

112TH CONGRESS
1ST SESSION

H. R. 3634

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 12, 2011

Mr. HUIZENGA of Michigan (for himself, Mr. FRANK of Massachusetts, Mrs. MALONEY, Mr. SENSENBRENNER, Mr. MANZULLO, Mr. ROYCE, Mr. TIBERI, and Mr. OLVER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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

other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize alternative inmate work opportunities in support of non-profit organizations and other public service programs, and for other purposes.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Federal Prison Industries Competition in Contracting
 6 Act of 2011”.

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. Re-entry employment preparation through work-based training and apprenticeship.
- Sec. 12. Restructuring the Board of Directors.
- Sec. 13. Management matters.
- Sec. 14. Transitional personnel management authority.
- Sec. 15. Federal Prison Industries report to Congress.
- Sec. 16. Definitions.
- Sec. 17. Implementing regulations and procedures.
- Sec. 18. Rules of construction.
- Sec. 19. Effective date and applicability.
- Sec. 20. Clerical amendments.

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

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

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

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

14 “(b) SOLICITATION AND EVALUATION OF OFFERS
15 AND CONTRACT AWARDS.—(1)(A) If a procurement activ-
16 ity of a Federal department or agency has a requirement
17 for a specific product or service that is authorized to be
18 offered for sale by Federal Prison Industries, in accord-
19 ance with section 4122 of this title, and is listed in the
20 catalog referred to in subsection (g), the procurement ac-
21 tivity shall solicit an offer from Federal Prison Industries,
22 if the purchase is expected to be in excess of the micro-
23 purchase threshold (as defined by section 32(f) of the Of-
24 fice of Federal Procurement Policy Act (41 U.S.C.
25 428(f))).

1 “(B) The requirements of subparagraph (A) shall
2 also apply to a procurement that a Federal department
3 or agency intends to meet by placing an order against a
4 contract maintained by the General Services Administra-
5 tion under the Multiple Award Schedule Contracts Pro-
6 gram.

7 “(C) Federal Prison Industries, upon its request,
8 shall be listed on any Schedule, referred to in subpara-
9 graph (B), as offering products or services which Federal
10 Prison Industries believes to be comparable to those prod-
11 ucts and services being offered by commercial contractors
12 through the Multiple Award Schedule Contracts Program.

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

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

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

1 “(B) the contract award is necessary to main-
2 tain work opportunities otherwise unavailable at the
3 penal or correctional facility at which the contract is
4 to be performed to prevent circumstances that could
5 reasonably be expected to significantly endanger the
6 safe and effective administration of such facility.

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

11 “(A) the specific product or service to be fur-
12 nished will meet the requirements of the procure-
13 ment activity (including any applicable
14 prequalification requirements and all specified com-
15 mercial or governmental standards pertaining to
16 quality, testing, safety, serviceability, and warran-
17 ties);

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

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

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

24 “(A) supported by specific findings by the war-
25 den of the penal or correctional institution at which

1 a Federal Prison Industries workshop is scheduled
2 to perform the contract;

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

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

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

18 “(7) A contract award may be made to Federal Pris-
19 on Industries using other than competitive procedures if
20 such product or service is only available from Federal
21 Prison Industries and the contract may be awarded under
22 the authority of section 2304(c)(1) of title 10 or section
23 303(e) of the Federal Property and Administrative Serv-
24 ices Act of 1949 (41 U.S.C. 253(e)(1)), as may be applica-
25 ble, and pursuant to the justification and approval re-

1 requirements relating to such noncompetitive procurements
2 specified by law and the Governmentwide Federal Acquisi-
3 tion Regulation.

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

7 “(9) A solicitation for a contract shall first be made
8 to Federal Prison Industries using other than competitive
9 procedures if the product or service to be acquired would
10 otherwise be furnished by a contractor performing the
11 work outside of the United States.

12 “(c) OFFERS FROM FEDERAL PRISON INDUS-
13 TRIES.—(1) A timely offer received from Federal Prison
14 Industries to furnish a product or service to a Federal de-
15 partment or agency shall be considered for award without
16 limitation as to the dollar value of the proposed purchase,
17 unless the contract opportunity has been reserved for com-
18 petition exclusively among small business concerns pursu-
19 ant to section 15(a) of the Small Business Act (15 U.S.C.
20 644(a)) and its implementing regulations.

21 “(2)(A) Any offer made by Federal Prison Industries
22 to furnish a product or service may exclude from the of-
23 fered price the following:

24 “(i) The costs related to security of the facili-
25 ties at which the contract will be performed.

1 “(ii) The costs of educating and training the
2 prison work force performing the contract.

3 “(iii) Excess capital costs of machinery and ex-
4 cess inventories used within a prison environment
5 that are the result of the unique environment of
6 prison life.

7 “(iv) Other costs of performing the contract re-
8 sulting from the unique environment of prison facili-
9 ties.

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

15 “(e) FINALITY OF CONTRACTING OFFICER’S DECI-
16 SION.—(1) A decision by a contracting officer regarding
17 the award of a contract to Federal Prison Industries or
18 relating to the performance of such contract shall be final,
19 unless reversed on appeal pursuant to paragraph (2) or
20 (3).

21 “(2)(A) The Chief Operating Officer of Federal Pris-
22 on Industries may protest a decision by a contracting offi-
23 cer not to award a contract to Federal Prison Industries
24 pursuant to subsection (b)(4), in accordance with section

1 33.103, (Protests to the agency) of the Federal Acquisi-
2 tion Regulation (48 CFR part 33.103).

3 “(B) In the event of an adverse decision of a protest
4 filed pursuant to subparagraph (A), the Assistant Attor-
5 ney General for Administration may request a reconsider-
6 ation of such adverse decision by the head of the Federal
7 agency or department, which shall be considered de novo
8 and the decision issued by such agency head on a non-
9 delegable basis. Such decision upon reconsideration by the
10 agency head shall be final.

