed to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility.

(4) Except in the case of an award to be made pursuant to paragraph (3), a contract award shall be made with Federal Prison In-

dustries only if the contracting officer for the procurement activity determines that—

(A) the specific product or service to be furnished will meet the requirements of the procurement activity (including any applicable prequalification requirements and all specified commercial or governmental standards pertaining to quality, testing, safety, serviceability, and warranties);

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

(C) the contract price does not exceed a current market price.

(5) A determination by the Attorney General pursuant to paragraph (3) shall be—

(A) supported by specific findings by the warden of the penal or correctional institution at which a Federal Prison Industries workshop is scheduled to perform the contract;

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

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

(6) If the Attorney General has not made the determination described in paragraph (3) within 30 days after Federal Prison Industries has been informed of a contracting opportunity by a procurement activity, the procurement activity may proceed to conduct a procurement for the product or service in accordance with the procedures generally applicable to such procurements by the procurement activity.

(7) A contract award may be made to Federal Prison Industries using other than competitive procedures if such product or service is only available from Federal Prison Industries and the contract may be awarded under the authority of section 2304(c)(1) of title 10 or section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(1)), as may be applicable, and pursuant to the justification and approval requirements relating to such noncompetitive procurements specified by law and the Governmentwide Federal Acquisition Regulation.

(c) OFFERS FROM FEDERAL PRISON INDUSTRIES.—A timely offer received from Federal Prison Industries to furnish a product or service to a Federal department or agency shall be considered for award without limitation as to the dollar value of the proposed purchase.

(d) PERFORMANCE BY FEDERAL PRISON INDUSTRIES.—Federal Prison Industries shall perform its contractual obligations under a contract awarded by a Federal department or agency to the same extent as any other contractor.

(e) FINALITY OF CONTRACTING OFFICER'S DECISION.—(1) A decision by a contracting officer regarding the award of a contract to Federal Prison Industries or relating to the performance of such contract shall be final, unless reversed on appeal pursuant to paragraph (2) or (3).

(2) The Chief Executive Officer of Federal Prison Industries may appeal to the head of a Federal department or agency a decision by a contracting officer not to award a contract to Federal Pris-

on Industries pursuant to subsection (b)(4). The decision of the head of a Federal department or agency on appeal shall be final.

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

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

(B) final resolution by the board of contract appeals having jurisdiction over the procurement activity's contract performance disputes pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(f) REPORTING OF PURCHASES.—Each Federal department or agency shall report purchases from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4))) in the same manner as it reports to such System any acquisition in an amount in excess of the simplified acquisition threshold (as defined by section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

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

(h) COMPLIANCE WITH STANDARDS.—Federal Prison Industries shall comply with Federal occupational, health, and safety standards with respect to the operation of its industrial operations.

* * * * * * *

[§ 4127. Prison Industries report to Congress

[The board of directors of Federal Prison Industries shall submit an annual report to the Congress on the conduct of the business of the corporation during each fiscal year, and on the condition of its funds during such fiscal year. Such report shall include a statement of the amount of obligations issued under section 4129(a)(1) during such fiscal year, and an estimate of the amount of obligations that will be so issued in the following fiscal year.]

§ 4127. Federal Prison Industries report to Congress

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

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

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

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

(3) an analysis of—

(A) the corporation's total sales for each specific product and type of service sold to the Federal agencies and the commercial market;

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

(C) the corporation's share of such total Federal Government purchases by specific product and type of service; and

(D) the number and disposition of disputes submitted to the heads of the Federal departments and agencies pursuant to section 4124(e) of this title;

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

(A) the number of inmates employed;

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

(C) the number and percentage of employed inmates by the term of their incarceration; and

(D) the various hourly wages paid to inmates employed with respect to the production of the various specific products and types of services authorized for production and sale to Federal agencies and in the commercial market; and

(5) data concerning employment obtained by former inmates upon release to determine whether the employment provided by Federal Prison Industries during incarceration provided such inmates with knowledge and skill in a trade or occupation that enabled such former inmate to earn a livelihood upon release.

(c) PUBLIC AVAILABILITY.—Copies of an annual report under subsection (a) shall be made available to the public at a price not exceeding the cost of printing the report.

* * * * * * *

§ 4130. Construction of provisions

Nothing in this chapter shall be construed—

(1) to establish an entitlement of any inmate to—

(A) employment in a Federal Prison Industries facility; or

(B) any particular wage, compensation, or benefit on demand, except as otherwise specifically provided by law or regulation;

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

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

§ 4131. Definitions

As used in this chapter—

(1) the term "assembly" means the process of uniting or combining articles or components (including ancillary finished components or assemblies) so as to produce a significant change in form or utility, without necessarily changing or altering the component parts;

(2) the term "current market price" means, with respect to a specific product, the fair market price of the product within the meaning of section 15(a) of the Small Business Act (15 U.S.C. 644(a)), at the time that the contract is to be awarded, verified through appropriate price analysis or cost analysis, including any costs relating to transportation or the furnishing of any ancillary services;

(3) the term "import-sensitive product" means a product which, according to Department of Commerce data, has experienced competition from imports at an import to domestic production ratio of 25 percent or greater;

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

(5) the term "manufacture" means the process of fabricating from raw or prepared materials, so as to impart to those materials new forms, qualities, properties, and combinations;

(6) the term "reasonable share of the market" means a share of the total purchases by the Federal departments and agencies, as reported to the Federal Procurement Data System for—

(A) any specific product during the 3 preceding fiscal years, that does not exceed 20 percent of the Federal market for the specific product; and

(B) any specific service during the 3 preceding fiscal years, that does not exceed 5 percent of the Federal market for the specific service; and

(7) the term "services" has the meaning given the term "service contract" by section 37.101 of the Federal Acquisition Regulation (48 C.F.R. 36.102), as in effect on July 1, 2001.

* * * * * * *

SECTION 524 OF TITLE 28, UNITED STATES CODE

§ 524. Availability of appropriations

(a) * * *

* * * * * * *

(c)(1) There is established in the United States Treasury a special fund to be known as the Department of Justice Assets Forfeiture Fund (hereafter in this subsection referred to as the "Fund") which shall be available to the Attorney General without fiscal year limitation for the following law enforcement purposes—

(A) * * *

* * * * * * *

[(I) after all reimbursements and program-related expenses have been met at the end of fiscal year 1989, the Attorney General may transfer deposits from the Fund to the building and facilities account of the Federal prison system for the construction of correctional institutions.]

(J) payments to the Bureau of Prisons exclusively for the purpose of establishing the Federal Enhanced In-Prison Voca-

tional Assessment and Training Program in all Federal institutions, which shall provide in-prison assessments of prisoners' needs and aptitudes, enhanced work skills developed, enhanced release readiness programming, and other components as appropriate to reduce inmate idleness and prepare Federal prisoners for release and reentry into the community;

(K) payments to the Bureau of Prisons exclusively for the purpose of establishing a nonprofit component for inmate work in all Federal institutions, in carrying out which Federal Prison Industries shall (i) work actively to identify and donate to nonprofit organizations that provide goods and services to low income individuals who can use Federal Prison Industry products and have difficulty purchasing these products on their own, and (ii) focus on organizations that would not otherwise be available to purchase such products.

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MARKUP TRANSCRIPT

BUSINESS MEETING

THURSDAY, APRIL 18, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. We have a working quorum here. Pursuant to notice I now call up the bill H.R. 1577, the "Federal Prison Industries Competition and Contracting Act," for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 1577, follows:]

I

107TH CONGRESS
1ST SESSION

H. R. 1577

To amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with non-inmate workers and the firms that employ them and increasing the likelihood that Federal agencies get the best value for taxpayers dollars, to require that Federal Prison Industries fully and timely perform its Government contracts by empowering Federal contracting officers with the contract administration tools generally available to assure full and timely performance of other Government contracts, to enhance the opportunities for effective public participation in decisions to expand the activities of Federal Prison Industries, to provide to Federal agencies temporary preferential contract award authority to ease the transition of Federal Prison Industries to obtaining inmate work opportunities through other than its mandatory source status, to provide additional work opportunities for Federal inmates by authorizing Federal Prison Industries to provide inmate workers to nonprofit entities with protections against commercial activities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2001

Mr. HOEKSTRA (for himself, Mr. FRANK, Mr. COLLINS, Mrs. MALONEY of New York, Mr. SENSENBRENNER, Mr. COBLE, Mr. HILLEARY, Ms. BALDWIN, Mr. JENKINS, Mr. KLECZKA, Mr. TOM DAVIS of Virginia, Mr. RAHALL, Ms. HART, Mr. MCGOVERN, Mr. BLUNT, Mr. GORDON, Mr. BURR of North Carolina, Mr. SMITH of Washington, Mr. LAHOOD, Mr. NEY, Mr. HILLIARD, Mr. LOBIONDO, Mr. JONES of North Carolina, Mr. ENGLISH, Mr. DOYLE, Mr. MCHUGH, Mr. EHLERS, Ms. CARSON of Indiana, Mr. SESSIONS, Mr. CAMP, Mr. KUCINICH, Mr. ROYCE, Mr. SOUDER, and Mr. TANNER) 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 non-inmate workers and the firms that employ them and increasing the likelihood that Federal agencies get the best value for taxpayers dollars, to require that Federal Prison Industries fully and timely perform its Government contracts by empowering Federal contracting officers with the contract administration tools generally available to assure full and timely performance of other Government contracts, to enhance the opportunities for effective public participation in decisions to expand the activities of Federal Prison Industries, to provide to Federal agencies temporary preferential contract award authority to ease the transition of Federal Prison Industries to obtaining inmate work opportunities through other than its mandatory source status, to provide additional work opportunities for Federal inmates by authorizing Federal Prison Industries to provide inmate workers to nonprofit entities with protections against commercial activities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Prison Industries Competition in Contracting Act of 2001''.

SEC. 2. GOVERNMENTWIDE PROCUREMENT POLICY RELATING TO PURCHASES FROM FEDERAL PRISON INDUSTRIES.

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

"§ 4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries

"(a) IN GENERAL.—Purchases from Federal Prison Industries, Incorporated, a wholly owned Government corporation, as defined in section 9101(3)(E) of title 31, may be made by a Federal department or agency only in accordance with this section.

"(b) SOLICITATION AND EVALUATION OF OFFERS AND CONTRACT AWARDS.—(1) When a procurement activity of a Federal department or agency has a requirement for a specific product or service that is authorized to be offered for sale by Federal Prison Industries, in accordance with section 4122 of this title, and is listed in the catalog referred to in subsection (g), the procurement activity shall solicit an offer from Federal Prison Industries, if the purchase is expected to be in excess of the micro-purchase threshold (as defined by section 32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f))).

"(2) A contract award for such product or service shall be made using competitive procedures in accordance with the specifications and evaluation factors specified in the solicitation (or other request for offers), unless a determination is made by the Attorney General pursuant to paragraph (3).

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

"(A) Federal Prison Industries cannot reasonably expect to receive the contract award on a competitive basis; and

"(B) the contract award is necessary to maintain work opportunities otherwise unavailable at the penal or correctional facility at which the contract is to be performed to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility.

"(4) A contract award shall be made with Federal Prison Industries if the contracting officer for the procurement activity determines that—

"(A) the prison-made product or service to be furnished will meet the requirements of the procurement activity (including any applicable

prequalification requirements and all specified commercial or governmental standards pertaining to quality, testing, safety, serviceability, and warranties);

"(B) timely performance of the contract can be reasonably expected; and

"(C) the contract price does not exceed a current market price.

"(5) A determination by the Attorney General pursuant to paragraph (3) shall be—

"(A) supported by specific findings by the warden of the penal or correctional institution at which a Federal Prison Industries workshop is scheduled to perform the contract;

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

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

"(6) If the Attorney General has not made the determination described in paragraph (3) within 30 days after Federal Prison Industries has been informed of a contracting opportunity by a procurement activity, the pro-

curement activity shall conduct a procurement for the product in accordance with the procedures generally applicable to such procurements by the procurement activity.

"(c) COMPETITIVE OFFERS FROM FEDERAL PRISON INDUSTRIES.—A timely offer made by Federal Prison Industries shall be considered for award in accordance with the applicable specification and evaluation factors specified in any solicitation (or other request for offers).

"(d) PERFORMANCE BY FEDERAL PRISON INDUSTRIES.—Federal Prison Industries shall perform its contractual obligations under a contract awarded by a Federal department or agency to the same extent as any other contractor.

"(e) FINALITY OF CONTRACTING OFFICER'S DECISION.—(1) A decision by a contracting officer regarding the award of a contract to Federal Prison Industries or relating to the performance of such contract shall be final, unless reversed on appeal pursuant to paragraph (2) or (3).

"(2) The Chief Executive Officer of Federal Prison Industries may appeal to the head of a Federal department or agency a decision by a contracting officer not to award a contract to Federal Prison Industries pursuant to subsection (b)(4). The decision of the head of a Federal department or agency on appeal shall be final.

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

"(A) alternative means of dispute resolution pursuant to subchapter IV of chapter 5 of title 5; or

"(B) final resolution by the board of contract appeals having jurisdiction over the procurement activity's contract performance disputes pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

"(f) REPORTING OF PURCHASES.—Each Federal department or agency shall report purchases from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4))) in the same manner as it reports to such System any acquisition in an amount in excess of the simplified acquisition threshold (as defined by section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

"(g) CATALOG OF PRODUCTS.—Federal Prison Industries shall publish and maintain a catalog of all specific products and services that it is authorized to offer for sale. Such catalog shall be periodically revised as products and

services are added or deleted by its board of directors (in accordance with section 4122(b) of this title).

"(h) COMPLIANCE WITH STANDARDS.—Federal Prison Industries shall comply with Federal occupational, health, and safety standards with respect to the operation of its industrial operations.".

SEC. 3. PUBLIC PARTICIPATION REGARDING EXPANSION PROPOSALS BY FEDERAL PRISON INDUSTRIES.

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

(1) by redesignating paragraph (6) as paragraph (11); and

(2) by striking paragraphs (4) and (5) and inserting the following new paragraphs:

"(4) A decision to authorize Federal Prison Industries to offer a new specific product or service or to expand the production of an existing product or service shall be made by its board of directors in conformance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, and this chapter.

"(5)(A) Whenever Federal Prison Industries proposes to offer for sale a new specific product or service or to expand production of a currently authorized product or service, the Chief Operating Officer of Federal Prison

Industries shall submit an appropriate proposal to the board of directors and obtain the board's approval before initiating any such expansion. The proposal submitted to the board shall include a detailed analysis of the probable impact of the proposed expansion of inmate-work activities by Federal Prison Industries on private sector firms and their non inmate workers.

''(B)(i) The analysis required by subparagraph (A) shall be performed by an interagency team on a reimbursable basis or by a private contractor paid by Federal Prison Industries.

''(ii) If the analysis is to be performed by an interagency team, such team shall be led by the Federal Procurement Data Center with representatives of the Department of Labor, the Department of Commerce, and the Small Business Administration.

''(iii) If the analysis is to be performed by a private contractor, the selection of the contractor and the administration of the contract shall be conducted by one of the entities referenced in clause (ii) as an independent executive agent for the board of directors.

''(C) The analysis required by subparagraph (A) shall identify and consider—

"(i) the number of vendors that currently meet the requirements of the Federal Government for the specific product or service;

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

"(iii) the share of the Federal market for the specific product or service projected for Federal Prison Industries for the fiscal year in which production or performance will commence or expand and the subsequent 3 fiscal years;

"(iv) whether the industry producing the specific product or service in the private sector—

"(I) has an unemployment rate higher than the national average;

"(II) has a rate of employment for workers that has consistently shown an increase during the previous 5 years; or

"(III) has an import to domestic production ratio of 25 percent or greater;

"(v) the total volume of domestic production during each of the 5 previous years in the industry producing the specific product or service in the private sector;

"(vi) whether the specific product is an import-sensitive product;

"(vii) the requirements of the Federal Government and the demands of entities other than the Federal Government for the specific product or service during the previous 3 fiscal years;

"(viii) the projected growth or decline in the demand of the Federal Government for the specific product or service;

"(ix) the capability of the projected demand of the Federal Government for the specific product or service to sustain both Federal Prison Industries and private vendors; and

"(x) whether authorizing the production of the new product or performance of a new service will provide inmates with the maximum opportunity to acquire knowledge and skill in trades and occupations that will provide them with a means of earning a livelihood upon release.

"(C)(i) The board of directors may not approve a proposal to authorize the production and sale of a new specific product or continued sales of a previously authorized product unless—

"(I) the product to be furnished is a prison-made product; or

"(II) the service to be furnished is to be performed by inmate workers.

"(ii) The board of directors may not approve a proposal to authorize the production and sale of a new prison-made product or to expand production of a currently authorized product if the product is—

"(I) produced in the private sector by an industry which has reflected during the previous year an unemployment rate above the national average; or

"(II) an import-sensitive product.

"(iii) The board of directors may not approve a proposal for inmates to provide a service in which an inmate worker has access to—

"(I) personal or financial information about individual private citizens, including information relating to such person's real property, however described, without giving prior notice to such persons; or

"(II) data that is classified, or that will become classified after being merged with other data.

"(iv)(I) Federal Prison Industries is prohibited from furnishing construction services relating to buildings, structures, or other real property.

"(II) Geographic data regarding the location of surface and subsurface infrastructure providing communica-

tions, water and electrical power distribution, pipelines for the distribution of natural gas, bulk petroleum products and other commodities, and other utilities.

"(III) For purposes of this clause, the term 'construction' has the meaning given such term by section 2.101 of the Federal Acquisition Regulation (48 CFR part 2.101), as in effect on June 1, 2000, including the repair, alteration, or maintenance of real property in being.

"(6) To provide further opportunities for participation by interested parties, the board of directors shall—

"(A) give additional notice of a proposal to authorize the production and sale of a new product or expand the production of a currently authorized product in a publication designed to most effectively provide notice to private vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal, which notice shall offer to furnish copies of the analysis required by paragraph (5) and shall solicit comment on the analysis;

"(B) solicit comments on the analysis required by paragraph (5) from trade associations representing vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal to

1 authorize the production and sale of a new product
2 or expand the production of a currently authorized
3 product; and
4 ''(C) afford an opportunity, on request, for a
5 representative of an established trade association,
6 labor union, or other representatives of private in-
7 dustry to present comments on the proposal directly
8 to the board of directors.
9 ''(7) The board of directors shall be provided copies
10 of all comments received on the expansion proposal.
11 ''(8) Based on the comments received on the initial
12 expansion proposal, the Chief Operating Officer of Federal
13 Prison Industries may provide the board of directors a re-
14 vised expansion proposal. If such revised proposal provides
15 for expansion of inmate work opportunities in an industry
16 different from that initially proposed, such revised pro-
17 posal shall be subject to the public comment requirements
18 of paragraph (6).
19 ''(9) The board of directors shall consider a proposal
20 to authorize the sale of a new product or service (or to
21 modify the volume of sales for a currently authorized prod-
22 uct or service) and take any action with respect to such
23 proposal, during a meeting that is open to the public, un-
24 less closed pursuant to section 5526 of title 5.

"(10) In conformity with the requirements of paragraphs (5) through (9) of this subsection, the board of directors may—

"(A) authorize the donation of products produced by Federal industries and available for sale; or

"(B) authorize the production of a new specific product for donation.".

SEC. 4. TRANSITIONAL PREFERENTIAL CONTRACTING AUTHORITIES.

(a) PREFERRED SOURCE STATUS.—

(1) IN GENERAL.—Subject to the limitations of paragraph (3) and subsection (c), a Federal department or agency having a requirement for a product or service that is authorized for sale by Federal Prison Industries and is listed in its catalog (referred to in section 4124(g) of title 18, United States Code) shall first solicit an offer from Federal Prison Industries on a noncompetitive basis during the period specified in subsection (d).

(2) CONTRACT AWARD AUTHORITY.—A contract award shall be made to Federal Prison Industries if the contracting officer for the procurement activity determines that—

(A) the prison-made product or service to be furnished will meet the requirements of the procurement activity (including commercial or governmental standards pertaining to quality, testing, safety, serviceability, and warranties as may be imposed upon a private sector supplier of such product or service);

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

(C) the negotiated contract price does not exceed a fair and reasonable price.

(3) LIMITATION ON USE OF AUTHORITY.—As a percentage of the total sales made by Federal Prison Industries during the base period, the total dollar value of contract awards made pursuant to this section shall not exceed—

(A) 90 percent in fiscal year 2002;

(B) 85 percent in fiscal year 2003;

(C) 70 percent in fiscal year 2004;

(D) 55 percent in fiscal year 2005; and

(E) 40 percent in fiscal year 2006.

(b) ADDITIONAL LIMITATIONS ON USE OF TRANSITIONAL PREFERENTIAL CONTRACTING AUTHORITIES.—

(1) SALES WITHIN VARIOUS BUSINESS SECTORS.—Use of the authority provided by subsection

(a) shall not result in contract awards to Federal Prison Industries that are in excess of its total sales during the base year for each of its business sectors.

(2) LIMITATIONS RELATING TO SPECIFIC PRODUCTS AND SERVICES.—Use of the authority provided by subsection (a) shall not result in contract awards to Federal Prison Industries for any specific product or service that are in excess of its total sales during the base period for such product or service.

(3) TOTAL SALES DURING EACH COVERED FISCAL YEAR.—The preferential contracting authority provided by subsection (a) shall not be available to make additional noncompetitive contract awards whenever the dollar value of sales made by Federal Prison Industries through competitive means exceed the annual percentages specified in subsection (a)(3).

(c) DURATION OF AUTHORITY.—The preferential contracting authority authorized by subsection (a) may not be used on or after October 1, 2007, and becomes effective on the effective date of the final regulations issued pursuant to section 16(b).

(d) DEFINITIONS.—For the purposes of this section—

(1) the term ''base period'' means the total sales of Federal Prison Industries during the period October 1, 1999 and September 30, 2000 (Fiscal Year 2000).

(2) the term ''business sectors'' means the 5 product/service groups identified in the 1999 Federal Prison Industries annual report as Textile Products, Furniture Products, Electronic Products, Metal Products, and Graphics/Services.

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

SEC. 5. INMATE WAGES AND DEDUCTIONS.

(a) IN GENERAL.—The Director of the Federal Bureau of Prisons shall prescribe the rates of hourly wages to be paid inmates performing work for Federal Prison Industries and in other work assignments within the various Federal correctional institutions.

(b) PERIODIC ADJUSTMENTS TO WAGE RATES.—The various inmate wage rates shall be reviewed and considered for increase on not less than a biannual basis.

(c) PAYMENT OF WAGES AND DEDUCTIONS.—Wages earned by an inmate worker shall be paid in the name of the inmate. Deductions, aggregating to not more than

80 percent of gross wages, shall be taken from the wages due for—

(1) applicable taxes (Federal, State, and local);

(2) payment of fines and restitution pursuant to court order;

(3) payment of additional restitution for victims of the inmate's crimes (at a rate not less than 10 percent of gross wages);

(4) allocations for support of the inmate's family pursuant to statute, court order, or agreement with the inmate;

(5) allocations to a fund in the inmate's name to facilitate such inmate's assimilation back into society, payable at the conclusion of incarceration; and

(6) such other deductions as may be specified by the Director of the Bureau of Prisons.

(d) VOLUNTARY PARTICIPATION IN FEDERAL PRISON INDUSTRIES.—Each inmate worker working for Federal Prison Industries shall indicate in writing that such person—

(1) is participating voluntarily; and

(2) understands and agrees to the wages to be paid and deductions to be taken from such wages.

SEC. 6. CLARIFYING AMENDMENT.

Section 1761 of title 18, United States Code, is amended in subsection (a), by striking ''any goods, and wares, or merchandise manufactured, produced, mined'' and inserting ''products manufactured, services furnished, or minerals mined''.

SEC. 7. CONFORMING AMENDMENT.

Section 4122(a) of title 18, United States Code, is amended by striking ''production of commodities'' and inserting ''production of products or furnishing of services''.

SEC. 8. AUTHORITY TO PERFORM AS A FEDERAL SUBCONTRACTOR.

(a) IN GENERAL.—Federal Prison Industries is authorized to enter into a contract with a Federal contractor (or a subcontractor of such contractor at any tier) to produce products as a subcontractor or supplier in the performance of a Federal procurement contract. The use of Federal Prison Industries as a subcontractor or supplier shall be a wholly voluntary business decision by the Federal prime contractor or subcontractor, subject to any prior approval of subcontractors or suppliers by the contracting officer which may be imposed by the Federal Acquisition Regulation or by the contract.

(b) COMMERCIAL SALES PROHIBITED.—The authority provided by subsection (a) shall not result, either directly or indirectly, in the sale in the commercial market

of a product or service resulting from the labor of Federal inmate workers in violation of section 1762(a) of title 18, United States Code. A Federal contractor (or subcontractor at any tier) using Federal Prison Industries as a subcontractor or supplier in furnishing a commercial product pursuant to a Federal contract shall implement appropriate management procedures to prevent introducing an inmate-produced product into the commercial market.

(c) PROHIBITIONS ON MANDATING SUBCONTRACTING WITH FEDERAL PRISON INDUSTRIES.—The use of Federal Prison Industries as a subcontractor or supplier of products or provider of services shall not be imposed upon prospective or actual Federal prime contractors or a subcontractors at any tier by means of—

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

(B) specifications requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract;

(C) any contract modification directing the use of Federal Prison Industries, its products or services; or

(D) any other means.

(d) DURATION OF AUTHORITY.—

(1) IN GENERAL.—The authority provided by subsection (a) may not be used to enter into a contract to perform as a subcontractor or supplier on or after October 1, 2007, and becomes effective on the effective date of the final regulations issued pursuant to section 16(b).

(2) COMPLETION OF EXISTING AGREEMENTS.—Any agreement entered into prior to the expiration date specified in paragraph (1) may continue for the term specified in such agreement.

SEC. 9. PROVIDING ADDITIONAL OPPORTUNITIES FOR VOCATIONAL AND REMEDIAL EDUCATIONAL OPPORTUNITIES FOR INMATES.

(a) AMENDMENT TO THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.—Section 524(c)(1) of title 28, United States Code, is amended—

(1) in subparagraph (I), by inserting ''and'' after the semicolon;

(2) by redesignating the second appearance of subparagraph (I) as subparagraph (J); and

(3) by amending subparagraph (J) (as redesignated by paragraph (2)) to read as follows:

"(J) payments to the Bureau of Prisons exclusively for the purpose of providing, either directly or through contract, additional vocational training and remedial educational training for inmates during that fiscal year.".

