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1ST SESSION

# H. R. 1829

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 2003

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

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

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

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

4        (a) SHORT TITLE.—This Act may be cited as the  
 5 “Federal Prison Industries Competition in Contracting  
 6 Act of 2003”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Governmentwide procurement policy relating to purchases from Federal Prison Industries.
- Sec. 3. Public participation regarding expansion proposals by Federal Prison Industries.
- Sec. 4. Transitional mandatory source authority.
- Sec. 5. Authority to perform as a Federal subcontractor.
- Sec. 6. Inmate wages and deductions.
- Sec. 7. Clarifying amendment relating to services.
- Sec. 8. Conforming amendment.
- Sec. 9. Rules of construction relating to chapter 307.
- Sec. 10. Providing additional rehabilitative opportunities for inmates.
- Sec. 11. Restructuring the Board of Directors.
- Sec. 12. Providing additional management flexibility to Federal Prison Industries operations.
- Sec. 13. Transitional personnel management authority.
- Sec. 14. Federal Prison Industries report to Congress.
- Sec. 15. Independent study to determine the effects of eliminating the Federal Prison Industries mandatory source authority.
- Sec. 16. Sense of Congress.
- Sec. 17. Definitions.
- Sec. 18. Implementing regulations and procedures.
- Sec. 19. Rule of construction.
- Sec. 20. Effective date and applicability.
- Sec. 21. Clerical amendments.
- Sec. 22. Procurement of goods and services manufactured in the United States.

9 **SEC. 2. GOVERNMENTWIDE PROCUREMENT POLICY RELAT-**  
 10 **ING TO PURCHASES FROM FEDERAL PRISON**  
 11 **INDUSTRIES.**

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

1 **“§ 4124. Governmentwide procurement policy relat-**  
2 **ing to purchases from Federal Prison In-**  
3 **dustries**

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

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

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

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

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

8               “(B) the contract award is necessary to main-  
9 tain work opportunities otherwise unavailable at the  
10 penal or correctional facility at which the contract is  
11 to be performed to prevent circumstances that could  
12 reasonably be expected to significantly endanger the  
13 safe and effective administration of such facility.

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

18               “(A) the specific product or service to be fur-  
19 nished will meet the requirements of the procure-  
20 ment activity (including any applicable  
21 prequalification requirements and all specified com-  
22 mercial or governmental standards pertaining to  
23 quality, testing, safety, serviceability, and warran-  
24 ties);

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

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

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

7           “(A) supported by specific findings by the war-  
8 den of the penal or correctional institution at which  
9 a Federal Prison Industries workshop is scheduled  
10 to perform the contract;

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

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

18           “(6) If the Attorney General has not made the deter-  
19 mination described in paragraph (3) within 30 days after  
20 Federal Prison Industries has been informed of a con-  
21 tracting opportunity by a procurement activity, the pro-  
22 curement activity may proceed to conduct a procurement  
23 for the product or service in accordance with the proce-  
24 dures generally applicable to such procurements by the  
25 procurement activity.

1       “(7) A contract award may be made to Federal Pris-  
2 on Industries using other than competitive procedures if  
3 such product or service is only available from Federal  
4 Prison Industries and the contract may be awarded under  
5 the authority of section 2304(c)(1) of title 10 or section  
6 303(c) of the Federal Property and Administrative Serv-  
7 ices Act of 1949 (41 U.S.C. 252(c)(1)), as may be applica-  
8 ble, and pursuant to the justification and approval re-  
9 quirements relating to such noncompetitive procurements  
10 specified by law and the Governmentwide Federal Acquisi-  
11 tion Regulation.

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

15       “(c) OFFERS FROM FEDERAL PRISON INDUS-  
16 TRIES.—A timely offer received from Federal Prison In-  
17 dustries to furnish a product or service to a Federal de-  
18 partment or agency shall be considered for award without  
19 limitation as to the dollar value of the proposed purchase,  
20 unless the contract opportunity has been reserved for com-  
21 petition exclusively among small business concerns pursu-  
22 ant to section 15(a) of the Small Business Act (15 U.S.C.  
23 644(a)) and its implementing regulations.

24       “(d) PERFORMANCE BY FEDERAL PRISON INDUS-  
25 TRIES.—Federal Prison Industries shall perform its con-

1 tractual obligations under a contract awarded by a Fed-  
2 eral department or agency to the same extent as any other  
3 contractor.

4 “(e) FINALITY OF CONTRACTING OFFICER’S DECI-  
5 SION.—(1) A decision by a contracting officer regarding  
6 the award of a contract to Federal Prison Industries or  
7 relating to the performance of such contract shall be final,  
8 unless reversed on appeal pursuant to paragraph (2) or  
9 (3).

10 “(2) The Chief Executive Officer of Federal Prison  
11 Industries may appeal to the head of a Federal depart-  
12 ment or agency a decision by a contracting officer not to  
13 award a contract to Federal Prison Industries pursuant  
14 to subsection (b)(4). The decision of the head of a Federal  
15 department or agency on appeal shall be final.

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

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

22 “(B) final resolution by the board of contract  
23 appeals having jurisdiction over the procurement ac-  
24 tivity’s contract performance disputes pursuant to

1 the Contract Disputes Act of 1978 (41 U.S.C. 601  
2 et seq.).

3 “(f) REPORTING OF PURCHASES.—Each Federal de-  
4 partment or agency shall report purchases from Federal  
5 Prison Industries to the Federal Procurement Data Sys-  
6 tem (as referred to in section 6(d)(4) of the Office of Fed-  
7 eral Procurement Policy Act (41 U.S.C. 405(d)(4))) in the  
8 same manner as it reports to such System any acquisition  
9 in an amount in excess of the simplified acquisition thresh-  
10 old (as defined by section 4(11) of the Office of Federal  
11 Procurement Policy Act (41 U.S.C. 403(11))).

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

18 “(h) COMPLIANCE WITH STANDARDS.—Federal Pris-  
19 on Industries shall comply with Federal occupational,  
20 health, and safety standards with respect to the operation  
21 of its industrial operations.”.