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

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

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

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

1 eral Procurement Policy Act (41 U.S.C. 405(d)(4))) in the
 2 same manner as it reports to such System any acquisition
 3 in an amount in excess of the simplified acquisition thresh-
 4 old (as defined by section 4(11) of the Office of Federal
 5 Procurement Policy Act (41 U.S.C. 403(11))).

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

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

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

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

21 (1) by redesignating paragraph (6) as para-
 22 graph (13); and

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

1 “(4)(A) Federal Prison Industries is authorized to
2 offer a new specific product or furnish a new specific serv-
3 ice in response to a competitive solicitation or other pur-
4 chase request issued by a Federal department or agency.
5 No subsequent offering of such product or service may be
6 made by Federal Prison Industries until the board of di-
7 rectors has approved the offering for sale of such new spe-
8 cific product or new specific service, in conformance with
9 the requirements of paragraphs (5) through (9).

10 “(B) Federal Prison Industries may produce a prod-
11 uct or furnish a service in excess of the authorized level
12 of production for such product or service, in response to
13 an order placed pursuant to an existing contract with a
14 Federal department or agency, if the agency’s need for
15 the product or service is of such an urgency that it would
16 justify the use of procedures other than competitive proce-
17 dures pursuant to section 2304(c)(2) of title 10 or section
18 303(c)(2) of the Federal Property and Administrative
19 Services Act of 1949 (41 U.S.C. 253(c)(2)), as may be
20 applicable.

21 “(5) A decision to authorize Federal Prison Indus-
22 tries to offer a new specific product or specific service or
23 to expand the production of an existing product or service
24 for sale to the Federal Government shall be made by its
25 board of directors in conformance with the requirements

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

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

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

1 istration of the contract shall be conducted by one of the
2 entities referenced in clause (ii) as an independent execu-
3 tive agent for the board of directors. Maximum consider-
4 ation shall be given to any proposed statement of work
5 furnished by the Chief Operating Officer of Federal Prison
6 Industries.

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

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

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

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

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

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

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

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

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

10 “(vii) the projected growth or decline in the de-
11 mand of the Federal Government for the specific
12 product 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
16 and private vendors; and

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

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

1 specific product or continued sale of a previously author-
2 ized product unless—

3 “(I) the product to be furnished is a prison-
4 made 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 de-
21 scribed, without giving prior notice to such persons
22 or class 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
13 of the Federal Acquisition Regulation (48 CFR part
14 2.101), as in effect on June 1, 2010, including the repair,
15 alteration, or maintenance of real property in being.

16 “(7) To provide further opportunities for participa-
17 tion 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
25 approval of the proposal, which notice shall offer to

1 furnish copies of the analysis required by paragraph
2 (6) and shall solicit comment on the analysis;

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

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

18 “(9) Based on the comments received on the initial
19 expansion 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 pro-
24 posal shall reflect the analysis required by paragraph

1 (6)(C) and be subject to the public comment requirements
2 of paragraph (7).

3 “(10) 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
7 respect to such proposal, during a meeting that is open
8 to the public, unless closed pursuant to section 552(b) of
9 title 5.

10 “(11) In conformance with the requirements of para-
11 graph (10) of this subsection, the board of directors
12 may—

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

16 “(B) authorize the production of a new specific
17 product or the furnishing of a new specific service
18 for 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 two-thirds of
5 the appointed members of the board.”.

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

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

20 (b) **PREFERENTIAL SOURCE STATUS.**—Subject to
21 the limitations of subsection (d), a contract award shall
22 be made on a noncompetitive basis to Federal Prison In-
23 dustries if the contracting officer for the procurement ac-
24 tivity determines that—

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

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

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

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

21 (d) PERFORMANCE OF CONTRACTUAL OBLIGA-
22 TIONS.—

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

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

8 (e) LIMITATIONS ON USE OF AUTHORITY.—

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

14 (A) 90 percent in fiscal year 2012;

15 (B) 85 percent in fiscal year 2013;

16 (C) 70 percent in fiscal year 2014;

17 (D) 55 percent in fiscal year 2015; and

18 (E) 40 percent in fiscal year 2016.

19 (2) SALES WITHIN VARIOUS BUSINESS SEC-
20 TORS.—Use of the authority provided by subsections
21 (b) and (c) shall not result in sales by Federal Pris-
22 on Industries to the Government that are in excess
23 of its total sales during the base year for each busi-
24 ness sector.

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

7 (4) CHANGES IN DESIGN SPECIFICATIONS.—If a
8 buying agency directs a change to the design speci-
9 fication for a specific product, the costs associated
10 with the implementation of such specification change
11 by Federal Prison Industries shall not be considered
12 for the purposes of computing sales by Federal Pris-
13 on Industries for the purposes of paragraphs (2) and
14 (3).

15 (f) ADDITIONAL AUTHORITY TO SUSTAIN INMATE
16 EMPLOYMENT.—During the period specified in subsection
17 (g), the authority of section 4122(b)(11)(C)(ii) of title 18,
18 United States Code (as added by section 3), may be used
19 by the Board to sustain inmate employment.

20 (g) DURATION OF AUTHORITY.—The preferential
21 contracting authorities authorized by subsection (b) may
22 not be used on or after October 1, 2015, and become effec-
23 tive on the effective date of the final regulations issued
24 pursuant to section 17.

1 (h) DEFINITIONS.—For the purposes of this sec-
2 tion—

3 (1) the term “base period” means the total
4 sales of Federal Prison Industries during the period
5 October 1, 2009, and September 30, 2010 (Fiscal
6 Year 2010);

7 (2) the term “business sectors” means the
8 seven product/service business groups identified in
9 the 2004 Federal Prison Industries annual report as
10 the Clothing and Textiles Business Group, the Elec-
11 tronics Business Group, the Fleet Management and
12 Vehicular Components Business Group, the Indus-
13 trial Products Business Group, the Office Furniture
14 Business Group, the Recycling Activities Business
15 Group, and the Services Business Group; and

16 (3) the term “fair and reasonable price” shall
17 be given the same meaning as, and be determined
18 pursuant to, part 15.8 of the Federal Acquisition
19 Regulation (48 CFR 15.8).

