

# Union Calendar No. 165

108TH CONGRESS  
1ST SESSION

# H. R. 1829

[Report No. 108–286]

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.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 2003

Mr. HOEKSTRA (for himself, Mr. FRANK of Massachusetts, Mr. COLLINS, Mrs. MALONEY, Mr. SENSENBRENNER, Mr. CONYERS, Mr. COBLE, Mr. WATT, Mr. MANZULLO, Ms. VELÁZQUEZ, Mr. BOEHNER, Mr. GEORGE MILLER of California, Mr. TOM DAVIS of Virginia, Mr. RANGEL, Mr. TOOMEY, Mr. NADLER, Mr. EHLERS, Mr. DINGELL, Mr. LOBIONDO, Mr. CANTOR, Ms. BALDWIN, Mr. NORWOOD, Ms. WOOLSEY, Mr. SOUDER, Mr. FERGUSON, Ms. SCHAKOWSKY, Mr. SHADEGG, Mr. KINGSTON, Ms. HART, Ms. LEE, Mr. HOSTETTLER, Mr. FILNER, Mr. BARTLETT of Maryland, Mr. OXLEY, Mr. ENGLISH, Mr. MCINTYRE, Mr. DEMINT, Mr. FLAKE, Mr. SMITH of New Jersey, Mr. RYAN of Wisconsin, Mr. CULBERSON, Mr. EMANUEL, Mr. FORBES, Mr. GOODE, Mrs. NORTHUP, Mr. OLVER, Mr. BLUNT, Ms. PRYCE of Ohio, Mrs. MILLER of Michigan, Mr. CRAMER, Mr. CAMP, Mr. ROGERS of Michigan, Mr. LEACH, Mr. PENCE, Mr. HILL, Mr. UPTON, Mr. MCCOTTER, Mr. LANGEVIN, Mr. NETHERCUTT, Mr. OSBORNE, Mr. HAYES, Mr. WAMP, Mr. TERRY, Mr. KLECZKA, Mrs. MYRICK, Mr. NEY, Mr. BRADY of Pennsylvania, Mr. BRADY of Texas, Mrs. JONES of Ohio, Mr. JONES of North Carolina, Mr. SESSIONS, Mrs. CUBIN, Mrs. CAPITO, Mr. BURR, Mr. CLAY, Mr. KNOLLENBERG, Mr. MORAN of Kansas, Mr. TIBERI, Mr. PORTER, Mr. MCGOVERN, Mr. BALLENGER, Mr. DEAL of Georgia, Mr. EVERETT, Mr. KENNEDY of

Rhode Island, Mr. McKEON, Mr. ISAKSON, Mr. LATOURETTE, Mr. THORNBERRY, Mrs. WILSON of New Mexico, Mr. ROYCE, Mr. KLINE, Mr. KUCINICH, Mr. DUNCAN, Mr. TIAHRT, Mr. QUINN, Mr. WILSON of South Carolina, Mr. DOOLITTLE, Mr. McDERMOTT, Mrs. BIGGERT, Mrs. MUSGRAVE, Mr. CHOCOLA, Mr. GINGREY, Mr. NUNES, and Mr. BURNS) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 25, 2003

Additional sponsors: Mr. KING of Iowa, Mr. FROST, Mrs. BLACKBURN, Mr. WEINER, Mr. JENKINS, Mr. STENHOLM, Mr. McINNIS, Mr. GUTIERREZ, Mr. LANTOS, Mr. UDALL of Colorado, Mr. GORDON, Mr. ISRAEL, Ms. LORETTA SANCHEZ of California, Mr. GONZALEZ, Mr. MILLER of North Carolina, Mr. LATHAM, Mr. FEENEY, Mr. MICHAUD, Mr. NUSSLE, Mr. HOEFFEL, Mr. McHUGH, Mr. LEVIN, Mr. BEAUPREZ, Ms. CARSON of Indiana, Mr. SHUSTER, Mr. STUPAK, Mr. CARTER, Mr. WELDON of Florida, Ms. LINDA T. SÁNCHEZ of California, Mr. RAHALL, Ms. ESHOO, Mr. PLATTS, Mr. MEEHAN, Mr. BARRETT of South Carolina, Mr. DOYLE, Mr. FOLEY, Mr. TAYLOR of North Carolina, Mr. KIRK, and Ms. KILPATRICK

SEPTEMBER 25, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on April 12, 2003]

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## A BILL

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

alternative inmate work opportunities in support of non-profit organizations, and 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 Act*  
 6        *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.*

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

4 *Section 4124 of title 18, United States Code, is amend-*  
 5 *ed to read as follows:*

6 **“§4124. Governmentwide procurement policy relating**  
 7 **to purchases from Federal Prison Indus-**  
 8 **tries**

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

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

25 *“(2) A contract award for such product or service shall*  
 26 *be made using competitive procedures in accordance with*

1 *the applicable evaluation factors, unless a determination is*  
2 *made by the Attorney General pursuant to paragraph (3)*  
3 *or an award using other than competitive procedures is au-*  
4 *thorized pursuant to paragraph (7).*

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

9               “(A) *Federal Prison Industries cannot reason-*  
10 *ably expect fair consideration to receive the contract*  
11 *award on a competitive basis; and*