1 **SEC. 3. PUBLIC PARTICIPATION REGARDING EXPANSION**  
2 **PROPOSALS BY FEDERAL PRISON INDUS-**  
3 **TRIES.**

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

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

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

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

16 “(5)(A) Whenever Federal Prison Industries pro-  
17 poses to offer for sale a new specific product or specific  
18 service or to expand production of a currently authorized  
19 product or service, the Chief Operating Officer of Federal  
20 Prison Industries shall submit an appropriate proposal to  
21 the board of directors and obtain the board’s approval be-  
22 fore initiating any such expansion. The proposal submitted  
23 to the board shall include a detailed analysis of the prob-  
24 able impact of the proposed expansion of sales within the  
25 Federal market by Federal Prison Industries on private  
26 sector firms and their non-inmate workers.

1       “(B)(i) The analysis required by subparagraph (A)  
2 shall be performed by an interagency team on a reimburs-  
3 able basis or by a private contractor paid by Federal Pris-  
4 on Industries.

5       “(ii) If the analysis is to be performed by an inter-  
6 agency team, such team shall be led by the Administrator  
7 of the Small Business Administration or the designee of  
8 such officer with representatives of the Department of  
9 Labor, the Department of Commerce, and the Federal  
10 Procurement Data Center.

11       “(iii) If the analysis is to be performed by a private  
12 contractor, the selection of the contractor and the admin-  
13 istration of the contract shall be conducted by one of the  
14 entities referenced in clause (ii) as an independent execu-  
15 tive agent for the board of directors. Maximum consider-  
16 ation shall be given to any proposed statement of work  
17 furnished by the Chief Operating Officer of Federal Prison  
18 Industries.

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

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

24               “(ii) the proportion of the Federal Government  
25 market for the specific product or specific service

1 currently furnished by small businesses during the  
2 previous 3 fiscal years;

3 “(iii) the share of the Federal market for the  
4 specific product or specific service projected for Fed-  
5 eral Prison Industries for the fiscal year in which  
6 production or performance will commence or expand  
7 and the subsequent 4 fiscal years;

8 “(iv) whether the industry producing the spe-  
9 cific product or specific service in the private  
10 sector—

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

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

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

18 “(vi) the requirements of the Federal Govern-  
19 ment and the demands of entities other than the  
20 Federal Government for the specific product or serv-  
21 ice during the previous 3 fiscal years;

22 “(vii) the projected growth or decline in the de-  
23 mand of the Federal Government for the specific  
24 product or specific service;

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

5           “(ix) whether authorizing the production of the  
6           new product or performance of a new service will  
7           provide inmates with the maximum opportunity to  
8           acquire knowledge and skill in trades and occupa-  
9           tions that will provide them with a means of earning  
10          a livelihood upon release.

11          “(D)(i) The board of directors may not approve a  
12          proposal to authorize the production and sale of a new  
13          specific product or continued sale of a previously author-  
14          ized product unless—

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

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

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

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

1           “(II) an import-sensitive product.

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

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

10          “(II) geographic data regarding the location of  
11       surface and subsurface infrastructure providing com-  
12       munications, water and electrical power distribution,  
13       pipelines for the distribution of natural gas, bulk pe-  
14       troleum products and other commodities, and other  
15       utilities; or

16          “(III) data that is classified.

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

23          “(II) For purposes of this clause, the term ‘construc-  
24       tion’ has the meaning given such term by section 2.101  
25       of the Federal Acquisition Regulation (48 CFR part

1 2.101), as in effect on June 1, 2002, including the repair,  
2 alteration, or maintenance of real property in being.

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

5 “(A) give additional notice of a proposal to au-  
6 thorize the production and sale of a new product or  
7 service, or expand the production of a currently au-  
8 thorized product or service, in a publication designed  
9 to most effectively provide notice to private vendors  
10 and labor unions representing private sector workers  
11 who could reasonably be expected to be affected by  
12 approval of the proposal, which notice shall offer to  
13 furnish copies of the analysis required by paragraph  
14 (5) and shall solicit comment on the analysis;

15 “(B) solicit comments on the analysis required  
16 by paragraph (5) from trade associations rep-  
17 resenting vendors and labor unions representing pri-  
18 vate sector workers who could reasonably be ex-  
19 pected to be affected by approval of the proposal to  
20 authorize the production and sale of a new product  
21 or service (or expand the production of a currently  
22 authorized product or service); and

23 “(C) afford an opportunity, on request, for a  
24 representative of an established trade association,  
25 labor union, or other private sector representatives

1 to present comments on the proposal directly to the  
2 board of directors.

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

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

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

21 “(10) In conformity with the requirements of para-  
22 graphs (5) through (9) of this subsection, the board of  
23 directors may—

1           “(A) authorize the donation of products pro-  
2           duced or services furnished by Federal industries  
3           and available for sale;

4           “(B) authorize the production of a new specific  
5           product or the furnishing of a new specific service  
6           for donation; or

7           “(C) authorize a proposal to expand production  
8           of a currently authorized specific product or specific  
9           service in an amount in excess of a reasonable share  
10          of the market for such product or service, if—

11                   “(i) a Federal agency or department, pur-  
12                   chasing such product or service, has requested  
13                   that Federal Prison Industries be authorized to  
14                   furnish such product or service in amounts that  
15                   are needed by such agency or department; or

16                   “(ii) the proposal is justified for other good  
17                   cause and supported by at least eight members  
18                   of the board.”.

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

20           (a) **IN GENERAL.**—Notwithstanding the require-  
21           ments of section 4124 of title 18, United States Code (as  
22           amended by section 2 of this Act), a Federal department  
23           or agency having a requirement for a product that is au-  
24           thorized for sale by Federal Prison Industries and is listed  
25           in its catalog (referred to in section 4124(g) of title 18,



1 United States Code) shall first solicit an offer from Fed-  
2 eral Prison Industries and make purchases on a non-  
3 competitive basis in accordance with this section or in ac-  
4 cordance with section 2410n of title 10, United States  
5 Code, or section 318 of title III of the Federal Property  
6 and Administrative Services Act of 1949 (as added by sub-  
7 section (i)).