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

1 of the limitation imposed by such subsection for the fol-
2 lowing fiscal year.

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

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

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

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

22 **“SEC. 318. PRODUCTS OF FEDERAL PRISON INDUSTRIES:**
23 **PROCEDURAL REQUIREMENTS.**

24 “(a) MARKET RESEARCH.—Before purchasing a
25 product listed in the latest edition of the Federal Prison

1 Industries catalog under section 4124(g) of title 18,
2 United States Code, the head of an executive agency shall
3 conduct market research to determine whether the Federal
4 Prison Industries product is comparable to products avail-
5 able from the private sector that best meet the executive
6 agency’s needs in terms of price, quality, and time of deliv-
7 ery.

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

19 “(c) IMPLEMENTATION BY HEAD OF EXECUTIVE
20 AGENCY.—The head of an executive agency shall ensure
21 that—

22 “(1) the executive agency does not purchase a
23 Federal Prison Industries product or service unless
24 a contracting officer of the agency determines that
25 the product or service is comparable to products or

1 services available from the private sector that best
2 meet the agency’s needs in terms of price, quality,
3 and time of delivery; and

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

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

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

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

1 “(B) a contract specification requiring the con-
2 tractor to use specific products or services (or class-
3 es of products or services) offered by Federal Prison
4 Industries in the performance of the contract; or

5 “(C) any contract modification directing the use
6 of products or services of Federal Prison Industries
7 in the performance of the contract.

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

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

15 “(1) any data that is classified;

16 “(2) any geographic data regarding the location
17 of—

18 “(A) surface and subsurface infrastructure
19 providing communications or water or electrical
20 power distribution;

21 “(B) pipelines for the distribution of nat-
22 ural gas, bulk petroleum products, or other
23 commodities; or

24 “(C) other utilities; or

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

6 “(g) DEFINITIONS.—In this section:

7 “(1) The term ‘competitive procedures’ has the
8 meaning given such term in section 4(5) of the Of-
9 fice of Federal Procurement Policy Act (41 U.S.C.
10 403(5)).

11 “(2) The term ‘market research’ means obtain-
12 ing specific information about the price, quality, and
13 time of delivery of products available in the private
14 sector through a variety of means, which may in-
15 clude—

16 “(A) contacting knowledgeable individuals
17 in government and industry;

18 “(B) interactive communication among in-
19 dustry, acquisition personnel, and customers;
20 and

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

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

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

14 (b) LIMITATIONS ON USE.—Federal Prison Indus-
15 tries is prohibited from being a subcontractor or supplier
16 at any tier if—

17 (1) the product or service is to be acquired by
18 a Federal department or agency pursuant to section
19 3 of the Javits-Wagner-O’Day Act (41 U.S.C. 48);
20 or

21 (2) the product to be acquired by the Federal
22 department or agency is subject to section 2533a of
23 title 10, United States Code.

24 (c) COMMERCIAL SALES PROHIBITED.—The author-
25 ity provided by subsection (a) shall not result, either di-
26 rectly or indirectly, in the sale in the commercial market

1 of a product or service resulting from the labor of Federal
2 inmate workers in violation of section 1761(a) of title 18,
3 United States Code. A Federal contractor (or subcon-
4 tractor at any tier) using Federal Prison Industries as a
5 subcontractor or supplier in furnishing a commercial prod-
6 uct pursuant to a Federal contract shall implement appro-
7 priate management procedures to prevent introducing an
8 inmate-produced product into the commercial market.

9 (d) PROHIBITIONS ON MANDATING SUBCON-
10 TRACTING WITH FEDERAL PRISON INDUSTRIES.—Except
11 as authorized under the Federal Acquisition Regulation,
12 the use of Federal Prison Industries as a subcontractor
13 or supplier of products or provider of services shall not
14 be imposed upon prospective or actual Federal prime con-
15 tractors or a subcontractors at any tier by means of—

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

19 (2) specifications requiring the contractor to
20 use specific products or services (or classes of prod-
21 ucts or services) offered by Federal Prison Indus-
22 tries in the performance of the contract;

23 (3) any contract modification directing the use
24 of Federal Prison Industries, its products or serv-
25 ices; or

1 (4) any other means.

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

3 Section 4122(b) of title 18, United States Code (as
4 amended by section 3 of this Act), is further amended by
5 adding after paragraph (11) a new paragraph (12) as fol-
6 lows:

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

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

23 “(C) The Board of Directors of Federal Prison In-
24 dustries shall—

1 “(i) not later than September 30, 2012, in-
2 crease the maximum wage rate for inmates per-
3 forming work for or through Federal Prison Indus-
4 tries to an amount equal to 50 percent of the min-
5 imum wage prescribed by section 6(a)(1) of the Fair
6 Labor Standards Act of 1938 (29 U.S.C.
7 206(a)(1)); and

8 “(ii) not later than September 30, 2017, in-
9 crease such maximum wage rate to an amount equal
10 to such minimum wage.

11 “(D) 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
22 family pursuant to statute, court order, or agree-
23 ment with the inmate;

1 “(v) allocations to a fund in the inmate’s name
2 to facilitate such inmate’s assimilation back into so-
3 ciety, 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 “(E) 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) and (c) by strik-
14 ing “goods, wares, or merchandise manufactured, pro-
15 duced, or mined” each place it appears and inserting
16 “products manufactured, services furnished, or minerals
17 mined”.

18 (b) COMPLETION OF EXISTING AGREEMENTS.—Any
19 prisoner work program operated by a prison or jail of a
20 State or local jurisdiction of a State which is providing
21 services for the commercial market through inmate labor
22 on October 1, 2010, may continue to provide such com-
23 mercial services until—

1 (1) the expiration date specified in the contract
2 or other agreement with a commercial partner on
3 October 1, 2010, or

4 (2) until September 30, 2015, if the prison
5 work program is directly furnishing the services to
6 the commercial market.