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

18       “(4) *Except in the case of an award to be made pursu-*  
19 *ant to paragraph (3), a contract award shall be made with*  
20 *Federal Prison Industries only if the contracting officer for*  
21 *the procurement activity determines that—*

22              “(A) *the specific product or service to be fur-*  
23 *nished will meet the requirements of the procurement*  
24 *activity (including any applicable prequalification*  
25 *requirements and all specified commercial or govern-*

1        *mental standards pertaining to quality, testing, safe-*  
2        *ty, serviceability, and warranties);*

3                *“(B) timely performance of the contract can be*  
4        *reasonably expected; and*

5                *“(C) the contract price does not exceed a current*  
6        *market price.*

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

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

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

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

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

1 *generally applicable to such procurements by the procure-*  
 2 *ment activity.*

3       “(7) *A contract award may be made to Federal Prison*  
 4 *Industries using other than competitive procedures if such*  
 5 *product or service is only available from Federal Prison*  
 6 *Industries and the contract may be awarded under the au-*  
 7 *thority of section 2304(c)(1) of title 10 or section 303(c)*  
 8 *of the Federal Property and Administrative Services Act*  
 9 *of 1949 (41 U.S.C. 252(c)(1)), as may be applicable, and*  
 10 *pursuant to the justification and approval requirements re-*  
 11 *lating to such noncompetitive procurements specified by law*  
 12 *and the Governmentwide Federal Acquisition Regulation.*

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

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

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

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

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

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

12 “(A) alternative means of dispute resolution pur-  
 13 suant to subchapter IV of chapter 5 of title 5; or

14 “(B) final resolution by the board of contract ap-  
 15 peals having jurisdiction over the procurement activi-  
 16 ty’s contract performance disputes pursuant to the  
 17 Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

18 “(f) REPORTING OF PURCHASES.—Each Federal de-  
 19 partment or agency shall report purchases from Federal  
 20 Prison Industries to the Federal Procurement Data System  
 21 (as referred to in section 6(d)(4) of the Office of Federal  
 22 Procurement Policy Act (41 U.S.C. 405(d)(4))) in the same  
 23 manner as it reports to such System any acquisition in  
 24 an amount in excess of the simplified acquisition threshold



1 *(as defined by section 4(11) of the Office of Federal Procure-*  
 2 *ment Policy Act (41 U.S.C. 403(11))).*

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

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

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

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

18 *(1) by redesignating paragraph (6) as para-*  
 19 *graph (12); and*

20 *(2) by striking paragraphs (4) and (5) and in-*  
 21 *serting the following new paragraphs:*

22 “(4) *A decision to authorize Federal Prison Industries*  
 23 *to offer a new specific product or specific service or to ex-*  
 24 *pand the production of an existing product or service shall*  
 25 *be made by its board of directors in conformance with the*

1 requirements of subsections (b), (c), (d), and (e) of section  
2 553 of title 5, and this chapter.

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

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

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

24 “(iii) If the analysis is to be performed by a private  
25 contractor, the selection of the contractor and the adminis-

1 *tration of the contract shall be conducted by one of the enti-*  
2 *ties referenced in clause (ii) as an independent executive*  
3 *agent for the board of directors. Maximum consideration*  
4 *shall be given to any proposed statement of work furnished*  
5 *by the Chief Operating Officer of Federal Prison Industries.*

6       “(C) *The analysis required by subparagraph (A) shall*  
7 *identify and consider—*

8               “(i) *the number of vendors that currently meet*  
9 *the requirements of the Federal Government for the*  
10 *specific product or specific service;*

11              “(ii) *the proportion of the Federal Government*  
12 *market for the specific product or specific service cur-*  
13 *rently furnished by small businesses during the pre-*  
14 *vious 3 fiscal years;*

15              “(iii) *the share of the Federal market for the spe-*  
16 *cific product or specific service projected for Federal*  
17 *Prison Industries for the fiscal year in which produc-*  
18 *tion or performance will commence or expand and the*  
19 *subsequent 4 fiscal years;*

20              “(iv) *whether the industry producing the specific*  
21 *product or specific service in the private sector—*

22                       “(I) *has an unemployment rate higher than*  
23 *the national average; or*

1                   “(II) has a rate of unemployment for work-  
2                   ers that has consistently shown an increase dur-  
3                   ing the previous 5 years;

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

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

10                  “(vii) the projected growth or decline in the de-  
11                  mand of the Federal Government for the specific prod-  
12                  uct or specific service;

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

17                  “(ix) whether authorizing the production of the  
18                  new product or performance of a new service will pro-  
19                  vide inmates with the maximum opportunity to ac-  
20                  quire knowledge and skill in trades and occupations  
21                  that will provide them with a means of earning a  
22                  livelihood upon release.