8 (b) PREFERENTIAL SOURCE STATUS.—Subject to  
9 the limitations of subsection (d), a contract award shall  
10 be made on a noncompetitive basis to Federal Prison In-  
11 dustries if the contracting officer for the procurement ac-  
12 tivity determines that—

13 (1) the product offered by Federal Prison In-  
14 dustries will meet the requirements of the procure-  
15 ment activity (including commercial or governmental  
16 standards or specifications pertaining to design, per-  
17 formance, testing, safety, serviceability, and warran-  
18 ties as may be imposed upon a private sector sup-  
19 plier of the type being offered by Federal Prison In-  
20 dustries);

21 (2) timely performance of the contract by Fed-  
22 eral Prison Industries can be reasonably expected;  
23 and

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

1           (c) CONTRACTUAL TERMS.—The terms and condi-  
2 tions of the contract and the price to be paid to Federal  
3 Prison Industries shall be determined by negotiation be-  
4 tween Federal Prison Industries and the Federal agency  
5 making the purchase. The negotiated price shall not ex-  
6 ceed a fair and reasonable price determined in accordance  
7 with the procedures of the Federal Acquisition Regulation.

8           (d) PERFORMANCE OF CONTRACTUAL OBLIGA-  
9 TIONS.—

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

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

20           (e) LIMITATIONS ON USE OF AUTHORITY.—

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

- 1 (A) 90 percent in fiscal year 2005;  
2 (B) 85 percent in fiscal year 2006;  
3 (C) 70 percent in fiscal year 2007;  
4 (D) 55 percent in fiscal year 2008; and  
5 (E) 40 percent in fiscal year 2009.

6 (2) SALES WITHIN VARIOUS BUSINESS SEC-  
7 TORS.—Use of the authority provided by subsections  
8 (b) and (c) shall not result in sales by Federal Pris-  
9 on Industries to the Government that are in excess  
10 of its total sales during the base year for each busi-  
11 ness sector.

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

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

24 (f) DURATION OF AUTHORITY.—The preferential  
25 contracting authorities authorized by subsection (b) may

1 not be used on or after October 1, 2009, and become effective on the effective date of the final regulations issued pursuant to section 18.

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

6 (1) the term “base period” means the total sales of Federal Prison Industries during the period October 1, 2001, and September 30, 2002 (Fiscal Year 2002);

10 (2) the term “business sectors” means the eight product/service business groups identified in the 2002 Federal Prison Industries annual report as the Clothing and Textiles Business Group, the Electronics Business Group, the Fleet Management and Vehicular Components Business Group, the Graphics Business Group, the Industrial Products Business Group, the Office Furniture Business Group, the Recycling Activities Business Group, and the Services Business Group; and

20 (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 CFR 15.8).

24 (h) FINDING BY ATTORNEY GENERAL WITH RESPECT TO PUBLIC SAFETY.—(1) Not later than 60 days

1 prior to the end of each fiscal year specified in subsection  
2 (e)(1), the Attorney General shall make a finding regard-  
3 ing the effects of the percentage limitation imposed by  
4 such subsection for such fiscal year and the likely effects  
5 of the limitation imposed by such subsection for the fol-  
6 lowing fiscal year.

7 (2) The Attorney General's finding shall include a de-  
8 termination whether such limitation has resulted or is like-  
9 ly to result in a substantial reduction in inmate industrial  
10 employment and whether such reductions, if any, present  
11 a significant risk of adverse effects on safe prison oper-  
12 ation or public safety.

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

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

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

1 **“SEC. 318. PRODUCTS OF FEDERAL PRISON INDUSTRIES:**  
2 **PROCEDURAL REQUIREMENTS.**

3 “(a) MARKET RESEARCH.—Before purchasing a  
4 product listed in the latest edition of the Federal Prison  
5 Industries catalog under section 4124(d) of title 18,  
6 United States Code, the head of an executive agency shall  
7 conduct market research to determine whether the Federal  
8 Prison Industries product is comparable to products avail-  
9 able from the private sector that best meet the executive  
10 agency’s needs in terms of price, quality, and time of deliv-  
11 ery.

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

23 “(c) IMPLEMENTATION BY HEAD OF EXECUTIVE  
24 AGENCY.—The head of an executive agency shall ensure  
25 that—

1           “(1) the executive agency does not purchase a  
2           Federal Prison Industries product or service unless  
3           a contracting officer of the agency determines that  
4           the product or service is comparable to products or  
5           services available from the private sector that best  
6           meet the agency’s needs in terms of price, quality,  
7           and time of delivery; and

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

11          “(d) MARKET RESEARCH DETERMINATION NOT  
12          SUBJECT TO REVIEW.—A determination by a contracting  
13          officer regarding whether a product or service offered by  
14          Federal Prison Industries is comparable to products or  
15          services available from the private sector that best meet  
16          an executive agency’s needs in terms of price, quality, and  
17          time of delivery shall not be subject to review pursuant  
18          to section 4124(b) of title 18.

19          “(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A  
20          contractor or potential contractor of an executive agency  
21          may not be required to use Federal Prison Industries as  
22          a subcontractor or supplier of products or provider of serv-  
23          ices for the performance of a contract of the executive  
24          agency by any means, including means such as—

1           “(A) a contract solicitation provision requiring  
2           a contractor to offer to make use of products or  
3           services of Federal Prison Industries in the perform-  
4           ance of the contract;

5           “(B) a contract specification requiring the con-  
6           tractor to use specific products or services (or class-  
7           es of products or services) offered by Federal Prison  
8           Industries in the performance of the contract; or

9           “(C) any contract modification directing the use  
10          of products or services of Federal Prison Industries  
11          in the performance of the contract.

12          “(2) In this subsection, the term “contractor”, with  
13          respect to a contract, includes a subcontractor at any tier  
14          under the contract.

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

19                 “(1) any data that is classified;

20                 “(2) any geographic data regarding the location  
21          of—

22                         “(A) surface and subsurface infrastructure  
23                         providing communications or water or electrical  
24                         power distribution;



1           “(B) pipelines for the distribution of nat-  
2           ural gas, bulk petroleum products, or other  
3           commodities; or

4           “(C) other utilities; or

5           “(3) any personal or financial information  
6           about any individual private citizen, including infor-  
7           mation relating to such person’s real property how-  
8           ever described, without the prior consent of the indi-  
9           vidual.

10          “(g) DEFINITIONS.—In this section:

11           “(1) The term ‘competitive procedures’ has the  
12           meaning given such term in section 4(5) of the Of-  
13           fice of Federal Procurement Policy Act (41 U.S.C.  
14           403(5)).