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

16 (d) EXISTING WORK OPPORTUNITIES FOR FEDERAL
17 INMATES.—Any private for-profit business entity having
18 an agreement with Federal Prison Industries in effect on
19 the date of enactment of this Act, under which Federal
20 inmates are furnishing services that are being introduced
21 into the commercial market, may continue to furnish such
22 services for the duration of the term of such agreement.

23 (e) ADDITIONAL AMENDMENT.—Section 1761 of title
24 18, United States Code, is further amended—

1 (1) by redesignating subsection (d) as sub-
2 section (e); and

3 (2) by inserting after subsection (c) the fol-
4 lowing new subsection:

5 “(d) This section shall not apply to services per-
6 formed as part of an inmate work program conducted by
7 a State or local government to disassemble, scrap, and re-
8 cycle products, other than electronic products, that would
9 otherwise be disposed of in a landfill. Recovered scrap
10 from such program may be sold.”.

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

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

15 **SEC. 9. RULES OF CONSTRUCTION RELATING TO CHAPTER**
16 **307.**

17 Chapter 307 of title 18, United States Code, is fur-
18 ther amended by adding at the end the following:

19 **“§ 4130. Construction of provisions**

20 “Nothing in this chapter shall be construed—

21 “(1) to establish an entitlement of any inmate
22 to—

23 “(A) employment in a Federal Prison In-
24 dustries facility; or

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

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

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

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

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

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

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

23 (A) in-prison assessments of inmates’
24 needs and aptitudes;

1 (B) a full range of educational opportuni-
2 ties;

3 (C) vocational training and apprentice-
4 ships; and

5 (D) comprehensive release-readiness prepa-
6 ration.

7 (3) AUTHORIZATION OF APPROPRIATIONS.—For
8 the purposes of carrying out the program established
9 by paragraph (1), \$75,000,000 is authorized for
10 each fiscal year after fiscal year 2011, to remain
11 available until expended. It is the sense of Congress
12 that Federal Prison Industries should use some of
13 its net earnings to accomplish the purposes of the
14 program.

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

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

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

23 (C) in at least 75 percent of all Federal
24 prisons not later than 6 years after such date
25 of enactment; and

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

3 (b) ADDITIONAL INMATE WORK OPPORTUNITIES
4 THROUGH PUBLIC SERVICE ACTIVITIES.—

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

8 **“§ 4124a. Additional inmate work opportunities**
9 **through public service activities**

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

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

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

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

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

6 “(c) INMATE WORK TRAINING ADMINISTRATOR.—

7 There is hereby established the position of Inmate Work
8 Training Administrator, who shall be responsible for fos-
9 tering the creation of alternative inmate work opportuni-
10 ties authorized by this section. The Administrator shall
11 be designated by the Chief Executive Officer of Federal
12 Prison Industries, with the approval of the Board of Di-
13 rectors, and be under the supervision of the Chief Oper-
14 ating Officer, but may directly report to the Board.

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

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

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

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

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

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

12 “(e) REPRESENTATIONS.—

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

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

22 “(B) the work would not be performed in
23 the United States but for the availability of the
24 inmate workers; and

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

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

11 “(A) no non-inmate employee (including
12 any person performing work activities for such
13 governmental entity pursuant to section 607 of
14 subchapter IV of the Social Security Act (42
15 U.S.C. 607)) of the eligible entity (or any affil-
16 iate of the entity) working in the United States
17 will have his or her job abolished or work hours
18 reduced as a result of the entity being author-
19 ized to utilize inmate workers; and

20 “(B) the work to be performed by the in-
21 mate workers will not supplant work currently
22 being performed in the United States by a con-
23 tractor of the eligible entity.

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

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

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

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

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

20 “(C) not approve an agreement that will
21 result in the displacement of non-inmate work-
22 ers contrary to the representations required by
23 subsection (e)(2) as determined by the Board or
24 by the Secretary of Labor (pursuant to sub-
25 section (i)); and

1 “(D) not approve an agreement that will
2 result, either directly or indirectly, in the pro-
3 duction of a new product or the furnishing of
4 a service for other than resale by an eligible en-
5 tity described in paragraph (1) or (2) of sub-
6 section (b) or donation.

7 “(g) WAGE RATES AND DEDUCTIONS FROM INMATE
8 WAGES.—

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

17 “(2) PAYMENT TO INMATE WORKER AND AU-
18 THORIZED DEDUCTIONS.—Wages shall be paid and
19 deductions taken pursuant to section
20 4122(b)(12)(D).

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

24 “(A) is participating voluntarily; and

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

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

11 “(i) ENFORCEMENT OF PROTECTIONS FOR NON-IN-
12 MATE WORKERS.—

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

24 “(2) DURING PERFORMANCE.—

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

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

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

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

1 (2) AUTHORIZATION OF APPROPRIATION.—

2 There is authorized to be appropriated \$5,000,000
3 for each of the fiscal years 2012 through 2016 for
4 the purposes of paying the wages of inmates and
5 otherwise undertaking the maximum number of
6 agreements with eligible entities pursuant to section
7 4124a of title 18, United States Code, as added by
8 paragraph (1).

9 (3) SENSE OF CONGRESS.—For purposes of
10 sections 4124a and 4124b of title 18, United States
11 Code, as added by sections 10(b) and 11, respec-
12 tively, it is the sense of Congress that an inmate
13 training wage that is at least 50 percent of the min-
14 imum wage prescribed pursuant to section 6(a)(1) of
15 the Fair Labor Standards Act of 1938 (29 U.S.C.
16 206(a)(1)) will facilitate successful achievement of
17 the goals of the work-based training and apprentice-
18 ship program authorized under such section 4124a.

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

21 (1) PROPOSALS FOR DONATION PROGRAMS.—

22 The Chief Operating Officer of Federal Prison In-
23 dustries shall develop and present to the Board of
24 Directors of Federal Prison Industries proposals to
25 have Federal Prison Industries donate products and

1 services to eligible entities that provide goods or
2 services to low-income individuals who would likely
3 otherwise have difficulty purchasing such products
4 or services in the commercial market.