23                  “(D)(i) The board of directors may not approve a pro-  
24                  posal to authorize the production and sale of a new specific

1 *product or continued sale of a previously authorized prod-*  
2 *uct unless—*

3           “(I) *the product to be furnished is a prison-made*  
4 *product; or*

5           “(II) *the service to be furnished is to be per-*  
6 *formed by inmate workers.*

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

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

14           “(II) *an import-sensitive product.*

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

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

23           “(II) *geographic data regarding the location of*  
24 *surface and subsurface infrastructure providing com-*  
25 *munications, water and electrical power distribution,*

1        *pipelines for the distribution of natural gas, bulk pe-*  
2        *troleum products and other commodities, and other*  
3        *utilities; or*

4                *“(III) data that is classified.*

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

11       *“(II) For purposes of this clause, the term ‘construc-*  
12       *tion’ has the meaning given such term by section 2.101 of*  
13       *the Federal Acquisition Regulation (48 C.F.R. part 2.101),*  
14       *as in effect on June 1, 2002, including the repair, alter-*  
15       *ation, or maintenance of real property in being.*

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

18                *“(A) give additional notice of a proposal to au-*  
19        *thorize the production and sale of a new product or*  
20        *service, or expand the production of a currently au-*  
21        *thorized product or service, in a publication designed*  
22        *to most effectively provide notice to private vendors*  
23        *and labor unions representing private sector workers*  
24        *who could reasonably be expected to be affected by ap-*  
25        *proval of the proposal, which notice shall offer to fur-*

1        *nish copies of the analysis required by paragraph (5)*  
2        *and shall solicit comment on the analysis;*

3                *“(B) solicit comments on the analysis required*  
4        *by paragraph (5) from trade associations representing*  
5        *vendors and labor unions representing private sector*  
6        *workers who could reasonably be expected to be af-*  
7        *ected by approval of the proposal to authorize the*  
8        *production and sale of a new product or service (or*  
9        *expand the production of a currently authorized prod-*  
10       *uct or service); and*

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

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

18        *“(8) Based on the comments received on the initial ex-*  
19       *pansion proposal, the Chief Operating Officer of Federal*  
20       *Prison Industries may provide the board of directors a re-*  
21       *vised expansion proposal. If such revised proposal provides*  
22       *for expansion of inmate work opportunities in an industry*  
23       *different from that initially proposed, such revised proposal*  
24       *shall reflect the analysis required by paragraph (5)(C) and*

1 *be subject to the public comment requirements of paragraph*  
2 *(6).*

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

10       “(10) *In conformity with the requirements of para-*  
11 *graphs (5) through (9) of this subsection, the board of direc-*  
12 *tors may—*

13               “(A) *authorize the donation of products produced*  
14 *or services furnished by Federal industries and avail-*  
15 *able for sale;*

16               “(B) *authorize the production of a new specific*  
17 *product or the furnishing of a new specific service for*  
18 *donation; or*

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

23                       “(i) *a Federal agency or department, pur-*  
24 *chasing such product or service, has requested*  
25 *that Federal Prison Industries be authorized to*



1           *furnish such product or service in amounts that*  
 2           *are needed by such agency or department; or*  
 3           “(ii) *the proposal is justified for other good*  
 4           *cause and supported by at least eight members of*  
 5           *the board.*”.

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

7           (a) *IN GENERAL.*—Notwithstanding the requirements  
 8           of section 4124 of title 18, United States Code (as amended  
 9           by section 2 of this Act), a Federal department or agency  
 10          having a requirement for a product that is authorized for  
 11          sale by Federal Prison Industries and is listed in its catalog  
 12          (referred to in section 4124(g) of title 18, United States  
 13          Code) shall first solicit an offer from Federal Prison Indus-  
 14          tries and make purchases on a noncompetitive basis in ac-  
 15          cordance with this section.

16          (b) *PREFERENTIAL SOURCE STATUS.*—Subject to the  
 17          limitations of subsection (d), a contract award shall be  
 18          made on a noncompetitive basis to Federal Prison Indus-  
 19          tries if the contracting officer for the procurement activity  
 20          determines that—

21               (1) *the product offered by Federal Prison Indus-*  
 22               tries will meet the requirements of the procurement  
 23               activity (including commercial or governmental  
 24               standards or specifications pertaining to design, per-  
 25               formance, testing, safety, serviceability, and warran-

1        *ties as may be imposed upon a private sector supplier*  
 2        *of the type being offered by Federal Prison Indus-*  
 3        *tries);*

4            *(2) timely performance of the contract by Fed-*  
 5        *eral Prison Industries can be reasonably expected;*  
 6        *and*

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

9        *(c) CONTRACTUAL TERMS.—The terms and conditions*  
 10       *of the contract and the price to be paid to Federal Prison*  
 11       *Industries shall be determined by negotiation between Fed-*  
 12       *eral Prison Industries and the Federal agency making the*  
 13       *purchase. The negotiated price shall not exceed a fair and*  
 14       *reasonable price determined in accordance with the proce-*  
 15       *dures of the Federal Acquisition Regulation.*

16       *(d) PERFORMANCE OF CONTRACTUAL OBLIGATIONS.—*

17            *(1) IN GENERAL.—Federal Prison Industries*  
 18        *shall perform the obligations of the contract nego-*  
 19        *tiated pursuant to subsection (c).*

20            *(2) PERFORMANCE DISPUTES.—If the head of the*  
 21        *contracting activity and the Chief Operating Officer*  
 22        *of Federal Prison Industries are unable to resolve a*  
 23        *contract performance dispute to their mutual satisfac-*  
 24        *tion, such dispute shall be resolved pursuant to sec-*

tion 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 2005;

(B) 85 percent in fiscal year 2006;

(C) 70 percent in fiscal year 2007;

(D) 55 percent in fiscal year 2008; and

(E) 40 percent in fiscal year 2009.