(b) PRIORITY ESTABLISHED.—During each fiscal after fiscal year 2002, the Attorney General shall allocate not less than 10 percent of the excess unobligated balance in the Department of Justice Assets Forfeiture Fund to the purpose specified in section 524(c)(1)(J) of title 28, United States Code.

SEC. 10. ALLOCATION OF PROFITS TO VOCATIONAL TRAINING.

Section 4126 of title 18, United States Code (as amended by section 5) is further amended by adding at the end the following new subsection:

"(h) Not less than 20 percent of the gross profits of the corporation at the end of each fiscal year shall be allocated to fund vocational training for inmates without regard to the type of work activities to which they are assigned.".

SEC. 11. RESTRUCTURING THE BOARD OF DIRECTORS.

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

"§ 4121. Federal Prison Industries; Board of Directors: executive management

''(a) Federal Prison Industries is a government corporation of the District of Columbia organized to carry on such industrial operations in Federal correctional institutions as authorized by its Board of Directors. The manner and extent to which such industrial operations are carried on in the various Federal correctional institutions shall be determined by the Attorney General.

''(b)(1) The corporation shall be governed by a board of 7 directors appointed by the President with the advise and consent of the Senate.

''(2) In making appointments to the Board, the President shall assure that 3 members represent the business community, 3 members represent organized labor, and 1 member shall have special expertise in inmate rehabilitation techniques. The members of the Board representing the business community shall include, to the maximum extent practicable, representation of firms furnishing services as well as firms producing products, especially from those industry categories from which Federal Prison Industries derives substantial sales. The members of the Board representing organized labor shall, to the maximum practicable, include representation from labor unions whose members are likely to be most affected by the sales of Federal Prison Industries.

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

"(A) 2 members representing the business community shall be appointed for a term of 3 years;

"(B) 2 members representing labor shall be appointed for a term of 3 years;

"(C) 1 member representing the business community shall be appointed for a term of 4 years;

"(D) 1 member representing the business community shall be appointed for a term of 4 years; and

"(E) the members having special expertise in inmate rehabilitation techniques shall be appointed for a term of 5 years.

"(4) The President shall designate 1 member of the Board as Chairperson. The Chairperson may designate a Vice Chairperson.

"(5) Members of the Board may be reappointed.

"(6) Any vacancy on the Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

"(7) The members of the Board shall serve without compensation. The members of the Oversight Board shall be allowed travel expenses, including per diem in lieu of

subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, to attend meetings of the Board and, with the advance approval of the Chairperson of the Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Board.

"(8)(A) The Chairperson of the Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.

"(B) Upon request of the Chairperson of the Board, a Federal agency may detail a Federal Government employee to the Board without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

"(9) The Chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

"(c) The Director of the Bureau of Prisons shall serve as Chief Executive Officer of the Corporation. The Director shall designate a person to serve as Chief Operating Officer of the Corporation.".

SEC. 12. POST-RELEASE EMPLOYMENT ASSISTANCE.

(a) IN GENERAL.—The Director of the Bureau of Prisons shall, to the maximum extent practicable, afford to inmates opportunities to participate in programs and

activities designed to help prepare such inmates to obtain employment upon release.

(b) POST-RELEASE EMPLOYMENT PLACEMENT ASSISTANCE.—Such post-release employment placement assistance required by subsection (a) shall include—

(1) training in the preparation of resumes and job applications;

(2) training in interviewing skills;

(3) training and assistance in job search techniques;

(4) conduct of job fairs; and

(5) such other methods deemed appropriate by the Director of the Bureau of Prisons.

(c) PRIORITY PARTICIPATION.—Priority in program participation shall be accorded to inmates who are participating in work opportunities afforded by Federal Prison Industries and are within 12 months of release from incarceration.

SEC. 13. PROVIDING ADDITIONAL MANAGEMENT FLEXIBILITY TO FEDERAL PRISON INDUSTRY OPERATIONS.

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

(1) by striking ''(3)'' and inserting ''(3)(A)''; and

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

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

"(C) Federal Prison Industries may operate a workshop outside of a correctional facility if all of the inmates working in such workshop are classified as minimum security inmates.".

SEC. 14. FEDERAL PRISON INDUSTRIES REPORT TO CONGRESS.

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

"§ 4127. Federal Prison Industries report to Congress

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

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

"(1) a statement of the amount of obligations issued under section 4129(a)(1) of this title during the fiscal year;

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

"(3) an analysis of—

"(A) the corporation's total sales for each specific product and type of service sold to the Federal agencies and the commercial market;

"(B) the total purchases by each Federal agency of each specific product and type of service;

"(C) the corporation's share of such total Federal Government purchases by specific product and type of service; and

"(D) the number and disposition of disputes submitted to the heads of the Federal departments and agencies pursuant to section 4124(e) of this title;

"(4) an analysis of the inmate workforce that includes—

"(A) the number of inmates employed;

"(B) the number of inmates utilized to produce products or furnish services sold in the commercial market;

"(C) the number and percentage of employed inmates by the term of their incarceration; and

"(D) the various hourly wages paid to inmates employed with respect to the production of the various specific products and types of services authorized for production and sale to Federal agencies and in the commercial market; and

"(5) data concerning employment obtained by former inmates upon release to determine whether the employment provided by Federal Prison Industries during incarceration provided such inmates with knowledge and skill in a trade or occupation that enabled such former inmate to earn a livelihood upon release.

"(c) PUBLIC AVAILABILITY.—Copies of an annual report under subsection (a) shall be made available to the public at a price not exceeding the cost of printing the report.".

SEC. 15. DEFINITIONS.

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

"§ 4130. Definitions

"As used in this chapter—

"(1) the term 'assembly' means the process of uniting or combining articles or components (including ancillary finished components or assemblies) so

as to produce a significant change in form or utility, without necessarily changing or altering the component parts;

"(2) the term 'current market price' means, with respect to a specific product, the fair market price of the product within the meaning of section 15(a) of the Small Business Act (15 U.S.C. 644(a)), at the time that the contract is to be awarded, verified through appropriate price analysis or cost analysis, including any costs relating to transportation or the furnishing of any ancillary services;

"(3) the term 'import-sensitive product' means a product which, according to Department of Commerce data, has experienced competition from imports at an import to domestic production ratio of 25 percent or greater;

"(4) the term 'labor-intensive manufacture' means a manufacturing activity in the private sector in which the ratio of the value of direct labor to the value of the product prior to shipment exceeds 20 percent;

"(5) the term 'manufacture' means the process of fabricating from raw or prepared materials, so as to impart to those materials new forms, qualities, properties, and combinations;

"(6) the term 'prison-made products' means specific products that require labor-intensive manufacture or assembly employing Federal prison inmates for not less than 75 percent of the hours of direct labor required for the production of the product;

"(7) the term 'reasonable share of the market' means a share of the total purchases by the Federal departments and agencies, as reported to the Federal Procurement Data System for—

"(A) any specific product during the 3 preceding fiscal years, that does not exceed 20 percent of the Federal market for the specific product; and

"(B) any specific service during the 3 preceding fiscal years, that does not exceed 5 percent of the Federal market for the specific service;

"(8) the term 'services' has the meaning given the term 'service contract' by section 37.101 of the Federal Acquisition Regulation (48 C.F.R. 36.102), as in effect on July 1, 1997;

"(9) the term 'specific product' means a product that is designed and manufactured to meet requirements distinct in function and predominant ma-

terial of manufacture from another product, as described by—

"(A) the 6-digit classification for the product in the 1997 North American Industry Classification System (or any revisions to such system) published by the Office of Management and Budget; and

"(B) for purposes of reporting on sales by Federal Prison Industries, the current National Stock Number assigned to such product under the Federal Stock Classification System (including group, part number and section), as determined by the General Services Administration; and

"(10) the term 'specific service' means a type of service included within one of the categories of services used by Federal agencies in reporting to the Federal Procurement Data System, as described in the current edition of the Product and Service Code Manual issued by the Federal Procurement Data Center of the General Services Administration as Executive Agent for the Administrator for Federal Procurement Policy (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4))).".

SEC. 16. IMPLEMENTATION IN THE FEDERAL ACQUISITION REGULATION.

(a) PROPOSED REVISIONS.—Proposed revisions to the Governmentwide Federal Acquisition Regulation to implement the amendments made by this Act shall be published not later than 60 days after the date of the enactment of this Act and provide not less than 60 days for public comment.

(b) FINAL REGULATIONS.—Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of publication.

(c) PUBLIC PARTICIPATION.—The proposed regulations required by subsection (a) and the final regulations required by subsection (b) shall afford an opportunity for public participation in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

SEC. 17. RULE OF CONSTRUCTION.

Subsection (e) of section 4124 of title 18, United States Code, as amended by section 2, is not intended to alter any rights of any offeror other than Federal Prison Industries to file a bid protest in accordance with other law or regulation in effect on the date of the enactment of this Act.

SEC. 18. EFFECTIVE DATE AND APPLICABILITY.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICABILITY.—Section 4124 of title 18, United States Code, as amended by section 2, shall apply to any requirement for a product or service offered by Federal Prison Industries needed by a Federal department or agency after the effective date of the final regulations issued pursuant to section 16(b), or after September 30, 2002, whichever is earlier.

SEC. 19. CLERICAL AMENDMENTS.

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

(1) by amending the item relating to section 4124 to read as follows:

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

(2) by amending the item relating to section 4127 to read as follows:

"4127. Federal Prison Industries report to Congress.";

and

(3) by adding at the end the following new item:

"4130. Definitions.".

○

Without objection, the amendment in the nature of a substitute before all Members will be considered as read and open for amendment at any point in the original text of the amendment.

[The amendment follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1577 OFFERED BY MR. SENSENBRENNER AND MR. FRANK

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Prison Industries Competition in Contracting Act of 2002''.

SEC. 2. GOVERNMENTWIDE PROCUREMENT POLICY RELATING TO PURCHASES FROM FEDERAL PRISON INDUSTRIES.

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

''§ 4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries

''(a) IN GENERAL.—Purchases from Federal Prison Industries, Incorporated, a wholly owned Government corporation, as referred to in section 9101(3)(E) of title 31, may be made by a Federal department or agency only in accordance with this section.

''(b) SOLICITATION AND EVALUATION OF OFFERS AND CONTRACT AWARDS.—(1) If a procurement activity

of a Federal department or agency has a requirement for a specific product or service that is authorized to be offered for sale by Federal Prison Industries, in accordance with section 4122 of this title, and is listed in the catalog referred to in subsection (g), the procurement activity shall solicit an offer from Federal Prison Industries, if the purchase is expected to be in excess of the micro-purchase threshold (as defined by section 32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f))).

"(2) A contract award for such product or service shall be made using competitive procedures in accordance with the applicable evaluation factors, unless a determination is made by the Attorney General pursuant to paragraph (3) or an award using other than competitive procedures is authorized pursuant to paragraph (7).

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

"(A) Federal Prison Industries cannot reasonably expect to receive the contract award on a competitive basis; and

"(B) the contract award is necessary to maintain work opportunities otherwise unavailable at the penal or correctional facility at which the contract is

to be performed to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility.

''(4) Except in the case of an award to be made pursuant to paragraph (3), a contract award shall be made with Federal Prison Industries only if the contracting officer for the procurement activity determines that—

''(A) the specific product or service to be furnished will meet the requirements of the procurement activity (including any applicable prequalification requirements and all specified commercial or governmental standards pertaining to quality, testing, safety, serviceability, and warranties);

''(B) timely performance of the contract can be reasonably expected; and

''(C) the contract price does not exceed a current market price.

''(5) A determination by the Attorney General pursuant to paragraph (3) shall be—

''(A) supported by specific findings by the warden of the penal or correctional institution at which a Federal Prison Industries workshop is scheduled to perform the contract;

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

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

"(6) If the Attorney General has not made the determination described in paragraph (3) within 30 days after Federal Prison Industries has been informed of a contracting opportunity by a procurement activity, the procurement activity may proceed to conduct a procurement for the product or service in accordance with the procedures generally applicable to such procurements by the procurement activity.

"(7) A contract award may be made to Federal Prison Industries using other than competitive procedures if such product or service is only available from Federal Prison Industries and the contract may be awarded under the authority of section 2304(c)(1) of title 10 or section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(1)), as may be applicable, and pursuant to the justification and approval requirements relating to such noncompetitive procurements

specified by law and the Governmentwide Federal Acquisition Regulation.

"(c) OFFERS FROM FEDERAL PRISON INDUSTRIES.—A timely offer received from Federal Prison Industries to furnish a product or service to a Federal department or agency shall be considered for award without limitation as to the dollar value of the proposed purchase.

"(d) PERFORMANCE BY FEDERAL PRISON INDUSTRIES.—Federal Prison Industries shall perform its contractual obligations under a contract awarded by a Federal department or agency to the same extent as any other contractor.

"(e) FINALITY OF CONTRACTING OFFICER'S DECISION.—(1) A decision by a contracting officer regarding the award of a contract to Federal Prison Industries or relating to the performance of such contract shall be final, unless reversed on appeal pursuant to paragraph (2) or (3).

"(2) The Chief Executive Officer of Federal Prison Industries may appeal to the head of a Federal department or agency a decision by a contracting officer not to award a contract to Federal Prison Industries pursuant to subsection (b)(4). The decision of the head of a Federal department or agency on appeal shall be final.

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

"(A) alternative means of dispute resolution pursuant to subchapter IV of chapter 5 of title 5; or

"(B) final resolution by the board of contract appeals having jurisdiction over the procurement activity's contract performance disputes pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

"(f) REPORTING OF PURCHASES.—Each Federal department or agency shall report purchases from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4))) in the same manner as it reports to such System any acquisition in an amount in excess of the simplified acquisition threshold (as defined by section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

"(g) CATALOG OF PRODUCTS.—Federal Prison Industries shall publish and maintain a catalog of all specific products and services that it is authorized to offer for sale. Such catalog shall be periodically revised as products and

services are added or deleted by its board of directors (in accordance with section 4122(b) of this title).

"(h) COMPLIANCE WITH STANDARDS.—Federal Prison Industries shall comply with Federal occupational, health, and safety standards with respect to the operation of its industrial operations.".

SEC. 3. PUBLIC PARTICIPATION REGARDING EXPANSION PROPOSALS BY FEDERAL PRISON INDUSTRIES.

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

(1) by redesignating paragraph (6) as paragraph (12); and

(2) by striking paragraphs (4) and (5) and inserting the following new paragraphs:

"(4) A decision to authorize Federal Prison Industries to offer a new specific product or specific service or to expand the production of an existing product or service shall be made by its board of directors in conformance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, and this chapter.

"(5)(A) Whenever Federal Prison Industries proposes to offer for sale a new specific product or specific service or to expand production of a currently authorized product or service, the Chief Operating Officer of Federal

Prison Industries shall submit an appropriate proposal to the board of directors and obtain the board's approval before initiating any such expansion. The proposal submitted to the board shall include a detailed analysis of the probable impact of the proposed expansion of sales within the Federal market by Federal Prison Industries on private sector firms and their noninmate workers.

"(B)(i) The analysis required by subparagraph (A) shall be performed by an interagency team on a reimbursable basis or by a private contractor paid by Federal Prison Industries.

"(ii) If the analysis is to be performed by an interagency team, such team shall be led by the Administrator of the Small Business Administration or the designee of such officer with representatives of the Department of Labor, the Department of Commerce, and the Federal Procurement Data Center.

"(iii) If the analysis is to be performed by a private contractor, the selection of the contractor and the administration of the contract shall be conducted by one of the entities referenced in clause (ii) as an independent executive agent for the board of directors. Maximum consideration shall be given to any proposed statement of work furnished by the Chief Operating Officer of Federal Prison Industries.

"(C) The analysis required by subparagraph (A) shall identify and consider—

"(i) the number of vendors that currently meet the requirements of the Federal Government for the specific product or specific service;

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

"(iii) the share of the Federal market for the specific product or specific service projected for Federal Prison Industries for the fiscal year in which production or performance will commence or expand and the subsequent 4 fiscal years;

"(iv) whether the industry producing the specific product or specific service in the private sector—

"(I) has an unemployment rate higher than the national average; or

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

"(v) whether the specific product is an import-sensitive product;

"(vi) the requirements of the Federal Government and the demands of entities other than the Federal Government for the specific product or service during the previous 3 fiscal years;

"(vii) the projected growth or decline in the demand of the Federal Government for the specific product or specific service;

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

"(ix) whether authorizing the production of the new product or performance of a new service will provide inmates with the maximum opportunity to acquire knowledge and skill in trades and occupations that will provide them with a means of earning a livelihood upon release.

"(D)(i) The board of directors may not approve a proposal to authorize the production and sale of a new specific product or continued sales of a previously authorized product unless—

"(I) the product to be furnished is a prison-made product; or

"(II) the service to be furnished is to be performed by inmate workers.

"(ii) The board of directors may not approve a proposal to authorize the production and sale of a new prison-made product or to expand production of a currently authorized product if the product is—

"(I) produced in the private sector by an industry which has reflected during the previous year an unemployment rate above the national average; or

"(II) an import-sensitive product.

"(iii) The board of directors may not approve a proposal for inmates to provide a service in which an inmate worker has access to—

"(I) personal or financial information about individual private citizens, including information relating to such person's real property, however described, without giving prior notice to such persons or class of persons to the greatest extent practicable;

"(II) geographic data regarding the location of surface and subsurface infrastructure providing communications, water and electrical power distribution, pipelines for the distribution of natural gas, bulk petroleum products and other commodities, and other utilities; or

"(III) data that is classified.

"(iv)(I) Federal Prison Industries is prohibited from furnishing through inmate labor construction services, un-

less to be performed within a Federal correctional institution pursuant to the participation of an inmate in an apprenticeship or other vocational education program teaching the skills of the various building trades.

"(II) For purposes of this clause, the term 'construction' has the meaning given such term by section 2.101 of the Federal Acquisition Regulation (48 CFR part 2.101), as in effect on June 1, 2001, including the repair, alteration, or maintenance of real property in being.

"(6) To provide further opportunities for participation by interested parties, the board of directors shall—

"(A) give additional notice of a proposal to authorize the production and sale of a new product or service, or expand the production of a currently authorized product or service, in a publication designed to most effectively provide notice to private vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal, which notice shall offer to furnish copies of the analysis required by paragraph (5) and shall solicit comment on the analysis;

"(B) solicit comments on the analysis required by paragraph (5) from trade associations representing vendors and labor unions representing private sector workers who could reasonably be ex-

pected to be affected by approval of the proposal to authorize the production and sale of a new product or service (or expand the production of a currently authorized product or service); and

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

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

"(8) Based on the comments received on the initial expansion proposal, the Chief Operating Officer of Federal Prison Industries may provide the board of directors a revised expansion proposal. If such revised proposal provides for expansion of inmate work opportunities in an industry different from that initially proposed, such revised proposal shall reflect the analysis required by paragraph (5)(C) and be subject to the public comment requirements of paragraph (6).

"(9) The board of directors shall consider a proposal to authorize the sale of a new specific product or specific service (or to expand the volume of sales for a currently authorized product or service) and take any action with respect to such proposal, during a meeting that is open

to the public, unless closed pursuant to section 552(b) of title 5.

"(10) In conformity with the requirements of paragraphs (5) through (9) of this subsection, the board of directors may—

"(A) authorize the donation of products produced or services furnished by Federal industries and available for sale; or

"(B) authorize the production of a new specific product or the furnishing of a new specific service for donation.".

SEC. 4. TRANSITIONAL MANDATORY SOURCE AUTHORITY.

(a) IN GENERAL.—Notwithstanding the requirements of section 4124 of title 18, United States Code (as amended by section 2 of this Act), a Federal department or agency having a requirement for a product that is authorized for sale by Federal Prison Industries and is listed in its catalog (referred to in section 4124(g) of title 18, United States Code) shall first solicit an offer from Federal Prison Industries and make purchases on a noncompetitive basis in accordance with this section.

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

dustries if the contracting officer for the procurement activity determines that—

(1) the product offered by Federal Prison Industries will meet the requirements of the procurement activity (including commercial or governmental standards or specifications pertaining to design, performance, testing, safety, serviceability, and warranties as may be imposed upon a private sector supplier of the type being offered by Federal Prison Industries);

(2) timely performance of the contract by Federal Prison Industries can be reasonably expected; and

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

(c) CONTRACTUAL TERMS.—The terms and conditions of the contract and the price to be paid to Federal Prison Industries shall be determined by negotiation between Federal Prison Industries and the Federal agency making the purchase. The negotiated price shall not exceed a fair and reasonable price determined in accordance with the procedures of the Federal Acquisition Regulation.

(d) PERFORMANCE OF CONTRACTUAL OBLIGATIONS.—

(1) IN GENERAL.—Federal Prison Industries shall perform the obligations of the contract negotiated pursuant to subsection (c).

(2) PERFORMANCE DISPUTES.—If the head of the contracting activity and the Chief Operating Officer of Federal Prison Industries are unable to resolve a contract performance dispute to their mutual satisfaction, such dispute shall be resolved pursuant to section 4124(e)(3) of title 18, United States Code (as added by section 2 of this Act).

(e) LIMITATIONS ON USE OF AUTHORITY.—

(1) IN GENERAL.—As a percentage of the sales made by Federal Prison Industries during the base period, the total dollar value of sales to the Government made pursuant to subsection (b) and subsection (c) of this section shall not exceed—

(A) 90 percent in fiscal year 2004;

(B) 85 percent in fiscal year 2005;

(C) 70 percent in fiscal year 2006;

(D) 55 percent in fiscal year 2007; and

(E) 40 percent in fiscal year 2008.

(2) SALES WITHIN VARIOUS BUSINESS SECTORS.—Use of the authority provided by subsections (b) and (c) shall not result in sales by Federal Prison Industries to the Government that are in excess

of its total sales during the base year for each business sector.

(3) LIMITATIONS RELATING TO SPECIFIC PRODUCTS.—Use of the authorities provided by subsections (b) and (c) shall not result in contract awards to Federal Prison Industries that are in excess of its total sales during the base period for such product.

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

(f) DURATION OF AUTHORITY.—The preferential contracting authorities authorized by subsection (b) may not be used on or after October 1, 2008, and become effective on the effective date of the final regulations issued pursuant to section 17.

(g) DEFINITIONS.—For the purposes of this section—

(1) the term ''base period'' means the total sales of Federal Prison Industries during the period October 1, 2000, and September 30, 2001 (Fiscal Year 2001);

(2) the term ''business sectors'' means the eight product/service business groups identified in the 2001 Federal Prison Industries annual report as the Clothing and Textile Business Group, the Electronics Business Group, the Fleet Management and Vehicular Components Business Group, the Furniture Business Group, the Graphics Business Group, the Industrial Products Business Group, the Recycled Electronics Products and Services Business Group, and the Services Business Group; and

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

SEC. 5. AUTHORITY TO PERFORM AS A FEDERAL SUBCONTRACTOR.

(a) IN GENERAL.—Federal Prison Industries is authorized to enter into a contract with a Federal contractor (or a subcontractor of such contractor at any tier) to produce products as a subcontractor or supplier in the performance of a Federal procurement contract. The use of Federal Prison Industries as a subcontractor or supplier shall be a wholly voluntary business decision by the Federal prime contractor or subcontractor, subject to any prior approval of subcontractors or suppliers by the con-

tracting officer which may be imposed by the Federal Acquisition Regulation or by the contract.

(b) COMMERCIAL SALES PROHIBITED.—The authority provided by subsection (a) shall not result, either directly or indirectly, in the sale in the commercial market of a product or service resulting from the labor of Federal inmate workers in violation of section 1762(a) of title 18, United States Code. A Federal contractor (or subcontractor at any tier) using Federal Prison Industries as a subcontractor or supplier in furnishing a commercial product pursuant to a Federal contract shall implement appropriate management procedures to prevent introducing an inmate-produced product into the commercial market.

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

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

(2) specifications requiring the contractor to use specific products or services (or classes of prod-

ucts or services) offered by Federal Prison Industries in the performance of the contract;

(3) any contract modification directing the use of Federal Prison Industries, its products or services; or

(4) any other means.

SEC. 6. INMATE WAGES AND DEDUCTIONS.

Section 4122(b) of title 18, United States Code (as amended by section 3 of this Act), is further amended by adding a new paragraph (11) as follows:

"(11)(A) The Board of Directors of Federal Prison Industries shall prescribe the rates of hourly wages to be paid inmates performing work for or through Federal Prison Industries. The Director of the Federal Bureau of Prisons shall prescribe the rates of hourly wages for other work assignments within the various Federal correctional institutions.

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

"(C) Wages earned by an inmate worker shall be paid in the name of the inmate. Deductions, aggregating to not more than 80 percent of gross wages, shall be taken from the wages due for—

"(i) applicable taxes (Federal, State, and local);

"(ii) payment of fines and restitution pursuant to court order;

"(iii) payment of additional restitution for victims of the inmate's crimes (at a rate not less than 10 percent of gross wages);

"(iv) allocations for support of the inmate's family pursuant to statute, court order, or agreement with the inmate;

"(v) allocations to a fund in the inmate's name to facilitate such inmate's assimilation back into society, payable at the conclusion of incarceration; and

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

"(D) Each inmate worker working for Federal Prison Industries shall indicate in writing that such person—

"(i) is participating voluntarily; and

"(ii) understands and agrees to the wages to be paid and deductions to be taken from such wages.".

SEC. 7. CLARIFYING AMENDMENT RELATING TO SERVICES.

(a) IN GENERAL.—Section 1761 of title 18, United States Code, is amended in subsection (a), by striking ''any goods, and wares, or merchandise manufactured, produced, mined'' and inserting ''products manufactured, services furnished, or minerals mined''.

(b) COMPLETION OF EXISTING AGREEMENTS.—Any prisoner work program operated by a prison or jail of a State or local jurisdiction of a State which is providing services for the commercial market through inmate labor on October 1, 2001, may continue to provide such commercial services until—

(1) the expiration date specified in the contract or other agreement with a commercial partner on October 1, 2001, or

(2) until September 30, 2004, if the prison work program is directly furnishing the services to the commercial market.