5 (2) SCHEDULE FOR SUBMISSION AND CONSID-
6 ERATION OF DONATION PROGRAMS.—

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

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

22 (C) OTHER PROPOSALS.—In addition to
23 proposals submitted by the Chief Operating Of-
24 ficer, the Board of Directors may, from time to

1 time, consider proposals presented by prospec-
2 tive eligible entities.

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

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

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

17 (4) AUTHORIZATION OF APPROPRIATIONS.—

18 There are authorized to be appropriated \$7,000,000
19 for each of the fiscal years 2012 through 2016 for
20 the purposes of paying the wages of inmates and
21 otherwise carrying out programs of the type de-
22 scribed in paragraph (1).

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

1 (1) DEMONSTRATION PROGRAM AUTHORIZED.—

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

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

1 (i) conducted during a period of three
2 consecutive fiscal years, commencing dur-
3 ing fiscal year 2012;

4 (ii) conducted at 12 Federal correc-
5 tional institutions; and

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

9 (C) REPORT ON RESULTS OF PROGRAM.—

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

18 (2) AUTHORIZATION OF APPROPRIATIONS.—

19 There is authorized to be appropriated \$3,000,000
20 in each of the three fiscal years after fiscal year
21 2011, to remain available until expended, for the
22 purposes of conducting the demonstration program
23 authorized by subsection (a).

24 (e) PRERELEASE EMPLOYMENT ASSISTANCE.—

1 (1) IN GENERAL.—The Director of the Federal
2 Bureau of Prisons shall, to the maximum extent
3 practicable, afford to inmates opportunities to par-
4 ticipate in programs and activities designed to help
5 prepare such inmates to obtain employment upon re-
6 lease.

7 (2) PRERELEASE EMPLOYMENT PLACEMENT
8 ASSISTANCE.—Such prerelease employment place-
9 ment assistance required by subsection (a) shall in-
10 clude—

11 (A) training in the preparation of resumes
12 and job applications;

13 (B) training in interviewing skills;

14 (C) training and assistance in job search
15 techniques;

16 (D) conduct of job fairs; and

17 (E) such other methods deemed appro-
18 priate by the Director.

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

1 **SEC. 11. RE-ENTRY EMPLOYMENT PREPARATION THROUGH**
2 **WORK-BASED TRAINING AND APPRENTICE-**
3 **SHIP.**

4 (a) IN GENERAL.—Chapter 307 of title 18, United
5 States Code, is further amended by inserting after section
6 4124a, as added by section 10(b), the following new sec-
7 tion:

8 **“§ 4124b. Re-entry employment preparation through**
9 **work-based training and apprenticeship**

10 “(a) PARTICIPATION AUTHORIZED.—A private for-
11 profit business entity shall be an eligible entity for partici-
12 pation in the program authorized by section 4124a of this
13 title, if such participation conforms with the requirements
14 and limitations of this section.

15 “(b) REQUIREMENTS RELATING TO PRODUCTS AND
16 SERVICES.—A private for-profit business entity is eligible
17 for such participation if such business entity proposes to
18 train participating inmates, pursuant to subsection (c), by
19 producing a product or performing a service, if such prod-
20 uct or service is of a type for which there is no production
21 or performance within the United States by noninmate
22 workers.

23 “(c) REQUIREMENTS RELATING TO TRAINING.—

24 “(1) IN GENERAL.—For purposes of this sec-
25 tion, the training of participating inmates shall be
26 work-based training that provides to a participating

1 inmate apprenticeship training or a functionally
2 equivalent structured program that combines hands-
3 on work experience with conceptual understanding of
4 the work being performed. Other inmates with reg-
5 ular work assignments within Federal Prison Indus-
6 tries may be assigned to support the program.

7 “(2) DOCUMENTATION OF PROGRAM PARTICIPA-
8 TION.—

9 “(A) Each inmate who successfully com-
10 pletes participation in training undertaken pur-
11 suant to this section shall be provided a certifi-
12 cate or other written document memorializing
13 such successful completion, providing a market-
14 able summary of the skills learned and an over-
15 all assessment of performance.

16 “(B) Copies of such documents shall be
17 furnished to perspective employers upon the re-
18 quest of the participant for a period of not less
19 than 24 months from the date of such partici-
20 pant’s release from incarceration.

21 “(3) DOCUMENTS REQUIRED FOR EMPLOY-
22 MENT.—The Federal Bureau of Prisons, in coopera-
23 tion with a business entity providing an inmate
24 work-based training at the time of his or her sched-
25 uled release, shall make every reasonable effort to

1 help the inmate timely obtain such documentation
2 (including a State government-issued photo identi-
3 fication card) as a person may be required to pro-
4 vide to a prospective employer, after such person
5 completes an Employment Eligibility Verification
6 (ICE Form I-9).

7 “(d) WAGE RATES.—

8 “(1) IN GENERAL.—Business entities partici-
9 pating in the program authorized by subsection (a)
10 shall propose wages for inmates participating in the
11 program at rates not less than the inmate training
12 wage promulgated pursuant to section 17(c) of the
13 Federal Prison Industries Competition in Con-
14 tracting Act of 2011.

15 “(2) INMATE TRAINING WAGE.—Not more than
16 30 days after the date of enactment of this section,
17 the Board of Directors of Federal Prison Industries
18 shall request the Secretary of Labor to promulgate
19 an inmate training wage pursuant to section 14(a)
20 of the Fair Labor Standards Act of 1938 (29 U.S.C.
21 214(a)).

22 “(e) SUPPORT FOR OTHER RELEASE PREPARATION
23 PROGRAMS.—In addition to the matters listed in section
24 4124a(d) of this title, a proposal for an agreement re-
25 ferred to in such section submitted by an eligible business

1 entity shall specify an amount of any supplemental fund-
2 ing, specified as a per-capita amount for each inmate par-
3 ticipating pursuant to the agreement, that the business
4 entity will provide for the purpose of supporting remedial,
5 vocational, and other release preparation programs for
6 other nonparticipating inmates.