15           “(2) The term ‘market research’ means obtain-  
16           ing specific information about the price, quality, and  
17           time of delivery of products available in the private  
18           sector through a variety of means, which may  
19           include—

20           “(A) contacting knowledgeable individuals  
21           in government and industry;

22           “(B) interactive communication among in-  
23           dustry, acquisition personnel, and customers;  
24           and

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

3 **SEC. 5. AUTHORITY TO PERFORM AS A FEDERAL SUBCON-**  
4 **TRACTOR.**

5           (a) IN GENERAL.—Federal Prison Industries is au-  
6 thorized to enter into a contract with a Federal contractor  
7 (or a subcontractor of such contractor at any tier) to  
8 produce products as a subcontractor or supplier in the per-  
9 formance of a Federal procurement contract. The use of  
10 Federal Prison Industries as a subcontractor or supplier  
11 shall be a wholly voluntary business decision by the Fed-  
12 eral prime contractor or subcontractor, subject to any  
13 prior approval of subcontractors or suppliers by the con-  
14 tracting officer which may be imposed by the Federal Ac-  
15 quisition Regulation or by the contract.

16           (b) COMMERCIAL SALES PROHIBITED.—The author-  
17 ity provided by subsection (a) shall not result, either di-  
18 rectly or indirectly, in the sale in the commercial market  
19 of a product or service resulting from the labor of Federal  
20 inmate workers in violation of section 1761(a) of title 18,  
21 United States Code. A Federal contractor (or subcon-  
22 tractor at any tier) using Federal Prison Industries as a  
23 subcontractor or supplier in furnishing a commercial prod-  
24 uct pursuant to a Federal contract shall implement appro-

1 priate management procedures to prevent introducing an  
2 inmate-produced product into the commercial market.

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

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

13 (2) specifications requiring the contractor to  
14 use specific products or services (or classes of prod-  
15 ucts or services) offered by Federal Prison Indus-  
16 tries in the performance of the contract;

17 (3) any contract modification directing the use  
18 of Federal Prison Industries, its products or serv-  
19 ices; or

20 (4) any other means.

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

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

1           “(11)(A) The Board of Directors of Federal Prison  
2 Industries shall prescribe the rates of hourly wages to be  
3 paid inmates performing work for or through Federal  
4 Prison Industries. The Director of the Federal Bureau of  
5 Prisons shall prescribe the rates of hourly wages for other  
6 work assignments within the various Federal correctional  
7 institutions. In the case of an inmate whose term of im-  
8 prisonment is to expire in not more than 2 years, wages  
9 shall be earned at an hourly rate of not less than \$2.50,  
10 but paid at the same rate and in the same manner as to  
11 any other inmate, and any amount earned but not paid  
12 shall be held in trust and paid only upon the actual expira-  
13 tion of the term of imprisonment.

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

17           “(C) The Board of Directors of Federal Prison In-  
18 dustries shall—

19                 “(i) not later than September 30, 2004, in-  
20 crease the maximum wage rate for inmates per-  
21 forming work for or through Federal Prison Indus-  
22 tries to an amount equal to 50 percent of the min-  
23 imum wage prescribed by section 6(a)(1) of the Fair  
24 Labor Standards Act of 1938 (29 U.S.C.  
25 206(a)(1));

1           “(ii) not later than September 30, 2009, in-  
2           crease such maximum wage rate to an amount equal  
3           to such minimum wage; and

4           “(iii) request the Secretary of Labor to estab-  
5           lish, not later than October 1, 2004, an ‘inmate  
6           training wage’ pursuant to that Act.

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

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

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

14           “(iii) payment of additional restitution for vic-  
15          tims of the inmate’s crimes (at a rate not less than  
16          10 percent of gross wages);

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

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

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

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

3               “(i) is participating voluntarily; and

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

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

7       (a) IN GENERAL.—Section 1761 of title 18, United  
8 States Code, is amended in subsection (a), by striking  
9 “any goods, wares, or merchandise manufactured, pro-  
10 duced, or mined” and inserting “products manufactured,  
11 services furnished, or minerals mined”.

12       (b) COMPLETION OF EXISTING AGREEMENTS.—Any  
13 prisoner work program operated by a prison or jail of a  
14 State or local jurisdiction of a State which is providing  
15 services for the commercial market through inmate labor  
16 on October 1, 2002, may continue to provide such com-  
17 mercial services until—

18               (1) the expiration date specified in the contract  
19       or other agreement with a commercial partner on  
20       October 1, 2002, or

21               (2) until September 30, 2005, if the prison  
22       work program is directly furnishing the services to  
23       the commercial market.

24       (c) APPROVAL REQUIRED FOR LONG-TERM OPER-  
25 ATION.—A prison work program operated by a correc-

1 tional institution operated by a State or local jurisdiction  
2 of a State may continue to provide inmate labor to furnish  
3 services for sale in the commercial market after the dates  
4 specified in subsection (b) if such program has been cer-  
5 tified pursuant to section 1761(c)(1) of title 18, United  
6 States Code, and is in compliance with the requirements  
7 of such subsection and its implementing regulations.

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

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

12 **SEC. 9. RULES OF CONSTRUCTION RELATING TO CHAPTER**

13 **307.**

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

16 **“§ 4130. Construction of provisions**

17 “Nothing in this chapter shall be construed—

18 “(1) to establish an entitlement of any inmate  
19 to—

20 “(A) employment in a Federal Prison In-  
21 dustries facility; or

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

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

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

6 **SEC. 10. PROVIDING ADDITIONAL REHABILITATIVE OPPOR-**  
7 **TUNITIES FOR INMATES.**

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

10           (1) **PROGRAM ESTABLISHED.—**There is hereby  
11           established the Enhanced In-Prison Educational and  
12           Vocational Assessment and Training Program within  
13           the Federal Bureau of Prisons.

14           (2) **COMPREHENSIVE PROGRAM.—**In addition to  
15           such other components as the Director of the Bu-  
16           reau of Prisons deems appropriate to reduce inmate  
17           idleness and better prepare inmates for a successful  
18           reentry into the community upon release, the pro-  
19           gram shall provide—

20                   (A) in-prison assessments of inmates’  
21                   needs and aptitudes;

22                   (B) a full range of educational opportuni-  
23                   ties;

24                   (C) vocational training and apprentice-  
25                   ships; and



1 (D) comprehensive release-readiness prepa-  
2 ration.