(c) APPROVAL REQUIRED FOR LONG-TERM OPERATION.—A prison work program operated with a correctional institution operated by State or local jurisdiction of a State may continue to provide inmate labor to furnish services for sale in the commercial market after the dates specified in subsection (b) if such program has been certified pursuant to section 1761(c)(1) of title 18, United

States Code, and is in compliance with the requirements of such subsection and its implementing regulations.

SEC. 8. CONFORMING AMENDMENT.

Section 4122(a) of title 18, United States Code, is amended by striking ''production of commodities'' and inserting ''production of products or furnishing of services''.

SEC. 9. RULES OF CONSTRUCTION RELATING TO CHAPTER 307.

Chapter 307 of title 18, United States Code, is further amended by adding the following:

''§ 4130. Construction of provisions

''Nothing in this chapter shall be construed—

''(1) to establish an entitlement of any inmate to—

''(A) employment in a Federal Prison Industries facility; or

''(B) any particular wage, compensation, or benefit on demand, except as otherwise specifically provided by law or regulation;

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

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

SEC. 10. PROVIDING ADDITIONAL OPPORTUNITIES FOR VOCATIONAL AND REMEDIAL EDUCATIONAL OPPORTUNITIES FOR INMATES.

(a) AMENDMENT TO THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.—Section 524(c)(1) of title 28, United States Code, is amended—

(1) in subparagraph (I), by inserting ''and'' after the semicolon;

(2) by redesignating the second appearance of subparagraph (I) as subparagraph (J); and

(3) by amending subparagraph (J) (as redesignated by paragraph (2)) to read as follows:

''(J) payments to the Bureau of Prisons exclusively for the purpose of providing, either directly or through contract, additional vocational training and remedial educational training for inmates during that fiscal year.''.

(b) PRIORITY ESTABLISHED.—During each fiscal after fiscal year 2002, the Attorney General shall allocate not less than 10 percent of the excess unobligated balance in the Department of Justice Assets Forfeiture Fund to the purpose specified in section 524(c)(1)(J) of title 28, United States Code.

SEC. 11. ALLOCATION OF PROFITS TO VOCATIONAL TRAINING.

Section 4126 of title 18, United States Code (as amended by section 5) is further amended by adding at the end the following new subsection:

''(h) Not less than 20 percent of the gross profits of the corporation at the end of each fiscal year shall be allocated to fund vocational training for inmates without regard to the type of work activities to which they are assigned.''.

SEC. 12. RESTRUCTURING THE BOARD OF DIRECTORS.

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

''§ 4121. Federal Prison Industries; Board of Directors: executive management

''(a) Federal Prison Industries is a government corporation of the District of Columbia organized to carry on such industrial operations in Federal correctional institutions as authorized by its Board of Directors. The manner and extent to which such industrial operations are carried on in the various Federal correctional institutions shall be determined by the Attorney General.

''(b)(1) The corporation shall be governed by a board of 9 directors appointed by the President with the advise and consent of the Senate.

"(2) In making appointments to the Board, the President shall assure that 3 members represent the business community, 3 members represent organized labor, 1 member shall have special expertise in inmate rehabilitation techniques, and 2 additional members whose background and expertise the President deems appropriate. The members of the Board representing the business community shall include, to the maximum extent practicable, representation of firms furnishing services as well as firms producing products, especially from those industry categories from which Federal Prison Industries derives substantial sales. The members of the Board representing organized labor shall, to the maximum practicable, include representation from labor unions whose members are likely to be most affected by the sales of Federal Prison Industries.

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

"(A) 2 members representing the business community shall be appointed for a term of 3 years;

"(B) 2 members representing labor shall be appointed for a term of 3 years;

"(C) 2 members whose background and expertise the President deems appropriate for a term of 3 years;

"(D) 1 member representing the business community shall be appointed for a term of 4 years;

"(E) 1 member representing the business community shall be appointed for a term of 4 years; and

"(F) the members having special expertise in inmate rehabilitation techniques shall be appointed for a term of 5 years.

"(4) The President shall designate 1 member of the Board as Chairperson. The Chairperson may designate a Vice Chairperson.

"(5) Members of the Board may be reappointed.

"(6) Any vacancy on the Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

"(7) The members of the Board shall serve without compensation. The members of the Oversight Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, to attend meetings of the Board and, with the advance approval of the Chairperson of the Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Board.

"(8)(A) The Chairperson of the Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.

"(B) Upon request of the Chairperson of the Board, a Federal agency may detail a Federal Government employee to the Board without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

"(9) The Chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

"(c) The Director of the Bureau of Prisons shall serve as Chief Executive Officer of the Corporation. The Director shall designate a person to serve as Chief Operating Officer of the Corporation.".

SEC. 13. PRE-RELEASE EMPLOYMENT ASSISTANCE.

(a) IN GENERAL.—The Director of the Bureau of Prisons shall, to the maximum extent practicable, afford to inmates opportunities to participate in programs and activities designed to help prepare such inmates to obtain employment upon release.

(b) PRE-RELEASE EMPLOYMENT PLACEMENT ASSISTANCE.—Such pre-release employment placement assistance required by subsection (a) shall include—

(1) training in the preparation of resumes and job applications;

(2) training in interviewing skills;

(3) training and assistance in job search techniques;

(4) conduct of job fairs; and

(5) such other methods deemed appropriate by the Director of the Bureau of Prisons.

(c) PRIORITY PARTICIPATION.—Priority in program participation shall be accorded to inmates who are participating in work opportunities afforded by Federal Prison Industries and are within 12 months of release from incarceration.

SEC. 14. PROVIDING ADDITIONAL MANAGEMENT FLEXIBILITY TO FEDERAL PRISON INDUSTRY OPERATIONS.

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

(1) by striking ''(3)'' and inserting ''(3)(A)''; and

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

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

"(C) Federal Prison Industries may operate a workshop outside of a correctional facility if all of the inmates working in such workshop are classified as minimum security inmates.".

SEC. 15. FEDERAL PRISON INDUSTRIES REPORT TO CONGRESS.

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

"§ 4127. Federal Prison Industries report to Congress

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

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

"(1) a statement of the amount of obligations issued under section 4129(a)(1) of this title during the fiscal year;

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

"(3) an analysis of—

"(A) the corporation's total sales for each specific product and type of service sold to the Federal agencies and the commercial market;

"(B) the total purchases by each Federal agency of each specific product and type of service;

"(C) the corporation's share of such total Federal Government purchases by specific product and type of service; and

"(D) the number and disposition of disputes submitted to the heads of the Federal departments and agencies pursuant to section 4124(e) of this title;

"(4) an analysis of the inmate workforce that includes—

"(A) the number of inmates employed;

"(B) the number of inmates utilized to produce products or furnish services sold in the commercial market;

"(C) the number and percentage of employed inmates by the term of their incarceration; and

"(D) the various hourly wages paid to inmates employed with respect to the production of the various specific products and types of

services authorized for production and sale to Federal agencies and in the commercial market; and

"(5) data concerning employment obtained by former inmates upon release to determine whether the employment provided by Federal Prison Industries during incarceration provided such inmates with knowledge and skill in a trade or occupation that enabled such former inmate to earn a livelihood upon release.

"(c) PUBLIC AVAILABILITY.—Copies of an annual report under subsection (a) shall be made available to the public at a price not exceeding the cost of printing the report.".

SEC. 16. DEFINITIONS.

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

"§ 4130. Definitions

"As used in this chapter—

"(1) the term 'assembly' means the process of uniting or combining articles or components (including ancillary finished components or assemblies) so as to produce a significant change in form or utility, without necessarily changing or altering the component parts;

"(2) the term 'current market price' means, with respect to a specific product, the fair market price of the product within the meaning of section 15(a) of the Small Business Act (15 U.S.C. 644(a)), at the time that the contract is to be awarded, verified through appropriate price analysis or cost analysis, including any costs relating to transportation or the furnishing of any ancillary services;

"(3) the term 'import-sensitive product' means a product which, according to Department of Commerce data, has experienced competition from imports at an import to domestic production ratio of 25 percent or greater;

"(4) the term 'labor-intensive manufacture' means a manufacturing activity in which the value of inmate labor constitutes at least 10 percent of the estimate unit cost to produce the item by Federal Prison Industries;

"(5) the term 'manufacture' means the process of fabricating from raw or prepared materials, so as to impart to those materials new forms, qualities, properties, and combinations;

"(6) the term 'reasonable share of the market' means a share of the total purchases by the Federal

departments and agencies, as reported to the Federal Procurement Data System for—

"(A) any specific product during the 3 preceding fiscal years, that does not exceed 20 percent of the Federal market for the specific product; and

"(B) any specific service during the 3 preceding fiscal years, that does not exceed 5 percent of the Federal market for the specific service; and

"(7) the term 'services' has the meaning given the term 'service contract' by section 37.101 of the Federal Acquisition Regulation (48 C.F.R. 36.102), as in effect on July 1, 2001.".

SEC. 17. IMPLEMENTING REGULATIONS AND PROCEDURES.

(a) FEDERAL ACQUISITION REGULATION.—

(1) PROPOSED REVISIONS.—Proposed revisions to the Governmentwide Federal Acquisition Regulation to implement the amendments made by this Act shall be published not later than 60 days after the date of the enactment of this Act and provide not less than 60 days for public comment.

(2) FINAL REGULATIONS.—Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effec-

tive on the date that is 30 days after the date of publication.

(3) PUBLIC PARTICIPATION.—The proposed regulations required by subsection (a) and the final regulations required by subsection (b) shall afford an opportunity for public participation in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

(b) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The Board of Directors of Federal Prison Industries shall issue regulations defining the terms specified in paragraph (2).

(2) TERMS TO BE DEFINED.—The Board of Directors shall issue regulations for the following terms:

(A) Prison-made product.

(B) Prison-furnished service.

(C) Specific product.

(D) Specific service.

(3) SCHEDULE FOR REGULATORY DEFINITIONS.—

(A) Proposed regulations relating to the matter described in subsection (b)(2) shall be published not later than 60 days after the date

of enactment of this Act and provide not less than 60 days for public comment.

(B) Final regulations relating to the matters described in subsection (b)(2) shall be published not less than 180 days after the date of enactment of this Act and shall be effective on the date that is 30 days after the date of publication.

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

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

(B) ENHANCED OUTREACH.—The Board of Directors shall use means designed to most effectively solicit public comment on proposed regulations, procedures, and policies and to inform the affected public of final regulations, procedures, and policies.

(C) OPEN MEETING PROCESSES.—The Board of Directors shall take all actions relating to the adoption of regulations, operating procedures, guidelines, and any other matter relating to the governance and operation of Federal Prison Industries based on deliberations and a recorded vote conducted during a meeting open to the public, unless closed pursuant to section 552(b) of title 5, United States Code.

SEC. 18. RULE OF CONSTRUCTION.

Subsection (e) of section 4124 of title 18, United States Code, as amended by section 2, is not intended to alter any rights of any offeror other than Federal Prison Industries to file a bid protest in accordance with other law or regulation in effect on the date of the enactment of this Act.

SEC. 19. EFFECTIVE DATE AND APPLICABILITY.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICABILITY.—Section 4124 of title 18, United States Code, as amended by section 2, shall apply to any requirement for a product or service offered by Federal Prison Industries needed by a Federal department or agency after the effective date of the final regulations

issued pursuant to section 16(a)(2), or after September 30, 2003, whichever is earlier.

SEC. 20. CLERICAL AMENDMENTS.

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

(1) by amending the item relating to section 4124 to read as follows:

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

(2) by amending the item relating to section 4127 to read as follows:

"4127. Federal Prison Industries report to Congress.";

and

(3) by adding at the end the following new items:

"4130. Construction of provisions.
"4131. Definitions.".

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes to explain the bill. Although Federal Prison Industries (FPI) may have started with good intentions, it has been surrounded by controversy since its inception. FPI is in direct competition with private companies for labor, goods and services. It enjoys a guaranteed market for its products and reduced cost for labor and capital. This has resulted in unfair competition with industries that are struggling. Since I was first elected to Congress, I have been working to correct this situation and level the playing field for industry. I feel that we as Members of Congress have a duty to ensure that Government corporations do not take away opportunities from small business. We also have a duty to ensure the taxpayer money is wisely spent. Neither one of these things can be guaranteed under the current law governing FPI.

Today we will mark up legislation to change that law. Today's markup comes after extensive work and effort by Representative Smith. Chairman Smith dedicated numerous staff hours and his own time to try to achieve a workable compromise among the many differing viewpoints on this issue. Although he was able to achieve agreement on some issues, he was unable to achieve a comprehensive compromised package. The reform package we will mark up today incorporates many of those agreed-upon changes that follows recent reforms to the Defense Department procurement process with regards to FPI. The provision in the Department of Defense authorization bill which changed procurement to allow DOD to determine if FPI products best meet the department needs for price, quality and timeliness of delivery can be seen as a victory for labor, business, industry and the American taxpayer. FPI hurts private industry.

In 1998 FPI sold over $220 million in office furniture directly in competition with the private sector. It is a large and growing government corporation. The legislation that we are marking up today is a substitute amendment based on H.R. 1577 introduced by Representative Hoekstra through a series of substantive modifications that have been agreed upon after 30 hours of detailed discussion. The legislation will force competition not only on DOD contracts, but those of other Federal agencies. It will fundamentally alter FPI's relationship with the Government customers. They will no longer be held captive by mandatory source requirements. All Federal Government agencies will have the ability to utilize taxpayer dollars in the most efficient manner possible. Decisions about purchases will be based on what is valuable in the market, such as timeliness of delivery, reasonableness of price and quality of products.

The legislation includes the following: First, requires FPI to compete for its contracts by phasing out the mandatory source requirement unless the Attorney General authorizes sole source award; eliminates FPI's ability to charge a price that exceeds the fair market value; allows contracting officers rather than FPI to determine if the product was best serviced by the agency's mission; allows the buying agency rather than FPI to determine the adequacy of FPI's performance; increases the opportunity for public participation in the process; ensures that FPI is prohibited from offering products or services as a subcontractor for private for-profit business concerns; authorizes FPI to produce products or provide services to be

donated to meet public needs that will not be met by private sector for-profit businesses, requires better reporting of FPI sales to Federal agency customers, and specifies the data to be included in the FPI annual report to Congress so we can better assess the impact of FPI on private sector firms and their law-abiding workers.

I am proud to be a part of this legislation and look forward to the chance to create a more competitive marketplace for Government contracts, and recognize the gentleman from Michigan.

Mr. CONYERS. Good morning Mr. Chairman and Members. I am happy to join you here on the prison industries problem, which is an important and difficult one. And I want to begin by acknowledging the hard work that everybody has put in on this. In one sense that is good, because I can remember a time when prison industries was a neglected subject. I mean who cared. Now we have a lot more interest in it and I think that is healthy.

Now on one hand, we have a prison industry program which does cry out for reform, which has grown far too reliant on sole source contracting. Once the small program focused solely on rehabilitation, Federal Prison Industries is now a massive enterprise that has, in effect, a monopoly in the Federal marketplace on over 300 products and services that generated nearly 600 million in sales last year. The program has seen these sales go from $29 million to $580 million and all too often these sole source sales come at the expense of hard-working individuals outside the prison system.

The fact that Federal Prison Industries is exempt from labor and safety laws, pays its workers a small fraction of the minimum wage, does not provide us with a model of fair competition. But, on the other hand, we are faced with the tremendously important dilemma of how we rehabilitate our inmates and prepare them for reentry into society. For all its critics, the Federal Prison Industries program clearly serves this important objective and in particular benefits minority individuals.

For example, a long term post-release employment study conducted by the Bureau of Prisons found that inmates who were released as long as 8 to 12 years ago who participated in Industry's work or vocational training programs were 24 percent less likely to be recommitted to Federal prisons than a comparison group of inmates who had no such training. I think that is significant.

Another study conducted in Florida found that less than 13 percent of the released inmates that participated in a State prison work program were recommitted after 2 years as compared to the national average rate of 60 percent recidivism.

So it is my view that if we do away with mandatory source, it is incumbent on this Committee to replace it with programs that give hope and skills to our prison population. So I come to this hearing today hoping to work out some common frames of reference where we can combine the best features of both the views that I know are present on the Committee. The increased vocational training provided in the underlying bill is a good start, but I plan to offer a provision which also increases the opportunity for nonprofit work and facilitates an inmate reentry back into society. And I hope my colleagues will examine that very carefully.

Federal Prison Industries can work, and our reform here today must be carefully crafted with as much compassion as we can muster. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Gentleman's time has expired. For purposes of markup, unanimous consent has already been granted that the text we will be working off is an amendment in the nature of a substitute offered by the gentleman from Massachusetts, Mr. Frank, and myself. Are there any amendments to the amendment in the nature of a substitute? Gentleman from Virginia.

Mr. SCOTT. I thought the gentleman from Michigan had amendments that we were going to do first.

Chairman SENSENBRENNER. Do we have a manager's amendment? The gentleman from Michigan has an amendment. The clerk will report the amendment when she gets it.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1577, offered by Mr. Conyers.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1577 OFFERED BY MR. CONYERS

Strike sections 10 and 11 and insert the following:

SEC. 10. PROVIDING ADDITIONAL OPPORTUNITIES FOR POST INCARCERATION VOCATIONAL AND REMEDIAL EDUCATIONAL OPPORTUNITIES FOR INMATES.

(a) FEDERAL REENTRY CENTER DEMONSTRATION.—

(1) AUTHORITY AND ESTABLISHMENT OF DEMONSTRATION PROJECT.—From funds made available to carry out this section, the Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, shall establish the Federal Reentry Center Demonstration project. The project shall involve appropriate prisoners from the Federal prison population and shall utilize community corrections facilities, home confinement, and a coordinated response by Federal agencies to assist participating prisoners in preparing for and adjusting to reentry into the community.

(2) PROJECT ELEMENTS.—The project authorized by paragraph (1) shall include the following core elements:

(A) A Reentry Review Team for each prisoner, consisting of representative from the Bureau of Prisons, the United States Probation System, the United States Parole Commission, and the relevant community corrections facility, who shall initially meet with the prisoner to develop a reentry plan tailored to the needs of the prisoner.

(B) A system of graduated levels of supervision within the community corrections facility to promote community safety, provide incentives for prisoners to complete the reentry plan, including victim restitution, and provide a reasonable method for imposing sanctions for a prisoner's violation of the conditions of participation in the project.

(C) Substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and educational training, life skills instruction, conflict resolution skills training, batterer intervention programs, assistance obtaining suitable affordable housing, and other programming to promote effective reintegration into the community as needed.

(3) PROBATION OFFICERS.—From funds made available to carry out this section, the Director of the Administrative Office of the United States Courts shall assign one or more probation officers from each participating judicial district to the Reentry Demonstration project. Such officers shall be assigned to and stationed at the community corrections facility and shall serve on the Reentry Review Teams.

(4) PROJECT DURATION.—The Reentry Center Demonstration project shall begin not later than 6 months following the availability of funds to carry out this subsection, and shall last 3 years.

(b) DEFINITIONS.—For the purposes of this section, ''Appropriate prisoner'' shall mean a person who is considered by prison authorities—

(1) to pose a medium to high risk of committing a criminal act upon reentering the community, and

(2) to lack the skills and family support network that facilitate successful reintegration into the community.

(c) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated, to remain available until expended—

(1) to the Federal Bureau of Prisons—

(A) $1,375,000 for fiscal year 2003;

(B) $1,110,000 for fiscal year 2004;

(C) $1,130,000 for fiscal year 2005;

(D) $1,155,000 for fiscal year 2006; and

(E) $1,230,000 for fiscal year 2007;

(2) to the Federal Judiciary—

(A) $3,380,000 for fiscal year 2003;

(B) $3,540,000 for fiscal year 2004;

(C) $3,720,000 for fiscal year 2005;

(D) $3,910,000 for fiscal year 2006; and

(E) $4,100,000 for fiscal year 2007.

SEC. 11. PROVIDING ADDITIONAL TRAINING AND EDUCATIONAL OPPORTUNITIES FOR INMATES.

(a) AMENDMENT REGARDING THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.—Section 524(c)(1) of title 28, United States Code, is amended—

(1) by redesignating the second appearance of subparagraph (I) as subparagraph (J); and

(2) by amending subparagraph (J) (as redesignated by paragraph (2)) to read as follows:

"(J) payments to the Bureau of Prisons exclusively for the purpose of establishing the Federal Enhanced In-Prison Vocational Assessment and Training Program in all Federal in-

stitutions, which shall provide in-prison assessments of prisoners' needs and aptitudes, enhanced work skills developed, enhanced release readiness programming, and other components as appropriate to reduce inmate idleness and prepare Federal prisoners for release and reentry into the community;''; and

(4) by adding at the end the following new subparagraph:

''(K) payments to the Bureau of Prisons exclusively for the purpose of establishing a nonprofit component for inmate work in all Federal institutions, in carrying out which Federal Prison Industries shall (i) work actively to identify and donate to nonprofit organizations that provide goods and services to low income individuals who can use Federal Prison Industry products and have difficulty purchasing these products on their own, and (ii) focus on organizations that would not otherwise be available to purchase such products.''.

(b) PRIORITY ESTABLISHED.—During each fiscal year after fiscal year 2002, the Attorney General shall, to carry out the programs described in subparagraphs (J) and (K) of section 524(c)(1) of title 28, United States

Code (as added by subsection (a)), allocate such funds as may be appropriate, but in no event less than $75,000,000, from the excess unobligated balance in the Department of Justice Assets Forfeiture Fund. If the unobligated balance of the Fund is less than such amount or such funds are otherwise unavailable from the Fund, such allocation shall be made from the General Treasury.

The CLERK. Strike sections 10 and 11 and insert the following: Section 10——

Mr. CONYERS. I ask unanimous consent the amendment be considered as read.

Mr. GEKAS. Reserving a point of order.

Chairman SENSENBRENNER. Point of order is reserved by the gentleman from Pennsylvania. Without objection, the amendment is considered as read. The gentleman from Michigan is recognized for 5 minutes.

Mr. CONYERS. Members of the Committee, we add two new sections to the bill, as you have heard, strike a couple. The first section would provide for a reentry program for Federal offenders, including drug treatment and aftercare.

Second, it would provide for improved programs for vocational and educational training programs along with the programs by which Federal Prison Industries is empowered to donate prison industry products to not-for-profit organizations that provide goods and services to low income individuals.

This latter change is based in large part on suggestions from several Members, particularly the gentleman from Massachusetts. I hope that we are past the days where the solution to crime is to lock people up for as long as we possibly can, ignore them, punish them along the way and hope the problem would go away. We have got tens of thousands of Federal inmates, an all-time record, by the way, and a world record, incidentally, who have been in prison for 10 years, 20 and even longer.

The very last thing that I hope we would want to do is return them to society with no skills and no hope. Now I have seen this happen. A person gets out of Jackson Prison with no money, nothing, a bus ticket, and you can start your watch ticking before the time he gets in trouble again and gets busted. I mean it is so incredibly elementary that you wonder how this could be going on in the 21st century with a straight face. Nothing, no skills, nobody, no relatives, no jobs, no prospects, and they say, see you, under their breath, later.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. CONYERS. Of course.

Chairman SENSENBRENNER. I have reviewed the gentleman's amendment and I think he is going in the right direction, and at this point in time I am prepared to accept it with a couple of words of caution of what we have to do in working matters out between now and the floor.

First of all, the gentleman's amendment provides for authorizations in the neighborhood of $5 million, plus or minus, to the Bureau of Prisons and the judiciary for each of the next five fiscal years. I think that DOJ would go ballistic over that and I hope we can reach out some kind of an agreement where there is perhaps a different figure put in that they would be willing to accept.

The other concern that I have relates to the provisions in section 11 relating to the Department of Justice assets forfeiture fund. I think we will have the same concern expressed by the Department of Justice, and I am prepared to put this in the bill kind of as a negotiating point with DOJ, but with the express understanding that this language is not written in stone tablets.

Mr. CONYERS. Well, that is a very good start, Mr. Chairman. I am happy to hear you say that. I yield to the gentleman from Massachusetts.

Mr. FRANK. I must say it is a lot easier for all of us—I want to express my strong support for the gentleman's amendment. It is a lot easier for us to be flexible when we know that the appropriators will have a lot to say about this, anyway. In acknowledging flexibility, we are not giving away any of our own decision-making. But I just want to thank the Ranking Member for offering this. Many of us are torn because we certainly want to see people who are incarcerated being given opportunities to learn to break this pattern. We also are concerned about the negative competitive effect it has on low wage private sector people. There were several things in here that tried to bridge that, and one that I have been working on, and I thank the Chairman and the Ranking Member for working with us on it to get a more active program of donations, and I want to highlight that this is part of what we are talking about.

I would ask for an additional minute.

Chairman SENSENBRENNER. Without objection.

Mr. FRANK. We have in here an authorization for them to begin an active program of seeking out nonprofit groups that cannot afford to go into the private market and buy furniture and buy clothing and buy draperies and get this donated to them. In other words, the prisoners are presumably not doing a lot of marketing. The prisoners are doing the physical work. What we are trying to do here is more actively create a program whereby we will seek out groups, daycare centers, homeless shelters, drug treatment centers, who cannot now be in the market, and this will allow the prisoners to still make the machinery and make the stuff and have it donated. And I must say it seems to me this is an area in the whole faith-based area, this would be one of the areas we could be reaching out to groups that would not otherwise have been able to afford it. So I realize we will have difficulties over the financing, but I think this is a very constructive amendment that tries to deal with this conflict.

Chairman SENSENBRENNER. The time of the gentleman has once again expired. Does the gentleman from Pennsylvania insist upon his point of order?

Mr. GEKAS. I do not. I ask unanimous consent to withdraw.

Chairman SENSENBRENNER. The point of order is withdrawn. The question is on the amendment.

Mr. SCOTT. Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from Virginia.

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. The prison industries program, or FPI, has been around since the 1930's. Under the law, Federal agencies are required to buy needed products from FPI if they can meet the order. The purpose of the program is to teach prisoners real work skills so when they are released from prison they will be able to find and hold jobs to support themselves and their families and be less likely to commit crimes in the future. There is no question that the program has worked. Follow-up studies covering as much as 16 years of data has shown that inmates

who participate in prison industry programs are more likely to be employed and less likely to commit crimes than those who did not participate in the program. But it certainly benefits offenders and their families. That is beside the point from a public policy perspective. The real benefit to all of us is that as a result of this program, we are less likely to be victims of crime.