7 “(f) ADDITIONAL STANDARDS APPLICABLE.—In con-
8 sidering a proposed agreement pursuant to section
9 4124a(f)(1) of this title, the Board of Directors shall—

10 “(1) give preference to an agreement that pro-
11 poses—

12 “(A) work-based training opportunities
13 that provide the participating inmate the best
14 prospects for obtaining employment paying a
15 livable wage upon release;

16 “(B) the highest per-capita amount pursu-
17 ant to subsection (e) relating to providing fi-
18 nancial support for release preparation for
19 other inmates; and

20 “(C) the highest inmate wage rates;

21 “(2) not approve any agreement with respect to
22 furnishing services of the type described in section
23 4122(b)(6)(D)(iii) of this title;

24 “(3) not approve any agreement with respect to
25 furnishing construction services described in section

1 4122(b)(6)(D)(iv) of this title, unless to be per-
2 formed within a Federal correctional institution;

3 “(4) not approve an agreement that does not
4 meet the standards of subsection (b); and

5 “(5) request a determination from the Depart-
6 ment of Commerce (and such other executive branch
7 entities as may be appropriate), regarding whether a
8 product or service is of the type being produced or
9 performed in the United States by noninmate work-
10 ers, whenever the Board determines that such an ad-
11 ditional assessment is warranted, including upon a
12 request from an interested party presenting informa-
13 tion that the Board deems to warrant such addi-
14 tional assessment prior to the Board’s consideration
15 of the proposed agreement.

16 “(g) LIMITATIONS ON THE USE OF THE AUTHOR-
17 ITY.—

18 “(1) NO SALES BY FEDERAL PRISON INDUS-
19 TRIES.—Federal Prison Industries is prohibited
20 from directly offering for commercial sale products
21 produced or services furnished by Federal inmates,
22 including through any form of electronic commerce.

23 “(2) DURATION.—

1 “(A) No proposed agreement pursuant to
2 this subsection may be approved by the Board
3 of Directors after September 30, 2020.

4 “(B) Performance of all such agreements
5 shall be concluded prior to October 1, 2025.”.

6 (b) REVIEW AND REPORTING BY THE ATTORNEY
7 GENERAL.—Not less than biannually, beginning in fiscal
8 year 2012, the Attorney General shall meet in person
9 jointly with the Chairman of the Board of Directors and
10 the Chief Executive Officer of Federal Prison Industries
11 to review the progress that Federal Prison Industries is
12 making in maximizing the use of the authority provided
13 by sections 4124a and 4124b of title 18, United States
14 Code. The Attorney General shall provide annually a writ-
15 ten report to the Committees on the Judiciary and Appro-
16 priations of the House of Representatives and the Senate
17 addressing such progress by Federal Prison Industries.

18 (c) GAO ASSESSMENT OF WORK-BASED TRAINING
19 PROGRAM.—

20 (1) IN GENERAL.—The Comptroller General of
21 the United States shall undertake an on-going as-
22 sessment of the authority granted by section 4124b
23 of title 18, United States Code, as added by sub-
24 section (a).

1 (2) MATTERS TO BE ASSESSED.—In addition to
2 such other matters as the Comptroller General
3 deems appropriate, the assessment shall include—

4 (A) efforts to recruit private for-profit
5 business entities to participate;

6 (B) the quality of training provided to in-
7 mates;

8 (C) the amounts and types of products and
9 services that have been produced incident to the
10 work-based training programs;

11 (D) the types of worksite arrangement that
12 encourage business concerns to voluntarily enter
13 into such partnerships;

14 (E) the extent and manner of the partici-
15 pation of supervisory, quality assurance, and
16 other management employees of the partici-
17 pating business entity in worksites within cor-
18 rectional facilities of various levels of security;

19 (F) the extent of the facilities, utilities,
20 equipment, and personnel (other than security
21 personnel) provided by the host correctional
22 agency, and extent to which such resources are
23 provided on a nonreimbursable basis;

24 (G) the rates of wages paid to inmate
25 workers and the effect that such wage rates

1 have on willingness of business entities to par-
2 ticipate;

3 (H) any complaints filed regarding the dis-
4 placement of noninmate workers or of inmate
5 workers being paid less than required wages
6 and the disposition of those complaints;

7 (I) any sanctions recommended relating to
8 displacement of noninmate workers or payment
9 of less than the required wages, and the dis-
10 position of such proposed sanctions;

11 (J) the extent to which the new authority
12 provided additional inmate work opportunities
13 assisting the Bureau of Prisons in attaining its
14 objective of providing 25 percent of the work-
15 eligible inmates with work opportunities within
16 Federal Prison Industries;

17 (K) measures of any adverse impacts of
18 implementation of the new authority on busi-
19 ness concerns using noninmate workers that are
20 engaged in providing similar types of products
21 and services in direct competition; and

22 (L) a compilation of data relating work op-
23 portunities for Federal inmates with work as-
24 signments with Federal Prison Industries pro-
25 vided by—

1 (i) sales to Federal agencies pursuant
2 to the status of Federal Prison Industries
3 as a mandatory source of supply during
4 the period fiscal year 1990 through fiscal
5 year 2011;

6 (ii) sales to Federal agencies of serv-
7 ices, both through non-competitive inter-
8 agency transfers and as a result of direct
9 competition from private-sector offerors
10 during the period fiscal year 1990 though
11 fiscal year 2011;

12 (iii) performance as a subcontractor to
13 a Federal prime contractor or Federal sub-
14 contractor at a higher tier beginning in fis-
15 cal year 1990;

16 (iv) introduction of inmate-furnished
17 services into the commercial market, begin-
18 ning in the second quarter of fiscal year
19 1998;

20 (v) alternative inmate work opportuni-
21 ties, beginning in fiscal year 2012, pro-
22 vided by agreements with—

23 (I) non-profit organizations, pur-
24 suant to section 4124a(b)(1) of title

1 18, United States Code, as added by
2 section 10(b), and section 10(c);

3 (II) religious organizations, pur-
4 suant to section 4124a(b)(2) of title
5 18, United States Code;

6 (III) units of local governments,
7 school districts, or other special pur-
8 pose districts, pursuant to section
9 4124a(b)(3) of title 18, United States
10 Code;

11 (IV) work-based Employment
12 Preparation Programs for Federal in-
13 mates, pursuant to section 4124b of
14 title 18, United States Code, as added
15 by section 11; or

16 (V) other means.