3 (3) AUTHORIZATION OF APPROPRIATIONS.—For  
4 the purposes of carrying out the program established  
5 by paragraph (1), \$75,000,000 is authorized for  
6 each fiscal year after fiscal year 2003, to remain  
7 available until expended. Funds shall be allocated  
8 from the gross profits within the Federal Prison In-  
9 dustries Fund, and, to the extent such amounts are  
10 inadequate, from the General Treasury.

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

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

16 (B) in at least 50 percent of all Federal  
17 prisons not later than 4 years after such date  
18 of enactment;

19 (C) in at least 75 percent of all Federal  
20 prisons not later than 6 years after such date  
21 of enactment; and

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

24 (b) ADDITIONAL INMATE WORK OPPORTUNITIES  
25 THROUGH PUBLIC SERVICE ACTIVITIES.—

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

4   **“§ 4124a. Additional inmate work opportunities**  
5                           **through public service activities**

6           “(a) IN GENERAL.—Inmates with work assignments  
7           within Federal Prison Industries may perform work for  
8           an eligible entity pursuant to an agreement between such  
9           entity and the Inmate Work Training Administrator in ac-  
10          cordance with the requirements of this section.

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

14                  “(1) that is an organization described in section  
15                  501(c)(3) of the Internal Revenue Code of 1986 and  
16                  exempt from taxation under section 501(a) of such  
17                  Code and that has been such an organization for a  
18                  period of not less than 36 months prior to inclusion  
19                  in an agreement under this section;

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

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

25          “(c) INMATE WORK TRAINING ADMINISTRATOR.—

1           “(1) The Federal Prison Industries Board of  
2 Directors shall designate an entity as the Inmate  
3 Work Training Administrator to administer the  
4 work-based training program authorized by this sec-  
5 tion.

6           “(2) In selecting the Inmate Work Training  
7 Administrator, the Board of Directors shall select an  
8 entity—

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

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

18           “(3) With respect to the formation and per-  
19 formance of an agreement authorized by this section,  
20 the Director of the Bureau of Prisons and the Chief  
21 Operating Officer of Federal Prison Industries shall  
22 be responsible only for—

23                   “(A) maintaining appropriate institutional  
24 and inmate security; and

1                   “(B) matters relating to the selection and  
2                   payment of participating inmates.

3           “(d) PROPOSED AGREEMENTS.—An eligible entity  
4 seeking to enter into an agreement pursuant to subsection  
5 (a) shall submit a detailed proposal to the Inmate Work  
6 Training Administrator. Each such agreement shall  
7 specify—

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

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

12                   “(3) the number of inmate workers expected to  
13 be employed in the specified types of work during  
14 the various phases of the agreement;

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

17                   “(5) the facilities, services and personnel (other  
18 than correctional personnel dedicated to the security  
19 of the inmate workers) to be furnished by Federal  
20 Prison Industries or the Bureau of Prisons and the  
21 rates of reimbursement, if any, for such facilities,  
22 services, and personnel.

23           “(e) REPRESENTATIONS.—

24                   “(1) ELEEMOSYNARY WORK ACTIVITIES.—Each  
25 proposed agreement shall be accompanied by a writ-

1       ten certification by the chief executive officer of the  
2       eligible entity that—

3               “(A) the work to be performed by the in-  
4               mate workers will be limited to the eleemosy-  
5               nary work of such entity in the case of an enti-  
6               ty described in paragraph (1) or (2) of sub-  
7               section (b);

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

10              “(C) the work performed by the inmate  
11              workers will not result, either directly or indi-  
12              rectly, in the production of a new product or  
13              the furnishing of a service that is to be offered  
14              for other than resale or donation by the eligible  
15              entity or any affiliate of the such entity.

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

20              “(A) no non-inmate employee or volunteer  
21              of the eligible entity (or any affiliate of the enti-  
22              ty) will have his or her job abolished or work  
23              hours reduced as a result of the entity being  
24              authorized to utilize inmate workers; and

1           “(B) the work to be performed by the in-  
2           mate workers will not supplant work currently  
3           being performed by a contractor of the eligible  
4           entity.

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

6           “(1) IN GENERAL.—Each such proposed agree-  
7           ment shall be presented to the Board of Directors,  
8           be subject to the same opportunities for public com-  
9           ment, and be publicly considered and acted upon by  
10          the Board in a manner comparable to that required  
11          by paragraphs (6) and (7) of section 4122(b).

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

15                 “(A) give priority to an agreement that  
16                 provides inmate work opportunities that will  
17                 provide participating inmates with the best  
18                 prospects of obtaining employment paying a liv-  
19                 able wage upon release;

20                 “(B) give priority to an agreement that  
21                 provides for maximum reimbursement for in-  
22                 mate wages and for the costs of supplies and  
23                 equipment needed to perform the types of work  
24                 to be performed;

1           “(C) not approve an agreement that will  
2           result in the displacement of non-inmate work-  
3           ers or volunteers contrary to the representa-  
4           tions required by subsection (e)(2) as deter-  
5           mined by the Board or by the Secretary of  
6           Labor (pursuant to subsection (i)); and

7           “(D) not approve an agreement that will  
8           result, either directly or indirectly, in the pro-  
9           duction of a new product or the furnishing of  
10          a service for other than resale or donation.

11          “(g) WAGE RATES AND DEDUCTIONS FROM INMATE  
12 WAGES.—

13           “(1) IN GENERAL.—Inmate workers shall be  
14           paid wages for work under the agreement at a basic  
15           hourly rate to be negotiated between the eligible en-  
16           tity and Federal Prison Industries and specified in  
17           the agreement. The wage rates set by the Director  
18           of the Federal Bureau of Prisons to be paid inmates  
19           for various institutional work assignments are spe-  
20           cifically authorized.

21           “(2) PAYMENT TO INMATE WORKER AND AU-  
22           THORIZED DEDUCTIONS.—Wages shall be paid and  
23           deductions taken pursuant to section  
24           4122(b)(11)(C).

1           “(3) VOLUNTARY PARTICIPATION BY INMATE.—

2           Each inmate worker to be utilized by an eligible en-  
3           tity shall indicate in writing that such person—

4                       “(A) is participating voluntarily; and

5                       “(B) understands and agrees to the wages  
6           to be paid and deductions to be taken from  
7           such wages.