We are prepared to spend billions of dollars in prison construction and prison upkeep in our efforts to reduce crime, but this is a program that reduces crime while it essentially pays for itself. FPI works through a process of requiring Federal agencies to seek as a first resort to meet its procurement needs from prison-made goods. The total revenues of FPI represent a very small percent, much less than 1 percent, about one quarter of 1 percent of Federal agency procurement dollars. The furniture and apparel industry are two industries which the FPI does most of its work, and when representatives of those industries were asked at a hearing to estimate the impact on their industry, words such as "insignificant" and "negligible" were used. If such industries are having problems, it is probably not—it is obviously not due to the impact of FPI. The program generates almost as much business as it takes by pumping in three quarters of its revenue back into the economy through purchases, much of it going to small, minority and women-owned businesses.

For several years FPI has received awards for spending money in this sector of the economy. All able-bodied inmates in the Federal system are required by law to work. Few offenders enter the prison program with marketable work skills. The vast majority do not even have credible work habits such as showing up for work, cooperating with employees, and working productively with others. Such habits are required to be maintained in an FPI job. With elimination of parole, good conduct credits, Pell Grants and other incentives, Federal prison system has little to offer as an incentive for self-development. But FPI is an exception. FPI jobs pay much more than the other prison jobs. To hold down an FPI job, an inmate must have completed high school or be making steady progress towards obtaining a GED and maintaining a good record of good behavior. This is true not only for those already in an FPI job but those on the waiting list.

Some have suggested that vocational education is a good substitute for FPI work experience. While vocational education is important and ought to be available for all inmates, no amount of educational course work can substitute for real work at a workplace in terms of work experience. The average sentence for prisoners in the Federal prison is 8 years. The vocational education program usually runs 2 years or less.

In any case, we have a situation what do you do with the other 6 years. I am first to concede there are problems at FPI which should be fixed. When a small business is making a single client product such as Army helmets, and depends on DOD contracts for its operations, FPI should not be able to take that business away. We don't need to fix the problem through a meat cleaver approach that the bill has before us. While it suggests that the lack of competition is a problem, the bill seeks to stranglehold FPI as a competitor not only by strengthening the prohibition against activities in the commercial market, but in the Government market as well.

We should fix the problems and we should do so in such a way that breaks the cycle of crime by ensuring the viability of this vital crime reducing program.

With 20 new programs scheduled to come on-line in the next few years, we can ill afford to diminish the successful crime reduction programs, and we should not believe that if any job goes to an FPI project that somebody will lose a job. We have to focus on the fact that this Committee with oversight responsibility should look at the safe, efficient and productive operation of our prison system, and that is why we need, Mr. Chairman, to make sure if we are going to get rid of the mandatory source, we need to make sure that the FPI system is alive and well.

Ms. LOFGREN. Would the gentleman yield?

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. The gentleman's time has expired. Without objection, he gets two more minutes.

Ms. LOFGREN. Thank you, Mr. Chairman. In addition to those excellent comments, I would like to note that an additional benefit of the industry's program is the reduction of violence and disorder in the institution itself. That is true not only in the Federal prisons, but in all of the State and local jails and prisons we have looked at. That if you have focused job activity, the institutions become much less violent, and I think that is why correctional officers associations tend to be very big fans of these industry programs because it gives—idle hands lead to problems and this gives something productive for inmates to do and learn a skill that will allow them to be successful after entering when their term is served.

Mr. CONYERS. Would the gentleman from Virginia yield?

Mr. SCOTT. I yield.

Mr. CONYERS. I want to thank the gentleman for his statement because I think it is important that all of us appreciate where the gentleman is coming from. I mean I think it is a very important and enlightened position that Mr. Scott is taking here. And I think it is important that we see if we can marry these new ideas that are here, that we go beyond the private sector and that we get into the places where there isn't any money and there isn't any competition either. And so it is in that spirit that I appreciate the gentleman's comment on my amendment.

Chairman SENSENBRENNER. The gentleman's time has expired. The gentleman from Georgia, Mr. Barr.

Mr. BARR. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BARR. I know this isn't very popular here in response to the arguments from the other side, but let me interject a small dose of reality here. For those who claim that maintaining the monopoly of FPI to be the sole source for Federal contracting and provision of furniture and other paraphernalia to Federal agencies as being a cure-all for prison violence and for rehabilitation, let me remind folks that the major prison uprising that we had at the Federal penitentiary in Atlanta back in the late 1980's was centered at the FPI building there because it was high profile. It was the first target and cost millions upon millions of dollars when that facility was burned down. So, yes, it can be a benefit, but it is not going to be a cure-all and simply because you have a Federal Prison Industries

facility at a Federal prison facility does not mean that you are not going to have serious problems, and sometimes it can be a catalyst for more serious violence than if you don't have it. So these things can cut both ways. Let us look at it on its merit and not based on some Pollyannaish theory in saying that we ought to interject that the alien concept of competition into the provision of Government furnishings and services will decimate our ability to do away with prison violence and rehabilitate prisoners. That is not really so.

Let us look at it on its merits. I think it is a very meritorious bill. It does not do away with Federal Prison Industries. It simply interjects the concept of competition and rationality into that process on behalf of the American taxpayers who are the people that we represent here. I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Michigan, Mr. Conyers. For what purpose does the gentleman from Wisconsin seek recognition?

Mr. GREEN. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Real briefly, I don't believe I take a Pollyannaish approach to FPI and the concept of rehabilitation, but I do believe that the FPI program can be an important part of the answer as we deal with increasing number of prisoners and increasingly long prison terms. Even with those longer terms, these prisoners will return to society some day, and unless we have assisted them in getting job skills, we know where they are going to be within a short period of time after release, and that is right back in prison.

It is interesting to note that the supporters of this bill don't say that they are doing away with FPI. They claim to be reforming it and fixing it. I think most of us can agree that FPI does need reform. It does need improvements. But I think we will also learn during the debate today if you take a look at some of the issues raised by amendment that this bill doesn't reform FPI. It is an effort to do away with it entirely. And if, in fact, this bill succeeds and if, in fact, we do away with FPI, I think we will see just how valuable the program has been and can be, and I think it will be a sad day. I yield back my time.

Chairman SENSENBRENNER. Gentleman yields back. Question is on the Conyers amendment. Those in favor will say aye. Opposed, no. The ayes appear to have it. The ayes have it and the Conyers amendment is agreed to. Are there further amendments?

Mr. FRANK. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. I move to strike the last word.

Chairman SENSENBRENNER. You are recognized for 5 minutes.

Mr. FRANK. I agree that there is a self-interest in helping those prisoners who can be rehabilitated. Obviously not all of them can be, but many of them, we hope, can be and I think it is very important to try. And that is why I was appreciative that the Chairman and the Ranking Member have accepted the amendment on donations. I think this is something that is really quite important.

We have in this society a large number of institutions, many of them religious-based, some of them nonreligious-based, that try to provide help to some of the most unfortunate people in our society.

They deal with drug rehab, they deal with homelessness. They deal with daycare for people at the low end. Many of them could benefit from clothing and furniture, two of the areas that the Federal Prison Industries does so much of its work. On the other hand, I don't want to see them in the market.

I do want to make a couple of points. First of all, let us note that we ban from import into America, because we think it is unfair competition, goods made in foreign countries with prison labor. And nobody has yet to explain to me the moral difference. If prison labor should not be the source of goods and commerce because it was foreign, I don't understand this. Indeed, under world trade rules, are we allowed to solely discriminate? If we send into the stream of commerce prison-made goods in America without restriction and then in effect give them a preference, by what right do we discriminate internationally?

Secondly, let us note, there are people, for instance, in the garment and textile field who have been those most affected by international trade. It is not a good idea, and I would say this to people who try to promote acceptance of a trade regime. The FPI has a terrific impact, and so do many of the State prison programs, on precisely that segment of our economy, workers and smaller business people who are already very negatively affected by trade. And I think it would be a grave error. It is piling on.

On the other hand, with the amendment that has been adopted, we are instructing the Bureau of Prisons to find groups actively that could take furniture, that could take clothing, take draperies, that would not otherwise be in the market, so they are not competing. They are not taking away from anything that would be sold. They could even start a special line that would be aimed at some of these facilities which have special needs for this and that would give the prisoners the work because, as I said, I am a strong supporter of rehabilitation, but having the prisoners actively engaged in marketing doesn't seem a good idea.

Mr. SCOTT. Would the gentleman yield.

Mr. FRANK. I yield.

Mr. SCOTT. Mr. Chairman, I say to the gentleman I agree with his assessment, but there is one problem. If you are supplying people that can't pay, then the program isn't paying for itself.

Mr. FRANK. I would say to them—I agree, but I think the notion that it has to pay for itself is not one that I accept. We don't say that putting people in prison has to pay for itself. But that is a separate issue. Frankly, maybe we ought to pay for itself by cutting back on some of the excess in imprisonment. But I don't think we have to have a prison program pay for itself. I would yield back.

Chairman SENSENBRENNER. We have two votes on the floor. The Committee is recessed until after the votes and it is the intention of the Chair to start up as soon as we get a working quorum. The Committee stands in recess.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order. When the Committee recessed for the votes, the bill H.R. 1577 was under consideration. The Conyers amendment had been agreed to. Are there further amendments? Gentleman from North Carolina.

Mr. COBLE. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. COBLE. I will not consume the entire 5 minutes. I come to this bill subjectively involved because I represent many furniture and textile employees in my district. This bill has been in the stream for a long, long time. I have met with the Federal Bureau of Prisons director and her able staff and, without exception, those conferences were harmonious, but we left failing to convince each other that either side was right or wrong. We need balance. I don't want to do anything that would endanger life inside the walls, that is public safety and prison safety. I think we must be ever conscious of the significance of that both as to inmates, guards, prison administrative personnel as well. And I want to commend you and the gentleman from Massachusetts, Mr. Frank. I think your work has resulted in striking this balance.

I think by eliminating ultimately the mandatory source rule, which plagues my textile and furniture people back home and it plagues me, by gradually getting rid of that, striking the balance that you and Mr. Frank have seen to it that now exists, I think is a good way to go, a good course to pursue. And having said that, Mr. Chairman, I yield back my time.

[The prepared statement of Mr. Coble follows:]

PREPARED STATEMENT OF THE HONORABLE HOWARD COBLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman and Members of the Committee,

Federal statute authorizes Federal Prison Industries (FPI), the government corporation that employs federal inmates, to sell the goods and services produced by these inmates to federal agencies but not to the public in competition with the private sector. Federal law also mandates that federal agencies purchase FPI products. This requirement is generally referred to as "FPI's mandatory source status."

While I support efforts to train prisoners to become productive members of society, I strongly believe that such efforts should take great care not to threaten the jobs of hard-working taxpayers. This issue is especially important to the 6th Congressional District of North Carolina, home to more than 40,000 textile and furniture workers, since two major classes of items produced by FPI are textiles and furniture. The mandatory source status gives FPI an unfair advantage over private manufacturers contending for federal contracts. Therefore, many of my constituents are deprived of employment opportunities in order to give work to federal inmates. In addition, the furniture industry in North Carolina is already competing with an increasing number of furniture imports arriving to the U.S. from countries such as China.

For these reasons, I am greatly concerned about FPI's proposal to begin selling inmate-furnished services in the commercial marketplace. I am equally concerned with FPI's publication of a regulation that professes to be a codification of "existing standards and procedures utilized to accomplish FPI's mission." It is my opinion that FPI is in need of reform before it is allowed to expand.

I am strong proponent of H.R. 1577 because it does just that—eliminates FPI's mandatory source advantage. It also prohibits FPI from entering the commercial market which I believe may have an adverse effect on private companies not able to compete with the low wages and cost benefits enjoyed by FPI. Further, the bill incorporates vocational and educational programs to teach inmates job-hunting and professional skills and coordinates funding to help inmates transition back into society.

Chairman SENSENBRENNER. Are there further amendments? The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment. It is Green point 050.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1577 OFFERED BY MR. GREEN OF WISCONSIN

Page 1, beginning on line 15, strike "only in accordance with this section" and insert "in accordance with applicable laws and regulations".

Page 2, strike lines 6 through 9 and insert "shall advise Federal Prison Industries of the requirement so that Federal Prison Industries may submit a timely offer".

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1577 offered by Mr. Green of Wisconsin. Page 1, beginning on line 15, strike "only in accordance with this section" and insert "in accordance with applicable laws and regulations." .

Page 2, strike line 6 through 9 and insert "shall advise Federal Prison industries of the requirement so that Federal Prison Industries may submit a timely offer.".

Chairman SENSENBRENNER. The gentleman from Wisconsin is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Mr. Chairman, I would not be involved in the debate here before this Committee today if I believed that this bill would do what its strongest supporters suggest. If this bill were merely about reforming FPI, I would be supporting it, but it isn't. It claims to reform FPI when it really condemns FPI. It claims to add elements of competition, but what it really does is stack the deck against competition. And section 2 of this bill is a prime example of that, and that is what this amendment gets at.

Section 2 of the bill provides that after the mandatory source is phased out, contracting officers aren't required to even solicit a competitive offer from FPI if the purchase involved is under the micropurchase threshold, which is $2500. Understand that three-fourths of all of FPI's orders are under $2500.

Now if, as the supporters of this bill suggest, they are trying to introduce competitive forces here, surely for these types of purchases FPI should at least be advised of the purchase and given a

chance to compete for it. But under this bill, they aren't even advised of it. This amendment merely provides that purchases from FPI after the mandatory source rule has been phased out be accomplished in accordance with the applicable laws and regulations, and it provides that Federal agencies should advise FPI of any procurement requirements that they have so that FPI can at least have the chance to make an offer, to make a bid. If we don't do this, we are condemning FPI.

What we are essentially saying is in the name of reform, we are going to turn out the lights. FPI will essentially cease to exist after the mandatory phaseout has taken place. That would be terribly unfortunate for a lot of the reasons that you already heard. So if we are really about creating a soft landing for FPI, if we are really about introducing market forces into this program, if we are really about continuing FPI to sort of push them in a new direction, then this is the type of amendment we should support. It gives FPI at least a modest ability and opportunity to continue. With that, I yield back my time.

Chairman SENSENBRENNER. I move to strike the last word and ask the Members to vote in opposition to the amendment. I will be very brief.

Currently nobody is required to solicit bids for purchases under $2500. What this amendment proposes to do is to go through the expense of soliciting bids for minor purchases and that is going to increase the cost to every other agency of the Government simply because FPI might be in the market.

I think that if we are interested in eliminating unnecessary paperwork, the amendment should go down and we should continue the present law where bids or purchases under $2500 can be done without competitive bidding.

Yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the Chairman and I agree with his remarks. I don't think you are going to see on the part of Federal agencies an anti-FPI bias. And I think there may be an apprehension there. I don't think there is any basis for it. Where the FPI has had good relationships with agencies and been a good supplier, they are likely to get the same kind of treatment as anybody else, and I don't see the need for any special provisions.

Mr. GREEN. Will the gentleman yield?

Chairman SENSENBRENNER. The gentleman from Wisconsin.

Mr. GREEN. My question to Mr. Frank is if what Mr. Frank says is true, shouldn't those agencies at least be required to advise FPI of opportunities to compete for contracts?

Chairman SENSENBRENNER. I yield to the gentleman from Massachusetts.

Mr. FRANK. We are talking about a de minimis situation and I think the normal rule again is the potential supplier ought to be doing the job of monitoring this. I don't believe that the—as I said, I don't want to give a preferential situation here. I don't believe that the agencies are required to inform everybody else. I don't want FPI to be discriminated against, but I don't want there to be some special rule. And it is my understanding that they are currently required to notify every potential supplier.

Ms. LOFGREN. Would the gentleman yield?

Chairman SENSENBRENNER. I yield to the gentlewoman from California.

Ms. LOFGREN. I think the amendment is a reasonable one, and one of the reasons why is that the prison system doesn't have a marketing arm. I mean the private sector has marketers, but the prison industries do not, that I am aware of. And so as time goes on, the sales relationship will diminish, and there is no ability to really to resurrect it in the budget, and so I think it was at least notified that some competition is sensible and reasonable, and I thank the gentleman for yielding.

Mr. FRANK. Will the gentleman yield.

Chairman SENSENBRENNER. I yield to the gentleman from Massachusetts.

Mr. FRANK. I will say for an agency that does not have a marketing arm, the FPI has done a pretty good job of staying in touch with a lot of us and getting other people to stay in touch with a lot of us. They may not have a marketing arm, but they sure do a lot of marketing.

Chairman SENSENBRENNER. I yield back the balance of my time. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, you talk about the vitality and viability and industry of the present system. 75 percent of the contracts are under $2,500 and that is $2,500 each. You can purchase an awful lot of goods if make them in sequential $2,500 or less purchases. If we can eliminate mandatory source and, as the gentlewoman from California mentioned, you have no ability to market, you will be losing 25, 75 percent of all of your orders if this amendment does not pass. All this is is that you have to at least notify them so you can make the offer. You do not have to accept the offer. The price may be better, the delivery situation may be better if you go somewhere else, but at least FPI would have the notice that the purchase is about to be made so they can at least compete.

Without this amendment, the very viability of prison industries is at risk. We are going to be building several new prisons in the upcoming years. I think it is about 20 new prisons. And if you do not have this amendment, the ability to put a prison industry in those new prisons will be seriously at risk. I would certainly hope we would agree to the amendment.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman.

Mr. WATT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Just for the purpose of asking Mr. Frank a question. Under the micro purchase threshold standards now—in excess of the micro purchase standards, is the FPI required to give the prison industries notice of a bid, notice of opportunity?

Mr. FRANK. I do not know if the FPI—the FPI is prison industries.

Mr. WATT. Is anybody required to give the prison industries——

Mr. FRANK. I do not know the exact status. I think the FPI ought to be treated in this regard like any other potential supplier so that if notices go out, they ought to get the same notices that anybody else does. I do not want them to be given any kind of special rule or not.

Meanwhile, help has arrived in the person of someone who knows the answer. I might be able to give the gentleman an answer. If the gentleman would withhold for a minute, we might be able to have it for him.

I am informed that the legislation that we are considering does require for above that micro level that there be a notice to FPI to Federal agencies that are in the business.

Mr. WATT. And below the level, is the FPI guaranteed the contract or is this available?

Mr. FRANK. It is available to anyone, and I think you have a problem of paperwork requirements on the agencies for these small purchases.

Mr. WATT. Okay.

Mr. SCOTT. Will the gentleman yield.

Mr. WATT. Yes.

Mr. SCOTT. One of the problems in these so-called micro purchases, if you are doing $2,000, you are buying a lot of computers one at a time, $2,000 will add up to a lot of money. What happens under these is you have no notice to—requirement to notify anybody.

Mr. WATT. Does not that put everybody on the same basis, then?

Mr. SCOTT. It puts everybody on the same basis if you have a marketing arm. But you are right.

Mr. WATT. Why should we be required to give a Government agency more notice than the general public has? You would think they would be on the inside of the system. They would be more likely to get the information.

Mr. SCOTT. If the gentleman would yield. We are eliminating the mandatory source and going to competition. 75 percent of the orders——

Mr. WATT. If—you want to put them on the same basis that we put everybody else, I thought.

Mr. WATT. If you put them——

Mr. SCOTT. If you put them in the dark.

Mr. WATT. That is not in the dark. It is no more in the dark than private industry.

Mr. SCOTT. You can go to wherever you want, to your brother-in-law, wherever you want. I think the requirement is you have to do a little—you can pick a couple of office supply companies and let them kind of do an informal—but you basically can go where you want. And if you do not, and 75 percent of the orders in FPI are under $2,500 and they do not have a marketing arm, and maybe they would have to. But all the Government agencies, all this says is you are at least posted somewhere where prison industries can at least know where they have given up mandatory source, at least let them know so the prisoners will have some work to do so they will be less likely to commit crimes in the future.

Mr. FRANK. Will the gentleman yield?

Mr. WATT. I yield to Mr. Frank.

Mr. FRANK. The gentleman from Virginia says this is to prevent people from giving preferential treatment to the brother-in-law. That is assuming the brother-in-law is not in prison. I do not always want to assume that. But beyond that, I am informed, not surprisingly, the FPI has a budget for marketing. They have a budget of $25 million for marketing. They do do the marketing. It does not say post it somewhere where they can see it. It says they get a special notice.

And I would also note, remember, the FPI starts out here to some extent with existing law, with existing relationships. Where they have existing relationships with agencies, why would an agency go out of its way to terminate that relationship? In fact, they probably have a lot of advantage over others because there is this ongoing relationship with others.

We are saying everybody ought to be treated equally. Where there is a notice, they should get it. If there is no requirement for notice, they should not be treated any differently than anybody else. I do think because of the relationships they have enjoyed under the mandatory sourcing, they start out with an advantage.

Chairman SENSENBRENNER. The gentleman's time has expired. The question is on the amendment of the gentleman from Wisconsin, Mr. Green. All those in favor, say aye. Those opposed, no. The noes appear to have it.

Mr. GREEN OF WISCONSIN. Mr. Chairman, on that I ask the yeas and nays.

Chairman SENSENBRENNER. rollcall is ordered. Those in favor, say aye. Those opposed, no. The clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. Aye.

The CLERK. Mr. Gekas.

[No response.]

The CLERK. Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Gallegly.

Mr. GALLEGLY. No.

The CLERK. Mr. Goodlatte.

[No response.]

The CLERK. Mr. Bryant.

[No response.]

The CLERK. Mr. Chabot.

Mr. CHABOT. Aye.

The CLERK. Mr. Barr.

Mr. BARR. No.

The CLERK. Mr. Jenkins.

[No response.]

The CLERK. Mr. Cannon.

Mr. CANNON. No.

The CLERK. Mr. Graham.

[No response.]

The CLERK. Mr. Bachus.

[No response.]

The CLERK. Mr. Hostettler.

Mr. HOSTETTLER. No.

The CLERK. Mr. Green.
Mr. GREEN. Aye.
The CLERK. Mr. Keller.
[No response.]
The CLERK. Mr. Issa.
Mr. ISSA. Aye.
The CLERK. Ms. Hart.
[No response.]
The CLERK. Mr. Flake.
[No response.]
The CLERK. Mr. Pence.
[No response.]
The CLERK. Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no.
Mr. Frank.
Mr. FRANK. No.
The CLERK. Mr. Berman.
[No response.]
The CLERK. Mr. Boucher.
[No response.]
The CLERK. Mr. Nadler.
[No response.]
The CLERK. Mr. Scott.
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt.
Mr. WATT. Pass.
The CLERK. Mr. Watt, pass.
Ms. Lofgren.
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye.
Ms. Jackson Lee.
Ms. JACKSON LEE. Pass.
The CLERK. Ms. Jackson Lee, pass.
Ms. Waters.
Ms. WATERS. No.
The CLERK. Ms. Waters, no.
Mr. Meehan.
Mr. MEEHAN. No.
The CLERK. Mr. Meehan, no.
Mr. Delahunt.
[No response.]
The CLERK. Mr. Wexler.
[No response.]
The CLERK. Ms. Baldwin.
Ms. BALDWIN. No.
The CLERK. Mr. Weiner.
Mr. WEINER. No.
The CLERK. Mr. Schiff.
[No response.]
The CLERK. Mr. Chairman.
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Are there additional Members in the room who wish to pass or change their vote? The gentleman from Pennsylvania, Mr. Gekas.

The CLERK. Mr. Gekas.

Mr. GEKAS. No.

Chairman SENSENBRENNER. Gentlewoman from Pennsylvania, Ms. Hart.

Ms. HART. No.

Chairman SENSENBRENNER. Gentleman from Florida, Mr. Keller.

Mr. KELLER. No.

Chairman SENSENBRENNER. Gentleman from Tennessee, Mr. Jenkins.

Mr. JENKINS. No.

Chairman SENSENBRENNER. Gentleman from North Carolina, Mr. Watt.

Mr. WATT. No.

The CLERK. Mr. Watt, no.

Chairman SENSENBRENNER. Other Members who wish to cast or change their votes?

Gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Aye.

Chairman SENSENBRENNER. Gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. Aye.

The CLERK. Mr. Bachus, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 8 ayes and 18 nays.

Chairman SENSENBRENNER. The amendment is not agreed to. Are there further amendments? Ms. Jackson Lee.

Ms. JACKSON LEE. I have an amendment at the desk.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1577, offered by Ms. Jackson Lee of Texas.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1577 OFFERED BY MS. JACKSON-LEE OF TEXAS

At the end of the bill add the following new section:

SEC. ___. INDEPENDENT STUDY TO DETERMINE THE EFFECTS OF ELIMINATING THE FEDERAL PRISON INDUSTRIES MANDATORY SOURCE AUTHORITY.

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

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

(c) SUBMISSION.—Not later than January 31, 2003, the Comptroller General shall submit the results of the study to Congress, including any recommendations for legislation.

The CLERK. At the end of the bill add the following new section. "section. Independent study to determine the effect of eliminating the Federal Prison Industries mandatory source authority.".

Ms. JACKSON LEE. I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, ordered. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you, Mr. Chairman. This is an informative and instructional amendment that I ask my colleagues to support to provide us with the information of what impact the Federal Prison Industries have. We obviously appreciate the advantage the program can have on persons who are incarcerated and society at large. At the same time there is, I think, the need to be able to determine what value comes to those who are incarcerated with respect to training and experience with development of job skills and work ethic. Also how these particular industries compete with opportunities needed by low income families and, as well, other small private contractors. Information goes a long way. It is instructional, and I believe this study is long overdue, Mr. Chairman. We have never had one, to my understanding, and, of course, one of the issues that could be raised is whether or not it brings down recidivism, which is something we all want to encourage to happen; that recidivism is diminished, if you will. This provides an opportunity in the community for those individuals who are to go back into the community.

I would ask my colleagues to support this study because we can only be better policymakers and legislators if we have this information. I yield back.

Chairman SENSENBRENNER. I move to strike the last words and recognize myself for 5 minutes.

I do not think we need to have an independent study on this. It kind of punts the whole question on whether or not the mandatory source rule should be repealed, continued, or phased out. I think most of the Members of this Committee have realized that mandatory source is not in the public interest. What the legislation proposes to do is phase out mandatory source in the way to prevent the rug from being pulled out from underneath Federal Prison Industries. The Comptroller General is overloaded with GAO studies. Any Member can ask for a GAO study. It does not require a Committee action.