17 (3) OPPORTUNITY FOR PUBLIC COMMENT.—

18 The Comptroller General shall provide an oppor-
19 tunity for public comment on the proposed scope
20 and methodology for the assessment required by
21 paragraph (1), making such modifications in re-
22 sponse to such comments as he deems appropriate.

23 (4) REPORTS AND RECOMMENDATIONS.—

24 (A) IN GENERAL.—The Comptroller Gen-
25 eral shall submit to the Congress in accordance

1 with this subsection two interim reports and a
2 final report of the assessment of implementa-
3 tion of the new authority, including such rec-
4 ommendations as the Comptroller General may
5 deem appropriate.

6 (B) INTERIM REPORTS.—The two interim
7 reports shall encompass the assessment of the
8 implementation of the new authority—

9 (i) from the effective date of the au-
10 thority through the end of fiscal year
11 2014; and

12 (ii) from the effective date of the au-
13 thority through the end of fiscal year
14 2017.

15 (C) FINAL REPORT.—The final report
16 shall assess the implementation of the new au-
17 thority from the effective date of the authority
18 through the end of fiscal year 2018.

19 (D) SUBMISSION TO CONGRESS.—The
20 Comptroller General shall submit the reports
21 required by this paragraph within 6 months
22 after the end of the fiscal years referred to in
23 subparagraphs (B) and (C).

1 (d) CONFORMING AMENDMENT.—Section 1761 of
2 title 18, United States Code, as amended by section 7,
3 is further amended—

4 (1) by redesignating subsection (e) as sub-
5 section (f); and

6 (2) inserting after subsection (d) the following
7 new subsection:

8 “(e) This section shall not apply to products produced
9 or services furnished with inmate labor incidental to the
10 work-based training program authorized pursuant to sec-
11 tion 4124b of this title.”.

12 **SEC. 12. RESTRUCTURING THE BOARD OF DIRECTORS.**

13 (a) IN GENERAL.—Section 4121 of title 18, United
14 States Code, is amended to read as follows:

15 **“§ 4121. Federal Prison Industries; Board of Direc-
16 tors: executive management**

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

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

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

18 “(3) Each member shall be appointed for a term of
19 5 years, except that of members first appointed—

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

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

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

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

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

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

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

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

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

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

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

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

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

13 “(B) Upon request of the Chairperson of the Board,
14 a Federal agency may detail a Federal Government em-
15 ployee to the Board without reimbursement. Such detail
16 shall be without interruption or loss of civil service status
17 or privilege.

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

21 “(c) The Director of the Bureau of Prisons shall
22 serve as Chief Executive Officer of the Corporation. The
23 Director shall designate a person to serve as Chief Oper-
24 ating Officer of the Corporation.”.

1 (b) CONTINUED GOVERNANCE.—The members of the
2 Board of Directors serving on the date of enactment of
3 this Act, and the person selected by them as Chairman,
4 shall continue to exercise the duties and responsibilities
5 of the Board until the earlier of—

6 (1) the date on which the President has ap-
7 pointed at least 6 members of the Board and des-
8 ignated a new Chairman, pursuant to section 4121
9 of title 18, United States Code (as added by section
10 12(a) of this Act); or

11 (2) the date that is 365 days after the date of
12 enactment of this Act.

13 **SEC. 13. MANAGEMENT MATTERS.**

14 (a) ADDITIONAL FLEXIBILITIES.—Section
15 4122(b)(3) of title 18, United States Code, is amended—

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

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

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

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

1 (b) COST ACCOUNTING SYSTEM.—

2 (1) ESTABLISHMENT.—Federal Prison Indus-
3 tries shall establish a cost accounting system that
4 meets the requirements of part 30 (Cost Accounting
5 Standards Administration) of the Federal Acquisi-
6 tion Regulation (48 CFR part 30). The compliance
7 of the cost accounting system with such standards
8 shall be annually verified as part of the independent
9 audit of Federal Prison Industries, Inc., pursuant to
10 section 9106(b) of title 31, United States Code.

11 (2) APPLICATION OF RELATED PROVISION.—
12 Section 4124(c)(2) of title 18, United States Code,
13 shall apply when Federal Prison Industries has been
14 found to have a complaint cost accounting system
15 pursuant to paragraph (1).

16 **SEC. 14. TRANSITIONAL PERSONNEL MANAGEMENT AU-**
17 **THORITY.**

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

23 (1) eligible for appointment (or reappointment)
24 in the competitive service pursuant to title 5, United
25 States Code;

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

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

6 **SEC. 15. FEDERAL PRISON INDUSTRIES REPORT TO CON-**
7 **GRESS.**

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

10 **“§ 4127. Federal Prison Industries report to Congress**

11 “(a) IN GENERAL.—Pursuant to chapter 91 of title
12 31, the board of directors of Federal Prison Industries
13 shall submit an annual report to Congress on the conduct
14 of the business of the corporation during each fiscal year
15 and the condition of its funds during the fiscal year.

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

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

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

25 “(3) an analysis of—

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

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

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

10 “(D) the number and disposition of dis-
11 putes submitted to the heads of the Federal de-
12 partments and agencies pursuant to section
13 4124(e) of this title;

14 “(4) an allocation of the profits of the corpora-
15 tion, both gross and net, to—

16 “(A) educational, training, release-prepara-
17 tion opportunities for inmates;

18 “(B) opening new factories; and

19 “(C) improving the productivity and com-
20 petitiveness of existing factories;

21 “(5) an analysis of the inmate workforce that
22 includes—

23 “(A) the number of inmates employed;

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

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

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

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

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

1 **SEC. 16. DEFINITIONS.**

2 Chapter 307 of title 18, United States Code, is
3 amended 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
9 as 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,
13 with respect to a specific product, the fair market
14 price of the product within the meaning of section
15 15(a) of the Small Business Act (15 U.S.C. 644(a)),
16 at the time that the contract is to be awarded,
17 verified through appropriate price analysis or cost
18 analysis, including any costs relating to transpor-
19 tation or the furnishing of any ancillary services;

20 “(3) the term ‘import-sensitive product’ means
21 a product which, according to Department of Com-
22 merce data, has experienced competition from im-
23 ports at an import to domestic production ratio of
24 25 percent or 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
5 of fabricating from raw or prepared materials, so as
6 to impart to those materials new forms, qualities,
7 properties, 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 Fed-
11 eral 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
15 product; and

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

20 “(7) the term ‘services’ has the meaning given
21 the term ‘service contract’ by section 37.101 of the
22 Federal Acquisition Regulation (48 CFR 36.102), as
23 in effect on July 1, 2010.”.