8           “(h) ASSIGNMENT TO WORK OPPORTUNITIES.—As-  
9           signment of inmates to work under an approved agree-  
10          ment with an eligible entity shall be subject to the Bureau  
11          of Prisons Program Statement Number 1040.10 (Non-  
12          Discrimination Toward Inmates), as contained in section  
13          551.90 of title 28 of the Code of Federal Regulations (or  
14          any successor document).

15          “(i) ENFORCEMENT OF PROTECTIONS FOR NON-IN-  
16          MATE WORKERS.—

17               “(1) PRIOR TO BOARD CONSIDERATION.—Upon  
18          request of any interested person, the Secretary of  
19          Labor may promptly verify a certification made pur-  
20          suant subsection (e)(2) with respect to the displace-  
21          ment of non-inmate workers so as to make the re-  
22          sults of such inquiry available to the Board of Direc-  
23          tors prior to the Board’s consideration of the pro-  
24          posed agreement. The Secretary and the person re-  
25          questing the inquiry may make recommendations to



1 the Board regarding modifications to the proposed  
2 agreement.

3 “(2) DURING PERFORMANCE.—

4 “(A) IN GENERAL.—Whenever the Sec-  
5 retary deems appropriate, upon request or oth-  
6 erwise, the Secretary may verify whether the  
7 actual performance of the agreement is result-  
8 ing in the displacement of non-inmate workers  
9 or the use of inmate workers in a work activity  
10 not authorized under the approved agreement.

11 “(B) SANCTIONS.—Whenever the Sec-  
12 retary determines that performance of the  
13 agreement has resulted in the displacement of  
14 non-inmate workers or employment of an in-  
15 mate worker in an unauthorized work activity,  
16 the Secretary may—

17 “(i) direct the Inmate Work Training  
18 Administrator to terminate the agreement  
19 for default, subject to the processes and  
20 appeals available to a Federal contractor  
21 whose procurement contract has been ter-  
22 minated for default; and

23 “(ii) initiate proceedings to impose  
24 upon the person furnishing the certifi-  
25 cation regarding non-displacement of non-

1 inmate workers required by subsection  
2 (d)(2)(B) any administrative, civil, and  
3 criminal sanctions as may be available.”.

4 (2) AUTHORIZATION OF APPROPRIATION.—

5 There is authorized to be appropriated \$5,000,000  
6 for each of the fiscal years 2004 through 2008 for  
7 the purposes of paying the wages of inmates and  
8 otherwise undertaking the maximum number of  
9 agreements with eligible entities pursuant to section  
10 4124a of title 18, United States Code, as added by  
11 paragraph (1).

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

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

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

18 (1) PROPOSALS FOR DONATION PROGRAMS.—

19 The Chief Operating Officer of Federal Prison In-  
20 dustries shall develop and present to the Board of  
21 Directors of Federal Prison Industries proposals to  
22 have Federal Prison Industries donate products and  
23 services to eligible entities that provide goods or  
24 services to low-income individuals who would likely

1 otherwise have difficulty purchasing such products  
2 or services in the commercial market.

3 (2) SCHEDULE FOR SUBMISSION AND CONSID-  
4 ERATION OF DONATION PROGRAMS.—

5 (A) INITIAL PROPOSALS.—The Chief Oper-  
6 ating Officer shall submit the initial group of  
7 proposals for programs of the type described in  
8 paragraph (1) within 180 days after the date of  
9 the enactment of this Act. The Board of Direc-  
10 tors of Federal Prison Industries shall consider  
11 such proposals from the Chief Operating Officer  
12 not later than the date that is 270 days after  
13 the date of the enactment of this Act.

14 (B) ANNUAL OPERATING PLAN.—The  
15 Board of Directors of Federal Prison Industries  
16 shall consider proposals by the Chief Operating  
17 Officer for programs of the type described in  
18 paragraph (1) as part of the annual operating  
19 plan for Federal Prison Industries.

20 (C) OTHER PROPOSALS.—In addition to  
21 proposals submitted by the Chief Operating Of-  
22 ficer, the Board of Directors may, from time to  
23 time, consider proposals presented by prospec-  
24 tive eligible entities.

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

4           (A) that is an organization described in  
5 section 501(c)(3) of the Internal Revenue Code  
6 of 1986 and exempt from taxation under sec-  
7 tion 501(a) of such Code and that has been  
8 such an organization for a period of not less  
9 than 36 months prior to inclusion in a proposal  
10 of the type described in paragraph (1), or

11           (B) that is a religious organization de-  
12 scribed in section 501(d) of such Code and ex-  
13 empt from taxation under section 501(a) of  
14 such Code.

15           (4) AUTHORIZATION OF APPROPRIATIONS.—

16 There are authorized to be appropriated \$7,000,000  
17 for each of the fiscal years 2004 through 2008 for  
18 the purposes of paying the wages of inmates and  
19 otherwise carrying out programs of the type de-  
20 scribed in paragraph (1).

21           (d) MAXIMIZING INMATE REHABILITATIVE OPPOR-  
22 TUNITIES THROUGH COGNITIVE ABILITIES ASSESS-  
23 MENTS.—

24           (1) DEMONSTRATION PROGRAM AUTHORIZED.—

1 (A) IN GENERAL.—There is hereby estab-  
2 lished within the Federal Bureau of Prisons a  
3 program to be known as the “Cognitive Abili-  
4 ties Assessment Demonstration Program”. The  
5 purpose of the demonstration program is to de-  
6 termine the effectiveness of a program that as-  
7 sesses the cognitive abilities and perceptual  
8 skills of Federal inmates to maximize the bene-  
9 fits of various rehabilitative opportunities de-  
10 signed to prepare each inmate for a successful  
11 return to society and reduce recidivism. The  
12 demonstration program shall be undertaken by  
13 a contractor with a demonstrated record of ena-  
14 bling the behavioral and academic improvement  
15 of adults through the use of research-based sys-  
16 tems that maximize the development of both the  
17 cognitive and perceptual capabilities of a par-  
18 ticipating individual, including adults in a cor-  
19 rectional setting.