I believe this amendment really fuzzes the issue of whether mandatory sourcing shall be taken away. I would point out that the Department of Justice supports the phaseout of mandatory sourcing that is contained in this bill. The AFL-CIO does as well, with letters that have been delivered to the Committee today, and it seems to me that we ought to bite the bullet, make a decision, and do it.

I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the Chair for yielding. The Chair must consider the fact that there are some Members who have never seen a study that they did not like. So what is one more study onto all the hundreds of other studies that have been ordered in the 107th Congress. And so if it will give the gentlewoman support for final passage, will reduce the number of amendments she might otherwise introduce, I am for it.

Ms. JACKSON LEE. You are so eloquent, Mr. Ranking Member. Would the gentleman yield?

Chairman SENSENBRENNER. I am happy to yield to the gentlewoman from Texas.

Ms. JACKSON LEE. My Ranking Member has expressed himself in such an eloquent fashion that I just want to echo the sentiments. I believe that information is not negative and I believe that the refined information coming from the Comptroller would be very helpful to us. I appreciate the general support of the mandatory source, but there is not only a question about that. It raises many additional issues dealing with the impact of the prison bureau industries, the impact on local private entrepreneurs, employment issues. It is a helpful document to be able to not have other Congresses revisit this question again.

I would ask my colleagues to support this amendment.

Chairman SENSENBRENNER. I yield to the gentleman from Massachusetts.

Mr. FRANK. I would suggest another reason why the majority might want to authorize this study. You might want to give the Controller General more to do, in which case he would stop trying to find out just what the Vice President was doing last year.

Chairman SENSENBRENNER. Well, we will think about that. I yield back the balance of my time. The question is on the amendment offered by the gentlewoman from Texas, Ms. Jackson Lee. Those in favor, say aye. Those opposed, no. The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

Mr. HYDE. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the substitute.

The CLERK. Amendment to the amendment in the nature of an substitute to H.R. 1577 offered by Mr. Hyde.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1577 OFFERED BY MR. HYDE

Page 18, after line 14, insert the following:

1 (h) FINDING BY ATTORNEY GENERAL WITH RE-
2 SPECT TO PUBLIC SAFETY.—(1) Not later than 60 days
3 prior to the end of each fiscal year specified in subsection
4 (e)(1), the Attorney General shall make a finding regard-
5 ing the effects of the percentage limitation imposed by
6 such subsection for such fiscal year and the likely effects
7 of the limitation imposed by such subsection for the fol-
8 lowing fiscal year.
9 (2) The Attorney General's finding shall include a de-
10 termination whether such limitation has resulted or is like-
11 ly to result in a substantial reduction in inmate industrial
12 employment and whether such reductions, if any, present
13 a significant risk of adverse effects on safe prison oper-
14 ation or public safety.
15 (3) If the Attorney General finds a significant risk
16 of adverse effects on either safe prison management or
17 public safety, he shall so advise the Congress before the
18 end of the fiscal year in which the finding is made, and
19 such finding shall serve (notwithstanding any other provi-

sions of this Act) to postpone for one year the imposition of any further limitation.

(4) Any limitation postponed under paragraph (3) shall take effect in the fiscal year immediately following the fiscal year for which it is postponed, if not later than 60 days prior to the first day of such fiscal year the Attorney General makes a determination under paragraph (2) either—

(A) that such limitation is not likely to result in a substantial reduction in inmate industrial employment; or

(B) that any such reduction will not present a significant risk of adverse effects on safe prison operation or public safety.

The CLERK. Page 18 after line 14 insert the following.

Mr. HYDE. Mr. Chairman, I ask unanimous consent that the further reading of the amendment be dispensed with.

Chairman SENSENBRENNER. Without objection.

Mr. HYDE. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes in support of his amendment.

Mr. HYDE. Mr. Chairman, I am offering what I believe to be a perfecting amendment designed to ensure that the bill will serve the purposes for which its authors intend, which is to improve Federal Prison Industries rather than destroy it. It will provide a safety valve just in case the provisions of the bill do not work out as planned. I believe it is important to preserve Federal Prison Industries because it has a proven record of improving prison safety as well as overall public safety. Participation in Federal Prison Industries works programs has been shown to reduce recidivism, to increase the likelihood that inmates will be gainfully employed after they are released. Those programs are currently providing employment and training to about 22,000 inmates which is about 25 percent of the total number of inmates who are eligible for work programs, and there are plans to increase that number by building new factories in some of the Federal prisons, the newer Federal prisons.

Mr. Chairman, the proponents of this bill believe they can preserve these social benefits by gradually phasing out the preference that Federal Prison Industries projects gets in the Federal Government's procurement system. Each year the number of items sold under this preference will become smaller and smaller until 2008 when there would be no preference at all. In theory, by then, Federal Prison Industries would have reorganized its operation so that they could continue to sell their product to the Government agencies even without a preference. I hope this plan works. But the bill as currently drafted makes no provision for what will happen if it does not work.

Mr. Chairman, there are at least three reasons why turning Federal Prison Industries into an enterprise that can undersell private contractors may be easier said than done.

First, even though prison wages are lower than private wages, productivity is also far lower.

Second, the overhead cost for such items as supervision and security are far higher in prison factories than in private enterprises.

Finally, Federal Prison Industries is forbidden by law to sell its product on the open market. Unlike private competitors, it can sell only to the Federal Government. So it can take advantage of economies of scale to nearly the same extent as its competitors.

Mr. Chairman, my amendment would require the Attorney General to make a determination each year about whether the phasing-out of Federal Prison Industries' procurement preference has resulted in a reduction in the number of inmates provided employed in-work programs or is likely to do during the following year. If, and only if, there had been or was likely to be a substantial reduction in the number of inmates employed, the Attorney General would then determine whether this reduction posed a significant threat to prison safety or to general public safety. If not, then further reductions would be imposed on schedule. But if the Attorney

General found both, that the phasing-out of the preference would substantially reduce prison work opportunities and that this reduction posed a significant threat to prison safety or public safety, then any further phasing-out would be postponed for at least a year. The phasing-out would occur only after the Attorney General found that it was safe to proceed.

Mr. Chairman, I hope the Committee will adopt this amendment. If the proponents of the bill are correct in assuming that their reforms will make Federal Prison Industries more competitive rather than putting it out of business, then the safety valve provided by this amendment will never come into play. But if the proponents are wrong and if our highest law enforcement official determines there is a significant risk to prison safety or public safety, then the safety valve which I am providing will be badly needed.

I urge my colleagues to support this perfecting amendment.

Chairman SENSENBRENNER. Mr. Chairman, I move to strike the last words and recognize myself for 5 minutes.

Mr. Chairman, this amendment guts the bill. And with all due respect to my good friend from Illinois, what he has proposed to do is to have a rolling postponement of the phase-out of the mandatory procurement practices.

In the early determination from the Attorney General we can postpone that phase-out 1 year at a time so it never gets phased out. Now, nobody on this Committee is in favor of making prisons unsafe and we do not endorse prison riots and we want to make sure prisoners are kept in safe and humane conditions. But the effect of this amendment, given the way the Federal Bureau of Prisons operates will be to prevent the transferring of people who are presently in money-making industrial practices in the prison into the vocational rehabilitation programs that were authorized under the Conyers amendments and which will give those prisoners better skills to get jobs in the private sector once they are released from prison and are looking for jobs.

I think that the adoption of the Hyde amendment will allow Federal Prison Industries to keep doing business as usual, but also will really disadvantage the prisoners who do want to make a sincere attempt at rehabilitation from being forced into the vocational rehab jobs that the gentleman from Michigan, Mr. Conyers, is correctly pushing.

So I would hope that this amendment would not be adopted.

Mr. FRANK. Mr. Chairman.

Chairman SENSENBRENNER. I yield to the gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, I have an amendment to the amendment at the desk.

Chairman SENSENBRENNER. I would yield back the balance of my time.

Mr. FRANK. Mr. Chairman, I move to offer an amendment to the amendment.

Chairman SENSENBRENNER. The clerk will report the amendment to the amendment.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1577 OFFERED BY MR. HYDE

Page 18, after line 14, insert the following:

1 (h) FINDING BY ATTORNEY GENERAL WITH RE-
2 SPECT TO PUBLIC SAFETY.—(1) Not later than 60 days
3 prior to the end of each fiscal year specified in subsection
4 (e)(1), the Attorney General shall make a finding regard-
5 ing the effects of the percentage limitation imposed by
6 such subsection for such fiscal year and the likely effects
7 of the limitation imposed by such subsection for the fol-
8 lowing fiscal year.
9 (2) The Attorney General's finding shall include a de-
10 termination whether such limitation has resulted or is like-
11 ly to result in a substantial reduction in inmate industrial
12 employment and whether such reductions, if any, present
13 a significant risk of adverse effects on safe prison oper-
14 ation or public safety.
15 (3) If the Attorney General finds a significant risk
16 of adverse effects on either safe prison management or
17 public safety, he shall so advise the Congress [illegible]
18 end of the fiscal year in which the finding is made, and
19 [illegible]

1 visions of this Act) to postpone for one year the imposition
2 of any further limitation.
3 (4) Any limitation postponed under paragraph (3)
4 shall take effect in the fiscal year immediately following
5 the fiscal year for which it is postponed, if not later than
6 60 days prior to the first day of such fiscal year the Attor-
7 ney General makes a determination under paragraph (2)
8 either—
9 (A) that such limitation is not likely to result
10 in a substantial reduction in inmate industrial em-
11 ployment; or
12 (B) that any such reduction will not present a
13 significant risk of adverse effects on safe prison op-
14 eration or public safety.

The CLERK. Amendment offered by Mr. Frank to the Hyde amendment to the amendment in the nature of a substitute to H.R. 1577 moves to amend the amendment by striking all after the word Congress on line 17.

Chairman SENSENBRENNER. The gentleman from Massachusetts is recognized in 5 minutes in support of the amendment to the amendment.

Mr. FRANK. Mr. Chairman, the effect of this amendment is very simple. That is why we have not distributed copies. It would just amendment at the word Congress on line 17 of page one. It would leave in place the requirement that the Attorney General make this double finding. As you remember, the Attorney General is instructed to find whether or not there has been a substantial reduction in employment and whether or not that reduction in employment has presented a significant risk of adverse effects. It would have the Attorney General report that to the Congress, which is the appropriate policymaking body.

In its current form it seems to me to be a degree of delegation much too far. It lets the Attorney General unilaterally amend the legislation based on the finding. Now we understand that these are not the findings of great specificity. I think it is worth having this. That is why I did not want to oppose the amendment altogether but simply get the finding. But we all know that the issues here are somewhat going to be ambiguous.

One, there is perhaps the more quantifiable question about whether there has been a reduction. There is a more difficult question as to whether or not this causes adverse risks to public safety. Whether there might be alternative methods of trying to rehabilitate prisoners, whether there are other things we can do. It does not seem to me this is a legislative principle we ought to adopt. It almost comes close to the reverse of the legislative veto, an executive unilateral power to suspend a significant impact of a statute.

I do believe if the Attorney General—and the Attorney General came to this Committee and said, look, we have a serious problem here, that we would not ignore it. We would look at it. It seems to me that is the appropriate process. It ought to trigger a serious investigation from this Committee.

I would also point out there is a little bit of an inconsistency in the amendment because in the first part, the report requires a finding that there has been a loss of employment that has led to adverse risk of public safety. But on page 2, those are independent factors. They have been delinked. There is an "or" there on line 11 and that what I would strike out. So that once there has been a suspension, a finding that there has been a drop in employment, even in the absence of finding that that had an adverse risk of public safety, would allow the Attorney General to continue to suspend an Act of Congress. I think that is not a good idea.

So I agree that this kind of a report from the Attorney General would be useful, but I do not think this is, either in this particular instance or as a general legislative matter, an appropriate way to structure a program, and that is why I offered offer the amendment.

I yield to my Ranking Member.

Mr. CONYERS. I thank the gentleman for yielding. I want my friend Mr. Hyde to know that I just called Lionel Hampton, whose

birthday we celebrated in this room yesterday, and he supports your amendment and Henry Hyde's amendment.

Mr. FRANK. I just hope the gentleman vibrates with me on this particular issue.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I have a different reading of the language on page 2, line 11. That order seems to me that the postponement would be withdrawn and the reductions take place if either there is A or B. So that if it has been postponed by the Attorney General, he would find either A or B and then it goes into effect.

Mr. Chairman, we have delegated a lot of authority to the Attorney General in the past few months. I mean, we delegated him to name terrorist organizations and start taking their property without any judicial review. So this little delegation pales in consideration of some of the other powers we have given him.

Congress, as we know from the way we have dealt with this very issue, will take a long time to respond to such a finding.

It seems to me if we want to ignore his findings that we would allow this postponement to go into effect or take affirmative action to go ahead and limit the prison industry program notwithstanding his specific finding, and we could pass a bill to that effect. It seems to me if the Attorney General has made such a finding that we ought to stop the process right where it is before we go much further. The Attorney General has the ultimate responsibility in the Government or responsibility in his department to make sure the prisons are being run safely. And if he finds the implementation of this bill is jeopardizing that, he ought to have the power to continue the prison industry program to make sure that the prisons are safe and the public safety is not adversely affected.

Finally, Mr. Chairman, if the amendment without the Frank amendment guts the bill, then the bill in fact guts prison industries. And that is the ultimate question before us, whether we are going to have a viable prison industry program or not. And I think this amendment at least will make sure that we have a viable prison industry program, the amendment without the Frank amendment. I would hope we defeat the Frank amendment and adopt the Hyde amendment.

Mr. BACHUS. I seek recognition in opposition to the Frank amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BACHUS. Mr. Chairman, I would hate to pick up the paper 3 or 4 years from now and read that there was a prison riot in my district or my State or anywhere in the United States, and one of the root causes of that was some program had been—had been shut down, some work program of prison industries, as a result of what we have passed today. I believe that the Hyde amendment would assure us at least that we would be watching out for any unforeseen or foreseen consequences of the legislation which did make prison safety or undermine prison safety.

I would just tell you that I was sent to work at 14 years of age here in the summer for a month or two because my dad said that was the best way to keep me out of trouble, and I do not think I ever got in trouble when I was at work, any serious trouble. And I believe that it also builds character. I believe it builds a work ethic, and I do not want to deny the prisoners an opportunity to do something to feel better about themselves. And this amendment offers me a great deal of comfort with the overall bill. I believe for the safety of the community we represent, we ought to support this amendment.

Mr. HYDE. Would the gentleman yield?

Mr. BACHUS. I would yield.

Mr. HYDE. I want to thank the gentleman for his remarks and I want to thank Mr. Scott for his analysis. I think he is exactly right. Prison industries is a valuable asset. You get somebody locked up in a prison who has no hope, especially when they leave the prison, and they have not had a work experience, they can learn they can put the time there in prison to good use and come out a person who can cope with life. And I think to deny that—and that is really what the bill does, the bill eviscerates prison industries.

It is not an enormous gash into the commerce of the community. It is worthwhile, it gives the prisoners a work experience, and I think we ought to nurture it and not destroy it.

The Attorney General has to make two findings. One is that the limitation has resulted or is likely to result in a substantial reduction in inmate industrial employment. Well, if the program makes that, you would want to correct that, would you not? And the other is, the other finding is, and he has to find both, is that it presents a significant risk of adverse effect on safe prison operation or public safety.

So I do not think this is such a big deal to preserve the viability of prison industries. I think it is therapeutic. I think it helps society. It helps the inmates, and it does not harm the local shoe store or delicatessen or anybody we are trying to protect.

I thank Mr. Bachus and I thank Mr. Scott.

Chairman SENSENBRENNER. The time belongs to the gentleman from Alabama.

Mr. BACHUS. I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, we have to recognize here that, first of all, that my dear friend Mr. Hyde's amendment effectively destroys the objective of the bill. You have to start out with that premise. If we are going to let the distinguished Attorney General call the last shots on prison industries, you have got to start out with that recognition.

The Frank amendment gives us some life. It gives the Attorney General some responsibility, but it does not give him the chance to pull the switch. So as long as you understand that when you are voting on the amendment, we will go along with the majority.

I yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the gentleman.

I want to stress the amendments that we adopted offered by the gentleman from Michigan do encourage prison industries to keep going. We talk about a wide donation program so they can give

things away. We talked about some other aspect of rehabilitation. No one is talking about simply having the prisoners sit there and sulk. We are talking about having stuff given away rather than sold in competition. But beyond that, here is the problem with the amendment. Let us be very clear that the finding about whether or not there has been a drop in sales is a fairly specific one, but does that lead to a risk of public safety? Most of the Members in this Committee know what they think about this now. This is not some objective determination to be made by the Attorney General. This is a basic philosophical thing. Members here have been arguing on behalf of the Attorney General making that finding. They have been arguing the finding. They are calling for it.

Let us also understand—and I know we have given other forms of delegation to the Attorney General and I used to join the gentleman from Virginia in being a little skeptical of those. But here is the problem, too. We are not talking about a purely intellectual issue. The Attorney General is the chief operating officer for the Federal department. The FPI brings in revenue to his department. He is going to be heavily lobbied by the people within his department to do something that stops this program from going into effect. We had FPI lobbying us very heavily to oppose any such legislation. They wanted an expansion. The fact is that the revenues here are useful to the department.

In fact, if you were going to give somebody the power to stop it, I do not think we should do that as appropriate legislative policy. It probably should not be the Cabinet budget officer whose budget will be directly affected one way or another. You might want to give it to somebody else. I do not think we ought to give it to anybody.

I do think if the Attorney General sends Congress a well-documented report that says we had trouble in the prisons because of this, we can go on. A short suspension can be part of an appropriations bill. It does not require a whole legislative operation.

I will say to my friends on my side, these kinds of principles are not good for one bill only. Give the Attorney General the power to suspend the program affecting the prisons based on his unilateral unchallengeable finding, why does it stop here? Are there other things that this Attorney General or the next Attorney General could? Did my friends on the other side want Janet Reno to have that? Do we want John Ashcroft to have it? Attorneys general are not neutral figures. They are often very high profile, very ideologically defined figures. What a precedent we are setting here to give the Attorney General of the United States the power unilaterally to suspend because of a finding that is part philosophical and part factual.

Mr. HYDE. Will the gentleman yield?

Mr. FRANK. Yes.

Mr. HYDE. You have said the amendment guts the bill.

Mr. FRANK. I did not say that. Other people have said it.

Mr. HYDE. You have not objected to them using those words.

Mr. FRANK. No.

Mr. HYDE. I am told by Mr. Conyers that under his breath he has said that.

In any event, the bill is not gutted because it requires the Attorney General to make two findings. One is that a substantial limita-

tion in inmate industrial employment has occurred and the other is it presents a significant risk of adverse effect on safe prison operation or public safety. So if those two elements are not found, the bill is in its full glory. If they are found, we have some flexibility to adjust the situation and keep Federal industries flying.

Mr. FRANK. Let me take back my time and ask for an additional minute to respond.

Chairman SENSENBRENNER. No objection.

Mr. FRANK. I did not say the bill was gutted. I say what I say, and other people can say what they say, and if I objected to everything with which I disagreed, nobody else would get a chance to talk around here. The fact is that there is still a principle here of delegation that seems to me very unwise and precedential to say on an issue that is partly factual but partly philosophical that we will let one of the most high profile, often politically sharply defined public officials, Janet Reno or John Ashcroft or any Attorney General that you think of, will allow that kind of a suspension. And I think that is a grave error. No, I do not say it guts the bill. I would note that it does appear to be kind of a tendency for people who do not like the bill to vote one way and people who do like the bill to vote another. I think it is a mistake, as I said, of setting this precedent of giving that power.

I think the part of the amendment that requires the finding by the Attorney General is a useful one. But having the Attorney General, highly ideological in either party's case, the man whose budget or woman whose budget is influenced by this has the unilateral power to suspend congressional action is a bad idea.

Chairman SENSENBRENNER. The gentleman's time has expired. The gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes.

Mr. WATT. Mr. Chairman, I move to strike the last words.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. First of all, Mr. Chairman, I would just say that there is among the best debates I think I have ever witnessed in this Committee. When you have a bill and an amendment that divides allies like the Chairman and the former Chairman on one side and Bobby Scott and myself on the other side—and this is not along political lines, it is along substantive and public policy lines—you have got the ingredients of a very difficult issue that needs to have this kind of public debate. And a lot of it goes back to your opinion about what prison industries, whether there even ought to be such a thing as prison industries and what it does to contribute to a complex out there that many of us perceive as growing out of control. But I am not going to go there.

I want to go back to the substantive part of this. I clearly disagree with the former Chairman's amendment, and the trouble I have with Mr. Frank's amendment to the amendment is that it seems to have been once we have passed Ms. Jackson Lee's amendment, if we also passed this amendment, Mr. Frank's amendment, we would then have a study by the Comptroller General that under Ms. Jackson Lee's amendment, which I presume would do essentially the same thing that the Attorney General's study would do under this amendment as amended by Mr. Frank. I am just, I guess, I am a little concerned that what if the Comptroller General

comes up with one set of findings and if, as I presume the Attorney General would, he would find whatever is necessary to, I think to preserve prison industries? I mean, I think it probably would be easier to document that if you cut out prison industries, somebody is more likely to not be rehabilitated or go back into the community and engage in some counterproductive activity. I mean, the Attorney General could easily find that. The Comptroller General could conduct the same study and find the exact opposite.

Where does that leave us if that happens? If either the sponsor of the amendment or the sponsor of the amendment to the amendment would address that?

Mr. FRANK. Will the gentleman yield?

I would say I think that is right, but I worry about the duplication. But it is an important issue. It would leave us, the Congress, in a better position because, as the gentleman knows, particularly the gentleman who studies these things, we would not simply get that conclusion. We would get presumably the reasons behind that conclusion, and I would not find myself unhappy if we got two conflicting recommendations, each the product not simply of an ideological free disposition but of a kind of a study. But I think obviously that is why I do not want it to be automatically triggered by either finding. But if we got two studies that were contradictory but if they were both serious studies, maybe we would have more good debates.

Mr. WATT. That is a fair answer. I would obviously favor Mr. Frank's over Mr. Hyde's amendment, and with that explanation, I think I will support Mr. Frank's amendment to the amendment. I yield back the balance of my time.

Mr. GREEN. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

Again, I think this amendment and the debate surrounding this amendment really points out what is going on here. Those who are arguing that the bill is about reform and making FPI work should in no way or form object to the Hyde amendment. There is no reason to object. If they are confident of this quote/unquote soft landing, if they are confident that prison industries can continue after the phase-out of the preference that takes place, then they should be just fine with this amendment. They will have no reason to be nervous about it or to be anxious about it at all. The fact that they are protesting so much shows that this is not about reforming FPI. It is instead about trying to condemn it and trying to terminate it and trying to make the program go away.

I would note that the Department of Justice, as the Chairman has pointed out, is in favor of the phase-out. So you have got the Department of Justice here in favor of the phase-out. This amendment, the Hyde amendment, the underlying amendment, simply has them look at this, has the Department of Justice, the Attorney General's office, take a look year by year monitoring the progress of the phase-out and monitoring the progress of prison industries to determine whether or not they are wrong. And, in fact, this does have the type of effect that many of us who are opposed to this bill fear. And I appreciate the good intentions of many of the supporters who talk about how because of the donation initiatives that

are in this bill that there will still be FPI. Let us not fool ourselves. There will not be, because under these donation provision—and again the Bureau of Prisons has a public works seperate from FPI, it is going to cost money. Where is that money going to come from?

Right now we have in FPI essentially a self-funding institution. It pays for itself. That is one of the beauties of it. But if this bill goes through and if it has the effect that many of us fear, what will happen is if FPI is going to continue at all, if it is going to have these donation programs, these donation elements, they will have to come to us in Congress and ask for a lot of money, an awful lot of money.

So, again, we should really understand what is going on in this debate. This is not about whether or not we are reforming FPI and making it work better. This is about whether or not we are going to end FPI, whether we will condemn it and terminate the program. It is for that reason that despite, I think, the constructive comments of my friend, Congressman Frank, I must oppose his amendment and strongly support the underlying Hyde amendment. I yield back my time.

Chairman SENSENBRENNER. The question is on the Frank amendment to the Hyde amendment. Those in favor will say aye. Those opposed will say no. The ayes appear to have it.

Mr. HYDE. I ask for a rollcall vote, Mr. Chairman.

Chairman SENSENBRENNER. This is a rollcall vote. Those in favor of the Frank amendment to the Hyde amendment will say aye. The clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. No.

The CLERK. Mr. Gekas.

[No response.]

The CLERK. Mr. Coble.

[No response.]

The CLERK. Mr. Smith.

Mr. SMITH. Yes.

The CLERK. Mr. Smith, aye.

Mr. Gallegly.

Mr. GALLEGLY. Aye.

The CLERK. Mr. Goodlatte.

[No response.]

The CLERK. Mr. Bryant.

[No response.]

The CLERK. Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Barr.

Mr. BARR. Aye.

The CLERK. Mr. Barr, aye. Mr. Jenkins.

[No response.]

The CLERK. Mr. Cannon.

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye. Mr. Graham.

Mr. GRAHAM. Aye.

The CLERK. Mr. Graham, aye. Mr. Bachus.

Mr. BACHUS. No.

The CLERK. Mr. Hostettler.

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Green.
Mr. GREEN. No.
The CLERK. Mr. Keller.
Mr. KELLER. Aye.
The CLERK. Mr. Issa.
[No response.]
The CLERK. Ms. Hart.
Ms. HART. Aye.
The CLERK. Ms. Hart, aye. Mr. Flake.
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence.
[No response.]
The CLERK. Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank.
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman.
[No response.]
The CLERK. Mr. Boucher.
[No response.]
The CLERK. Mr. Nadler.
[No response.]
The CLERK. Mr. Scott.
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt.
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren.
Ms. LOFGREN. No.
The CLERK. Ms. Jackson Lee.
[No response.]
The CLERK. Ms. Waters.
[No response.]
The CLERK. Mr. Meehan.
[No response.]
The CLERK. Ms. Waters.
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan.
[No response.]
The CLERK. Mr. Delahunt.
[No response.]
The CLERK. Mr. Wexler.
[No response.]
The CLERK. Ms. Baldwin.
[No response.]
The CLERK. Mr. Weiner.
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff.
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no. Mr. Chairman.
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Are there additional Members who wish to cast or change their vote? Gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye.

Chairman SENSENBRENNER. Gentleman from Tennessee, Mr. Jenkins.

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye.