24 **SEC. 17. IMPLEMENTING REGULATIONS AND PROCEDURES.**

25 (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
6 less 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 effec-
10 tive on the date that is 30 days after the date of
11 publication.

12 (3) PUBLIC PARTICIPATION.—The proposed
13 regulations required by subsection (a) and the final
14 regulations required by subsection (b) shall afford
15 an opportunity for public participation in accordance
16 with section 22 of the Office of Federal Procurement
17 Policy 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
24 terms:

25 (A) Prison-made product.

1 (B) Prison-furnished service.

2 (C) Specific product.

3 (D) Specific service.

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

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

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

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

19 (A) ADMINISTRATIVE PROCEDURE ACT.—
20 Regulations issued by the Board of Directors
21 shall be subject to notice and comment rule-
22 making pursuant to section 553 of title 5,
23 United States Code. Unless determined wholly
24 impracticable or unnecessary by the Board of

1 Directors, the public shall be afforded 60 days
2 for comment on proposed regulations.

3 (B) ENHANCED OUTREACH.—The Board
4 of Directors shall use means designed to most
5 effectively solicit public comment on proposed
6 regulations, procedures, and policies and to in-
7 form the affected public of final regulations,
8 procedures, and policies.

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

18 (c) SECRETARY OF LABOR.—

19 (1) SCHEDULE FOR REGULATORY ACTION.—
20 Upon receipt of a request from the Federal Prison
21 Industries Board of Directors, pursuant to section
22 11(d)(2), to establish an inmate training wage pur-
23 suant to section 14(a) of the Fair Labor Standards
24 Act of 1938 (29 U.S.C. 214(a)), the Secretary of

1 Labor, in consultation with the Attorney General,
2 shall issue—

3 (A) an advanced notice of proposed rule-
4 making within 60 days;

5 (B) an interim regulation with concurrent
6 request for public comments within 180 days;
7 and

8 (C) a final regulation within 365 days.

9 (2) ALTERNATIVE TO TIMELY ISSUANCE.—In
10 the event that the Secretary of Labor fails to issue
11 an interim inmate training wage by the date re-
12 quired by paragraph (1)(B), the Federal Prison In-
13 dustries Board of Directors may prescribe an in-
14 terim inmate training wage, which shall be in an
15 amount not less than 50 percent of the amount of
16 the minimum wage prescribed pursuant to section
17 6(a)(1) of such Act (29 U.S.C. 206(a)(1)).

18 (3) CONTINUED USE OF INTERIM INMATE
19 TRAINING WAGE.—

20 (A) The interim inmate training wage
21 issued pursuant to paragraph (1)(B) or pre-
22 scribed under paragraph (2) shall remain in ef-
23 fect until the effective date of a final regulation,
24 issued pursuant to paragraph (1)(C).

1 (B) An eligible entity having an approved
2 agreement with Federal Prison Industries pur-
3 suant to section 4124b of title 18, United
4 States Code, may continue to pay participating
5 inmates at the wages prescribed in the agree-
6 ment for the duration of the agreement, if those
7 wages comply with the standards of the interim
8 inmate training wage issued pursuant to para-
9 graph (1)(B) or prescribed under paragraph
10 (2).

11 (4) EXISTING AGREEMENTS WITH NONCON-
12 FORMING WAGES.—Any for-profit business concern
13 having an agreement with Federal Prison Industries
14 in effect on the date of enactment of this Act, under
15 which Federal inmates are furnishing services that
16 are being introduced into the commercial market,
17 may continue to pay wages at rates specified in the
18 agreement for the duration of the term of such
19 agreement.

20 **SEC. 18. RULES OF CONSTRUCTION.**

21 (a) AGENCY BID PROTESTS.—Subsection (e) of sec-
22 tion 4124 of title 18, United States Code, as amended by
23 section 2, is not intended to alter any rights of any offeror
24 other than Federal Prison Industries to file a bid protest

1 in accordance with other law or regulation in effect on the
2 date of the enactment of this Act.

3 (b) JAVITS-WAGNER-O'DAY ACT.—Nothing in this
4 Act is intended to modify the Javits-Wagner-O'Day Act
5 (41 U.S.C. 46 et seq.).

6 **SEC. 19. EFFECTIVE DATE AND APPLICABILITY.**

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

10 (b) APPLICABILITY.—Section 4124 of title 18, United
11 States Code, as amended by section 2, shall apply to any
12 requirement for a product or service offered by Federal
13 Prison Industries needed by a Federal department or
14 agency after the effective date of the final regulations
15 issued pursuant to section 17(a)(2), or after September
16 30, 2012, whichever is earlier.

17 **SEC. 20. CLERICAL AMENDMENTS.**

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

20 (1) by amending the item relating to section
21 4121 to read as follows:

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

22 (2) by amending the item relating to section
23 4124 to read as follows:

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

1 (3) by inserting after the item relating to sec-
2 tion 4124 the following new items:

“4124a. Additional inmate work opportunities through public service activities.
“4124b. Re-entry employment preparation through work-based training and ap-
 prenticeship.”;

3 (4) by amending the item relating to section
4 4127 to read as follows:

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

5 and

6 (5) by adding at the end the following new
7 items:

“4130. Construction of provisions.
“4131. Definitions.”.

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