20 (B) SCOPE OF DEMONSTRATION PRO-  
21 GRAM.—The demonstration program shall to  
22 the maximum extent practicable, be—

23 (i) conducted during a period of three  
24 consecutive fiscal years, commencing dur-  
25 ing fiscal year 2004;

1 (ii) conducted at 12 Federal correc-  
2 tional institutions; and

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

6 (C) REPORT ON RESULTS OF PROGRAM.—

7 Not later than 60 days after completion of the  
8 demonstration program, the Director shall sub-  
9 mit to Congress a report on the results of the  
10 program. At a minimum, the report shall in-  
11 clude an analysis of employment stability, sta-  
12 bility of residence, and rates of recidivism  
13 among inmates who participated in the program  
14 after 18 months of release.

15 (2) AUTHORIZATION OF APPROPRIATIONS.—

16 There is authorized to be appropriated \$3,000,000  
17 in each of the three fiscal years after fiscal year  
18 2003, to remain available until expended, for the  
19 purposes of conducting the demonstration program  
20 authorized by subsection (a).

21 (e) PRERELEASE EMPLOYMENT ASSISTANCE.—

22 (1) IN GENERAL.—The Director of the Federal  
23 Bureau of Prisons shall, to the maximum extent  
24 practicable, afford to inmates opportunities to par-  
25 ticipate in programs and activities designed to help

1       prepare such inmates to obtain employment upon re-  
2       lease.

3               (2) PRERELEASE EMPLOYMENT PLACEMENT  
4       ASSISTANCE.—Such prerelease employment place-  
5       ment assistance required by subsection (a) shall  
6       include—

7                       (A) training in the preparation of resumes  
8                       and job applications;

9                       (B) training in interviewing skills;

10                      (C) training and assistance in job search  
11                      techniques;

12                      (D) conduct of job fairs; and

13                      (E) such other methods deemed appro-  
14                      priate by the Director.

15               (3) PRIORITY PARTICIPATION.—Priority in pro-  
16       gram participation shall be accorded to inmates who  
17       are participating in work opportunities afforded by  
18       Federal Prison Industries and are within 24 months  
19       of release from incarceration.

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

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

1 **“§ 4121. Federal Prison Industries; Board of Direc-**  
2 **tors: executive management**

3 “(a) Federal Prison Industries is a government cor-  
4 poration of the District of Columbia organized to carry  
5 on such industrial operations in Federal correctional insti-  
6 tutions as authorized by its Board of Directors. The man-  
7 ner and extent to which such industrial operations are car-  
8 ried on in the various Federal correctional institutions  
9 shall be determined by the Attorney General.

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

12 “(2) In making appointments to the Board, the  
13 President shall assure that 3 members represent the busi-  
14 ness community, 3 members represent organized labor, 1  
15 member shall have special expertise in inmate rehabilita-  
16 tion techniques, 1 member represents victims of crime, 1  
17 member represents the interests of Federal inmate work-  
18 ers, and 2 additional members whose background and ex-  
19 pertise the President deems appropriate. The members of  
20 the Board representing the business community shall in-  
21 clude, to the maximum extent practicable, representation  
22 of firms furnishing services as well as firms producing  
23 products, especially from those industry categories from  
24 which Federal Prison Industries derives substantial sales.  
25 The members of the Board representing organized labor  
26 shall, to the maximum practicable, include representation



1 from labor unions whose members are likely to be most  
2 affected by the sales of Federal Prison Industries.

3 “(3) Each member shall be appointed for a term of  
4 5 years, except that of members first appointed—

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

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

9 “(C) 2 members whose background and exper-  
10 tise the President deems appropriate for a term of  
11 3 years;

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

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

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

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

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

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

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

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

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

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

22       “(B) Upon request of the Chairperson of the Board,  
23 a Federal agency may detail a Federal Government em-  
24 ployee to the Board without reimbursement. Such detail

1 shall be without interruption or loss of civil service status  
2 or privilege.

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

6 “(c) The Director of the Bureau of Prisons shall  
7 serve as Chief Executive Officer of the Corporation. The  
8 Director shall designate a person to serve as Chief Oper-  
9 ating Officer of the Corporation.”.

10 **SEC. 12. PROVIDING ADDITIONAL MANAGEMENT FLEXI-**  
11 **BILITY TO FEDERAL PRISON INDUSTRIES OP-**  
12 **ERATIONS.**

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

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

16 and

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

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

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

1 **SEC. 13. TRANSITIONAL PERSONNEL MANAGEMENT AU-**  
2 **THORITY.**

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

8 (1) eligible for appointment (or reappointment)  
9 in the competitive service pursuant to title 5, United  
10 States Code;

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

13 (3) given priority for any other position within  
14 the Bureau of Prisons for which such employee is  
15 qualified.

16 **SEC. 14. FEDERAL PRISON INDUSTRIES REPORT TO CON-**  
17 **GRESS.**

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

20 **“§ 4127. Federal Prison Industries report to Congress**

21 “(a) IN GENERAL.—Pursuant to chapter 91 of title  
22 31, the board of directors of Federal Prison Industries  
23 shall submit an annual report to Congress on the conduct  
24 of the business of the corporation during each fiscal year  
25 and the condition of its funds during the fiscal year.

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

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

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

10          “(3) an analysis of—

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

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

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

20           “(D) the number and disposition of dis-  
21 putes submitted to the heads of the Federal de-  
22 partments and agencies pursuant to section  
23 4124(e) of this title;

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

1           “(A) the number of inmates employed;

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

5           “(C) the number and percentage of em-  
6 ployed inmates by the term of their incarcer-  
7 ation; and

8           “(D) the various hourly wages paid to in-  
9 mates employed with respect to the production  
10 of the various specific products and types of  
11 services authorized for production and sale to  
12 Federal agencies and in the commercial market;  
13 and

14           “(5) data concerning employment obtained by  
15 former inmates upon release to determine whether  
16 the employment provided by Federal Prison Indus-  
17 tries during incarceration provided such inmates  
18 with knowledge and skill in a trade or occupation  
19 that enabled such former inmate to earn a livelihood  
20 upon release.