Chairman SENSENBRENNER. Gentleman from California, Mr. Issa.

Mr. ISSA. No.

Chairman SENSENBRENNER. Gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. Aye.

The CLERK. Mr. Gekas, aye.

Chairman SENSENBRENNER. Gentleman from New York, Mr. Nadler.

Mr. NADLER. Aye.

The CLERK. Mr. Nadler, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? Hearing none, the clerk will report.

The CLERK. Mr. Chairman, there are 18 ayes and 9 nays.

Chairman SENSENBRENNER. The amendment to the amendment is agreed to. The question is now on the amendment of the gentleman from Illinois, Mr. Hyde, as amended. Those in favor, say aye. Opposed no. The ayes appear to have it. The ayes have it and the amendment as amended is agreed to.

The Chair will give a bit of a scheduling note. We are due for a vote at 12:15. It is not the intention of the Chair to bring us back after the vote on the rule on the tax bill. So we will recess the Committee subject to the call of the Chair at the time the bell rings. Members will get at least 24 hours notice on when the Committee will resume its sitting.

Mr. CONYERS. Mr. Chairman, are there other major amendments that are outstanding?

Chairman SENSENBRENNER. I believe there are.

For what purpose does the gentleman from Virginia seek recognition?.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk that I hope will take more than 5 minutes.

Chairman SENSENBRENNER. You are not getting more than 5 minutes to speak on it. The clerk will report the amendment.

Mr. SCOTT. Mr. Chairman, I think there are other amendments that may go quicker.

Chairman SENSENBRENNER. The clerk will report the Scott amendment.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1577
OFFERED BY Mr. SCOTT AND MR. GREEN

SECTION 21. ADDITIONAL PILOT AUTHORITIES FOR INMATE WORK OPPORTUNITIES

(a) Section 4124 of title 18, United States Code, is amended to read as follows:

"§4132. Additional Pilot Authorities for Inmate Work Opportunities.

"(a) PILOT AUTHORITIES.- Federal Prison Industries may contract with private or public sector entities for Federal inmates to produce products or perform services for those entities. Under these pilot authorities, and pursuant to the terms and conditions specified in section §4122, Federal inmates may, under the direct supervision of Federal Prison Industries staff-

"(1) produce products or perform services for commercial companies which have been otherwise produced or performed for the companies by foreign labor outside the United States for at least 3 years before the proposed

effective date of the business agreement;

"(2) produce products or perform services for commercial companies which would otherwise be performed for the companies by domestic labor, if available; or

"(3) produce products or perform services for not-for-profit agencies in support of the charitable activities of those agencies.

"(b) LIMITATIONS ON USE OF AUTHORITIES.-

"(1) Federal Prison Industries is prohibited from directly offering for commercial sale products produced or services furnished by Federal inmates, including through any form of electronic commerce.

"(2) The number of Federal inmates working under the pilot authority provided in subsection (a)(1) shall not exceed-

"(A) 4,000 during Fiscal Year 2004;

"(B) 8,000 during Fiscal Year 2005;

"(C) 12,000 during Fiscal Year 2006;

"(D) 16,000 during Fiscal Year 2007;

"(E) 20,000 during Fiscal Year 2008; or

"(F) 25 percent of the work-eligible Federal inmate population in any fiscal year beginning after September 30, 2008.

"(3) The number of Federal inmates working under the pilot authority provided in subsection (a)(3) shall not exceed-

"(A) 2,000 during Fiscal Year 2004;

"(B) 4,000 during Fiscal Year 2005;

"(C) 6,000 during Fiscal Year 2006;

"(D) 8,000 during Fiscal Year 2007;

"(E) 10,000 during Fiscal Year 2008; or

"(F) 10 percent of the work eligible Federal inmate population in any fiscal year beginning after September 30, 2008.

"(c) INMATE WAGES.- (1) IN GENERAL.- Each Federal inmate worker participating in industrial operations authorized by the Corporation shall be paid at a wage rate prescribed by the Board of Directors. The Director of the Federal Bureau of Prisons shall prescribe the wage rates for other Federal inmate work

assignments within the various Federal correctional institutions. The Board shall give priority to approving Federal inmate work opportunities which maximize inmate earnings. Inmate wage rates shall be reviewed by the Board at least bi-annually.

"(2) For Federal inmate work performed for commercial companies pursuant to subsection (a)(1), the wage rate paid to Federal inmates must be the Federal Prison Industries wage rate in effect upon enactment of this Act or twice the rate paid for work of a similar nature in the foreign locality in which the work would otherwise be performed, whichever is higher.

"(3) For work performed by Federal inmates pursuant to subsection (a)(2), the wage rate paid to inmates shall be not less than the rate paid for work of a similar nature in the locality in which the work is to be performed, but in no event less than the minimum wage required pursuant to the Fair Labor Standards Act (29 U.S.C. 201 et seq). The determination of this wage rate shall be approved

by the Secretary of Labor or by the state or local government entity with authority to approve such determinations.

"(4) For work performed by Federal inmates in support of the charitable activities of not-for-profit agencies, or for sale to Federal agencies, the wage rate paid to inmates shall be not less than the Federal Prison Industries wage rate in effect upon adoption of this Act.

"(d) DEDUCTIONS FROM INMATE WAGES.- Inmate wages paid by commercial companies shall be paid to the Corporation in the name and for the benefit of the Federal inmate. Except as specified in subsection (e), the Corporation may deduct, withhold and disburse from the gross wages paid to inmates, aggregate amounts of not less than 50 percent and not more than 80 percent of gross wages for-

"(1) applicable taxes (Federal, state and local);

"(2) payment of fines, special assessments, and any other restitution owed by the inmate worker

pursuant to court order;

"(3) payment of additional restitution for victims of the inmate's crimes (at a rate not less than 10 percent of gross wages);

"(4) allocations for support of the inmate's family pursuant to statute, court order, or agreement with the inmate;

"(5) allocations to a fund in the inmate's name to facilitate such inmate's assimilation back into society, payable at the conclusion of incarceration;

"(6) such other deductions as may be specified by the Board of Directors.

"(e) EXCEPTION FOR HIGHER DEDUCTIONS.- The aggregate deduction authorized in subsection (d) may, with the written consent of an inmate, exceed the maximum limitation, if the amounts in excess of such limitation are for the purposes described in paragraphs (4) or (5) of that subsection.

"(f) ELIGIBLE NOT-FOR-PROFIT ENTITIES.- To be eligible to enter into an agreement pursuant to

subsection (a)(3), an entity shall-

"(1) be recognized by the Internal Revenue Service of the Department of the Treasury as eligible under section 501(c)(3) of the Internal Revenue Code of 1993; and

"(2) have been accorded such recognition and been operating under such authority for a period of not less than 36 months prior to making a proposal to enter into an agreement to utilize inmate workers; or

"(3) be exempt from taxation as a religious organization under section 501(d) of the Internal Revenue Code of 1993."

(b) Commercial market services authorized by the Federal Prison Industries Board of Directors and being provided by Federal Prison Industries on the date of enactment of this Act may be continued until converted to a private sector contract pursuant to the authority in this Act. The Board of Directors of Federal Prison Industries shall ensure these conversions occur at the earliest practicable date.

"(g) Federal Prison Industries may solicit, receive and approve proposals from private companies for Federal inmate work opportunities. Federal Prison Industries shall establish and publish for comment criteria to be used in evaluating and approving such proposals. In developing criteria, priority shall be given to those proposals which offer Federal inmates the highest wages, the most marketable skills, and the greatest prospects for post-release reintegration.

"(h) The Board must approve all proposals in advance of their implementation.

"(i) Any business or eligible not-for-profit entity seeking to contract with Federal Prison Industries for Federal inmate workforce participation shall submit a detailed proposal to the Chief Operating Officer of Federal Prison Industries. Each such proposal shall specify-

"(1) the product or service to be produced or furnished;

"(2) the proposed duration of the business agreement, specified in terms of a base period and

number of option period;

"(3) the number of Federal inmate workers expected to be employed during the various phases of the agreement;

"(4) the number of foreign workers, if any, outside the United States currently performing for the proposing entity the work proposed for performance by Federal inmate workers, and the wage rates paid to those workers;

"(5) the wage rates proposed to be paid to various classes of Federal inmate workers, at not less than the rates required by subsection xxxx; and

"(6) the facilities, services and personnel (other than correctional personnel dedicated to the security of the inmate workers) to be furnished by the Federal Prison Industries or the Bureau of Prisons and the rates of reimbursement for such facilities, services, and personnel, if any.

"(j) Each proposed commercial business agreement shall be accompanied by a written certification by the

chief executive officer of the business entity proposing the agreement that-

"(1) no non-inmate employee of the business (or any affiliate) working within the United States will have their job abolished or their work hours reduced as a direct result of the agreement;

"(2) inmate workers will be paid wages at rates in accordance with subsection xxxx;

"(3) any domestic workforce reductions carried out by the business entity affecting employees performing work comparable to the work being performed by inmates pursuant to the agreement shall first apply to inmate workers employed pursuant to the agreement.

"(k) Each proposed agreement with an eligible not-for-profit entity shall be accompanied by a written certification by the chief executive officer of the eligible entity that-

"(1) the work to be performed by the inmate workers will be limited to the eleemosynary work of such entity;

"(2) the work would not be performed on a compensated basis but for the availability of the inmate workers;

"(3) the work performed by the inmate workers will not result, either directly or indirectly, in the production of a product or the furnishing of a service that is to be offered for commercial sale by the eligible entity or any affiliate of such entity;

"(4) no non-inmate employees of the eligible entity (or any affiliate of the entity) will have their job abolished or their work hours reduced as a result of the entity entering into an agreement to utilize inmate workers; and

"(5) the work to be performed by the inmate workers will not supplant work currently being performed by a contractor of the eligible entity.

"(1) PUBLIC NOTICE AND COMMENT.- (1) IN GENERAL.- The Board shall make reasonable attempts to provide opportunities for notice and comment to the widest audience of potentially interested parties as

practicable. At a minimum, the Board shall:

"(A) give notice of a proposed business agreement on the Corporation's web site and in a publication designed to most effectively provide notice to private businesses and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposed agreement, which notice shall offer to furnish copies of the proposal (excluding any proprietary information) and chief executive certifications and shall solicit comments on same;

"(B) solicit comments on the business proposal from trade associations representing businesses and labor unions representing workers who could reasonably be expected to be affected by approval of the proposal; and

"(C) afford an opportunity, on request, for a representative of an established trade association, labor union, or other representatives of private industry to present

comments on the proposal directly to the Board of Directors.

"(2) The Board of Directors shall be provided copies of all comments received on the proposal.

"(3) Based on the comments received on the initial business proposal, the business or non-profit entity or Federal Prison Industries Chief Operating Officer may provide the Board of Directors a revised proposal. If the revised proposal presents new issues or potential effects on the private sector which were not addressed in the original proposal and comments received thereon, the Board shall provide another public notice and comment opportunity pursuant to paragraph (1).

"(4) The Board of Directors shall consider all inmate work opportunity proposals submitted and take any action with respect to such proposals, during a meeting that is open to the public, unless closed pursuant to section 552(b) of title 5.

"(m) BOARD APPROVAL.- (1) In determining whether

to approve a proposed business agreement for Federal inmate work opportunities, the Board shall-

"(A) not approve any agreement that would result in the displacement of non-inmate workers contrary to subsection (d) or pay less than the wages required by subsection xxxx as determined by the Board or by the Secretary of Labor pursuant to subsection (g);

"(B) not approve an agreement which the Board determines contains terms and conditions which would subject domestic non-inmate workers to unfair competition;

"(C) request a determination from the International Trade Commission, the Department of Commerce or such other Executive Branch entities as may be appropriate, whenever the Board questions the representations by a commercial company or a not-for-profit entity regarding whether a particular product or service has been produced by foreign labor outside the United States for the commercial

company or not-for profit entity for at least 3 years before the proposed effective date of the business agreement;

"(D) not approve an agreement which would cause Federal Prison Industries' sales revenue derived from any specific industry to exceed 50 percent of Federal Prison Industries' total revenue.

"(E) not approve any agreement which would permit Federal inmates access to information contrary to section xxxx;

"(F) not approve any agreement with an eligible not-for-profit entity that will result, either directly or indirectly, in the production of a product or the furnishing of a service for commercial resale;

"(G) not approve any agreement which provides for direct supervision of Federal inmate workers by non-Federal Prison Industries employees; and

"(H) not approve any agreement which would

provide for products or services produced by Federal inmates to be sold to agencies of state government without the written consent of the Governor or designee.

"(n) REVIEW AND ENFORCEMENT.--

(1) Upon request of any interested person, the Secretary of Labor may promptly verify a certification pursuant to subsection (d)(1) with respect to the displacement of non-inmate workers or a certification with respect to the wages proposed to be paid Federal inmate workers pursuant to subsection (d)(2) so as to make the results of such inquiry available to the Board of Directors prior to the Board's consideration of the proposed agreement. The Secretary and the person requesting the inquiry may make recommendations to the Board regarding modifications to the proposed agreement.

"(2) Whenever the Secretary deems appropriate, the Secretary may verify whether the actual performance of the agreement is resulting in the displacement of non-inmate workers and whether the

wages being paid the Federal inmate workers meets the standards of subsection (d).

"(3) Whenever the Secretary determines that performance of the agreement has resulted in the displacement of non-inmate workers or the payment of Federal inmate workers at less than the required wage rates, the Secretary may-

"(A) direct the Chief Operating Officer of the Corporation to terminate the agreement for default, subject to the processes and appeals available to a Federal contractor whose procurement contract has been terminated for default;

"(B) direct that the Federal inmate workers be retroactively paid the wages that were due; and

"(C) initiate proceedings to impose upon the person furnishing the certifications made pursuant to subsection (d), any administrative, civil, and criminal sanctions as may be available."

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1577 offered by Mr. Scott and Mr. Green. "section 21, additional pilot authorities for inmate work opportunities. A, section 4124 of title 18, United States Code, is amended to read as follows: Subsection 4132.".

Mr. SCOTT. Mr. Chairman, I ask the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, last fall with your support, discussions were held in good faith between the gentleman from Virginia, Mr. Wolf, the gentleman from Texas, Mr. Smith, the gentleman from Michigan, Mr. Hoekstra, and their staffs to work out a compromise to the various bills restructuring FPI and to present to us some kind of compromise people could agree to.

The proposal was developed. Many of the elements agreed to were reflected in your substitute version of H.R. 1577 before us now, and this amendment applied to that underlying substitute is that entire proposal. The proposal was never presented to us because some who had originally joined in decided to reflect the compromise approach. The key element to this amendment, which is in the proposal developed but not in the substitute, is a provision to authorize FPI to pilot potential ways to offset the effect of the elimination of its mandatory source provision for obtaining work for inmates.

This amendment offers the same language regarding these pilot authorities as everyone agreed to last fall. Specifically, FPI would be authorized to produce commercial market items for private companies which have been produced offshore for at least 3 years providing inmates are at least paid twice the foreign market wage. That is to ensure that the lower wage is not the focus of the pilot.

FPI is also authorized to produce items for the domestic commercial market, provided inmates are paid at the domestic market wages. This will allow FPI to pilot a program similar to the Federal PIE or Prison Industries Enhancement program, already in operation for State prison industry programs.

Under this program, FPI would be allowed to pilot the production of products for services for which there is no domestic labor force available. There are strong protections against American worker displacements. Again the language is a language that was developed by representatives involved in the compromise.

The third pilot would allow FPI to produce products or perform services for nonprofit agencies in support of their charitable activities. During this pilot this amendment would authorize there would be extensive input from the International Trade Commission and the Department of Labor and other interested groups, proposals are noticed to the public and affected parties. All actions taken by the board are open to public meetings. We are talking about piloting these notions. They are in both the Wolf bill and the gentleman from Wisconsin Mr. Green's bill restructuring FPI. If they do not work, it will create the kind of problems that some rhetorically suggest are possible, then we can simply put a stop to them.

Mr. Chairman, if we are going to take away the only reliable basis the prison system has to ensure the real work opportunities

for prisoners since 1934 because one quarter of 1 percent of Federal procurement expenditures are too much to allow for a program that has been proven to reduce crime, it would be irresponsible for us to not at least test out other ways to give the program some reliability.

I hope my colleagues would support the amendment. And I point out, Mr. Chairman, that this amendment is being offered by myself and Mr. Green.

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. FRANK. To strike the requisite number of words.

Chairman SENSENBRENNER. Gentleman is recognized for 5 minutes.

Mr. FRANK. Mr. Chairman, I want to speak in opposition to the amendment, and I will say it is the first I have seen it so I cannot fully comment, but there were things that disturb me right from the beginning.

One, I am troubled by the fundamental inconsistency here that this to some extent exacerbates. I and many of my colleagues have campaigned hard against foreign-made goods made by prison labor coming into the U.S. I think that has been an important human rights cause and it has been a bipartisan one. And I must stay I am struck at the outset and no one has yet explained to me that fundamental contradiction why we are morally right in not allowing foreign prison goods into the U.S. And simultaneously allowing the expansion of prison-made goods within the U.S.

Here in particular this is exacerbated because this says one of the things it encourages is the production of products and performance of services which have been otherwise produced or performed by the companies by foreign labor outside of the U.S.. Here is what we are saying.

On the one hand, we will be encouraging prison labor to displace foreign-made goods. That may have some appeal to people. But how then do we go to various world trade organizations and object to foreign-made goods coming here? It is not always important to be 100 percent consistent, but I am really troubled by this.

On the one hand we are saying, look, one of the things we will try to do is replace and displace your foreign-made goods with our prison-made goods, but do not dare send any prison-made goods here. That is troubling to me.

Secondly, on first reading, this says they can produce three kinds of products. They can produce products and services that are performed by foreign labor, or they can produce products or perform services for commercial companies which would otherwise be performed for the companies by domestic labor.

Well, it seems between foreign labor and domestic labor, on the assumption that extraterrestrial labor does not do a significant amount of business here, I think we have pretty much everything. So I am not sure what we have domestic and foreign. I would yield if I am missing something.

Mr. SCOTT. I think the operative language there is "if available." it could have been done by domestic labor if domestic labor had been available and it was not available.

Mr. FRANK. It does not say "if not available". It says produce products and perform services for commercial companies which

would otherwise be performed for the companies by domestic labor, if available.

Again, we are giving an agency that has got a budget—and one of the arguments that has been made by the gentleman from Wisconsin, and I appreciate his presenting the argument in this way, this is a way for the prison industries to get some money. I would say to the gentleman, and this is relevant to this whole pilot, by the way, it is an interesting pilot. I may misunderstand pilot. Pilot sounds to me like something small. By the time I add it up, 35 percent of the total inmates can be in this pilot program, which is a pretty big pilot program.

But here is the problem. I want to do some things for the people in prison, but why should garment and furniture workers be paying for this as opposed to the taxpayer? Let us not do this work on the backs of some of the lowest wage people in the country.

You say, how are we going to pay for it? You are paying for it now by displacing workers, garment workers, furniture workers, and I think that is wrong. I am prepared to vote for good programs. But I guess let us take that financing issue head-on.

Should we finance a program that is of general benefit to the society by I think competing at a subsidized way, in a monopoly way—not even competing, taking work that would otherwise be done by some of the lower wage people in our society, or should we do it by a more general form of financing? I would say to the gentleman that is a difference between us.

I do say there are programs in prisons I want to support. By the way, why just this program? Why not prison guards? Let us find some other industry that we can displace to pay for prison guards. Why do we single out rehabilitation as the one example of something that is publicly-funded here?

I still want to go back and say I am troubled by this on the foreign side, but also as it reads, it is pretty much anything. It can be foreign or domestic. And you say maybe they left out on the words "understood if available" so it is only for places that were not available. Again, these are not hard-and-fast decisions. These are not strict factual questions. Is the labor available or not available? At what wage? With or what unions? Under what working conditions? This is a real problem.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. GREEN. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you. I will not take the full time. I appreciate the gentleman, Mr. Frank, his reference to extraterrestrial labor. That may be all that is left for FPI after this bill passes.

Again, the other part that we need to think about here is whether or not the purpose of this bill is to reform abuses and problems within FPI or whether or not it is an effort to simply terminate it and condemn it and put away. I would argue the bill does the latter. I think what this substitute amendment tries to do is to provide at least a limited opportunity, limited, very limited opportunity for the program to continue.

Mr. GREEN. Everyone here has talked about the value of the program, but no one here is arguing that FPI doesn't perform an important valuable service. And yet this bill would take that service

away. It will end it. There is no doubt—there should be no doubt in anybody's mind. This amendment was a simple limited way to offer some hope that the program might continue. And our goal with these reforms is to offer competition. I would argue the other side wishes to take it away.

At this point I would like to yield the balance of my time to my friend, Mr. Scott.

Mr. SCOTT. Could you yield to the gentlelady from California? She had a question to ask.

Ms. LOFGREN. Very quickly. If I am reading this correctly, the only work that could be provided under this amendment is work that has already gone offshore, and inmates would be paid the prevailing wage. I mean—the question I have, though, has to do with limitations on the service side. Several years ago when I was on the crime subcommittee Mark Clask came and gave testimony to us that inmates were doing data entry relative to private information in children, which was a shocking thing to me and many people, and I would want to make sure that there would be privacy limitations in terms of the service side, because I think this is a very interesting and useful amendment, but there is that element that needs to be guarded against. And I yield back and I thank the gentleman.

Mr. CONYERS. Would the gentleman yield for a second.

Mr. GREEN. I have very little time. I need to get to Mr. Scott.

Mr. CONYERS. Have we checked—I asked the author of the bill with the Virginia AFL-CIO on this question.

Mr. SCOTT. Not specifically, Mr. Chairman.

Mr. CONYERS. What about the National AFL-CIO?

Mr. SCOTT. Well, Mr. Chairman, I would say that the prison industry program has been—has been proven to reduce crime significantly for those who are—who are potentially victims of crime. I think they would appreciate it if we would pass legislation that would reduce crime. This prison industry program reduces crime. I think there are a lot of hard-working Americans who would like the opportunity not to be victims of crime, and if we can do something about the crime rate, they would appreciate it.

Mr. CONYERS. Well, that is a good answer.

Mr. GREEN. Mr. Chairman, I yield time to my friend, Mr. Scott.

Mr. SCOTT. The gentleman from Massachusetts has indicated that he has not had time to fully read the amendment. I would ask that we withdraw it if we could have the opportunity to have it considered as a floor amendment.

The CHAIRMAN. If the gentleman from Wisconsin will yield, I will ask the Rules Committee in its wisdom to protect you. Sometimes my pleas fall on deaf ears there, but you know what that is like.

Mr. SCOTT. You are very persuasive.

Mr. FRANK. If the gentleman would yield. As a sponsor of the bill, I would similarly agree to go and lobby for the right to offer this amendment as long as I didn't have to read it.

The CHAIRMAN. The amendment is withdrawn. So we can make a clean get-away, the Committee is recessed subject to the call of the Chair.

[Whereupon, at 12:05 p.m., the Committee was adjourned, subject to the call of the Chair.]

* * * * *

The Committee met, pursuant to notice, at 10:09 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. [Presiding.] The Committee will be in order.

When the Committee recessed last week, the bill H.R. 1577 was the pending business. A motion had been made to report the bill favorably, and the bill had been considered as read and open for amendment at any point. There was no amendment pending at the time of the recess.

Chairman SENSENBRENNER. Are there further amendments?

The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Mr. Chairman, I have amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. GREEN. It should be Green.052.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1577, offered by Mr. Green of Wisconsin. Page 25, line 24, strike——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1577 OFFERED BY MR. GREEN OF WISCONSIN

Page 25, line 24, strike ''9'' and insert ''11''.

Page 25, beginning on line 24, strike ''with the advice and consent of the Senate''.

Page 26, line 5, after ''techniques,'' insert ''1 member represents victims of crime, 1 member represents the interests of Federal inmate workers,''.

Page 27, beginning on line 1, insert the following new subparagraphs (and renumber the succeeding subparagraphs accordingly):

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

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

Chairman SENSENBRENNER. And the gentleman from Wisconsin is recognized for 5 minutes.

Mr. GREEN. Thank you.

Mr. Chairman, as we've gone through the debate on this legislation, it is my belief that in some ways the debate is inappropriately focused, because I don't believe that the debate or that the efforts in this legislation are, as they suggest, really aimed at improving FPI and merely attacking its abuses and making it operate more effectively and more efficiently.

Instead, I believe that the legislation that's before us seeks to terminate FPI. I believe it seeks to condemn FPI——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. GREEN. Yes.

Chairman SENSENBRENNER. This looks like a constructive amendment to this bill, and we're happy to accept it.

Mr. FRANK. Will the gentleman yield?

Mr. GREEN. Yes, I will yield.

Mr. FRANK. Me, too. [Laughter.]

Chairman SENSENBRENNER. Does the gentleman yield back the balance of his time?

Mr. GREEN. Seeing such strong bipartisan direction being sent my way, I do yield back the balance of my time. And I appreciate the efforts of the Chair and the Ranking Member.

Chairman SENSENBRENNER. The question is on the adoption of the amendment by the gentleman from Wisconsin, Mr. Green.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. WATT. It's Watt number 2.

Chairman SENSENBRENNER. Watt 2.

Mr. WATT. Mr. Chairman, I ask unanimous consent the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

AMENDMENT TO
AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1577
OFFERED BY MR. WATT

On page 2, after line 21, after "expect" insert "fair consideration."

Chairman SENSENBRENNER. And the gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I actually think this is a good and well-balanced bill. However, I am concerned that in one important area, the area which this amendment seeks to address, this bill leaves a gaping loophole. And either we need to correct it or maybe somebody will be able to explain to me exactly why the language is worded the way it is.

As I understood the purpose of the bill, the objective was to basically create an opportunity during the interim here for Federal Prison Industries to be competitive. And I certainly support that.

Unfortunately, this language on page 2, starting at line 21, I think basically guarantees the Federal Prison Industries the receipt of the contract award. And I can't understand why the language is worded the way it is. I think the Federal Prison Industries should always——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. WATT. Yes, I——

Chairman SENSENBRENNER. We've looked at your amendment. We think it's a good one.

Mr. WATT. Okay. Well, in that case, some other brilliant minds must have thought the same way. I think——

Mr. FRANK. Will the gentleman yield?

I concur.

Mr. WATT. Thank you.

I will yield back the balance of my time and shut up.

Chairman SENSENBRENNER. The question is on the—agreeing to the amendment of the gentleman from North Carolina, Mr. Watt.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

The gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. ISSA. I have three, actually. I'll take 1, the one that begins "Page 7, strike line 6."

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1544, offered by Mr. Issa. Page 7, strike line 6, and insert the following: of its industrial operations——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1577 OFFERED BY MR. ISSA

Page 7, strike line 6 and insert the following:

1 of its industrial operations.

2 "(i) RULE FOR CERTAIN FACTORIES.—Federal Pris-

3 on Industries shall be the mandatory source supplier to

4 Federal agencies for products manufactured in factories

5 where at least 80 percent of the inmate workforce is within

6 2 years of release or entry into a prerelease program.".

Chairman SENSENBRENNER. And the gentleman is recognized for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman.

My amendment seeks to, if you will, mend it, not end it, when it comes to the Federal Prison Industries.

I recognize there have been abuses of the requirement to purchase prison-made goods in the past. But I also recognize, as I think all of my colleagues do, that we need to find training and work skills for prisoners being released.

My amendment specifically requires that in order retain any preference in this case, Prison Industries would have to have programs in which 80 percent of the inmates are within 2 years of their release from prison, or they're released to a prerelease program, which obviously takes them out of being able to have this kind of training.

In order to do this, we would end a policy that I believe is one of the major abuses in the Prison Industries system, which is the tendency to use what I call lifers, or long-term prisoners, because they're easier to work with. And even though they're not going to be released, and they're certainly not in need of training, it's a great way for wardens to have less problems behind bars. I don't believe that when an industry competes—could I have order, Mr. Chairman?

Thank you, Mr. Chairman. I don't believe when prisons compete with private enterprise they should do so unless there is a compelling reason. In this case a 2-year imminent release back into soci-

ety would seem to be an example where we must ensure that these—that those being released in fact have skills and have a work ethic so that we can ensure that they will not return.

And with that I yield back the balance of my time and ask for approval.

Chairman SENSENBRENNER. I yield myself 5 minutes to oppose the amendment.

This just gets FPI back into the same business of predatory practices that makes it impossible for anybody else to compete, and it is an administrative nightmare because nobody knows who in the prison, you know, is within 2 years of release or not. You know, if they are eligible for parole, that's up to the Parole Board to make a determination and parole hearings don't occur 2 years out. And if the prison management, you know, wants to start stacking an FPI facility with people who might be within 2 years of release, I think that flies directly in the face of good management of the prison and good management of the inmates.

I don't think this amendment fixes the problem. You know, it compounds it and it causes more administrative problems within the prison, and I would hope that the amendment would not be agreed to.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. I yield to the gentleman from Massachusetts.

Mr. FRANK. I'll take the 5.

Chairman SENSENBRENNER. The gentleman is recognized.

Mr. FRANK. I move to strike the last word. I join in opposing it. First, in the amendment that we previously adopted offered by the gentleman from Michigan, we sought to provide opportunities, vocational and other for prisoners. The gentleman's amendment includes a specific section mandating that FPI seek out and service nonprofits and other entities that seek to provide services to low income people that are not now in the market, and I think, frankly, there was a great market in day care centers, in homeless shelters, in drug rehab places. Many of them would be faith-based institutions that are not now in the market. So the premise of this is, apparently, that absent this there wouldn't be any work for the prisoners. We hope that there will be work for the prisoners, but it won't be work that will be depriving private sector workers, particularly in beleaguered industries like furniture and clothing from doing their job.

Secondly, there is the problem that the Chairman pointed out. One, I don't believe you always know who's 2 years away from release. Release dates are not always fixed. People are able to get off short of the maximum sentence. Secondly, from the standpoint of prison administration, segregating the prisoners so that only those who are—even if you are sure that there are some who have less than 2 years because they're up against their maximum sentences or whatever, trying to run a prison so that only they get the—they're involved, seems to me to be very difficult. It adds an enormous complication.

But I also say this assumes, I think, incorrectly, that absent mandatory sourcing, there's no work for the prisoners. And we believe that in the amendment offered by the gentleman from Michigan, which was adopted in other ways, we are providing some work

opportunities, some rehabilitation and vocational opportunities. So I would agree with the Chairman and hope the amendment is defeated.

Mr. GREEN. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose the gentleman from Wisconsin seek recognition?

Mr. GREEN. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I rise in support of the Issa amendment. I believe that it is narrowly drafted, and I believe that it focuses the mandatory source rule on those who most need it, in the sense of those who we know are about to be release, they're on the verge of being released. And we believe that FPI presents some rehabilitative opportunities for them. We know that the majority of inmates don't lack employability skills. This is one way of providing them with some of the skills that they will need to be successful when they are released, so hopefully they won't be going back into prison.

But the balance of my time, I'd like to yield to Mr. Issa.

Mr. ISSA. Thank you, Mr. Green.

Mr. Chairman, as you may be aware, I served on a Prison Industry Board for the State of California, the largest program in the United States, actually in many ways larger than the Federal Government's program. I'm very well aware of the abuses, but I'm also well aware that in fact under the Federal Prison, although there will not be a very large group that could be assessed under this amendment, it would be a targeted group and if you read the language of the amendment, it specifically limits it to a burden on the prison industry, meaning that if they cannot fill it with 80 percent of people who are within 2 years, then they lose the exemption. So the burden would be on the Federal Prison Industries. This would be a small group, targeted specifically at an area in which the private sector has very, very little concern.

Again, having served on a Prison Industry Board, I'm well aware and very sympathetic that simply competing, using people who will not be release, is unfair competition. This seeks to remedy this by making it a pre-release program, and I once again strongly urge the adoption of this based on its narrow focus and the burden being on the Prison Industries. And I yield back to Mr. Green.

Mr. NADLER. Mr. Chairman?

Mr. GREEN. Mr. Chairman, yield back my time.

Chairman SENSENBRENNER. Gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. Mr. Chairman, I have to oppose this amendment. I think that—I strongly support this bill because it's wrong for prisons to be competing—for Prison Industries competing with private companies, when the wages paid to the prisoners are, compared to private wage rates, virtually nonexistent. And this amendment, aside from the obvious practical problem pointed out by several Members previously about how do you know who's going to—within 2 years of release, would simply continue the preference for Prison Industries, which is wrong. I do hope that Prison Industries continue, and as Mr. Frank said, there are many other uses for the products, but we should not be com-

peting at an advantage, at a great advantage, at a subsidized advantage with private enterprise. So I oppose the amendment and I support the bill. Thank you. I yield back.

Chairman SENSENBRENNER. For what purpose the gentleman from Virginia, Mr. Scott, seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, just very briefly, the average sentence that people are serving now in Federal prisons is about 8 years. This would mean that for the last two of those years, they would be—have an advantage and have much more likelihood of having work to do. I think we ought to consider the fact that these people are going to be released. We ought to consider the impact of the reduced recidivism for those who will be participating in the Federal Prison Industry program.

I would think that the average citizen would like us to do what we can to reduce recidivism and increase public safety. This amendment certainly goes in that direction, and I hope it would be adopted.

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. The question is—what purpose the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word just briefly.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. I actually support the thrust of Mr. Issa's amendment. I think the 2-year period, however, is too short and there are some practical problems with how it would be implemented, as the Chairman has pointed out, so on balance I think while he's thinking in the right direction, I don't think we can support this amendment as it's drawn. I yield back.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from California, Mr. Issa, those in favor will say aye.

Opposed, no.

The noes appear to have it.

Mr. ISSA. Mr. Chairman, I request a recorded vote.

Chairman SENSENBRENNER. A recorded vote is ordered. Those in favor of the Issa amendment will, as your names are called, answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Bryant?

Mr. BRYANT. No.

The CLERK. Mr. Bryant, no. Mr. Chabot?
[No response.]
The CLERK. Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
[No response.]
The CLERK. Mr. Graham?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
[No response.]
The CLERK. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. Yes.
The CLERK. Mr. Issa, aye. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no. Mr. Frank?
Mr. FRANK. No.
The CLERK. Mr. Frank, no. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee, no. Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no. Mr. Meehan?
Mr. MEEHAN. No.
The CLERK. Mr. Meehan, no. Mr. Wexler—Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?

[No response.]

The CLERK. Mr. Schiff?

Mr. SCHIFF. No.

The CLERK. Mr. Schiff, no. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Are there additional Members who wish to cast or change their vote? Gentleman from Virginia, Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. Gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye.

Chairman SENSENBRENNER. Gentleman from Utah, Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the clerk will report.

Gentlewoman from Wisconsin, Ms. Baldwin.

Ms. BALDWIN. No.

The CLERK. Ms. Baldwin, no.

Chairman SENSENBRENNER. The other gentleman from Wisconsin, Mr. Green?

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye.

Chairman SENSENBRENNER. Anybody else who wish to cast or change their vote? The clerk will try again.

The CLERK. Mr. Chairman, there are 5 ayes and 22 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments?

Mr. SCOTT. Yes.

Chairman SENSENBRENNER. Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, is this—do we have a vote pending?

Chairman SENSENBRENNER. No, this is a recess.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, Number 1.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. SCOTT. No. 1.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1577 offered by Mr. Scott. After Section 4, subsection (h)(3) (as added by the Hyde Amendment), insert the following:

(4) In advising the Congress pursuant to (3)——

Chairman SENSENBRENNER. Without objection the amendment is considered as read.

[The amendment follows:]

Amendment to the Amendment in the Nature of a Substitute
To H.R. 1577
Offered by Mr. Scott
#1

After Section 4, subsection (h)(3) (as added by the Hyde Amendment), insert the following:

"(4) In advising the Congress pursuant to (3), the Attorney General shall make recommendations
for additional authorizations of appropriations to provide additional alternative inmate rehabilitative opportunities and additional correctional staffing, as may be appropriate."

Chairman SENSENBRENNER. And the gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this amendment is requested by correctional workers and the American Federation of Government Employees. It simply requires the Attorney General, in his Hyde-Frank Annual Report to Congress——

Chairman SENSENBRENNER. The gentleman yield?

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. This is a good amendment. I urge the Members to accept it.

Mr. FRANK. Mr. Chairman yield?

Mr. SCOTT. I yield.

Mr. FRANK. I agree. I certainly wouldn't want to stop John Ashcroft from asking for more money. [Laughter.]

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. SCOTT. Yes, Mr. Chairman.

Chairman SENSENBRENNER. All those in favor of allowing the Attorney General to ask for more money by supporting the Scott amendment will say aye

Opposed, no.

The ayes have it, and the Attorney General can go to it.

Further amendments?

Mr. ISSA. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1577 offered by Mr. Issa. Page 7, strike line 6 and insert the following:

"of its industrial operations."

"(i) Rule For Certain Products—Federal Prison Industries shall be the mandatory source supplier to all Federal agencies"——

Chairman SENSENBRENNER. Without objection the amendment is read—considered as read.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1577 OFFERED BY MR. ISSA

Page 7, strike line 6 and insert the following:

1 of its industrial operations.

2 "(i) RULE FOR CERTAIN PRODUCTS.—Federal Pris-
3 on Industries shall be the mandatory source supplier to
4 all Federal agencies when the purchases made by those
5 agencies are for the purpose of providing products, with-
6 out cost—

7 "(1) in support of the charitable activities of
8 qualified non-profit organizations eligible under sec-
9 tion 501(c)(3) of the Internal Revenue Code of
10 1986; and

11 "(2) in support of humanitarian aid or disaster
12 relief activities.".

Chairman SENSENBRENNER. And the Gentleman from California is recognized for 5 minutes.

Mr. ISSA. Mr. Chairman, I would once again predict that if we want to mend, not end, Prison Industries, this is an excellent opportunity to do so. What we are doing here is crafting a narrow exception for nonprofit humanitarian and disaster relief. Literally here all we're saying in this amendment is if the government is going to give it away for these purposes, then it may choose to use what is effectively its own workforce rather than going to the outside.

Now, good example of where these types of things go on is prisoners could in fact be paid their, albeit less than minimum wage, small wages, but put to work for small wages making toys for tots

for Christmas, or making supplies for disaster relief, or in fact sleeping bags for the children of Kosovo. You can name a lot of good uses in which the government purchases and gives away products.

I am not asking for them to have office supplies, modular furniture, any of the normal things. Those don't go to charities. We're talking about disaster relief limited to 501(c)(3) corporations, and particularly in support of humanitarian aid and disaster relief activities.

Mr. Chairman, I strongly ask you to consider leaving a carve out for times again, in which the government is going to have it made for the purpose of giving it away. And I yield back the balance of my time.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, I support much of this amendment to the point where we've already done it. And I would say to the gentleman, I would hope he wouldn't press for a vote at this point, and we could work out, particularly the part about humanitarian and disaster relief.

But let me call Members' attention to the amendment offered by the gentleman from Michigan, which we've already adopted, and I'll just read—it's on page 5 of the Conyers amendment, beginning line 10. "Payments to the Bureau of Prisons exclusively for the purpose of establishing a nonprofit component for inmate work in all Federal institutions in carrying out which FPI shall work actively to identify and donate to nonprofit organizations that provide goods and services to low-income individuals and have difficulty purchasing them on their own, to focus on organizations that would not otherwise be available to purchase such products."

Indeed, I'd point out to the gentleman, this is somewhat broader in scope as a permission than his, because it says "nonprofit." It doesn't restrict that to 501(c)(3)'s because there are nonprofit organizations that aren't 501(c)(3)'s. So we're in agreement on that.

The gentleman does, I think, make a contribution when he talks about explicitly in support of humanitarian aid or disaster relief activities, and I would urge him—if he would withdraw this, I would be glad to work with him, I think the Chairman would, so that when we got to the floor we explicitly dealt with that, but I certainly agree with the gentleman, and that, as I said, is the thrust of an amendment already adopted.

Chairman SENSENBRENNER. Will the gentleman from Massachusetts yield?

Mr. FRANK. I yield to the Chairman.

Chairman SENSENBRENNER. I think that in terms of the humanitarian aid or disaster relief activities, the Conyers amendment is sufficient. But I agree with the gentleman from Massachusetts as well, that restricting this just to 501(c)(3)'s might be unduly restrictive, and I would be willing to commit between now and the floor that we deal with the issues as he and I have described.

Mr. FRANK. I would yield to the gentleman from California.

Mr. ISSA. Thank you. And with that, I very delightfully withdraw this and thank you for your assistance on making it better.

Chairman SENSENBRENNER. The amendment is withdrawn. Are there further amendments?

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Could I just strike the last word for 1 minute?

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. I didn't want Mr. Issa's comments to go by unnoticed. I think we do ourselves a severe disservice to consider people who are in prison as part of the Federal workforce. That is not, I repeat, not something that I subscribe to, even though I could support the thrust of the gentleman's amendment. The comments that Mr. Issa made, I just think we ought to—we ought to be very careful about how we do this.

If we said the same thing about a foreign country, we would be offended and we ought to be offended thinking about people being in prison being part of the Federal workforce in the United States.

Mr. SCOTT. Will the gentleman yield?

Mr. WATT. I'll yield to Mr. Scott.

Mr. SCOTT. Thank you for yielding. I would think that the gentleman meant that we'd use this as an opportunity to give work opportunities to prisoners, rather than consider it part of the workforce. I agree with the amendment, and I also agree that we ought to have more opportunities for work. It reduces recidivism, helps the prison operations, and I yield back.

Mr. WATT. I yield back the balance of my time.

Chairman SENSENBRENNER. Are there further amendments? The gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman. No. 3 please.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. And amendment offered by Mr. Issa to the amendment in the nature of a substitute to H.R. 1577. Page 5, line 2, after "regulation insert contract award shall be made to Federal Prison"——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT OFFERED BY MR. ISSA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1577

Page 5, line 2, after "Regulation." insert "A contract award shall be made to Federal Prison Industries using other than competitive procedures to provide a product if there are not at least two bidding contractors who are able to certify that the product to be provided is made in the United States.".

Chairman SENSENBRENNER. And the gentleman from California is recognized for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman. I believe this is my third, final and least controversial amendment.

What this seeks to do is specifically recognize that the reform of Prison Industries proposed by the Chairman and I believe by the Committee as a whole, is to eliminate a practice of unfair competition by Federal Prison workers through the Prison Industry authority. And I agree with that completely.

However, if what we are concerned about is protecting American jobs, while the other side is worrying about putting gainful employment to people to teach them skills prior to their release, and to keep them from being idle, which certainly is very difficult in a prison environment, then we want to make sure that this reform only protects Americans.

I think we can all agree, Mr. Chairman, that if we are going to outsource to China or to any other foreign country, the goods, the services and the production for Federal purchasers, we—it serves no purpose when compared to employing Americans who are incarcerated and who need the skills that this would train. And so it's very narrowly focused only on the fact that if there is no competitive American market, then this preference, if you will, remains, but it only remains because there is not a market, and certainly I believe that in any contract in which we're concerned about American jobs, we should be able to find at least two competitors who can certify that they make in the United States.

And with that, Mr. Chairman, I gladly yield back the balance of my time.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. Gentlewoman from California.

Ms. WATERS. Thank you very much, Mr. Chairman. I'm going to oppose all of these amendments that claim to be concerned about training the prisoners so that they will be competitive for jobs when they get out.

One of the things that we refuse to wrestle with is the fact that we've had prisoners doing work. I can remember at one time prisoners were doing some reservations for the airline industry, but when they get out, they can't get any jobs, they don't hire them. Their applications go in the wastebasket. This Congress, no other Congress that I know of, have really taken into consideration the fact that one of the problems that we have is recidivism, it's not because they're not trained. It's not because they can't do things. It's because employers will not hire them. I don't care where they have gotten training. You spend 5, 6, 7, 8, 9, 10 years in our Federal Penitentiary, we make sure that you don't get hired. They put it on the application. It's right there. We don't have any way by which to give support to ex-felons, and this business about the Prison Industries training them and getting them prepared to do away recidivism is—it's not real.

The fact of the matter is, until we are prepared to deal with how, we'll say to industries who have used prisoners in the past, that they have some responsibility to hire them when they get out, then this is for nought.

I oppose it.

Mr. ISSA. Would the gentlewoman yield?

Ms. WATERS. Yeah.

Mr. ISSA. I thank the gentlelady. I couldn't agree with you more, that a fundamental problem we have within our existing laws is in fact the ongoing stigma of Federal prisoners, and for that matter, other prisoners who have paid their dues, being denied repeatedly their ability to get the vast majority of jobs. As the gentlelady may not know, not only did I serve on the Prison Industries, but to be as candid as can be, I have a brother who served in both State and Federal prison. I'm acutely aware of the lifetime stigma, the problems, the jobs, that even though he has a master's degree, that are closed to him. And I look forward to, on another bill—and I'd be glad to co-author it with you—that we try to address this, we try to craft the ability for those who want to put the past behind them to be able to, but I must reassert that if we are to make sure that those jobs will be available, including working as reservation people or whatever the skill that we've taught them, that in fact we have to make sure that we beget the skill, because if they don't have the skill and yet the stigma's gone, they're still not going to get hired, and I hope the gentlelady——

Ms. WATERS. Reclaiming my time.

Mr. ISSA. Thank you.

Ms. WATERS. Thank you very much. And I appreciate what the gentleman is saying. I have a whole section, one part of my district, not all of my district, but one section of my district, where we have returning ex-felons or felons, whatever you want to call them, and that's the problem. The problem is they cannot find jobs, and I'm

sure that the gentleman would like to think of something to do, but the fact of the matter is, a bill by you and I would no good in this Congress, absolutely none. Take it up with your caucus. See if they're prepared to give you some support on it, and then talk to me.

And I'd be happy to do something, but otherwise, you're going to get defeated in any attempts to talk about what you do with helping to give some support to felons who are returning to these communities, who want to work, and they go about looking for work sometimes for several years, and then they give up. And guess what? Yeah, they go back to prison because they refuse to stand on the street and die and not eat. They do bad things. And I don't want to fool you. I don't want to fool anybody. Yes, I'm interested in doing something, but we don't have the will in my caucus or your caucus. We're all afraid to deal with felons and ex-felons. We're afraid we're going to be tagged as soft on crime, and protecting felons is such a false thing that goes on here, that I'm not going to support any of this, because actually we're just blowing smoke about training people for jobs when they get out of prisons. They will not get hired. And when we're prepared to do something about it, then we can talk about real training in the prisons.

Chairman SENSENBRENNER. I yield myself 5 minutes in opposition to the amendment. First of all, the amendment is not necessary. The bill already provides for sole source contracting if there's no competition. But the real rub with this amendment on that is that the Federal agencies who are buying products will not have the ability to make an independent decision regarding the contract or its terms. And Federal Prison Industries would again have uncontrolled monopoly power not governed by other provisions of law including the Federal acquisition regulations.

So for those two reasons, one is, is that when there isn't competition, this is already taken care of, and secondly, the fact that FPI will be able to write the terms of the contract and the purchaser really will not have very much to say about it, I believe this amendment should be rejected.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, I agree with the comments of the gentlelady from California that we need to do more to improve the employability of inmates after they get out. That is not what this amendment addresses. This amendment will actually help improve the employability of inmates. It will help manage the prisons. It will reduce crime. And we have a choice of doing that or protecting foreign jobs.

I would support the amendment because I think improving the employability of inmates, helping to manage the prison, and reducing crime are more important to me than protecting foreign jobs. So I support the amendment and hope it will be adopted.

Ms. WATERS. Will the gentleman yield?

Mr. SCOTT. I yield to the gentlelady from California.

Ms. WATERS. Would you be willing to amend the amendment to say that they would get a letter of reference from the Prison Industry where they were trained, to say that they have done a good job, they have worked well, and that particularly if they have not caused any problems in prison, that would say this was an ideal employee, and you think that IBM should hire them?

Mr. SCOTT. Reclaiming my time, I would assume that that was the situation now, that they get—that they would get a letter indicating what their job history was, and if not, I would—I don't know if it's relevant to this amendment, but I'd certainly support such a thing, because it's just telling the truth about what they did.

Ms. WATERS. Well, the fact of the matter is, they get no letters of reference about their good work in the Prison Industries.

Mr. SCOTT. Well, that's something we need to deal on. I would agree with the gentlelady.

And I yield back, Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from Florida seek recognition?

Mr. KELLER. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. KELLER. Mr. Chairman, I just have a—if I can have just a little colloquy with my colleague from California.

I know your intent is to protect American jobs, and at the same time, help with reducing recidivism by the positive thing Prison Industries does. My question is this: what if you have a foreign company, let's say Toyota or Mitsubishi, definitely a foreign corporation. The product is manufactured in that company, but yet it employs hundreds of people in America, for example, they assemble the product here in America. Would that company still be one that could bid for various government projects, or would it be excluded under your particular rule because it's a foreign corporation?

Mr. ISSA. I thank the gentleman. No, we wouldn't be prohibiting foreign corporations. We simply would ask for the federally determined made in the United States requirement, which is a content rule, and it requires that you substantially change the form of the energy. You can bring in raw goods, turn them into something. The raw goods can be imported. But there has to be a substantive change, and there's various standards the Federal Government has determined for it, and it's not uncommon. We require the same thing—if you want to export to Mexico or import from Mexico, we require a certain content level be declared. In this case, what we're talking about is an effort to save jobs in America, whether they are by incarcerated individuals or by Americans on the outside. And so this would not intend to reduce any American jobs. It would simply say why—why export American jobs in your buying practices if there are people needing training and work, albeit inside the Federal prisons?

Mr. KELLER. If that is the case, would you be willing to amend the language and tweak it slightly to say who are able to certify the product to be provided is made or assembled in the United States since a lot of foreign products are assembled in the United States and benefits American jobs?

Mr. ISSA. I don't have a problem with that if that would bring additional people into the fold. The intention is to save American jobs.

Mr. KELLER. Mr. Chairman, I'll yield back.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts?

Mr. FRANK. Mr. Chairman, with or without the amended language—and I think the gentleman from Florida made a good point, and I'm glad he clarified it. I'm opposing this for a couple reasons. First—and I admire the diligence of the gentleman from California, and I appreciate his bringing his experience to bear, and that's why on that amendment for charitable donations I very much agreed with him and want to make sure we take the fullest account of it. Yes, we should be providing vocational experience to the extent that it's rehabilitative and training to prisoners. But I disagree when he says we must protect American jobs whether they are being performed by people in or out of prison. I really do think there is a qualitative difference between employment of people in the private sector, trying to earn livings to support themselves and their families, and job training, in effect, that we provide the people in prison. They ought not to be equated.

Yes, it's important to protect those people in the American private sector from unfair competition, but that can be unfair competition from within the prisons as well as from outside. There are a couple of problems I have with this.

First of all, it says FPI gets it as a monopoly, sole source, if there are not at least two bidding contractors. Well, what if there's one? In other words, if there was one American manufacturer employing workers in the furniture industry, in the clothing industry, in other vulnerable industries, he or she moves it out to FPI. Why—why does the tie go to FPI even if there are two?

Secondly, we are talking about a dynamic economy. We are talking about—we're not talking about the production of super-computers here. We're talking about product lines where there's not a high barrier to entry. So there may not be at a given point two people ready to do this, but there may be 6 months from now or a year from now. It may be that the Federal Government going into a new line of work, expanding—we've got a situation now where the Federal Government is increasing its purchases in the area of homeland security. We're all familiar with companies that are now gearing up to do this. If the Federal Government were to begin to expand its purchases in a particular area and there was only one supplier before because it wasn't a major activity and now it's a bigger activity, why should we be discouraging the creation and development of new companies?

So you're talking here as if it's a static situation economically that there's only one bidding contractor, and that seems to me in error.

I would yield to the gentleman from California.

Mr. ISSA. Yes, are you asking unanimous consent to amend that, and would you support it if amended?

Mr. FRANK. No. I'm asking for unanimous consent to defeat it, to be honest, because I think—you, I think, have several flaws with it. One is the two versus the one. One is—and this is another one that concerns me. We do have exports as well as imports. We have

a national policy that says goods made with prison labor can be excluded from the U.S. In fact, it's one of the few categories where I think we are able to exclude goods that unfairly compete. They can be made in terrible working conditions. They can be made by children. And we still can't exclude them. But we can exclude prison goods.

Well, what you're saying here is, okay, if anybody in the—if the American prison industry is making it, that becomes a basis for an exclusion of any foreign good. What basis do we then have when China says we're not going to import any American goods if we can make them in Chinese prisons? I want our ability to oppose Chinese prison labor to be unencumbered by our giving ourselves this kind of preference.