(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.

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

7           (f) *DURATION OF AUTHORITY.*—*The preferential con-*  
 8           *tracting authorities authorized by subsection (b) may not*  
 9           *be used on or after October 1, 2009, and become effective*  
 10          *on the effective date of the final regulations issued pursuant*  
 11          *to section 18.*

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

13               (1) *the term “base period” means the total sales*  
 14               *of Federal Prison Industries during the period Octo-*  
 15               *ber 1, 2001, and September 30, 2002 (Fiscal Year*  
 16               *2002);*

17               (2) *the term “business sectors” means the eight*  
 18               *product/service business groups identified in the 2002*  
 19               *Federal Prison Industries annual report as the Cloth-*  
 20               *ing and Textiles Business Group, the Electronics*  
 21               *Business Group, the Fleet Management and Vehicular*  
 22               *Components Business Group, the Graphics Business*  
 23               *Group, the Industrial Products Business Group, the*  
 24               *Office Furniture Business Group, the Recycling Ac-*

1        *tivities Business Group, and the Services Business*  
2        *Group; and*

3            *(3) the term “fair and reasonable price” shall be*  
4        *given the same meaning as, and be determined pursu-*  
5        *ant to, part 15.8 of the Federal Acquisition Regula-*  
6        *tion (48 C.F.R. 15.8).*

7        *(h) FINDING BY ATTORNEY GENERAL WITH RESPECT*  
8        *TO PUBLIC SAFETY.—(1) Not later than 60 days prior to*  
9        *the end of each fiscal year specified in subsection (e)(1),*  
10       *the Attorney General shall make a finding regarding the*  
11       *effects of the percentage limitation imposed by such sub-*  
12       *section for such fiscal year and the likely effects of the limi-*  
13       *tation imposed by such subsection for the following fiscal*  
14       *year.*

15       *(2) The Attorney General’s finding shall include a de-*  
16       *termination whether such limitation has resulted or is like-*  
17       *ly to result in a substantial reduction in inmate industrial*  
18       *employment and whether such reductions, if any, present*  
19       *a significant risk of adverse effects on safe prison operation*  
20       *or public safety.*

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

24       *(4) In advising the Congress pursuant to paragraph*  
25       *(3), the Attorney General shall make recommendations for*

1 *additional authorizations of appropriations to provide ad-*  
2 *ditional alternative inmate rehabilitative opportunities and*  
3 *additional correctional staffing, as may be appropriate.*

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

6       (a) *IN GENERAL.*—*Federal Prison Industries is au-*  
7 *thorized to enter into a contract with a Federal contractor*  
8 *(or a subcontractor of such contractor at any tier) to*  
9 *produce products as a subcontractor or supplier in the per-*  
10 *formance of a Federal procurement contract. The use of*  
11 *Federal Prison Industries as a subcontractor or supplier*  
12 *shall be a wholly voluntary business decision by the Federal*  
13 *prime contractor or subcontractor, subject to any prior ap-*  
14 *proval of subcontractors or suppliers by the contracting offi-*  
15 *cer which may be imposed by the Federal Acquisition Regu-*  
16 *lation or by the contract.*

17       (b) *COMMERCIAL SALES PROHIBITED.*—*The authority*  
18 *provided by subsection (a) shall not result, either directly*  
19 *or indirectly, in the sale in the commercial market of a*  
20 *product or service resulting from the labor of Federal in-*  
21 *mate workers in violation of section 1761(a) of title 18,*  
22 *United States Code. A Federal contractor (or subcontractor*  
23 *at any tier) using Federal Prison Industries as a subcon-*  
24 *tractor or supplier in furnishing a commercial product pur-*  
25 *suant to a Federal contract shall implement appropriate*

1 management procedures to prevent introducing an inmate-  
 2 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 upon*  
 8 *prospective or actual Federal prime contractors or a sub-*  
 9 *contractors at any tier by means of—*

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

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

17 (3) *any contract modification directing the use*  
 18 *of Federal Prison Industries, its products or services;*  
 19 *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 In-*  
2 *dustries shall prescribe the rates of hourly wages to be paid*  
3 *inmates performing work for or through Federal Prison In-*  
4 *dustries. The Director of the Federal Bureau of Prisons*  
5 *shall prescribe the rates of hourly wages for other work as-*  
6 *signments within the various Federal correctional institu-*  
7 *tions.*

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

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

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

16               “(ii) *payment of fines and restitution pursuant*  
17 *to court order;*

18               “(iii) *payment of additional restitution for vic-*  
19 *tims of the inmate’s crimes (at a rate not less than*  
20 *10 percent of gross wages);*

21               “(iv) *allocations for support of the inmate’s fam-*  
22 *ily pursuant to statute, court order, or agreement*  
23 *with the inmate;*



1           “(v) allocations to a fund in the inmate’s name  
 2           to facilitate such inmate’s assimilation back into soci-  
 3           ety, payable at the conclusion of incarceration; and

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

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

8           “(i) is participating voluntarily; and

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

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

12          (a) *IN GENERAL.*—Section 1761 of title 18, United  
 13 States Code, is amended in subsection (a), by striking “any  
 14 goods, wares, or merchandise manufactured, produced, or  
 15 mined” and inserting “products manufactured, services fur-  
 16 nished, or minerals mined”.