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

1 **SEC. 15. INDEPENDENT STUDY TO DETERMINE THE EF-**  
2 **FECTS OF ELIMINATING THE FEDERAL PRIS-**  
3 **ON INDUSTRIES MANDATORY SOURCE AU-**  
4 **THORITY.**

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

9 (b) **SOLICITATION OF VIEWS.**—The Comptroller Gen-  
10 eral shall ensure that in developing the statement of work  
11 and the methodology for the study, the views and input  
12 of private industry, organized labor groups, Members and  
13 staff of the relevant Congressional committees, officials of  
14 the executive branch, and the public are solicited.

15 (c) **SUBMISSION.**—Not later than June 30, 2004, the  
16 Comptroller General shall submit the results of the study  
17 to Congress, including any recommendations for legisla-  
18 tion.

19 **SEC. 16. SENSE OF CONGRESS.**

20 It is the sense of Congress that it is important to  
21 study the concept of implementing a “good time” release  
22 program for non-violent criminals in the Federal prison  
23 system.

24 **SEC. 17. DEFINITIONS.**

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

1 **“§ 4131. Definitions**

2 “As used in this chapter—

3 “(1) the term ‘assembly’ means the process of  
4 uniting or combining articles or components (includ-  
5 ing ancillary finished components or assemblies) so  
6 as to produce a significant change in form or utility,  
7 without necessarily changing or altering the compo-  
8 nent parts;

9 “(2) the term ‘current market price’ means,  
10 with respect to a specific product, the fair market  
11 price of the product within the meaning of section  
12 15(a) of the Small Business Act (15 U.S.C. 644(a)),  
13 at the time that the contract is to be awarded,  
14 verified through appropriate price analysis or cost  
15 analysis, including any costs relating to transpor-  
16 tation or the furnishing of any ancillary services;

17 “(3) the term ‘import-sensitive product’ means  
18 a product which, according to Department of Com-  
19 merce data, has experienced competition from im-  
20 ports at an import to domestic production ratio of  
21 25 percent or greater;

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



1           “(5) the term ‘manufacture’ means the process  
2 of fabricating from raw or prepared materials, so as  
3 to impart to those materials new forms, qualities,  
4 properties, and combinations;

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

9           “(A) any specific product during the 3 pre-  
10 ceding fiscal years, that does not exceed 20 per-  
11 cent of the Federal market for the specific  
12 product; and

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

17           “(7) the term ‘services’ has the meaning given  
18 the term ‘service contract’ by section 37.101 of the  
19 Federal Acquisition Regulation (48 CFR 36.102), as  
20 in effect on July 1, 2002.”.

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

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

23 (1) **PROPOSED REVISIONS.**—Proposed revisions  
24 to the Governmentwide Federal Acquisition Regula-  
25 tion to implement the amendments made by this Act

1 shall be published not later than 60 days after the  
2 date of the enactment of this Act and provide not  
3 less than 60 days for public comment.

4 (2) FINAL REGULATIONS.—Final regulations  
5 shall be published not later than 180 days after the  
6 date of the enactment of this Act and shall be effec-  
7 tive on the date that is 30 days after the date of  
8 publication.

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

15 (b) BOARD OF DIRECTORS.—

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

19 (2) TERMS TO BE DEFINED.—The Board of Di-  
20 rectors shall issue regulations for the following  
21 terms:

22 (A) Prison-made product.

23 (B) Prison-furnished service.

24 (C) Specific product.

25 (D) Specific service.

1           (3) SCHEDULE FOR REGULATORY DEFINI-  
2 TIONS.—

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

8           (B) Final regulations relating to the mat-  
9 ters described in subsection (b)(2) shall be pub-  
10 lished not less than 180 days after the date of  
11 enactment of this Act and shall be effective on  
12 the date that is 30 days after the date of publi-  
13 cation.

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

16           (A) ADMINISTRATIVE PROCEDURE ACT.—  
17 Regulations issued by the Board of Directors  
18 shall be subject to notice and comment rule-  
19 making pursuant to section 553 of title 5,  
20 United States Code. Unless determined wholly  
21 impracticable or unnecessary by the Board of  
22 Directors, the public shall be afforded 60 days  
23 for comment on proposed regulations.

24           (B) ENHANCED OUTREACH.—The Board  
25 of Directors shall use means designed to most

1 effectively solicit public comment on proposed  
2 regulations, procedures, and policies and to in-  
3 form the affected public of final regulations,  
4 procedures, and policies.

5 (C) OPEN MEETING PROCESSES.—The  
6 Board of Directors shall take all actions relat-  
7 ing to the adoption of regulations, operating  
8 procedures, guidelines, and any other matter re-  
9 lating to the governance and operation of Fed-  
10 eral Prison Industries based on deliberations  
11 and a recorded vote conducted during a meeting  
12 open to the public, unless closed pursuant to  
13 section 552(b) of title 5, United States Code.

14 **SEC. 19. RULES OF CONSTRUCTION.**

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

21 (b) JAVITS-WAGNER-O'DAY ACT.—Nothing in this  
22 Act is intended to modify the Javits-Wagner-O'Day Act  
23 (41 U.S.C. 46, et seq.).

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

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

5 (b) APPLICABILITY.—Section 4124 of title 18, United  
6 States Code, as amended by section 2, shall apply to any  
7 requirement for a product or service offered by Federal  
8 Prison Industries needed by a Federal department or  
9 agency after the effective date of the final regulations  
10 issued pursuant to section 18(a)(2), or after September  
11 30, 2004, whichever is earlier.

12 **SEC. 21. CLERICAL AMENDMENTS.**

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

15 (1) by amending the item relating to section  
16 4121 to read as follows:

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

17 (2) by amending the item relating to section  
18 4124 to read as follows:

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

19 (3) by amending the item relating to section  
20 4127 to read as follows:

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

21 and

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

“4130. Construction of provisions.

“4131. Definitions.”.

3   **SEC. 22. PROCUREMENT OF GOODS AND SERVICES MANU-**  
4                           **FACTURED IN THE UNITED STATES.**

5           In any case in which a procurement activity proceeds  
6 to conduct a procurement for a product or service as de-  
7 scribed in paragraph (6) of section 4124(b) of title 18,  
8 United States Code, as added by section 2, the procure-  
9 ment must be of goods or services manufactured in the  
10 United States.

          Passed the House of Representatives November 6,  
2003.

Attest:

JEFF TRANDAHL,

*Clerk.*

By MARTHA C. MORRISON,

*Deputy Clerk.*