You know, trade is not a one-way street, and, yes, we should be protecting American jobs against unfair, subsidized, low-wage competition. But to have a rule that says if it can be made in an American prison and there is not another American major supplier—by the way, the gentleman—if there is only one American supplier, we're not going to—we're going to let the prison have it, and you totally exclude the foreign goods, where do we go to object in that case?

And then, finally, I would go back to the gentleman's point about the two bidding contractors. If you said there were no contractors—it already says that in the bill. A contract may be made if it's only available from Federal Prison Industries. Right on page 4, just the section the gentleman's amending, it already says if there are none. So if you were to amend it to say if there's not at least one, then it goes to FPI, the bill already says that. And I don't want to, as I said, discourage the development of more competition. I don't want to put an American seal of approval on other countries' saying, hey, if we can make it in our prisons, we're not buying it from America, and the bill already allows for situations where there are no domestic contractors. So I would hope that the amendment would be defeated.

Mr. GOODLATTE. Would the gentleman yield?

Mr. FRANK. Yes.

Mr. GOODLATTE. I share some of the gentleman's concerns about the amendment, particularly as it relates to reciprocal nature of foreign trade. But what if—is there some middle ground here? What if the only competition is a Chinese prison?

Mr. FRANK. I would say to the gentleman—if I could get one more minute, Mr. Chairman?

Chairman SENSENBRENNER. Without objection, the gentleman is recognized.

Mr. FRANK. In those very limited cases, I would be prepared to give preference to American prisoners over Chinese prisoners. But I would say it would be kind of hard to work that out right now. I would certainly agree to try to work that out between now and going to the floor. Again, the bill does deal with situations where it's only available from Federal Prison Industries. It does not deal with this—that particular situation, and I think we could clarify that so if the amendment were withdrawn, we could work out that at the—between now and going to the floor.

Mr. GOODLATTE. I wonder if the gentleman——

Mr. FRANK. I yield further.

Mr. GOODLATTE.—to direct that to the Chairman and ask if there is an opportunity—I would oppose this amendment, but work with you on——

Mr. FRANK. I would yield to——

Mr. GOODLATTE.—whether there are some ways to deal with competition issues——

Chairman SENSENBRENNER. I certainly think the gentleman from California raises a point. I don't think his amendment is properly drafted to do what needs to be done, you know, in a fair manner without putting FPI back into mandatory sourcing through the back door. So if the gentleman from California would forbear a bit and work with us, you might be able to get something.

The time of the gentleman from Massachusetts has expired. For what purpose does the gentleman from Wisconsin seek recognition?

Mr. GREEN. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I'll speak very briefly. Then I'll turn it back over to Mr. Issa for his comments and action.

Just as a reminder, we began the debate last week on this legislation with Members from both sides of the aisle praising the inherent worth of FPI. There was a lot of discussion about how the core values of FPI, providing opportunities for training, on-the-job training, skills training for inmates who will 1 day be back out in the work market. It was praised, both sides. And the view of many of us has been that, despite those good intentions, the legislation, the base legislation, unfortunately will end FPI.

And so as we've looked at a number of the amendments, they have been efforts to preserve some sliver of opportunity for the program to continue. And I think what Mr. Issa has attempted to do with this amendment is, again, taking a look at a very small set of circumstances, tried to allow FPI some ability to continue, to provide those very opportunities, that very experience that we've all been praising.

Unfortunately, the efforts haven't been successful. I think it's unfortunate because I think this effort to preserve aspects of FPI is an important one. And I hope that we'll have an opportunity in a future venue to do just that.

And with that, Mr. Chairman, I'll yield the balance of my time to Mr. Issa.

Mr. ISSA. Thank you, Mr. Green. And, Mr. Chairman I want to thank you for having this markup in a way in which we were able to express some of our concerns, and I very much appreciate the gentleman from Massachusetts and the gentleman from Virginia suggestions. And, Mr. Chairman, with your willingness to try to incorporate some of the principles that could remain from this amendment, I ask unanimous consent to withdraw it.

Chairman SENSENBRENNER. And it is withdrawn.

Are there further amendments? If not, the Chair notes the presence—the gentleman from Virginia?

Mr. SCOTT. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1577, offered by Mr. Scott. Page 10, insert after

Line 17 the following language: "(D) The board of directors may approve a proposal to authorize the production of a specific product or the furnishing of a specific service in excess of a reasonable share of the market, if specifically requested by the agency to—"

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

Amendment to the Amendment in the Nature of a Substitute
To H.R. 1577
Offered by Mr. Scott
#2

Page 10, Insert after Line 17 the following language:

"(D) The board of directors may approve a proposal to authorize the production of a specific product or the furnishing of a specific service in excess of a reasonable share of the market, if specifically requested by the agency to which the product or service shall be furnished and the award is made using competitive procedures."

Redesignate Paragraph D as E

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, this amendment would change the restriction in the bill on how much Federal share FPI could have of a particular product for which it has competed. Under the bill, the FPI is restricted to no more than 20 percent of a particular Federal market share with respect to products and 5 percent with respect to services, even after it is no longer entitled to the mandatory source and FPI has won a competitive bid.

Now, while a 20 percent share limitation may seem reasonable if your goal is simply to eliminate FPI from all potential contract activity, this restriction would put Federal agencies as well as FPI in a difficult situation. For example, the Postal Service's contracts with FPI to make and mend its mailbags for internal use, prior to contracting with FPI, it was an in-house operation of the Postal Service's, and as I understand it, the Postal Services approached FPI and asked if they could do the work, it could, and so now FPI has 100 percent of that business, and there is little sense in such—any other business getting into the business. We got 100 percent of the postal business. That's 95 percent market share of the bag making and mending business with the Federal Government.

Now, the definition in this amendment would allow some flexibility, but only if FPI gets the business through a competitive bid

and the customer wants FPI to do more than 20 percent. The service restriction, which is not under mandatory source, reflects the promotion—promoting competition on which some have justified their support for the bill, but that's not really what the bill is about. FPI gets service contracts now only competitively. This restriction suggests that the fear is that FPI will actually outcompete, so we want to make sure they don't get more than they can actually win in competition.

Now, one point we need to make is that the lost—that it's difficult for FPI to compete. The cost of production or services in FPI is much higher than in the private sector, in part because the goal in FPI is to try to employ as many inmates as possible. There are generally about four inmates doing what one person could do in the private sector in an efficient operation. But because you're trying to involve so many people, it's better to have four people doing the one job than just one. So $1.25 an hour actually costs $6 in competitive pricing.

So I would hope, Mr. Chairman, that my colleagues would support this amendment, just simply make sure that FPI does not lose control of the matter by requiring that the board has to specifically—make sure that FPI does not have any control in the matter by requiring that the board has to specifically approve the contract and the agency customer.

So, Mr. Chairman, I would hope that we would have this small exception to the 20 percent and the 5 percent rule so in those few circumstances FPI can continue doing what it's doing now.

Chairman SENSENBRENNER. I recognize myself for 5 minutes in opposition to the amendment. The amendment that Mr. Frank and I have offered provides that after the phase-out of mandatory source, FPI cannot exceed a reasonable share of the market, which is defined as a share of the total purchases by Federal departments and agencies that does not exceed 20 percent of the Federal market for the specific product or 5 percent of the Federal market for the specific service.

The Scott amendment would allow the board of directors to approve a proposal offering FPI to go above the 20 and 5 percent limitations if it is specifically requested by the agency and the contract award is used as competitive procedures. And this puts the wolf in sheep's clothing because the amendment allows FPI to use its advantages of low wages, no benefits, no taxes, and a free facility to focus on a particular market and to monopolize that market, thus driving competitors out of that market.

FPI's original authorizing statute made it clear that FPI was not intended to focus its attention on one particular industry and that the board should do everything in its power to prevent that. The concern was then, as it is now, that FPI would use its advantages to drive weaker, smaller businesses out of a particular industry area.

These concerns remain that even with board approval this amendment could drive competition out of business. Although the legislation provides for a new board, the requirement of board approval has not helped prevent this in the past. The legislation already provides for sole-source contracting if FPI is the only manufacturer or service provider in the market. This allows them to exceed the market share at the request of the agency.

I would urge the rejection of this amendment and yield back the balance of my time.

Mr. GREEN. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green?

Mr. GREEN. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognize for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I'll be brief.

FPI as it exists now could conceivably have the opportunity or the potential or the power to force businesses or to drive a monopoly, but let's not forget that what we are talking about here is FPI as reconstituted and restricted by this legislation. FPI has restricted by this legislation will hardly be the monopolistic organization which the Chairman warns of.

Again, I would argue that what we are attempting to do here is to hang onto some threads of operation for FPI. Lord knows that after this legislation passes there will be very little left for it. We're trying to preserve at least some opportunities on a limited scale. In this case, after an award has already been made using competitive procedures, we're trying to preserve at least something that will allow FPI to continue to promote, to preserve those values which we have all said are positive, are good, to keep that roll going which everyone here on both sides of the aisle has said is important for societal reasons.

So I think the amendment is modest, and I think it would hardly do any harm. It might help at least a little bit. And I would yield back my time.

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Frank?

Mr. FRANK. Mr. Chairman, I join you in opposing this amendment. The problem I have is that there are no objective standards here. It's just if the agency wants to do it. I believe many agencies—we've heard from many agencies that don't want to be put in a way—a restricted kind of position, but agencies may for reasons of comfort want to continue with the status quo or they've got one relationship, maybe they want to keep it. You also have an administration in power or a particular Cabinet Secretary that may have some particular ideological predisposition in this direction.

I think the bill as we have presented it, as amended, as I noted, by the gentleman from Michigan and perhaps that amendment to be even made more explicit, which provides for charitable donations, which authorizes them to get aggressive in finding places to make charitable donations, to deal with the humanitarian and disaster situations that the gentleman from California raised and to make that explicit if necessary, that this is sufficient. And to give any particular agency the power essentially to kind of deviate from the overall patter I think is unwise, and so I hope the amendment is defeated.

Chairman SENSENBRENNER. The gentleman from California, Mr. Issa?

Mr. ISSA. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. ISSA. I support this amendment, and I support it because of basic fairness. Nowhere in the language now or in the future, I'm sure, will there be a similar restriction for EDS, IBM, steel case. None of them are going to be limited to 20 percent of the product or 5 percent of the services. Why in the world, if we really are not trying to simply close down and kill Prison Industries, would we, in fact, put a limitation which is purely artificial against them? If what we want to do is eliminate shoddy goods being delivered at high prices when there are better companies able to deliver better products at better value, then legislation need not fear if the best product at the best price, more than 20 percent of it, were to come from Prison Industries.

Mr. FRANK. Would the gentleman yield?

Mr. ISSA. Yes, I would.

Mr. FRANK. The gentleman makes a fair point and let me respond. It's something we're familiar with in antitrust. It's one thing if you are dealing with a competitive situation which everyone starts evenly. In situations where there has been a monopoly shown, then you get into the remedy situation. And we are talking about a situation where FPI had been given statutorily a monopoly. So in that situation, where a monopoly has been in existence for some time, the kind of restrictions the gentleman is talking about are often imposed, and that's the reason. They don't all start even, all those other private sectors.

If 10 or 15 years from now we have done away with a monopoly situation, it might very well be that doing away with the 20 percent would be reasonable. But when you are in a long-time monopoly situation, adopting these kind of remedial restrictions is common practice.

Mr. ISSA. Reclaiming my time, if I could ask the gentleman from Virginia, if, in fact, this amendment were to specifically envision that we only take away this limitation when there was not 100 percent—when Prison Industries was not an exclusive vendor, that might solve the gentleman from Massachusetts' problem. And if I heard correctly, he would be supportive, if we were bidding on a brand-new contract, the Prison Industries is able to bid and get 100 percent of something they've never even gotten before.

Mr. SCOTT. Well, if the gentleman would yield?

Mr. ISSA. I'd yield.

Mr. SCOTT. One of the situations I mentioned was the bag making, bag mending contract with the Postal Service. They were doing it in-house. It was never bid before. The Prison Industries has started doing it. They're doing it all.

Now, I don't know if there's ever going to be any contract—there's not enough work to start a business. Prison Industries is doing it, and limiting that to 20 percent would probably have it revert back to the Postal Service trying to do it in-house again. That's what they were doing for years.

Mr. ISSA. I'd yield to the gentlelady from California.

Ms. WATERS. Thank you. On this example that has been given by Mr. Scott, I would dare say that just thinking about the number of bags that are needed in the Postal Service all over this country, that there is enough there for an industry. It seems to me that, again, if you're saying the only place that these bags are being made are with the Prison Industries, this training that you're talk-

ing about is not going to do them any good when they get out. Where are they going to mend postal bags and make postal bags when they get out if they've got a monopoly on it in the prison system?

Again, I keep bringing you back to this because I want us to get real, and this may be a tough lesson. If, in fact, we don't have cheap labor and no rehabilitation and felons are getting out——

Mr. ISSA. Reclaiming my time.

Ms. WATERS. Yes.

Mr. ISSA. If the Chairman would entertain changing the 20 and 5 to 50 percent, I think we could solve the gentlelady's problem and ensure that in the example that there would be at least one other source outside of Prison Industries at all time. I don't know if the Chairman would consider that——

Ms. WATERS. Would the gentleman yield?

Mr. ISSA.—management amendment.

Ms. WATERS. Would the gentleman——

Mr. ISSA. Yes.

Ms. WATERS. That would not solve my problem.

Mr. ISSA. I realize the gentlelady—but I was—I was still—Maxine, I was really trying to get to the essence of—I agree that we do not want to have an absence of a market after someone leaves, but to Mr. Scott's point, we also don't want to limit it so small that many markets would simply not be worth——

Mr. FRANK. Would the gentleman yield?

Mr. ISSA. I would yield to the gentleman from Massachusetts.

Mr. FRANK. Thank you. First, I would point out in the situation which is nobody else making it, I would remind people again the bill does say on page 4, "if the product or service is only available from FPI." So that would be taken care of.

Beyond that, I would say to the gentleman, I'd be willing to talk about some further refinements, but it's kind of hard to do it here. Again, if we could do this with a real safety valve between now and the floor, I'd participate.

Chairman SENSENBRENNER. The gentleman's time has expired. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments? If there are not, the question is on the amendment in the nature of a substitute offered by the Chairman and the gentleman from Massachusetts, Mr. Frank. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the amendment in the nature of a substitute is agreed to. The Chair notes the presence of a reporting quorum.

The question now occurs on the motion to report the bill H.R. 1577 favorably as amended. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it and the bill is favorably reported.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted. Without objection, the Chairman is authorized to move to go to conference pursuant

to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by House rules, in which to submit additional dissenting, supplemental, or minority views.

DISSENTING VIEWS

These views dissent from the Committee Report on H.R. 1577. The bill would phase out the "mandatory source" authority under which Federal Prison Industries (FPI) sells products to Federal agencies (mandatory source has never applied to services) and require that FPI compete for Federal business. The bill also imposes severe Federal market share restrictions which impede FPI's ability to compete. A promising alternative currently employed by FPI to reduce its reliance on both mandatory source and the Federal market, performing services for companies which are currently being performed in foreign countries, is prohibited under the bill.

In acknowledgment of the anticipated decline in inmate work opportunities, the bill provides authority for increased vocational training programs and for FPI to make products and donate them to non-profit organizations. Funding for these two initiatives is authorized from the Department of Justice Asset Forfeiture Fund and/or from appropriated funds. Given the improbability of funding being available from these two sources, these new authorities will not likely offset reductions in inmate employment. While vocational education is important and ought to be available to all inmates, no amount of educational course work can substitute the real world workplace experience of a job. This is true for several reasons.

Few offenders enter prison with marketable work skills. The vast majority do not have even credible work habits such as showing up for work on time each day, and working cooperatively and productively with others. Such habits are required to maintain an FPI job.

A vocational education program typically runs for 2 years or less and is generally thought better to be provided toward the end of the sentence. The average sentence for prisoners in the Federal system is 8 years. Whenever the vocational training is provided, the question becomes what to do with other 6 years of the sentence prior to or after completion of what is considered a beneficial period of vocational education.

With the elimination of parole, good conduct credits, Pell grants, and other such incentives, the Federal prison system has little to offer as an incentive for self development. The one shining exception is FPI. Non-FPI jobs pay from about $.12 an hour to about $.30 cents an hour while FPI jobs pay up to $1.25 per hour. To hold down an FPI job, an inmate must have completed high school or be making steady progress toward obtaining a GED, and maintain a record of good behavior. This is true not only for those already in an FPI job, but also for those on the waiting list for a job, as well as those seeking to establish eligibility to be placed on the waiting list

These contributions to inmate development are important, but the least important of FPI's contributions. Research has shown that inmates employed in Federal Prison Industries are less likely to

engage in prison misconduct while in custody and more likely to be employed and to refrain from criminal behavior upon return to society. These benefits of inmate work to inmate families and crime victims (support and restitution payments), to prison staff (reduced inmate idleness and a safer work environment) and to the taxpayers (reduced cost of incarceration and reduced recidivism) are far more compelling. While there are certainly problems in FPI's operations, reforming the manner in which FPI operates should be done in a way which does not result in the aforementioned societal benefits being substantially reduced or eliminated.

BACKGROUND

On April 18 and 24, 2002, the House Judiciary Committee marked up H.R. 1577 and voted to report the bill. During the markup, several amendments were offered by Reps. Scott, Hyde, Green and Issa to address serious concerns about the effects of this bill on the future viability of Federal Prison Industries. The amendments would have either mitigated some of the adverse effects of the bill or provided realistic alternative work opportunities for Federal inmates. None of the amendments were approved.

Two other bills have been introduced on FPI this session, H.R. 1535 (Wolf, Scott et al) and H.R. 2754 (Green, Scott et al). Both provide new authorities for FPI which offset the effects of mandatory source elimination.

CONCERNS RAISED BY H.R. 1577

1. To comply with the definition of "reasonable share of the market", FPI will have to close factories and reduce several thousand inmate jobs, as well as several hundred staff jobs.

Section 16 of the bill defines several terms, including "reasonable share of the market". The definition limits FPI's share of the Federal Government market to no more than 20 percent in products and 5 percent in services. It should be noted that these market share ceilings are separate and apart from the elimination of FPI's mandatory source authority. It is also ironic that the proponents of the bill suggest that they want FPI to compete for its business without mandatory source and then insist that the share of the Federal market which FPI can acquire be statutorily restricted.

Rep. Scott offered an amendment which would define "reasonable share" as "that share which is acquired competitively by FPI without reliance on mandatory source, is requested by the Federal customer and is approved by the FPI Board of Directors". That amendment was defeated by rollcall vote. Mr. Scott also used an example to illustrate the impact this language would have. FPI currently repairs mail bags for the U.S. Postal Service and has done so for decades. As a service, mandatory source has never applied. FPI is the principal source for these services and thus FPI currently provides 94 percent of the Federal market for the "Bag Repair" services category. To support the needs of the Postal Service, FPI employs nearly 500 inmates in four factories, three of which are in high security penitentiaries, where the need for productive work is most critical. Under the definition contained in the bill, FPI would have to reduce its production to no more than 5 percent of the market, which would employ so few inmates that the costs of operating the

factories would exceed the revenue. Further, the production output would be so low that the customer would likely refuse to give any business at all to FPI. The net result would be that FPI would have to close all four factories, laying off nearly 500 inmates and over 25 staff.

"Bag repair" is only one example of the adverse effects the definition of reasonable market share will have. Several dozen other categories of products and services will also be restricted, resulting in several thousand inmates being displaced, as well as several hundred staff.

2. FPI's ability to compete for business will be crippled by the bill.

It has been expected by all parties that some of FPI's sales would decline when mandatory source is eliminated. If FPI's sales are first constricted by the market share ceilings, its costs will go up and its efficiencies will go down. Thus, its ability to compete for business will be dramatically diminished.

3. The safe operation of the 24 additional Federal prisons under development will be jeopardized.

If FPI is unable to maintain its current levels of inmate employment (see #1) and is crippled in its ability to compete for business (see #2) it will not be able to justify opening new factories in the additional prisons already authorized by the Congress. All these new prisons are high and medium security, which house the two most difficult to manage inmate groups. Each new prison is planned to have a factory which employs about 350 inmates. Without these new factories, Wardens will have to manage their new prisons without meaningful employment for 8,400 inmates, a dangerous prison management proposition.

4. Most of the adverse impact of this bill will fall on private sector companies and their workers.

FPI would not exist, and certainly could not offer quality products and services without the direct support of private sector companies. Each of these companies responded to solicitations issued by FPI (as a Federal agency, FPI follows all the Federal procurement regulations) and were awarded the contracts through competitive procedures. In order to fulfill their contractual obligations, these companies have hired law-abiding citizens as staff, added equipment, and some have even opened entire new plants. Many of these companies have FPI contracts which extend 5–10 years.

In fiscal year 2001, FPI spent 73 percent of all its revenue on purchases of raw materials, equipment, supplies, and services from private sector companies. These expenditures totaled $426 million. The private sector companies involved have played by the rules, competing fair and square for the contracts. They and their employees do not deserve to be on the receiving end of an unjustified animus toward inmates or FPI.

5. The bill will have an unintended discriminatory effect.

Unfortunately, racial and ethnic minorities are disproportionately represented among the inmate population. Their representation in FPI jobs, however, mirrors their overall representation. Importantly, research on the value to inmates of working in prison industries jobs demonstrates that these minority inmates benefit more than majority group members regarding their likelihood of remaining crime-free and being successfully employed upon release.

Thus, job reductions in FPI of the magnitude certain to occur under the bill, will fall hardest on racial and ethnic minorities.

Of all the purchases made by FPI in fiscal year 2001, 66 percent were made from small, women and minority owned and disadvantaged businesses. This is one of the highest rates among all Federal agencies. It is well established that small businesses create more jobs per dollar of revenue than large businesses. As mentioned in #4 above, any downturn in FPI sales will be felt mostly by its private sector vendors. To the extent that FPI's sales decline, the hardest hit will be the socio-economically disadvantaged businesses which are deliberately targeted to provide them Federal procurement opportunities.

6. The bill precludes both the Federal and State prison industries programs from continuing the most promising inmate job creation option.

Current Federal statute (18 U.S.C. 1761(a)) restricts interstate commerce of inmate made products. The law, circa 1935, does not discuss inmate performed services. Legal opinions from the U.S. Department of Justice and at least a half dozen State attorneys general conclude that inmate performed services are not precluded by law.

Utilizing these opinions, both State and Federal prison industries programs have pursued opportunities to create inmate jobs by focusing predominantly on performing services for private companies which are otherwise being performed in foreign countries. Currently there are 2600 State inmates performing service work. FPI has initiated several pilots under this authority which are expected to employ several hundred inmates. The private sector companies have made resource investments and have diverted work from overseas to support inmate job creation.

The principal virtue of these work opportunities is that, by definition, the work is not currently being performed by domestic employees. Therefore, repatriating this work for inmates to perform achieves one of the highest priorities for inmate work: avoiding adverse impact on law-abiding American workers.

Notwithstanding the virtues of these work opportunities, sections 7 and 8 of the bill completely preclude State or Federal inmates from performing such services.

7. The bill provides no practical alternatives to provide for meaningful inmate employment.

Despite the obvious and irrefutable adverse impact on FPI, the bill offers no practical, realistic alternatives to keep inmates from being idle and to teach work skills.

An amendment offered by Reps. Conyers and Frank, and adopted by the Committee by voice vote, would provide authority for more vocational training programs and for FPI to manufacture items for donation to non-profit recipients. While such alternatives are laudable in intent, they are impractical for several reasons. First, they both specifically rely on additional funds being appropriated or on funds being allocated from the Department of Justice's Asset Forfeiture Fund. The probability of funds being made available for these purposes from either source is extremely low. Second, vocational training programs are typically 18–24 months in duration, while the average Federal inmate sentence is 8 years. Thus, work

programs are still necessary for ¾ of the typical inmate's sentence. Both authorities are commendable and should be part of a comprehensive reform strategy for FPI. In and of themselves, however, they do not serve to offset the significant inmate job losses which will occur under the bill.

8. An amendment that is critical to the future of FPI will be considered by the House during floor debate on the bill.

An amendment was offered by Rep. Scott to provide two additional authorities for FPI. The authorities are similar to those provided in H.R. 1535 and H.R. 2754.

The first would authorize FPI to produce items for private sector companies which they are otherwise having produced by foreign labor outside the country. Contrary to the arguments advanced during mark-up against this idea, it is consistent with our trade treaties, with Federal statute and with international labor standards.

Neither the NAFTA nor GATT agreements preclude the U.S. from having American inmates produce items for domestic consumption while still prohibiting items made in foreign prisons from being imported into the U.S. In fact, according to research done by Professor Ursulla Smartt of England, trading partner countries such as Japan, Canada, Mexico, England, France, Germany, Spain and Sweden allow their own inmates to produce products for their domestic commercial market but preclude imported prison made products. Further, International Labor Organization Conventions 29 and 105 specifically allow inmate labor to be used to produce items for domestic consumption within a country's economy.

For decades, Federal statute has permitted inmates to produce items for the commercial market. 18 U.S.C. 1761(b) provides that agricultural products and products sold to non-profits may be made with inmate labor, regardless of wage paid.

This same section of statute also provides authority for the State prison industries programs which is virtually identical to the second authority proposed by Rep. Scott. Under 18 U.S.C. 1761(c), referred to as the Prison Industries Enhancement Program, State prison inmates may product items for the commercial market provided: (a) they are paid market wages as approved by the State employment security office; (b) organized labor is consulted; (c) non-inmate workers are not displaced as a result; (d) the work is not done in labor surplus areas; and (e) the program is certified by the Department of Justice. This program was adopted into law in 1979 and there are currently 4,000 inmates performing such work in conjunction with 150 private sector companies. Mr. Scott's amendment would have extended similar authority to FPI.

It is clear that our country's concerns about the importation of "Chinese prison made goods" revolve around human rights abuses, and our inability to determine the conditions under which these products were made. These concerns certainly do not apply to United States operated prisons or prison industries programs.

The amendment by Rep. Scott which would have provided FPI these new authorities was withdrawn during mark-up with the expressed intention to have it ruled in order for consideration by the full House. Chairman Sensenbrenner and Reps. Conyers and Frank

indicated they would support such a proposal to the Rules Committee.

ROBERT C. SCOTT.
MARK GREEN.

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