17          (b) *COMPLETION OF EXISTING AGREEMENTS.*—Any  
 18 prisoner work program operated by a prison or jail of a  
 19 State or local jurisdiction of a State which is providing  
 20 services for the commercial market through inmate labor on  
 21 October 1, 2002, may continue to provide such commercial  
 22 services until—

23               (1) the expiration date specified in the contract  
 24               or other agreement with a commercial partner on Oc-  
 25               tober 1, 2002, or

1           (2) *until September 30, 2005, if the prison work*  
 2           *program is directly furnishing the services to the com-*  
 3           *mercial market.*

4           (c) *APPROVAL REQUIRED FOR LONG-TERM OPER-*  
 5           *ATION.—A prison work program operated by a correctional*  
 6           *institution operated by a State or local jurisdiction of a*  
 7           *State may continue to provide inmate labor to furnish serv-*  
 8           *ices for sale in the commercial market after the dates speci-*  
 9           *fied in subsection (b) if such program has been certified*  
 10          *pursuant to section 1761(c)(1) of title 18, United States*  
 11          *Code, and is in compliance with the requirements of such*  
 12          *subsection and its implementing regulations.*

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

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

17       **SEC. 9. RULES OF CONSTRUCTION RELATING TO CHAPTER**  
 18                               **307.**

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

21       **“§ 4130. Construction of provisions**

22           *“Nothing in this chapter shall be construed—*

23           *“(1) to establish an entitlement of any inmate*  
 24           *to—*

1           “(A) employment in a Federal Prison In-  
2           dustries facility; or

3           “(B) any particular wage, compensation, or  
4           benefit on demand, except as otherwise specifi-  
5           cally provided by law or regulation;

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

8           “(3) to establish any cause of action by or on be-  
9           half of any inmate against the United States or any  
10          officer, employee, or contractor thereof.”.

11 **SEC. 10. PROVIDING ADDITIONAL REHABILITATIVE OPPOR-**  
12 **TUNITIES FOR INMATES.**

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

15           (1) *PROGRAM ESTABLISHED.*—*There is hereby*  
16 *established the Enhanced In-Prison Educational and*  
17 *Vocational Assessment and Training Program within*  
18 *the Federal Bureau of Prisons.*

19           (2) *COMPREHENSIVE PROGRAM.*—*In addition to*  
20 *such other components as the Director of the Bureau*  
21 *of Prisons deems appropriate to reduce inmate idle-*  
22 *ness and better prepare inmates for a successful re-*  
23 *entry into the community upon release, the program*  
24 *shall provide—*

1                   (A) *in-prison assessments of inmates' needs*  
 2                   *and aptitudes;*

3                   (B) *a full range of educational opportuni-*  
 4                   *ties;*

5                   (C) *vocational training and apprentice-*  
 6                   *ships; and*

7                   (D) *comprehensive release-readiness prepa-*  
 8                   *ration.*

9                   (3) *AUTHORIZATION OF APPROPRIATIONS.—For*  
 10                   *the purposes of carrying out the program established*  
 11                   *by paragraph (1), \$75,000,000 is authorized for each*  
 12                   *fiscal year after fiscal year 2003, to remain available*  
 13                   *until expended. Funds shall be allocated from the*  
 14                   *gross profits within the Federal Prison Industries*  
 15                   *Fund, and, to the extent such amounts are inad-*  
 16                   *equat, from the General Treasury.*

17                   (4) *SCHEDULE FOR IMPLEMENTATION.—All com-*  
 18                   *ponents of the program shall be established—*

19                   (A) *in at least 25 percent of all Federal*  
 20                   *prisons not later than 2 years after the date of*  
 21                   *the enactment of this Act;*

22                   (B) *in at least 50 percent of all Federal*  
 23                   *prisons not later than 4 years after such date of*  
 24                   *enactment;*

1           (C) in at least 75 percent of all Federal  
2           prisons not later than 6 years after such date of  
3           enactment; and

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

6           (b) *INMATE WORK OPPORTUNITIES IN SUPPORT OF*  
7           *NOT-FOR-PROFIT ENTITIES.*—

8           (1) *PROPOSALS FOR DONATION PROGRAMS.*—*The*  
9           *Chief Operating Officer of Federal Prison Industries*  
10          *shall develop and present to the Board of Directors of*  
11          *Federal Prison Industries proposals to have Federal*  
12          *Prison Industries donate products and services to eli-*  
13          *gible entities that provide goods or services to low-in-*  
14          *come individuals who would likely otherwise have dif-*  
15          *ficulty purchasing such products or services in the*  
16          *commercial market.*

17          (2) *SCHEDULE FOR SUBMISSION AND CONSIDER-*  
18          *ATION OF DONATION PROGRAMS.*—

19          (A) *INITIAL PROPOSALS.*—*The Chief Oper-*  
20          *ating Officer shall submit the initial group of*  
21          *proposals for programs of the type described in*  
22          *paragraph (1) within 180 days after the date of*  
23          *the enactment of this Act. The Board of Directors*  
24          *of Federal Prison Industries shall consider such*  
25          *proposals from the Chief Operating Officer not*

1       *later than the date that is 270 days after the*  
2       *date of the enactment of this Act.*

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

9               *(C) OTHER PROPOSALS.—In addition to*  
10       *proposals submitted by the Chief Operating Offi-*  
11       *cer, the Board of Directors may, from time to*  
12       *time, consider proposals presented by prospective*  
13       *eligible entities.*

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

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

24               *(B) that is a religious organization de-*  
25       *scribed in section 501(d) of such Code and ex-*

1           *empt from taxation under section 501(a) of such*  
 2           *Code.*

3           (4) *AUTHORIZATION OF APPROPRIATIONS.—*

4           *There are authorized to be appropriated \$7,000,000*  
 5           *for each of the fiscal years 2004 through 2008 for the*  
 6           *purposes of paying the wages of inmates and other-*  
 7           *wise carrying out programs of the type described in*  
 8           *paragraph (1).*

9           (c) *MAXIMIZING INMATE REHABILITATIVE OPPORTU-*  
 10          *NITIES THROUGH COGNITIVE ABILITIES ASSESSMENTS.—*

11          (1) *DEMONSTRATION PROGRAM AUTHORIZED.—*

12               (A) *IN GENERAL.—There is hereby estab-*  
 13               *lished within the Federal Bureau of Prisons a*  
 14               *program to be known as the “Cognitive Abilities*  
 15               *Assessment Demonstration Program”. The pur-*  
 16               *pose of the demonstration program is to deter-*  
 17               *mine the effectiveness of a program that assesses*  
 18               *the cognitive abilities and perceptual skills of*  
 19               *Federal inmates to maximize the benefits of var-*  
 20               *ious rehabilitative opportunities designed to pre-*  
 21               *pare each inmate for a successful return to soci-*  
 22               *ety and reduce recidivism. The demonstration*  
 23               *program shall be undertaken by a contractor*  
 24               *with a demonstrated record of enabling the be-*  
 25               *havioral and academic improvement of adults*

1       *through the use of research-based systems that*  
2       *maximize the development of both the cognitive*  
3       *and perceptual capabilities of a participating*  
4       *individual, including adults in a correctional*  
5       *setting.*

6               *(B) SCOPE OF DEMONSTRATION PRO-*  
7       *GRAM.—The demonstration program shall to the*  
8       *maximum extent practicable, be—*

9               *(i) conducted during a period of three*  
10       *consecutive fiscal years, commencing during*  
11       *fiscal year 2004;*

12              *(ii) conducted at 12 Federal correc-*  
13       *tional institutions; and*

14              *(iii) offered to 6,000 inmates, who are*  
15       *categorized as minimum security or less,*  
16       *and are within five years of release.*

17              *(C) REPORT ON RESULTS OF PROGRAM.—*  
18       *Not later than 60 days after completion of the*  
19       *demonstration program, the Director shall sub-*  
20       *mit to Congress a report on the results of the*  
21       *program. At a minimum, the report shall in-*  
22       *clude an analysis of employment stability, sta-*  
23       *bility of residence, and rates of recidivism*  
24       *among inmates who participated in the program*  
25       *after 18 months of release.*



1           (2) *AUTHORIZATION OF APPROPRIATIONS.—*

2           *There is authorized to be appropriated \$3,000,000 in*  
 3           *each of the three fiscal years after fiscal year 2003,*  
 4           *to remain available until expended, for the purposes*  
 5           *of conducting the demonstration program authorized*  
 6           *by subsection (a).*

7           (d) *PRERELEASE EMPLOYMENT ASSISTANCE.—*

8           (1) *IN GENERAL.—The Director of the Federal*  
 9           *Bureau of Prisons shall, to the maximum extent prac-*  
 10           *ticable, afford to inmates opportunities to participate*  
 11           *in programs and activities designed to help prepare*  
 12           *such inmates to obtain employment upon release.*

13           (2) *PRERELEASE EMPLOYMENT PLACEMENT AS-*  
 14           *SISTANCE.—Such prerelease employment placement*  
 15           *assistance required by subsection (a) shall include—*

16                   (A) *training in the preparation of resumes*  
 17                   *and job applications;*

18                   (B) *training in interviewing skills;*

19                   (C) *training and assistance in job search*  
 20                   *techniques;*

21                   (D) *conduct of job fairs; and*

22                   (E) *such other methods deemed appropriate*  
 23                   *by the Director.*

24           (3) *PRIORITY PARTICIPATION.—Priority in pro-*  
 25           *gram participation shall be accorded to inmates who*

1        *are participating in work opportunities afforded by*  
 2        *Federal Prison Industries and are within 24 months*  
 3        *of release from incarceration.*

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

5        *Section 4121 of title 18, United States Code, is amend-*  
 6        *ed to read as follows:*

7    **“§4121. Federal Prison Industries; Board of Directors:**  
 8                                ***executive management***

9        *“(a) Federal Prison Industries is a government cor-*  
 10        *poration of the District of Columbia organized to carry on*  
 11        *such industrial operations in Federal correctional institu-*  
 12        *tions as authorized by its Board of Directors. The manner*  
 13        *and extent to which such industrial operations are carried*  
 14        *on in the various Federal correctional institutions shall be*  
 15        *determined by the Attorney General.*

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

18        *“(2) In making appointments to the Board, the Presi-*  
 19        *dent shall assure that 3 members represent the business*  
 20        *community, 3 members represent organized labor, 1 member*  
 21        *shall have special expertise in inmate rehabilitation tech-*  
 22        *niques, 1 member represents victims of crime, 1 member*  
 23        *represents the interests of Federal inmate workers, and 2*  
 24        *additional members whose background and expertise the*  
 25        *President deems appropriate. The members of the Board*

1 *representing the business community shall include, to the*  
 2 *maximum extent practicable, representation of firms fur-*  
 3 *nishing services as well as firms producing products, espe-*  
 4 *cially from those industry categories from which Federal*  
 5 *Prison Industries derives substantial sales. The members of*  
 6 *the Board representing organized labor shall, to the max-*  
 7 *imum practicable, include representation from labor unions*  
 8 *whose members are likely to be most affected by the sales*  
 9 *of Federal Prison Industries.*

10       “(3) *Each member shall be appointed for a term of*  
 11 *5 years, except that of members first appointed—*

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

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

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

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

21               “(E) *1 member representing the interests of Fed-*  
 22 *eral inmate workers shall be appointed for a term of*  
 23 *3 years;*

24               “(F) *1 member representing the business commu-*  
 25 *nity shall be appointed for a term of 4 years;*

1           “(G) 1 member representing the business commu-  
2           nity shall be appointed for a term of 4 years; and

3           “(H) the members having special expertise in in-  
4           mate rehabilitation techniques shall be appointed for  
5           a term of 5 years.

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

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

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

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

1       “(8)(A) *The Chairperson of the Board may appoint*  
 2       *and terminate any personnel that may be necessary to en-*  
 3       *able the Board to perform its duties.*

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

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

12       “(c) *The Director of the Bureau of Prisons shall serve*  
 13       *as Chief Executive Officer of the Corporation. The Director*  
 14       *shall designate a person to serve as Chief Operating Officer*  
 15       *of the Corporation.”.*

16       **SEC. 12. PROVIDING ADDITIONAL MANAGEMENT FLEXI-**  
 17                               **BILITY TO FEDERAL PRISON INDUSTRIES OP-**  
 18                               **ERATIONS.**

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

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

22       *and*

23               (2) *by adding at the end the following new para-*  
 24       *graphs:*

7 SEC. 13. TRANSITIONAL PERSONNEL MANAGEMENT AU-  
8 THORITY.

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

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

22 SEC. 14. FEDERAL PRISON INDUSTRIES REPORT TO CON-  
23 GRESS.

•HR 1829 RH

1 **“§4127. Federal Prison Industries report to Congress**

2       “(a) *IN GENERAL.*—Pursuant to chapter 91 of title 31,  
3 *the board of directors of Federal Prison Industries shall sub-*  
4 *mit an annual report to Congress on the conduct of the busi-*  
5 *ness of the corporation during each fiscal year and the con-*  
6 *dition of its funds during the fiscal year.*

7       “(b) *CONTENTS OF REPORT.*—In addition to the mat-  
8 *ters required by section 9106 of title 31, and such other*  
9 *matters as the board considers appropriate, a report under*  
10 *subsection (a) shall include—*

11               “(1) *a statement of the amount of obligations*  
12 *issued under section 4129(a)(1) of this title during*  
13 *the fiscal year;*

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

16               “(3) *an analysis of—*

17                       “(A) *the corporation’s total sales for each*  
18 *specific product and type of service sold to the*  
19 *Federal agencies and the commercial market;*

20                       “(B) *the total purchases by each Federal*  
21 *agency of each specific product and type of serv-*  
22 *ice;*

23                       “(C) *the corporation’s share of such total*  
24 *Federal Government purchases by specific prod-*  
25 *uct and type of service; and*

1           “(D) the number and disposition of disputes  
2           submitted to the heads of the Federal depart-  
3           ments and agencies pursuant to section 4124(e)  
4           of this title;

5           “(4) an analysis of the inmate workforce that in-  
6           cludes—

7           “(A) the number of inmates employed;

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

11          “(C) the number and percentage of em-  
12          ployed inmates by the term of their incarcer-  
13          ation; and

14          “(D) the various hourly wages paid to in-  
15          mates employed with respect to the production of  
16          the various specific products and types of serv-  
17          ices authorized for production and sale to Fed-  
18          eral agencies and in the commercial market; and

19          “(5) data concerning employment obtained by  
20          former inmates upon release to determine whether the  
21          employment provided by Federal Prison Industries  
22          during incarceration provided such inmates with  
23          knowledge and skill in a trade or occupation that en-  
24          abled such former inmate to earn a livelihood upon  
25          release.



1       “(c) *PUBLIC AVAILABILITY.*—Copies of an annual re-  
 2   port under subsection (a) shall be made available to the  
 3   public at a price not exceeding the cost of printing the re-  
 4   port.”.

5   **SEC. 15. INDEPENDENT STUDY TO DETERMINE THE EF-**  
 6                   **FFECTS OF ELIMINATING THE FEDERAL PRIS-**  
 7                   **ON INDUSTRIES MANDATORY SOURCE AU-**  
 8                   **THORITY.**

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

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

19       (c) *SUBMISSION.*—Not later than June 30, 2004, the  
 20 Comptroller General shall submit the results of the study  
 21 to Congress, including any recommendations for legislation.

22   **SEC. 16. SENSE OF CONGRESS.**

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

1 **SEC. 17. DEFINITIONS.**

2 Chapter 307 of title 18, United States Code, is amend-  
3 ed by adding at the end the following new section:

4 **“§ 4131. Definitions**

5 “As used in this chapter—

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

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

20 “(3) the term ‘import-sensitive product’ means a  
21 product which, according to Department of Commerce  
22 data, has experienced competition from imports at an  
23 import to domestic production ratio of 25 percent or  
24 greater;

25 “(4) the term ‘labor-intensive manufacture’  
26 means a manufacturing activity in which the value

1       of inmate labor constitutes at least 10 percent of the  
 2       estimate unit cost to produce the item by Federal  
 3       Prison Industries;

4               “(5) the term ‘manufacture’ means the process of  
 5       fabricating from raw or prepared materials, so as to  
 6       impart to those materials new forms, qualities, prop-  
 7       erties, and combinations;

8               “(6) the term ‘reasonable share of the market’  
 9       means a share of the total purchases by the Federal  
 10       departments and agencies, as reported to the Federal  
 11       Procurement Data System for—

12               “(A) any specific product during the 3 pre-  
 13       ceding fiscal years, that does not exceed 20 per-  
 14       cent of the Federal market for the specific prod-  
 15       uct; and

16               “(B) any specific service during the 3 pre-  
 17       ceding fiscal years, that does not exceed 5 percent  
 18       of the Federal market for the specific service; and

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

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

24       (a) *FEDERAL ACQUISITION REGULATION.*—

1           (1) *PROPOSED REVISIONS.*—*Proposed revisions*  
2           *to the Governmentwide Federal Acquisition Regula-*  
3           *tion to implement the amendments made by this Act*  
4           *shall be published not later than 60 days after the*  
5           *date of the enactment of this Act and provide not less*  
6           *than 60 days for public comment.*

7           (2) *FINAL REGULATIONS.*—*Final regulations*  
8           *shall be published not later than 180 days after the*  
9           *date of the enactment of this Act and shall be effective*  
10          *on the date that is 30 days after the date of publica-*  
11          *tion.*

12          (3) *PUBLIC PARTICIPATION.*—*The proposed regu-*  
13          *lations required by subsection (a) and the final regu-*  
14          *lations required by subsection (b) shall afford an op-*  
15          *portunity for public participation in accordance with*  
16          *section 22 of the Office of Federal Procurement Policy*  
17          *Act (41 U.S.C. 418b).*

18          (b) *BOARD OF DIRECTORS.*—

19               (1) *IN GENERAL.*—*The Board of Directors of*  
20               *Federal Prison Industries shall issue regulations de-*  
21               *fining the terms specified in paragraph (2).*

22               (2) *TERMS TO BE DEFINED.*—*The Board of Di-*  
23               *rectors shall issue regulations for the following terms:*

24                       (A) *Prison-made product.*

25                       (B) *Prison-furnished service.*

1                   (C) *Specific product.*

2                   (D) *Specific service.*

3                   (3) *SCHEDULE FOR REGULATORY DEFINI-*  
4 *TIONS.—*

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

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

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

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

1           (B) *ENHANCED OUTREACH.*—*The Board of*  
 2           *Directors shall use means designed to most effec-*  
 3           *tively solicit public comment on proposed regula-*  
 4           *tions, procedures, and policies and to inform the*  
 5           *affected public of final regulations, procedures,*  
 6           *and policies.*

7           (C) *OPEN MEETING PROCESSES.*—*The*  
 8           *Board of Directors shall take all actions relating*  
 9           *to the adoption of regulations, operating proce-*  
 10          *dures, guidelines, and any other matter relating*  
 11          *to the governance and operation of Federal Pris-*  
 12          *on Industries based on deliberations and a re-*  
 13          *corded vote conducted during a meeting open to*  
 14          *the public, unless closed pursuant to section*  
 15          *552(b) of title 5, United States Code.*

16 **SEC. 19. RULES OF CONSTRUCTION.**

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

23          (b) *JAVITS-WAGNER-O'DAY ACT.*—*Nothing in this Act*  
 24          *is intended to modify the Javits-Wagner-O'Day Act (41*  
 25          *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 Act*  
 4 *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 Pris-*  
 8 *on Industries needed by a Federal department or agency*  
 9 *after the effective date of the final regulations issued pursu-*  
 10 *ant to section 18(a)(2), or after September 30, 2004, which-*  
 11 *ever is earlier.*

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

13 *The table of sections for chapter 307 of title 18, United*  
 14 *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 items:*

“4130. *Construction of provisions.*

“4131. *Definitions.*”.





**Union Calendar No. 165**

108TH CONGRESS  
1ST SESSION

**H. R. 1829**

**[Report No. 108–286]**

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## **A BILL**

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

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SEPTEMBER 25, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed