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THE FEDERAL PRISON INDUSTRY'S EFFECTS ON THE U.S. ECONOMY AND THE SMALL BUSINESS ENVIRONMENT

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT & GOVERNMENT PROGRAMS

AND THE

SUBCOMMITTEE ON TAX, FINANCE & EXPORTS

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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THE FEDERAL PRISON INDUSTRY'S EFFECTS ON THE U.S. ECONOMY AND THE SMALL BUSINESS ENVIRONMENT

WEDNESDAY, OCTOBER 1, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT, AND GOVERNMENT,
SUBCOMMITTEE ON SUBCOMMITTEE ON TAX, FINANCE, AND EXPORTS,
Washington, D.C.

The Subcommittees met, pursuant to call, at 2:10 p.m. in Room 2360, Rayburn House Office Building, Hon. Todd Akin [Chairman of the Subcommittee on Workforce, Empowerment, and Government Programs], presiding.

Present from Subcommittee on Tax, Finance, and Exports: Representatives Toomey, Chabot, Musgrave, Beauprez, Millender-McDonald, Ballance, and Majette

Present from Subcommittee on Workforce, Empowerment, and Government Programs: Representatives Akin and McCotter

Chairman AKIN. The meeting will come to order. Good afternoon. I would like to begin by thanking my friend and colleague, Congressman Pat Toomey, who chairs the Subcommittee on Tax, Finance, and Exports, for joining me in holding this joint hearing. I know the Federal Prison Industries is of great interest to him, and, like many other Members, he has concerns about the impact of FPI or Federal Prison Industries on small business in general.

FPI was established 69 years ago with the following goals. First of all, employing and providing skills and training to inmates, keeping them constructively occupied, as well as producing market quality goods for sale to the federal government, and then in addition operating FPI in a self-sustaining manner, and then minimizing FPI's impact on private businesses and labor. While acknowledging these as admirable goals, the Committee is concerned as to how well FPI is achieving these goals, particularly whether or not FPI is minimizing its impact on private business and labor.

Congressman Pete Hoekstra of Michigan has recently proposed House Resolution 1829, the Federal Prison Industries Competition in Contracting Act, that would significantly change the way business is done at FPI. Congressman Hoekstra, thank you for joining us. I am grateful that you have agreed to testify before this Committee as to the merits of your bill.

I would also like to recognize Dr. Lappin recently became the CEO of Federal Prison Industries. Congratulations, Dr. Lappin. I look forward to hearing your testimony and that of the others who have been kind enough to join us here today.

Before we begin, however, I would like to give my other colleagues an opportunity for an opening statement, so with that I would go to Congressman Toomey if you would like.

[Mr. Akin's statement may be found in the appendix.]

Chairman TOOMEY. Thank you, Mr. Chairman, and thank you for joining me in this hearing. I do think this is a very important issue, and I look forward to examining the role of the Federal Prison Industries or FPI.

As most of us no doubt know, FPI was given a special kind of status in the government procurement process. I believe it is called mandatory source status, which essentially means that private sector competitors cannot compete against the Federal Prison Industry unless the FPI grants an exemption from what is essentially a monopoly.

It seems to me that there is substantial evidence that this policy has been harmful to American industry, American workers and a variety of industries, especially the textile, furniture manufacturing and a number of others. I think at times it actually means people are closing their doors, people who are trying to run a small business and trying to make ends meet for their family.

In 2001, we made a substantive change in how this policy is carried out with respect to the Defense Department, and I hope we will have some discussion about that change and other changes, and I hope we will contemplate what has been happening in recent years where Federal Prison Industry sales have grown quite significantly; at least that is my understanding.

I, too, look forward to the testimony of my colleague from Michigan, Mr. Hoekstra, who has been really a champion on this issue for a number of years now and who was really the leading force on getting the changes in the DOD and who has co-sponsored a bill, H.R. 1829, which is the Federal Prison Industries Competition in Contracting Act of 2003 and which I am a co-sponsor.

I should say as a general matter I do not object to work programs for prisoners, but I do believe that law abiding, hardworking citizens who are just trying to support their families ought to at least get at equal shot at government contracts and not be frozen out in favor of an industry that employs exclusively convicted prisoners.

I am looking forward to the testimony of all the witnesses and a series of questions, and I thank the Chairman for conducting the hearing today.

[Mr. Toomey's statement may be found in the appendix.]

Chairman AKIN. Thank you very much. I also had opportunity for a couple of other opening statements. I do not know if Congressman Udall is here.

Mr. Carter, I understand you have a witness that you would like to introduce. Let us go ahead, and why do you not please introduce your witness. Then we will go ahead straight to Congressman Hoekstra.

Mr. CARTER. Thank you, Mr. Chairman. Chairman Akin, Chairman Toomey, I would like to thank you for holding this hearing

and for allowing my constituent, Rebecca Boenigk of Bryan, Texas, to testify on behalf of women-owned businesses who sell goods and services to the federal government.

Rebecca Boenigk co-founded Neutral Posture, Inc. with her mother in 1990 and has served as chief executive officer since 1996. Ms. Boenigk and her mother led Neutral Posture from a start-up company to a publicly held company in just nine years. She has 21 years of experience in research, development, design and manufacturing of ergonomic seating.

Ms. Boenigk serves on the Industry Advisory Board of the National Science Foundation, University Cooperative Research Center in Ergonomics at Texas A&M University, which is in my district. She also serves as a board member of the Center of Entrepreneurialship in the Mays Business School at Texas A&M University.

Ms. Boenigk is a founding member of Women Impacting Public Policy, which was founded to advocate for women business owners. She is the co-recipient of the Ernst and Young Entrepreneur of the Year award in manufacturing in Neutral Posture and has received numerous awards under her direction.

Ms. Boenigk's first priority is her family. Married 15 years to Bobby Boenigk, she has two children, Rachel, 13, and Ryan, 12. She leads company efforts in supporting local community organizations such as Still Creek Boys Ranch, the Childrens and Go Texan organization and is the chair of the Jody Moore Memorial Fund for Breast Cancer Research.

It is my honor to introduce Rebecca to the Committee. I believe her background and leadership will prove very useful to the Committee's oversight of Federal Prison Industries and opportunities of women-owned businesses to sell to the federal government.

I thank you for recognizing me, and I would ask to be excused for another hearing.

Chairman AKIN. Thank you, Judge.

Could you please have the nice gentlelady that you were introducing raise her hand so I know who we are talking about here? Okay. Thank you. Thank you, Judge.

Also, I believe we have another witness who is going to be introduced by Congressman Norwood. Is that correct?

Mr. NORWOOD. Yes, Mr. Chairman. Thank you very much for the opportunity, first of all, to have this hearing. As a co-sponsor of Mr. Hoekstra's bill, I am encouraged by the fact that more of us in different districts are beginning to wake up and understand what this is doing to small businesses in our district, so thank you, Chairman Akin and Chairman Toomey, for having this meeting and allowing someone not on your Committee to attend.

I really appreciate the chance to introduce to all of you Angie McClure. Angie, please stand up. There you are way back in the back. She is going to lend her expertise to all of us today, as she did to me this past August as I spent a few hours in their plant in Cornelia, Georgia.

Ms. McClure has served as vice president of Habersham Metal Products Company in Cornelia, Georgia, since 1995. Prior to joining Habersham Metal, Ms. McClure served as a law clerk for a Chief Magistrate Judge in the state court system of Georgia for seven

years. She holds a Bachelor's degree in both Public Administration and Criminal Justice from Brenau University in Gainesville, Georgia, and a Master's in Business Administration also from Brenau University.

Mr. Chairman, as I said, I had the opportunity to tour the Habersham Metal factory in August and learn of the positive impact that Mr. Hoekstra's Federal Prison Industries Competition in Contracting Act bill will do. I was already a co-sponsor on the congressman's bill, but spending those few hours in this plant with Ms. McClure really brought home to me the difficulty that smaller businesses are having in competing in a world where labor is not very expensive for those who are building similar products.

This not only affects Habersham Metal in Georgia, but it also affects 600 and something other companies in Georgia. We are all going to have a little meeting at Georgia Tech in November and discuss this problem, but I am a very strong supporter of this legislation.

I thank and congratulate both of you chairmen for having this hearing, and I am particularly grateful that you have given me the opportunity to come introduce my constituent to you.

With that I will yield back, Mr. Chairman.

Chairman AKIN. Thank you, Congressman Norwood. I had a chance to be down in Atlanta a couple weeks back, and it is a wonderful place. I appreciate your doing the honors.

We are going to have two different line-up of witnesses. The first one is Congressman Hoekstra, who is, I might add, a gentleman who needs no introduction. However, there is someone who did want to introduce him here, and we are going to go to Congressman Toomey now for that introduction.

Chairman TOOMEY. Thank you, Chairman. Yes, I did indeed want to introduce my colleague. Just for the record, Peter Hoekstra is in his sixth term representing the Second Congressional District of Michigan. He serves on three Committees, Education and Workforce, Transportation and Infrastructure, and the Select Committee on Intelligence.

In addition to all the work he has done for years on the Federal Prison Industries issue, he is an outspoken advocate and expert on a variety of education issues, workforce issues, and he is a great champion of fiscal discipline and fiscal responsibility.

Congressman Hoekstra has worked tirelessly on Federal Prison Industry reform. I admire his work on this effort, his dedication to his constituents. I am looking forward to hearing his discussion of his bill, which I indicated earlier I am proud to be a co-sponsor of, and I should point out that this is a bill that at this point has become the product of a great deal of bipartisan work and a great deal of input, so I thank you for joining us today and look forward to your testimony,

Chairman AKIN. Thank you.

Congressman, if you would proceed then, please? Do you have a statement, I believe, to start with?

Mr. HOEKSTRA. I am full of statements today.

Chairman AKIN. Okay. Good. We will see if we can keep it to about five minutes or so worth of statements maybe. Thank you.

STATEMENT OF THE HONORABLE PETER HOEKSTRA, A REPRESENTATIVES IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. HOEKSTRA. Thank you. Thank you, Mr. Chairman, to both of the chairmen, for allowing me to talk about something that I do have a passion about. I have a passion about it because of the impact that it has had on people in my district and the kind of impact that it has had on small businesses and your constituents and others around the country.

FPI is able to derive and deprive small businesses from the opportunity to bid on over $500 million worth of business each and every year through the process that is called mandatory sourcing. Mandatory sourcing, very straightforward, means we bid—actually, we do not bid. We tell you to buy from us. We tell the federal government to buy from us, and no one else has the opportunity to bid for that work. It is rather unique.

I know that this is not a legislative hearing, but I am pleased to report that the Committee on the Judiciary has reported out H.R. 1829, which a number of you have sponsored. It is a bipartisan bill. Representative Barney Frank, Representative Mac Collins, Representatives Carolyn Maloney and Bernard Sanders of the House Judiciary Committee are all co-sponsors. John Conyers, the Ranking Democrat on Judiciary, is also a supporter of the bill.

This bill was reported out of Judiciary Committee on a strong bipartisan vote. The principal amendment seeking to weaken the bill was defeated on a bipartisan roll call of 19 to eight. The bill enjoys strong bipartisan support within the ranks of the House Committee on Small Business with 14 co-sponsors, led by the Committee's Chairman, Mr. Manzullo, and the Committee's Ranking Democratic Member, Ms. Velazquez. Like I said, we have worked on this for a number of years and have brought together one of the most unique coalitions I think in the House today.

The core objective of H.R. 1829 is the elimination of FPI status as a mandatory source to the various federal agencies. The bill requires FPI to compete for its federal contract opportunities rather than simply being able to take them as they can today. The elimination of FPI's mandatory source status will provide access to federal contracting opportunities now foreclosed.

FPI and other opponents of the elimination of FPI's mandatory source status are now trying to hide between the FPI stable of suppliers, suggesting that enactment of H.R. 1829 will hurt them. As with many of FPI's assertions, this one proves false.

With FPI operating as a prime contractor exercising its mandatory source status, an FPI supplier has a very preferential place in the federal procurement process. Remember what mandatory sources means in practical business terms. FPI, rather than the buying agency, determines whether FPI's offered product and delivery schedule meets the agency's mission needs.

FPI, rather than the buying agency, determines the reasonableness of FPI's offered price. FPI can demand its offered price provided that it does not exceed the highest price offered to the government for a comparable item. The highest price offered to the government.

No government purchases need to have been made at such price, and FPI determines comparability. To make a competitive purchase, the buying agency must actually obtain FPI's permission, a so-called waiver. As a former business person, I would like to be part of a team that can force its customers to make purchases from them. It gives me a guaranteed base of sales. Why would I want to relinquish such a preferred status? Why would suppliers to FPI want to give up that kind of preferred status?

However, from a public policy standpoint, FPI's mandatory source status is simply indefensible. By eliminating FPI's mandatory source status, H.R. 1829 merely provides access to those federal business opportunities for all, not just those who are FPI suppliers.

FPI's current suppliers will be free to win government business indirectly as a supplier to FPI, or they may choose to sell directly, something which many of them already do. As is the nature of the marketplace, business will be won based on their ability to best meet the federal agency's needs or, more accurately, the taxpayer's needs in terms of quality, delivery and price.

Many FPI suppliers have reputations of highly competitive quality performers. These folks, if they are quality supplier to FPI, can be quality suppliers, and this bill would allow them to compete for federal government business directly.

We will not decrease business opportunities available through purchases by federal agencies. H.R. 1829 eliminates FPI status as a mandatory source, not FPI's ability to compete. They are still free to compete.

There will be dire predictions regarding the impact of H.R. 1829 on FPI. Keep in mind that H.R. 1829 leaves in place a broad array of competitive advantages enjoyed by FPI. Proponents of H.R. 1829 like to say that the bill levels the playing field for small business. Many of us would like that kind of level playing field. More aptly, H.R. 1829 simply allows businesses, small and other than small, to simply get on the playing field for government contracts through the elimination of mandatory sources.

Inmate workers of FPI will continue to be paid at wage rates substantially less than the federal minimum wage prescribed by the Fair Labor Standards Act. Currently, FPI's highest wage is $1.15 per hour, with some being paid as low as 23 cents per hour. FPI wage rates, against which American firms and American workers are expected to compete, look to me to be modeled after the wage rates dictated by the Communist Government of China.

Chairman AKIN. Congressman, we are getting a little close on time. I like that Communist Government of China part. Is that good, or can you sort of summarize things at this point, do you think?

Mr. HOEKSTRA. It is awful tough, but let me just say I think three questions that need to be answered.

Chairman AKIN. Thank you.

Mr. HOEKSTRA. Thank you, Mr. Chairman. Thank you for your patience.

First, what can be done to more truly level the playing field when FPI competes for federal contracts against small business? For example, why should H.R. 1829 not require that FPI's bid price

be adjusted to reflect an inmate labor cost of at least the minimum wage rate required by the Fair Labor Standards Act.

I would respectfully ask that my constituents' questions should be asked today. I would be most interested in the response of the new director of the Federal Bureau of Prisons, who asserts that he is eager to reform FPI.

Second, why is FPI allowed to bid in a contract competition limited to competition among small businesses. One of the things that I have in my bill that some of the Members of this Committee have been critical of my bill on, and you may want to consider an amendment, but FPI is a business that is over $500 million, yet they have the authority to compete on small business set asides for the federal government.

Is that a reasonable position for us to take? That is something that we are going to take a look at in our bill as it comes to the floor.

The third question. After America has lost 2.7 million factory jobs over the last three years, is it defensible for FPI to be activating new factories at 17 new prisons to furnish more products under its indefensible mandatory source status?

Think about it. This is a manufacturing outfit that is going to build 17 new factories as identified in their annual report. Such expansions will probably make FPI the fastest growing manufacturing concern in America today. Can any of us think of a company that is building 17 new plants?

I would request that my full statement be inserted into the record. Thank you for your patience. If anyone has any questions, I would be more than willing to take them.

Thank you, Mr. Chairman.

[Mr. Hoekstra's statement may be found in the appendix.]

Chairman AKIN. Without objection.

I think before we go straight to questions I would like to offer our Ranking Member, Ms. Millender-McDonald, if you would like to have an opening statement?

Ms. MILLENDER-MCDONALD. Yes. Thank you so much, Mr. Chairman, and thank you and the other Chairman, my colleague, the Ranking Member, and myself for convening such an important hearing such as this.

I would like to agree with my dear friend and colleague, Mr. Hoekstra, in saying that we really do need to revisit the minimum wage of those inmates who are working on the various programs through FPI. We also need to level the playing field. I think it is so critical for that.

My statement says just that, Mr. Chairman; that the small businesses are struggling to receive the fair share of federal contracts. This is not just happening, so we need to look at that. My statement is so involved here I will not read this. I will just submit that for the record.

I thank you so much for convening this hearing, and I agree already with my colleague and friend, Mr. Hoekstra. He and I, I know when I first got here, went on Washington Journal together, so I have had some affinity for him since then to some limited degree.

Nevertheless, I do agree with him on our revisiting the competitiveness of the mandatory source by which FPI deals, the minimum wage by which they give to the inmates and the leveling of the playing field that needs to be. All of those things, in my opinion, need to be revisited.

Thank you so much.

Chairman AKIN. Thank you for your opening statement.

We have a few minutes to ask some questions of Congressman Hoekstra. Because of the fact that we have a number of other guests and will be having to ask questions of them, I would urge people if you have a burning question please indicate now, and we will go ahead and allow that questioning.

Ms. MILLENDER-MCDONALD. They are all burning, Mr. Chairman.

Chairman AKIN. They are all goods ones? I am going to forego asking questions right now.

Congressman, we will be inviting you to come up and join us here when we bring the second panel up.

Mr. HOEKSTRA. Thank you very much.

Chairman AKIN. Congressman Toomey?

Chairman TOOMEY. Thank you, Mr. Chairman. I do have a couple of questions for my colleague.

Mr. Hoekstra, you made the point that in fact it is the FPI that makes decisions rather than the agency about the products that they will buy, and I am wondering if you could elaborate on that?

What do you mean when you say it is the Federal Prison Industry that makes these decisions rather than the agency? That is my first question, and then I have another.

Mr. HOEKSTRA. It is very straightforward. If there was a product or a commodity that is manufactured by Federal Prison Industries, our federal agencies are required to go to Federal Prison Industries first as a supplier.

If for whatever reason a federal agency believes that Federal Prison Industries, the product that is provided by Federal Prison Industries, does not meet their needs they have to submit a request to Federal Prison Industries for a waiver that would then enable them to go to the private sector and do competitive bidding or go to GSA and go through the bidding process. FPI is the sole determiner as to whether their products meet the agency's needs or not.

Chairman TOOMEY. Let me follow up with some specifics. If an agency believes that something that the Federal Prison Industry manufactures is more expensive to obtain it through Federal Prison Industry or the quality is not up to the quality that they believe is available in the private sector or they think it is going to take longer to get to them than a private competitor could deliver it, are those criteria sufficient for the agency to say sorry, we are going elsewhere?

Mr. HOEKSTRA. The agency cannot determine that they will go elsewhere. They would have to put that in their waiver request.

Federal Prison Industries would then determine whether the product that they produce meets the quality, price or delivery schedule that the agency has outlined. Federal Prison Industries makes that determination, not the buying agency.

Chairman TOOMEY. So there is such a determination to be made, but it is made exclusively by the Federal Prison Industry?

Mr. HOEKSTRA. That is correct.

Chairman TOOMEY. Your bill, does it put the Federal Prison Industry out of business?

Mr. HOEKSTRA. Our bill removes mandatory—it does a number of things, but the key component as it affects Federal Prison Industries is that it removes mandatory sourcing.

Federal Prison Industries would be eligible to bid for the products that are procured by federal agencies and as a qualified bidder. You know, if they win the bid they get the business. If they do not, then it goes somewhere else.

Chairman TOOMEY. And is there anything in your bill that in any way diminishes the enormous competitive advantage that they have by virtue of their very low-cost labor?

Mr. HOEKSTRA. No. Well, they might argue, but the things that they continue to have. We do not address the wage issue. We do not address the issue that their facilities are provided to them by the Bureau of Prisons. We do not address the issue that they receive a $20 million interest free line of credit, so most of the advantage, if not all of the advantages, other than mandatory sourcing, are maintained.

Chairman TOOMEY. Okay.

Ms. MILLENDER-MCDONALD. Will the gentleman yield?

Chairman TOOMEY. I would be happy to yield. I will yield back the balance of my time.

Ms. MILLENDER-MCDONALD. Mr. Chairman?

Chairman AKIN. I would be happy to recognize you.

Ms. MILLENDER-MCDONALD. I just wanted to mention that Mr. Hoekstra did mention that there should be some amendments or there could be amendments, and I propose that one of those amendments would be minimum wage that I would perhaps submit to be a part of this because it is important that those who are doing the service should get better than just a low wage that they are presently getting to do this service while they are inmates.

Mr. HOEKSTRA. I thank you very much. Like I have said, as we have gone through the bill that is something that has come up, and I think the other thing that has come up based on feedback from the Members of the Small Business Committee is why are we letting a company that is this large bid on small business set asides? It makes no sense.

Chairman AKIN. Thank you, Congressman.

Are there additional questions? If not, Congressman, if you would care to join us?

Mr. BEAUPREZ. Mr. Chairman, might I?

Chairman AKIN. Yes. I am sorry.

Mr. BEAUPREZ. Congressman, if I might? I would like to pursue a little bit of that competitive advantages line of thinking.

You highlighted a couple. I have just written down through your comments the wage issue certainly being one. Would it be fair to say another one would be operating overhead because you spoke about the facilities basically I guess being furnished.

Mr. HOEKSTRA. Yes.

Mr. BEAUPREZ. Access to capital. What else might there be?

Mr. HOEKSTRA. Inmate worker benefits. No contribution for social security or unemployment compensation, no employee benefits paid, factory space furnished by the host prison, equipment is free, free access to a broad range of equipment that is excess to other federal agencies.

Utilities are furnished by the host prisons. Taxes. They are exempt from state and federal income state tax, gross receipts tax, excise tax and state and local sales tax on purchase. Insurance claims for personal injury or property damage are paid for by the U.S. Government. Workplace and health safety. They are exempt for OSHA, EPA and those types of things, and then the access to capita.

A lot of the things that are a significant cost to your small business you can just cross right off, you know, the expense side of the ledger for Federal Prison Industries.

Mr. BEAUPREZ. I am not looking at one, but I seem to recall that pretty well covers the waterfront on my old P&L report on the expense side.

Mr. HOEKSTRA. Yes.

Mr. BEAUPREZ. Thank you.

In the spirit of full disclosure, Mr. Chairman, I think I ought to mention that I, too, am a co-sponsor of this legislation.

Chairman AKIN. Thank you. Thank you for your comments.

Mr. HOEKSTRA. Mr. Chairman, thank you very much. I do have lots more answers, but since there are no more questions I will join you up front.

Chairman AKIN. Thank you, Congressman.

Mr. HOEKSTRA. Thank you.

Chairman AKIN. If I could ask the second panel of witnesses to please come forward now?

As the panel is being seated, I would just call attention to the Committee. We are fortunate today to have with us batting in the first position on our second panel the Honorable Harley Lappin. He is the chief executive officer of the Federal Prison Industries and the director of the Bureau of Prisons.

Harley has agreed to stick with us here through the statements of the different witnesses, and then he is going to take questions first, but we are going to excuse him when we are done with those questions. If we keep things moving along, hopefully we will be able to honor your schedule. We thank you for joining us.

I will do that as an introduction to our first witness, who is again Harley Lappin. He is the director of the Bureau of Prisons and chief executive officer of Federal Prison Industries.

Our second witness is—let me make sure I have them in the right order. No, I do not. I am going to have to be on my toes here. Okay. Our second lineup is Christopher Fay, and that is Milton Eisenhower Foundation. You are the director of that, if I am not mistaken, Christopher.

Mr. FAY. Yes, one of the directors.

Chairman AKIN. One of the directors. Thank you very much.

Our third is Mr. John Palatiello. Is that correct? U.S. Chamber of Commerce, Chairman of Procurement & Privatization Council.

Our other two witnesses have already been introduced, Angie McClure on my right and Rebecca is it Boenigk?

Ms. BOENIGK. Boenigk.

Chairman AKIN. Boenigk. Okay. Thank you, Rebecca.

What we are going to do is just go ahead and let each of you make a five minute statement or so, opening statements, and then we will open things up for questions.

Director, please?

STATEMENT OF THE HONORABLE HARLEY G. LAPPIN, CHIEF EXECUTIVE OFFICER, FEDERAL PRISON INDUSTRIES, AND DIRECTOR, FEDERAL BOARD OF PRISONS

Mr. LAPPIN. Good afternoon, Chairman Akin, Chairman Toomey, Members of both Subcommittees. I appreciate the opportunity to appear before you today and discuss Federal Prison Industry. I also appreciate your willingness to accommodate my schedule, allowing me to testify and then answer a few questions and then leave. Thank you very much.

As director of Bureau of Prisons, I also serve as the chief executive officer of Federal Prison Industry. Although I have been in my current position for less than six months, I have served in the Bureau of Prisons for 18 years in a variety of capacities, including warden at two institutions and regional director.

I am not involved in the daily operational details of the FPI program, but have firsthand knowledge of the impact this program has on reducing crime and in making prisons safer to manage and less expensive to operate. Today, there are more than 172,000 federal inmates. The federal inmate population has increased by more than 600 percent since 1980, and it is projected to increase to more than 215,000 by 2010.

The Bureau of Prisons is sensitive to the concerns of the Members of Congress, as well as business and labor representatives, that any negative impact of the FPI program on the private sector should be minimized. We do not oppose balanced and practical reform of FPI. Consistent with the Administration's position, any reform should simultaneously provide federal agencies greater procurement flexibility, increased access by private sector companies to government purchase and ensure the Attorney General maintains adequate work and opportunities for inmates incarcerated in federal prisons.

The Bureau has no control over the number of inmates who come to the prison, their length of stay or the background they bring with them. We do, however, have influence over their chances of success upon reintegrated into society. The Bureau of Justice Statistics has reported recently that recidivism among state prison systems increased over the recent 10-year period. During approximately the same timeframe, the federal prison system recidivism rate declined.

We know, based on rigorous research, that the positive impact is due to inmate programs that include work assignments, drug treatment, education, vocational training and others, all of which provide inmates with skills and cognitive abilities to function successfully when they return to their community.

Federal Prison Industry plays an integral role in reducing recidivism. Inmates who work in FPI are 24 percent less likely to commit crimes and 14 percent more likely to be employed for as long

as 12 years after release as compared to similar inmates who do not have FPI experience.

The impact of the FPI program is particularly significant because FPI focuses on employing more serious offenders. In fact, 76 percent of the inmate population workers have been convicted of drug offenses, weapons and other violent offenses. These inmates are at higher risk for recidivism because they typically have extensive and violent backgrounds, poor educational accomplishments and limited work experience.

FPI is a crime reducing program that is financially self-sustaining and receives no appropriated funds for its operation. Although inmates work for FPI to produce products and perform services, the real output of the FPI program is inmates who are more likely to return to society as law abiding taxpayers because of the improved job skills, training and work experience.

Last year, FPI spent more than a half a billion dollars on purchasing raw materials, supplies, services and equipment from private sector vendors. The amount represents 74 percent of the entire revenue earned by FPI programs, and more than 62 percent of this money went to small businesses.

Efforts to reform the FPI program in a balanced manner are already underway. We are already working to reduce FPI's program reliance on mandatory source, reduce production in office furniture and textiles and emphasize new areas for inmate jobs. The FPI board of directors recently adopted several resolutions to ensure the FPI program does not place an undue burden on private industry and small business.

The collective effect of these and other programs has been a decline in the FPI program sales and earnings. As a result, the FPI program has had to close or downsize 13 factories and reduce inmate program participation in FPI by about 2,000 inmates. If FPI is not able to maintain its viability as a correctional program or is not able to maintain adequate levels of inmate enrollment, there will be negative ripple effect.

First and foremost, if fewer and fewer inmates develop the fundamental skills of the workplace, recidivism will increase at a substantial cost to taxpayers and victims of crime. Second, there may be disruption to small businesses that currently depend on FPI program for their continued business success, and, third, opportunities to provide restitution to victims of crime will decrease

I recognize that this is a complex public policy issue with no easy answer. I look forward to working with the Administration, Members of the Subcommittee and others to achieve a practical, balanced, cost effective reform of Federal Prison Industry.

Chairman Akin and Chairman Toomey, again I appreciate the opportunity to testify before you today and look forward to your questions. Thank you.

[Mr. Lappin's statement may be found in the appendix.]

Chairman AKIN. Thank you, Director. You hit it exactly within a few seconds. That is pretty good timing.

We are just going to proceed across with our witnesses. Mr. Fay, if you would proceed?

STATEMENT OF CHRISTOPHER FAY, DIRECTOR, MILTON S. EISENHOWER FOUNDATION

Mr. FAY. I, too, would like to thank the panel and the Committee to allow me to testify and thank Chairman Akin and Chairman Toomey, thank the staff, Joe Hart and Tom Bazos, for inviting me. This is a very great honor to appear before you.

Ms. MILLENDER-MCDONALD. And also the Ranking Member.

Mr. FAY. And the Ranking Member. I am sorry.

Ms. MILLENDER-MCDONALD. Thank you.

Mr. FAY. Yes. I come to the subject of Prison Industries from a slightly different angle. I am now the director of the Milton Eisenhower Foundation, which is a private sector continuation of the Kerner Commission and Violence Commission started by President Johnson.

Incidentally, I am going to give you a condensed version of this, but I would appreciate it if my whole testimony is entered into the record.

Chairman AKIN. Without objection.

Mr. FAY. Thank you. My work with the Foundation is to replicate model programs for ex-offenders, and so one of the things I would like to address before this Committee is the impact Prison Industries has on the ability of the offender when he or she is released to actually make it on the outside. It is my contention that the design of Prison Industries in the current form does not adequately prepare the inmate to find employment.

Prior to coming to the Eisenhower Foundation, I ran a program in New York City for 10 years called Broadway Community, which worked with homeless people and drug addicts, and for the most part the people I worked with had come out of prison, federal prisons, and had failed in their efforts to make it on the outside. They were not able to actually use those skills and find adequate work.

I would like to point out even in the literature that Prison Industries puts out that those rudimentary and fundamental work skills tend to be things like showing up on time, working under authority, being able to focus on a task. Very important things, but if you are going to work with a person for a number of years that are incarcerated for a number of years, surely we can get on to more high level skills. It also points out in the literature that most of the best work goes to lifers, people who are not going to come out and look for another job.

In my present work, I am affiliated with the Delancey Street Foundation, which is probably the world's most famous and most successful program for ex-offenders located in San Francisco and four other facilities around the country.

They actually take the kind of people that he was just describing, really hard core individuals who are facing in some cases life terms, and within the average of four years these individuals do learn multiple life skills, and their record of success with their graduates is 80 percent. In other words, 80 percent of people who are hard core felons, hard core drug users, actually develop marketable skills, go on and become productive members of society.

I say that because we know that it can work. There is at least one outstanding model in this country that demonstrates that you can train people in work skills so they do not go back to prison.

I would recommend that any discussion on the subject of Prison Industries, whether how it affects small business or anything else, we also keep in mind the impact it has on the offender.

In the long run, we will have a much more humane society if we try and refocus the work of Prison Industries to really train the inmates. That becomes the primary focus rather than the making of money.

In the end, we will have a lower number of people in prisons, much less recidivism, and we will all be proud to see that the prisons have really had an impact on the human lives, our own brothers and sisters.

Thank you very much.

[Mr. Fay's statement may be found in the appendix.]

Chairman AKIN. Thank you.

Mr. Palatiello?

STATEMENT OF JOHN PALATIELLO, CHAIRMAN, PROCUREMENT & PRIVATIZATION COUNSEL, U.S. CHAMBER OF COMMERCE

Mr. PALATIELLO. Thank you, Mr. Chairman, both Chairmen and Ranking Members of the Subcommittees. I am John Palatiello. I am executive director of MAPS, a trade association of mapping spatial data and geographic information services firm, and I also chair the Privatization and Procurement Council of the U.S. Chamber of Commerce. It is my honor to appear on behalf of the Chamber this afternoon.

As you know, the Chamber is the world's largest business federation, representing more than 3,000,000 businesses and organizations. What you may not know is that over 96 percent of the Chamber's members are small businesses with no more than 100 employees, and 71 percent of our members have 10 or fewer employees.

Reform of Federal Prison Industries has for a number of years been at the top of the Chambers' government procurement platform. I commend the Subcommittee for its dedication to this issue and the interest of holding hearings on FPI competition and its effect on small business.

I will not spend a lot of time on the history of FPI. I think you all are very familiar with that, and so I will get right to the point. FPI is a non-competitive monopoly, and, in our view, monopolies have no place in a free market economy. When you remove competition from the equation, you are left with higher prices, lower quality of service and lower productivity. Non-market based practices also stifle innovation and reduce the availability of goods and services, and that is exactly what we have in federal procurement today because of the presence of Federal Prison Industries.

F.P.I. as a federal program, as a federal agency, puts the government in a role of being the opposing team to small business rather than being the umpire refereeing disputes among competitors in the marketplace. If you ask the question is there a level playing field for small business, the answer is absolutely not.

Today, FPI produces over 300 products and services. In 2002 alone, their sales totaled nearly $700 million, making it the thirty-ninth largest federal contractor. It makes it a formidable compet-

itor to large business and has an even greater advantage over small business that is virtually insurmountable.

The Small Business Committee has dedicated a great deal of time in recent months to the loss of jobs in the United States and the slow growth of jobs in our economy today, both in the manufacturing sector and the services sector, particularly with regard to the loss of jobs offshore.

Think for a moment of the double whammy that small businesses face. The competition that we are receiving from low wage jobs offshore and the competition we face right here at home from low wage, terribly advantaged positions in Federal Prison Industries. We believe that private firms and small businesses should be allowed to compete fairly and on a level playing field with FPI for federal contracts, plain and simple, by eliminating the mandate that government agencies purchase from FPI.

You have already heard about the waiver process that is virtually non-existent. FPI gets to be, and pardon me for mixing my sports and judicial metaphors, but they get to be judge, jury and prosecutor. They decide what they sell, when they sell, how much they sell it for and who they sell it to. The buying agency has no decision making in the process.

Again, as Mr. Hoekstra indicated, there is a waiver process. The waiver is granted by FPI. They have to voluntarily agree not to sell. There is no right of an agency to say FPI does not deliver what we are looking for and, therefore, we want to go to the open marketplace. That option is not at the disposal of federal agencies today.

We also believe that FPI is abusing its statutory authority with the way it aggressively and I think in a predatory manner enters a variety of markets, including the services area. FPI is not content to be a monopoly in sales to the federal government. It now believes it has the authority to sell in the commercial marketplace.

When you look at the list of advantages that Mr. Hoekstra mentioned, and I can go over them as well, it is an extraordinary advantage to allow Prison Industries to sell services in the commercial marketplace. This Congress and this government has spoken emphatically about prison made products for China, and yet we are going to condone allowing prison services in the open marketplace here in the United States? There is no authority for that, but they have granted that to themselves, again the predatory nature of the way they operate.

We strongly support Mr. Hoekstra's bill. We are unmindful of the need to manage and rehabilitate inmates and the bill strikes a balance by providing new opportunities on where we can use prison employees. I will be glad to discuss that in more detail under questioning.

Let me make one final point very quickly. We have a coalition that includes the Chamber of Commerce and the AFL–CIO. We have AFSCME and NFIB in our coalition supporting this bill. Our coalition includes not only small businesses that are adversely impacted by unfair competition, but our coalition includes those suppliers that are selling whole products or commodities to FPI, and we support Mr. Hoekstra's bill.

We do not think this would have an adverse impact on those suppliers. We think it would have a positive impact on all businesses

Thank you very much, Mr. Chairman.

[Mr. Palatiello's statement may be found in the appendix.]

Chairman AKIN. Thank you. Thank you for your comments.

We will next go to I think it is Ms. Boenigk.

Ms. BOENIGK. Yes, sir.

STATEMENT OF REBECCA BOENIGK, CEO AND CHAIRPERSON OF THE BOARD, NEUTRAL POSTURE, INC., BRYAN, TX, ON BEHALF OF WOMEN IMPACTING PUBLIC POLICY (WIPP)

Ms. BOENIGK. Good afternoon, Mr. Chairman and Members of the Committee. My name is Rebecca Boenigk. I am the CEO and chairman of the board of Neutral Posture. We are located in Bryan, Texas.

I am here today appearing on behalf of Women Impacting Public Policy, a national bipartisan public policy organization advocating on behalf of women-owned businesses representing 460,000 members. I am also a member of the Women Presidents Organization and a member of WBENC, which is the Women Business Enterprise National Council.

Neutral Posture is certified as a woman-owned business. We were certified by WBENC. The company was founded in 1989 by my mother, Jaye Congleton, and myself. We have been in business for 15 years. We have 90 employees at our Texas facility, and we have another 12 employees at our facility just outside of Toronto in Cambridge. We opened up a Canadian facility last year.

I want to commend you for holding this meeting. It is very important to us that there is reform in Federal Prison Industries because it is so unfair when we have to go and try and compete with them. Again, basically because they have a monopoly it is not really competition.

Approximately 25 percent of my business comes from the federal government. We have had a government schedule contract for over 10 years, and we do manufacture ergonomic chairs and multi-purpose chairs, much more comfortable than the ones you are all sitting in right now.

About 75 percent of our income comes from the Neutral Posture line, which is the high end, task intensive ergonomic seating line. The chairs have contoured seats, which help reduce seated pressure. We have an inflatable air lumbar in the back rib. Our chairs have been proven to reduce injuries and to reduce workers' comp costs. There is no other chair that Prison Industries has that can compete with our high end line of seating.

The State of Washington, for example, used our chairs, and by using our chairs they reduced their injury rate by 60 percent and their workers' comp costs by 90 percent. That is pretty significant. Those savings cannot be passed on to a lot of the government agencies because the government agencies are required to buy from FPI instead of giving us the opportunity to help them reduce their injuries and their cost.

Because UNICOR or FPI is our competitor and they do not make a chair like ours, the chair that they have that is the closest to our chair, the highest end chair they have, is called the Freedom chair.

It sells to government agencies around $650. My chair that I offer has five more adjustments than that chair, and it sells for $536, so we are over $100 less, and we have a better product that is available in five days.

Although the government agencies would like to buy from us, they are told that they cannot. They are told that they have to go to FPI. Even though we have better price, better quality, a lot of research to back up our product and great lead times, we still do not have the opportunity.

We have estimated that over the last 10 years we have lost approximately $10 million in sales because of FPI because of situations where we have gone in and we have been told just up front that we are not even allowed to compete for the business.

Recently we went into San Francisco. There is a new federal building going up. Before we could even get our foot in the door, we were told there would be no waivers granted on that building. This is before they even knew what we had to offer. It was just said this is strictly a FPI/UNICOR building. There will be nothing put in this building that does not come from them.

The other part that really bothers me is that if we have an agency that wants to buy from us, they have to go and get this waiver. Again, because the waiver comes from FPI, they are few and far between.

In the last two years, because the industry as a whole has been down so much, we have not seen one waiver get granted for us in over two years. That is something that especially when they do not even have a competitive product for our chair, the fact that they will not grant a waiver because they do not want to lose any more business is just completely unacceptable to me.

The Subcommittee should also know that in some cases the chairs are not manufactured in the prisons at all. They are manufactured in the manufacturing facility of the subcontractor or major supplier, some of which are competitors of mine. They will send the chairs to the prisons, and they will have to put a screw here or a screw there, put them together again, and then they slap their label on them, and they are sent out.

This has just happened to us because of the State of Washington. We have held the State of Washington contract for eight years, and we were told that we would no longer be able to hold the contract unless we worked with the prisons, so now in order to sell to the State of Washington we have to make the chairs in Texas, completely assemble them, take them back apart, put them in boxes and send them to the state prison so that they can then put them back together, mark them up and sell them back to the state.

This is something that is happening all over the place. My option was to either work with the prison to do that or to lose the business altogether.

Also, with FPI's overhead I was just astonished to hear all of the things that you take into account because as a small business owner I have to pay all of those things. I mean, my health insurance alone is $600,000 a year just to provide health insurance for my employees. All of those things that you take into account, that is a tremendous advantage that they have from a price standpoint.

When you look at the fact that our chairs are competitively priced lower and we still have to cover all of those costs on our own, it is just amazing. I mean, this has got to be an incredibly profitable group to be able to sell the chairs at the prices that they sell and still not have any of that overhead that they have to cover.

Chairman AKIN. We are just about out of time here. It is not really fair for me to ask questions ahead, but do you have any really uncomfortable chairs for Committee Members who ask too many questions?

Ms. BOENIGK. Sure. I can do that. We can build them uncomfortable, but we do not normally.

Ms. MILLENDER-MCDONALD. Get a lot of them, would you, Mr. Chairman?

Ms. BOENIGK. I do want to say one more thing.

Chairman AKIN. Sure.

Ms. BOENIGK. We have seen FPI show up in the commercial market recently at two of our biggest trade fairs, and they have come in with great, fancy literature that just says FPI. Nowhere on there does it actually say it is Federal Prison Industries. They are trying to sell into the commercial market now, not just to government agencies. This is sales that they are trying to make into the commercial market as well.

Again, because of their competitive advantage that would be very distressing to my company to see that happen.

Thank you very much.

[Ms. Boenigk's statement may be found in the appendix.]

Chairman AKIN. Thank you for your testimony.

Our last witness, but not the least. Ms. McClure?

STATEMENT OF ANGIE MCCLURE, VICE-PRESIDENT, HABERSHAM METAL PRODUCTS, CORNELIA, GA

Ms. MCCLURE. Thank you, sir. I am a small business. She is a small business. We do not represent a bunch of other government things. We are a small business, and we appreciate the Small Business Committee here.

I represent Habersham Metal Products, as Congressman Norwood has just referred to previously, in Cornelia, Georgia, That is in the North Georgia Mountains. I guess you would never know it by my accent.

We produce metal doors and frames for the detention industry. Our work is 95 percent dependent on government contracts. In 1996, the FPI did an impact study before they decided to come and build doors and frames in our industry. They predicted that they would only affect my particular business, Habersham Metal, in this impact study by 6.2 percent.

What the study did not take into account was what the effect would have on our entire market. Virtually all federal work was taken away in detention doors and frames. The pool of other work, which was very limited, became very competitive.

As you can realize, less work means prices drop. FPI has created such a tight market in our industry that prices have reduced in my industry by 26 percent since 1996. That hurts. We had 270 employees in 1996. We now have 165. These things have really affected

Habersham Metal, and it has affected the entire industry for metal doors and frames.

We are one of the many firms that are struggling to remain viable. I have a list of 627 companies in the State of Georgia alone that are affected by FPI. This is a list that have 50 or more employees. Taking that calculation, that is 31,350 taxpaying citizens in the State of Georgia alone that are affected daily by FPI. It is not just the CVA or the Correctional Vendors Association. There is only 16 CVA manufacturers in the State of Georgia. You have 627 companies that are affected daily because of FPI.

Let me share with you some examples specifically that happened at Habersham Metal. We worked for several months on a federal project in Louisiana. This work would mean three months of work for our company. When the specification came out, it was strictly FPI.

The only thing left in the specification and the request for proposal was the more difficult, custom hollow metal work, which the FPI did not want. They just wanted the easy manufacturing runs that they can make a lot of money on. That leaves the scrapings for all of us others. That reduced our workload from three months to three weeks, and that is 165 people that depend on that work daily.

The same thing happened to us in Hazelton, West Virginia. Another example was in Butner, North Carolina. The supplier for hollow metal doors and frames in Butner, North Carolina, had the contract, did the design drawings, submitted the design drawings, and was in production planning on a half a million dollar contract.

F.P.I. decides well, we want that contract, so they reduced the supplier's contract. This supplier is in an impoverished HubZone, a certified HubZone manufacturer in south Georgia. That hurts. Half a million dollars is a very big contract to a small company with only 40 people employed.

Inmates are incarcerated because they committed crimes against society. Now society is being put at risk by allowing inmates to hold their containment in their own hands. I mean, for God's sake. Let the prisoners build their own doors and frames to hold them in? That just does not make good sense.

Those who oppose FPI, they do so with well-intended, but misguided, desires to rehabilitate inmates. You know, there are a lot of other things that the inmates can do. They can build buildings for Habitat for Humanity, feed the hungry. There are a lot of other ways that we can rehabilitate inmates instead of taking work from citizens, taxpaying citizens that are hardworking, law abiding citizens.

That is my testimony, and I implore you for the sake of millions to reform the FPI. Thanks.

[Ms. McClure's statement may be found in the appendix.]

Chairman AKIN. Thank you, Ms. McClure. I appreciate all of your testimonies.

I am going to remind the Members of the Committee that we have made an agreement with Director Lappin that we are going to direct our questions first of all to him so that we can do that. I am going to run through the typical order of our people to do the

questions, and then we will direct questions to the other four members of the second panel.

I am going to just forego my comments for a minute and just go directly to Ms. Millender-McDonald.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman, and thank you all so much for being here today. You have enlightened us with your testimony.

Mr. Lappin, since you do have to leave, and I understand that, I have several questions. One is what is the percentage of your private sector vendors first? What are your crime producing programs? If you are saying that recidivism has declined, by how much? What percent?

If you do not have this information now, can you please get it to my office as to the breakdown per ethnic groups and gender? I need to know the recidivism reduction or decline, what type of crime producing programs you are doing.

It is true that you have no control of offenders who come into the institution, but you do have some control as to how they leave the institution ready for work and hopefully not to be returned again. How do you do that? What types of programs do you have?

Lastly, you spoke about downsizing 13 factories, and yet we heard from Mr. Hoekstra that 17 factories are being built. How do you account for this and account for an increase of $92 million that you got from fiscal year 2001 I think it is or 2002? Yes, sir? Question.

Mr. LAPPIN. Thank you, ma'am. First of all, let me address the recidivism issue. I do not have all those statistics here with me, but we will be able to provide that to you in writing.

We have a variety of crime reducing programs, in our opinion, to include Federal Prison Industry, residential drug treatment, GED, vocational training programs, a variety of other community service projects. I heard mentioned Habitat for Humanity. We do a lot of that work. We suit all of that to the benefit of the individual participating. We encourage it as much as we can and certainly see it having an impact.

I do know that our evaluation of recidivism, about 10 years ago we had about—during a period of about 10 years, which was just recently completed, our recidivism rate was about 44 percent. We have reduced it now to about 40 percent in the federal prison system, but the breakdown specifically by category and so on and so forth I do not have with me at the present time.

Ms. MILLENDER-MCDONALD. But you will get that to me?

Mr. LAPPIN. We will provide that to you in writing——

Ms. MILLENDER-MCDONALD. Thank you, sir.

Mr. LAPPIN [continuing]. and for the rest of the Committee Members.

As far as I indicated in my testimony, as a result of some adjustments to some resolutions based on the Federal Prison Industry to some other legislation, we have felt the impact in a number of our product areas, especially furniture, and we recognize the need to do that. Again, we are attempting to shift our product lines away from those requiring mandatory source.

I think that would be of benefit to the Committee as well. Not all of our products and services fall under the mandatory source re-

quirement. We will provide for all of you a list of those products that fall into mandatory source.

Ms. MILLENDER-MCDONALD. We do need to know what those products are.

Mr. LAPPIN. Absolutely. We will list those products that are applicable to mandatory source and those products and services that are not. We are doing all we can to shift our work, our additional work towards those products and services that do not fall into mandatory source.

Ms. MILLENDER-MCDONALD. Let me interject something, sir. Do you now feel that those that are not under the mandatory source should be competitive then?

Mr. LAPPIN. We actually are not opposed to the elimination of the mandatory sourcing. It is the speed at which this occurs. Again, that is something we will have to sort through, but, as I indicated, we are trying to move ourselves away from relying on those product lines that require mandatory source to those product lines and services that do not.

We believe we could still employ inmates. Whether or not to the level we have in the past would be determined by the products and services available in that area.

Ms. MILLENDER-MCDONALD. What percentage of these products are mandatory source?

Mr. LAPPIN. I do not have the specific percent. We can provide that to you.

Ms. MILLENDER-MCDONALD. Thank you. Mr. Lappin, are you with me, and I cannot speak for the rest of them, that we have to see rehabilitation so that these inmates who are not lifers can come out and be able to fit into this society as upright citizens? Are we really rehabilitating?

Mr. LAPPIN. We have three primary objectives in the Bureau of Prisons—protect the public, provide an environment for the staff and the inmates that is safe, and, third, to provide as many skills building programs for inmates in our custody to improve their skills and ability and their success upon release.

We believe that many of the programs we offer, the variety, the array, is having a significant impact on that. We recognize the difficult public policy dilemma that we are discussing here now for work for inmates, impact on small business, and I convey to you again we want to do whatever we can to have less impact on the small businesses.

We want to open the door so more businesses can certainly compete for products and services, more flexibility for government agencies, while at the same time still affording inmates the ample opportunity to work, participate in the UNICOR program, improve their work in job skills and habits and hopefully be more successful upon release.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman.

Chairman AKIN. Thank you.

Next would be Congressman Toomey.

Chairman TOOMEY. Thank you, Mr. Chairman. I have several questions for Mr. Lappin.

The first one is, as no doubt you are aware, I am glad that you support the elimination of mandatory source requirements. Of

course, Congressman Hoekstra's bill does this gradually, phases this out over five years. That is my understanding, which strikes me as longer than I would like to see it take, but in your view is that not enough time?

Mr. LAPPIN. Well, the Administration really has not taken a position on the legislation. We are still assessing the impact and so on and so forth.

As I indicated, Federal Prison Industry, the direction the Federal Prison Industry Board has given us, is directing us away from those products that require or fall under mandatory source to other products and services that do not require mandatory source.

Chairman TOOMEY. So you are not willing to say whether or not you can——.

Mr. LAPPIN. At this point we have not fully assessed the impact. Again, the Administration has not taken a position in that regard, but hopefully in the near future.

Chairman TOOMEY. I would hope in the near future. Let me ask another question. What percentage of Federal Prison Industry employees/workers are either illegal aliens or are serving a life term without the possibility of parole, if any?

Mr. LAPPIN. Well, let me just talk a little bit about the numbers. About 172,000 inmates in the Bureau of Prisons. About 28 percent are illegal aliens. A very small percentage of all the inmates are serving life sentences.

Our average sentence is about seven to eight years, so inmates are still serving a significant amount of time, a long enough time that we need an array of programs. It just cannot all be education, which is very important, or all vocational training or all work.

It is really important to have a combination of all three because, as you can imagine, most of these inmates come to us with limited skills, low literacy rates and so on.

Chairman TOOMEY. Okay. I understand all that. So you are saying 28 percent of all of the total prison population are illegal aliens?

Mr. LAPPIN. That is correct.

Chairman TOOMEY. All right. Now, would you suggest or would you say that that would then be reflective of the population that are participating in the Federal Prison Industry work?

Mr. LAPPIN. No, I would not. We probably have a lower percentage of inmates who are non U.S. citizens working in Federal Prison Industries.

Chairman TOOMEY. But you still do have some?

Mr. LAPPIN. There may be some. We can provide to you the specific data related to the breakdown of the inmates by citizenship.

Chairman TOOMEY. I would like to know what percentage are, you know, here illegally and, therefore, do not belong her when they are paroled or when they are released and belong somewhere else. Therefore, why are we losing American jobs to train people to perhaps be productive workers in another country?

Frankly, you know, their rehabilitation is not of great concern of mine. They did not belong in the first place, and they are not going to be here when they get out of prison.

Mr. LAPPIN. A large percentage of this group are housed in low security, private contract facilities where we do not operate prison factories.

Chairman TOOMEY. Okay. Another question comes to mind. Approximately what percentage of all the agency waiver requests are granted by the Federal Prison Industry?

Mr. LAPPIN. Again, I do not have those specifics. We can provide to you the percentage of waivers we have approved and how that compares to the number that we have not approved. I would be more than happy to provide that information.

Chairman TOOMEY. Do you have any vague idea? Is it half?

Mr. LAPPIN. I do not have a clue, and I would hate to tell you something that I am not that familiar with.

Chairman TOOMEY. I do not mean any disrespect, but it just seems, you know, whether the overwhelming majority are approved or whether it is a tiny percentage or somewhere in between, it is an important question since the Federal Prison Industry, as I understand it, and correct me if I am wrong, but it retains exclusive authority of determining whether or not a waiver will be granted.

It just seems pretty important to have an idea of whether most are or if they are never granted.

Mr. LAPPIN. My hesitation is the fact that we have made a lot of changes recently to the waiver process as a result of a resolution passed by the Federal Prison Industry Board. As a result of that, you know, we are seeing a different approach to the waiver approval or disapproval process.

I would be more than happy to provide to you as recent numbers as we have to the entire Committee here in the next few days.

Chairman TOOMEY. Yes. I would appreciate that.

Mr. LAPPIN. Let me go back to the earlier question. They just informed me I forgot. The inmates who are deportable, who are going to be deported, are not eligible to work at all in FPI.

Chairman TOOMEY. Okay.

Mr. LAPPIN. We will break that down for you as well.

Chairman TOOMEY. All right. Good. My last question, Mr. Chairman, has to do with this question that several of the other panelists raised about Federal Prison Industries sales going into the commercial marketplace.

First of all, is it your understanding that the authorizing legislation authorizes the Federal Prison Industry to sell directly into the commercial market and to sell to non-government entities?

Mr. LAPPIN. The existing legislation?

Chairman TOOMEY. Yes.

Mr. LAPPIN. Let me just say that any product or services that we currently produce we have reviewed by our legal staff, by the legal staff of the Bureau of Prisons and then reviewed by the Department, and they have provided approved or agreed with us that we have the authority to go into these areas.

Service is the primary area that we are going into in commercial areas. Very few in the products. Services we do not see falling under the mandatory source, and we do commercial services.

Chairman TOOMEY. So it is your understanding that as a general matter it is legally authorized under current legislation for you to

compete against the private sector in the private sector for services?

Mr. LAPPIN. Services. Correct.

Chairman TOOMEY. And to some degree for products, but to a lesser degree?

Mr. LAPPIN. Yes. I can provide you our interpretation of that along with the supporting documentation.

Chairman AKIN. I think we are about out of time here.

Chairman TOOMEY. I will yield the balance of my time, but just register that I find that surprising and disappointing and rather problematic, frankly.

Chairman AKIN. Thank you.

Next, Congressman Udall?

Mr. UDALL. Thank you, Mr. Chairman. Mr. Chairman, I would like to put my opening statement in the record.

Chairman AKIN. Yes, without objection.

Mr. UDALL. Mr. Lappin, you said that you tried to minimize the impact on small business from what your Prison Industries do. Could you tell us what you do now to lessen the impact on small business?

Mr. LAPPIN. There are a number of opportunities here. First, before we go into a new product area we advertise. We offer the public to speak before the Federal Prison Industry Board either in person or in writing, as well as in services there is a notification of sorts.

At any time I would encourage the folks who are here at the table if they are seeing they are being impacted by us, this happens frequently where we are contacted by other small businesses. We are asked to consider how to lessen the impact.

They certainly have the opportunity to contact the Federal Prison Industry chairperson, the CEO of Federal Prison Industries, through the Committee, however, and we would certainly look into how to lessen the impact of their competition with Federal Prison Industry.

Mr. UDALL. Thank you. How many inmates are involved in Prison Industry programs?

Mr. LAPPIN. As of today, we have about 19,500 inmates participating in UNICOR as a training or program initiative.

Let me just say, I think years ago when this legislation was passed, as they said, back in the 1930s, it was passed. I think it was implemented as it was intended to be, and I think it has been implemented, you know, and continues to be implemented as it was intended to be.

I think what no one expected was about 50 years after it was passed we saw such a significant growth in the federal prison system and other prison systems as well. In our intent to continue to train and educate and teach inmates better work skills, Federal Prison Industry as well continued to grow.

Again, I think that the whole intent here again is a crime reduction program. It has grown significantly, but it has grown only because of the fact that the federal prison population has grown so significantly over the last 23 years.

Mr. UDALL. Do you believe that in fact by inmates getting involved in your program it does reduce crime in the long term?

Mr. LAPPIN. We can provide to you the research that we completed. Again, 24 percent less likely to return to prison, 14 percent more likely to be employed. This is after tracking these individuals for as long as 12 years after release.

What is a shame in a way is, granted, we employ 19,000 or 20,000 inmates, but the bulk of the inmates, many, many of the inmates, never participate in this program all because we have waiting lists at all the institutions.

We are never able to get all of them into the program for even a brief period of time before they are released from custody, so we are still missing a large group of individuals, but recognize that we are trying to balance the impact, and we are also trying to balance the growth.

Mr. UDALL. Thank you. I thought I heard two different figures here on downsizing and building more; that you were downsizing 13 on the one hand and then building 17 more factories. Is that correct? Could you tell us what is going on there?

Mr. LAPPIN. Sure. As indicated, the original legislation mandates that we be self-sustaining. To be self-sustaining, we are having to make adjustments because we are seeing a decrease in the sales that we have had in the past. To remain self-sustaining, we are having to do what any other organization would do. We are having to absorb some of that loss from within the agency.

The growth, on the other hand, is the fact that over the next four or five years we are going to gain again 25,000 or 30,000 inmates, and as we add institutions, and I do not disagree with you there. Again, these are all medium and high security facilities, facilities where we get the most difficult individuals, the ones that have the greatest difficulty in their return to the community because they have longer crime histories.

They have lower literacy rates. They have less skills and abilities, so we really try to focus on employing a majority of the inmates in Federal Prison Industries and having them participate in this program at our higher security level institutions such as the mediums and highs, of which these 16 or 17 institutions are.

Mr. UDALL. So the 13 that you are downsizing there at one place in the system and the 17 that you are building are someplace else?

Mr. LAPPIN. You know, what we have done is in an effort to move the program away from the mandatory source is identify some of these other areas where we either compete or the customers are coming to us, and it is not under mandatory source, to revise a product or a service.

We have replaced some of those 13 with some of the products that were intended to go to these 16 or 17 prisons we were going to bring on line, which we realize is going to be a challenge for us down the road to be able to find additional services or products to go into those locations, again products and services that do not have requirement of mandatory source or follow the mandatory source requirement and do not have as much of an impact on jobs of U.S. citizens.

Chairman AKIN. Thank you. Just to recognize once again my own Subcommittee Chair and thank you so much for joining us.

Our next question comes from Mr. Beauprez.

Mr. BEAUPREZ. Thank you, Mr. Chairman.

Mr. Lappin, I formally have been I guess both a customer or a supplier to Prison Industries back in my home state of Colorado. I used to be in the cattle business and sold cattle occasionally to the dairy herd at one of our prisons and also competed because they were obviously producing milk and meat as well, just as we were, so I am familiar with it.

I am also familiar I think with the objective as stated, and I share it, that of reducing recidivism and in getting incarcerated inmates reentered back into society as productive citizens.

I visited at length with the immediate past director of our state prison system, and he told me, I recall, that education and specifically literacy training was number one for effectiveness in reducing recidivism at least in the State of Colorado. I would love to have a comment from you on that.

The percentages have already been probed, and I am going to assume that it does not do a whole lot of good to go there because you said you are really not prepared to speak to percentages, but is it correct that there are about 300 different products produced, as was testified, and about $700 million in annual sales? Is that roughly correct?

Mr. LAPPIN. I cannot be specific on the number of products. I am sure it is in that range. Our annual sales is about $678 million total revenue.

Mr. BEAUPREZ. Okay. Around $700 million. All right.

Mr. LAPPIN. $672 million.

Mr. BEAUPREZ. Have you given any thought? If you do not know all the percentages and such, you did testify I think rather clearly that you are not opposed to eliminating the mandatory sourcing requirement.

What might achieve the stated objective to both get the inmates educated, as well as trained to reenter society and not create the problem that we are addressing here today in competing with the private sector?

It feels to me like the private people have all that overhead and are paying taxes, and this is in a very real way a tax on top of the tax that they are already paying.

Mr. LAPPIN. Let me do a couple things. In addition to providing you the breakdown, let me also provide to all of you what exactly the appropriations provide. UNICOR/Federal Prison Industries receives no appropriations. We do provide a location for it to conduct its business.

We will provide to you a breakdown of beyond that what is paid for by Federal Prison Industry and what is not paid for by Federal Prison Industry—utilities, that whole breakdown—because I am not sure it is exactly as it was conveyed.

As far as the role of education, vocational training, work, we see significant reduction as well by inmates who participate in education. Again, education, vocational training, improved literacy. Teach them a skill. Those are very, very important components of the Bureau of Prisons, and we have a variety of programs in that regard, typically very short-term in nature.

When your average sentence is eight, nine, 10 years, you are not going to keep them in those types of programs for that long and make it realistic. The additional realistic work environment is a

part of that continuum that we believe is important to filling or trying to meet all the needs that these inmates lack when they enter the Bureau of Prisons or go to prison in general. That is really the focus.

You know, what I want to say as far as mandatory source is we are not pursuing products in that area. We believe there is potential for us to rely far less on it, depending on how it was to be phased out, but our focus is really towards those services, as an example, that are not performed on U.S. soil, that we can bring back to this country, repatriate, in addition to some services or——.

Mr. BEAUPREZ. Do you have examples? My time is about to run out.

Mr. LAPPIN. We provide, and let me just give you a couple examples. Again, we will do this in writing to you. Just a second. I have it right here.

Data entry, some areas in recycling and others that we have brought back to the U.S., again areas that do not impact. Distribution services, packaging services, equipment rebuilding services are some of the things that we have repatriated.

As far as services provided in this country, laundry services typically at the military bases, container repair services, printing services and vehicle repair services.

Mr. BEAUPREZ. One last question very quickly. From the description Mr. Hoekstra gave when I asked a question about the competitive advantage/disadvantage, even if we eliminated this mandatory sourcing would you not be able to still compete rather favorably?

Mr. LAPPIN. I think we are competing very well in those areas where we currently do not have mandatory source.

Mr. BEAUPREZ. I yield back, Mr. Chairman.

Chairman AKIN. Thank you.

I think our next questioner is going to be Congressman Ballance, if I am not mistaken.

Mr. BALLANCE. Thank you, Mr. Chairman.

I am familiar with Prison Industries from my service in the State of North Carolina. I am not as familiar with the federal project, but I believe that the theory is appropriate that we would have this work available, but I do not believe that we ought to have an unfair advantage or compete with private industry.

Now, the first question is why should the Federal Prison Industry have the authority to grant or not grant waivers?

Mr. LAPPIN. I am sorry?

Mr. BALLANCE. Why should you have the authority on the waiver question?

Mr. LAPPIN. Again, we have made a number of adjustments to the waivers, and——.

Mr. BALLANCE. But why should you have it? Why not have a third party deal with that?

Mr. LAPPIN. It is an option that certainly could be considered. Up to this point, the Federal Prison Industry Board has kept that authority with Federal Prison Industry, but it is certainly something that I am sure the Federal Prison Industry Board would consider if you would like us to do that.

Mr. BALLANCE. Well, I do not think you should have it, but the other question is I am told do you have sales representatives who work on commission?

Mr. LAPPIN. We actually do not have a sales force. That is I think originally why mandatory source was originally designed because Federal Prison Industry does not employ their own sales force. We do limited advertising. That that we do is contracted through some of our partnerships, so we have a very small sales force.

Mr. BALLANCE. We have such limited time. I do not want to be rude, but our time is very limited. My question goes to the issue of commission.

Mr. LAPPIN. I do not know how the small sales force we have, I am not sure exactly how that works. We can certainly provide to you an overview of who is part of the sales force, whether they are contract or our own, and we can provide that to you in written form.

Mr. BALLANCE. The real heart of the question would be whether or not those people have anything to do with these waivers.

Mr. LAPPIN. I do not believe that they do, but again I am not directly involved in the operational procedures related to the waivers, to who approves them, who does not. I would be more than happy to provide that information to you in writing. If you have any further questions in that regard, we can clear it up in that regard.

Mr. BALLANCE. I was not here in 2001, but did you testify down here in 2001?

Mr. LAPPIN. No, I did not. I have been in this job since April 4.

Mr. BALLANCE. I do not have any further questions.

Chairman AKIN. Thank you, Mr. Ballance.

Next question goes to Mr. McCotter.

Mr. MCCOTTER. Thank you, Mr. Chairman. Sorry I was late. I was in another Committee meeting.

For my own edification just to make sure I am right about this, Federal Prison Industries takes taxpayers' money through the prison system to subsidize and then competes against those very taxpayers. Is that pretty much what I think was testified to?

Mr. LAPPIN. I am not sure I understand exactly what you mean by that. Federal Prison Industry is a self-sustaining company or organization within the Bureau of Prisons who does compete for appropriated funds and providing products to other government agencies.

Mr. MCCOTTER. But the overhead is not like the private sector. I mean, I think I have a sheet here that shows the competitive advantage obtained by Federal Prison Industries, and I do not think that those are costs incurred by the taxpaying businesses. I think those are their money being used to provide that subsidy to Federal Prison Industries, but I can look that up.

It just seems to me a question, because I was reading through the written statements, and I was fascinated because rehabilitation seems to be the key here. It seems to me that prisoners rehabilitate themselves in the end because there is no greater compelling reason to rehabilitate yourself than stay out of prison.

When they do that, why does there necessarily have to be some type of skill that competes with the private sector? Why is there not more of a humanitarian bent to it? We spend a lot of money

on things like AmeriCorps to get people to volunteer to help their community and to learn compassion for their fellow human beings. It seems prisoners would need that. I do not understand why that would not be a better way to go, if you can answer that.

Finally, I am curious. If rehabilitation and productivity in the outside world is the goal, on page 6 you talk about FPI is going to "emphasize new areas for inmate jobs, particularly service jobs that are moving overseas." Now, part of job training is something you would hope they would pick up skills from this. Are we also going to pay to send them overseas to have one of those?

Mr. LAPPIN. Let me back up to the first question I will start with. We believe that we need to offer inmates opportunities to improve themselves; that it does not happen on their own.

Mr. MCCOTTER. Can I just ask a question on that? I am sorry. How does a prisoner get into Federal Prison Industries?

Mr. LAPPIN. It is a voluntary request. They go on a waiting list with everybody else that has requested. They are then interviewed and accepted after their name comes up to the top of the list.

Mr. MCCOTTER. So you are already starting with some of the, you know, relative statements, but better, self-motivating prisons that show a penchant to want to be rehabilitated, which might be more of a correlation with your 24 percent recidivism rate drop than the actual program itself.

Mr. LAPPIN. We do not force any inmate to participate in a program. All of the programs in the Bureau of Prisons are voluntary with the exception of one, and that is all inmates will have a work assignment. Now, that given work assignment would not be UNICOR unless they volunteer and ask to work in that capacity.

You are right. We still have a large percentage of inmates in the federal prison system and other systems as well that resist, that do not want to change, that do not think they need to change, but we have a large percentage of them at some point in their incarceration say, you know, the reason I am here is partly my responsibility and at some point say I need to change. Here are some opportunities for me to do so.

That is why there are no mandatory programs other than work, so in that capacity all of them are inmates who are saying yes, I want to change.

Mr. MCCOTTER. So then the 24 percent might not be an accurate number then, really a fair number to compare to the general population that is not like that? It is kind of like the argument about parochial schools versus public schools in terms of performance.

Mr. LAPPIN. All I can say is I am not a research expert. This group of people who worked in UNICOR were compared to a like group of inmates who really the only difference between the two groups was the fact that one group worked in UNICOR and the other group did not. We saw that 24 percent fewer of them were returning to prison.

Mr. MCCOTTER. That is a big difference. I mean, that is a big difference. One group is more motivated to do this and one is not, which shows that a penchant towards rehabilitation. I mean, I am just saying it because it is in there. If rehabilitation is your number one goal, in fairness I want to make sure we have it.

I believe there is a direct causal relationship between the Federal Prison Industries and small business being hurt. I would like to see a direct demonstrable correlation between rehabilitation of people on the Federal Prison Industries to make the program survive because in the final analysis before I go vote or do whatever I have to do, Dostoevsky did not write "Crime and Rehabilitation". He did not. He wrote Crime and Punishment, which is why society does not become a bunch of vigilantes.

Now when you take people and put them in prison to punish them and you go ahead and punish taxpayers by helping to put them out of business through Federal Prison Industries, I wonder if we do not have a problem.

Mr. LAPPIN. Again, all I can say, sir, is that we have seen significant positive impact from inmates who participate not only in this program—this is one of the crime reduction programs we offer, as well as residential drug treatment, education and others. We see those inmates who participate in those programs being more likely to succeed upon release from prison.

Chairman AKIN. I appreciate the questions. We are out of time on that question, Mr. McCotter.

We have several other congressmen that have not had an opportunity to ask questions. I think we have about 35 minutes or so of voting in front of us. I guess my question is can you hang in there, take a break and then take the last two questions, or do you feel that you are going to have to move along?

Mr. LAPPIN. I unfortunately am going to have to move along. I would be more than happy. Send those questions to me. I would be more than happy to provide a response to those in writing, or we can appear again at a future Subcommittee hearing.

Chairman AKIN. I am going to dismiss anybody else on the Committee who needs to scoot. We have a vote coming up and probably have about 13 minutes or so left.

What I am going to try and do then is I am going to try and let Ms. Majette ask. Maybe you could get about three minutes or so in. Congressman Hoekstra, if you want to do a minute or do, but I will hang in here. We will try and run the last couple.

Mr. UDALL. Mr. Chairman, apparently we submitted, the Committee did, questions. This was before you were there. They have not been answered the last time around, so we are hoping you will be a little bit better, Mr. Lappin, than the last group.

Mr. LAPPIN. I am sorry. We will certainly look into that. I was not aware of that.

Chairman AKIN. Thank you.

Ms. Majette, if you could just go right ahead? Thank you.

Ms. MAJETTE. Thank you, Mr. Chairman.

Mr. Lappin, it is my understanding that FPI advertises for some of their product lines, and it is also my understanding that about two-thirds of the product lines are mandatory source.

I have been handed some material. It says: "One quality name frequents more federal offices than any other. UNICOR is your preferred source for exceptional quality products and services." It shows a picture of a chair, office furniture, coats, some other items that according to the information I have received that chairs and office furniture and coats are under that mandatory source.

My question is why are you spending money to advertise for things that are already covered under the mandatory source product lines? What kind of money are you spending on this that could be better spent in other ways?

Mr. LAPPIN. Our advertising in general is rather limited compared to most other agencies or companies of this nature. There are many——.

Ms. MAJETTE. Do you mean of this nature meaning that already have the mandatory source protection?

Mr. LAPPIN. We are the only ones that have mandatory source protection.

Ms. MAJETTE. Well, then why do you need to advertise for thing that are already covered under the mandatory source protection?

Mr. LAPPIN. You would be surprised at how many people do not realize that UNICOR produces furniture.

Ms. MAJETTE. But is that not in direct competition to what some of the other people here have already talked about?

I am sorry. I do not want to pronounce your name incorrectly. Ms. Boenigk?

Ms. BOENIGK. Ms. Boenigk.

Ms. MAJETTE. Ms. Boenigk, who makes office chairs, she has to advertise. She has to factor in all of those costs of advertising as far as the cost of doing business, whereas you are having people produce these same items for 25 cents an hour to $1.15 an hour, which is the same kinds of things that we are being criticized for and we criticize other countries for for having those low wages, not even getting into the point about how that affects people's self-esteem if you are talking about trying to rehabilitate them and get them back into the mainstream.

I need an answer to this question of why you are spending money and what kind of money you are spending for these kinds of mandatory source items. If you feel it necessary to do that, then why should you have that kind of protection?

Mr. LAPPIN. Again, many, many government agencies do not realize that we produce furniture. It is under the mandatory source. We try to inform them through a variety of ways about what products we offer, and I can provide to you how much we spend on advertising.

Again, this is part of the profit from it is not appropriated funds that are being spent on the advertising.

Ms. MAJETTE. Well, as a former Judge in state court and having presided over thousands of criminal cases over the last almost 10 years before I resigned to run for Congress, I know that there are lots of other things that can be done other than having people spend their time working at 25 cents an hour to produce materials.

Frankly, I am from the State of Georgia, and I share the witnesses' concerns. If we are actually using that money——.

Chairman AKIN. We are about running out of time. I am sorry. I promised that I was going to get over when your three minutes was up.

Ms. MAJETTE. I would like to get that material, that information in writing.

Mr. LAPPIN. We will certainly do that.

Ms. MAJETTE. Thank you.

Chairman AKIN. Thank you.

Congressman Hoekstra?

Mr. HOEKSTRA. Thank you. Thank you, Mr. Chairman.

Chairman AKIN. You have about a minute or two.

Mr. HOEKSTRA. I thought we were going to get off on a very good footing when we met before until you said I am not sure it was presented accurately.

Mr. LAPPIN. I am sorry, sir.

Mr. HOEKSTRA. I take great offense at that. Let me ask you a question. Recidivism in the study that you are talking about is 24 percent, a 24 percent reduction.

What is the reduction in that same study when inmates are put into vocational and remedial education programs?

Mr. LAPPIN. We have those numbers, sir. I do not know the exact——.

Mr. HOEKSTRA. How can you not know that number? It is 33 percent. When we put people in vocational education, we give them remedial education, it is 33 percent. When you put them to work to compete against these folks, it is 24 percent. It is the same thing that our second witness here said.

You know the 24 percent because you are out there to protect the business. Our bill, because of Mr. Conyers' and Mr. Frank's concern about educating these people and making them productive when they get back into society, we have a huge component in there for vocational training, remedial education, and that is what we are advocating. That is what this bill advocates.

All you advocate is to put more of them to work, to put more of these people out of work, and you do not even know the number that says to really reduce recidivism let us give them vocational training. Let us give them meaningful work, and let us give them the basic educational skills that they need. You walk away from that.

Unbelievable that you keep quoting the 24 percent, 24 percent, 24 percent, say that we do not have our facts right on this, and then you do not even know that the most effective way to reduce recidivism is to give these folks vocational training to give them real skills rather than taking screws in and out of a chair, make work projects, high labor content.

Chairman AKIN. Congressman, I think we are——.

Mr. HOEKSTRA. My time is up. I do not need any more time. You have been great. Thank you.

Chairman AKIN. Thank you very much.

Director, I really appreciate your coming in. It was not an easy kind of panel and all. We also appreciate that you have been in the job for a fairly short period of time.

I think the whole reason that the program was created years ago was a good intention. Perhaps it needs to be adjusted and worked on. I appreciate your saying that you are willing to talk to us about that. We will look forward to working with you on it.

Mr. LAPPIN. Thank you.

Chairman AKIN. Thank you.

To the rest of our panel, this happens. We have to do these votes. We will hopefully see you in about 35 minutes. Thank you.

Mr. LAPPIN. Thank you, sir.

[Recess.]

Chairman AKIN. The Subcommittee will come to order again. As you notice, we have somewhat fewer Members here on the Subcommittee at this point. That is no uncommon because of the voting and the many complicated schedules that the Member have.

Now we are at a point where we are going to do some questioning. Each of you made your opening statements. I have a couple of questions here. I guess maybe the first one, John, I am going to direct your direction, but if others want to comment on it that would be fine. Then I have another question of a general nature.

First is what does FPI do to consult with business and groups in commercial services to ensure that FPI's actions do not adversely affect U.S. firms and workers? Does FPI have a policy in which it does impact analysis and take appropriate action regarding its effects on the marketplace?

Mr. PALATIELLO. Mr. Chairman, the answer is they have no policy, and they have no practice or procedure. They take a very literal reading of the law.

During the break I was kind of jesting with Ms. McClure that as onerous as her company was mentioned and treated in the competitive impact study, she ought to have been at least grateful that they did a competitive impact study. FPI reads the law as not requiring competitive impact studies on services, and, therefore, they do not conduct competitive impact studies on services.

Let me share with you our own personal experience from the standpoint of the mapping association that I am privileged to be executive director of. When Federal Prison Industries started getting into the mapping and geographic services area, there was no consultation. There was no public notice. There was no request for comments.

The market study that they did they hired a consultant to estimate the market. It was all internally so that they could define the market themselves. There was no outreach to the private sector.

One of the areas where the mapping community suffers from unfair competition is not only from Prison Industries, but even before their entry, is the fact that historically or until about 10 years ago a lot of mapping was done in-house by government agencies at the federal level, state Departments of Transportation and so on.

Our organization has been very aggressive in trying to get government agencies to outsource more of their mapping work. When Federal Prison Industries entered this field, we went and met with them. Their response to us was to congratulate us on different types of outsourcing provisions that we were successful in getting Congress to pass. They were watching what we were doing and seeing that as a market opportunity.

They actually said to us that prisoners would not adversely impact the private sector because they are not taking any work away from the private sector. They would be taking work away from government employees, so it would be work that would be contracted out from the government that they would be taking, not work from the private market.

We were absolutely incredulous about that rationale and explanation, but that was the extent. It was something that we initiated. We asked for a meeting with them. That is a long-winded answer,

but I wanted to give you that anecdotal experience. The answer is there is no requirement in their eyes, and, therefore, they do none.

Chairman AKIN. Thank you. Anybody else wish to respond to that question?

Ms. MCCLURE. Yes, sir. Dr. Lappin had referred to allowing Industries to speak to their board of directors about the impact that they will have on private industries. He just mentioned the impact on services.

We have used that avenue. Five of our people that are in the same industry, companies, all five of us, the major players in the——.

Chairman AKIN. These are the door——.

Ms. MCCLURE. The door industry. Yes, sir. The door and frame industry.

The major players that were in the impact study actually addressed three different times the board of directors and begged them not to do that. It did not help. I mean, we have written letters. We have had numerous meetings with the board. That is not an avenue that will help us.

Chairman AKIN. Okay. Anybody else on that question?

[No response.]

Chairman AKIN. Okay. I have one more these are what I call canned questions. Then I get to just ask a couple of my own here in just a minute.

If FPI were to sell services in the commercial marketplace, do you believe there would be a level playing field between small businesses and Prison Industries? If not, what advantages do you feel Prison Industries would have over small business?

Mr. PALATIELLO. I will start with that. We believe that it would be an extraordinarily unlevel playing field and that they would enjoy significant disadvantages.

Let us look at two issues. One is services and products for the government, and then let us look at commercial. Let me reiterate briefly what Mr. Hoekstra indicated just to make sure it is on the record.

They do not have to pay minimum wage. They do not have to pay any worker benefits like social security, unemployment insurance, anything of that nature. They either do not calculate overhead or do not have overhead, or it is subsidized and provided by the Bureau of Prisons and, therefore, by the taxpayer.

Free access to equipment that is determined excess or surplus by other agencies. They do not pay any taxes, federal, state, local. They enjoy the sovereign immunity of the government of the United States, which means they buy no insurance. There is no performance clause in their contract. If they do not perform, so what? We do not enjoy that. We have a requirement to perform. Workplace safety, OSHA, EPA regulations, zoning at the local level. They are exempt from all of that. Access to capital.

Let us remember, I believe that Mr. Lappin was let us say less than completely candid when he said they received no appropriated funds. Every dollar they get in a contract is appropriated funds. It is money from the Department of Defense. It is money from GSA. It is money from the Interior Department. It is all appropriated funds.

Now, we are splitting hair because there is no direct appropriation to FPI, but all of their sales are from appropriated funds to other agencies. In addition to that, they have a statutory line of credit. They can borrow up to $20 million from the U.S. Treasury at an interest rate of 5.5 percent. I have been to the bank. I have to borrow money from time to time, lines of credit for my business. I cannot get those terms.

When you look at all of those in the commercial market, there would be an extraordinary competitive advantage, the ones I have just listed, that small business just cannot compete with.

Let me make one other point that I think is important to remember. All of those advantages that I just mentioned and Mr. Hoekstra mentioned, Mr. Hoekstra's legislation does not touch those. His legislation does not affect any of those advantages. They would remain in FPI in terms of their ability to sell within the government.

Mr. Hoekstra's bill only addresses the issue of access to the market and ability to compete. We believe that in the government market even with all those advantage we can be competitive, but when you turn that loose in the free market economy I do not think we can be as competitive, and that is why we are so adamantly opposed to commercial market entry.

Chairman AKIN. It is interesting. I have been Subcommittee Chair and going to a number of different cities and held some of these hearings. Some of the hearings that we have talked about we have been talking about job loss around the country.

You know, my firm belief in answering the question of companies moving overseas is ultimately you have to change the equation. You have to make it profitable for businesses to want to stay here.

Actually, this list that you just mentioned would be kind of a nice place to start if we could cut all of our businesses free from all of these other different OSHA and sovereign immunity. That would make the free enterprise world pick up a little bit in this country, I would think. I think a lot of businesses might even move back to our country if we could give them the same advantages. Maybe they have a good thing going here.

Ms. MCCLURE. You can add corporate income tax to that list, too.

Chairman AKIN. I think you mentioned taxes in general. They do not pay any taxes, right?

Mr. FAY. I would like to add that it is a very captive work force.

Chairman AKIN. It is supposed to be, is it not? Yes.

Mr. FAY. But that is definitely an advantage they have over everyone else.

Chairman AKIN. Right. Good. Anything else on that question?

[No response.]

Chairman AKIN. I have just a couple of others. Let me just ask you. If you were a legislator and you were working on a bill and you take a look at the situation the way it is now, what would you do with FPI? What things would you change right now?

First of all, do you think that the program is even legitimate in the first place? Second of all, what would you do if you could change just one thing? What would be the one place where you would go to make a change?

I will just come right straight down the line. Everybody gets only your first choice. You do not get a second. Just the first thing you would change with FPI.

Mr. FAY. Well, I think that they have contradictory aims and so I would think that they need to have one philosophy as to what their objective is.

I think in the beginning, back in the 1930s, there was this idea that this work was going to be rehabilitative and educational. People would actually get jobs that they could take on the outside. I think everything that they do should come out of that objective, so whatever work a person does in prison, if this is to remain afloat, should be a transferable skill to the outside.

That would mean actually changing the nature of what kind of work they do. They would not be imitating third world industries. They would be highly skilled jobs. That would really change the dynamic in terms of having to be competitive.

Chairman AKIN. So you are saying there is a little bit of a difference in mission statements. Currently the way the program is set up is we are simply trying to make a product that we can put out in the market. Whether it is competitive or not, we will almost force it on the government, but the objective is to keep these people doing something that is productive. You are saying that they would be——.

Mr. FAY. Yes, but to do something productive is one thing. That could be make work.

Chairman AKIN. I was ready to finish the sentence, okay?

Mr. FAY. I am sorry.

Chairman AKIN. The second half you are saying would be not productive, but you want them doing something in prison that is going to give the highest percentage that they will not end up in prison again once they get out?

Mr. FAY. Exactly.

Chairman AKIN. And that should be the focus, not whether or not they are dutifully employed within the prison?

Mr. FAY. Right.

Chairman AKIN. Okay. So you would say you would shift the focus of what the program is a bit off to one side?

Mr. FAY. Yes.

Chairman AKIN. Okay. That would be your number one thing you would change?

Mr. FAY. Yes.

Chairman AKIN. Okay.

Mr. FAY. But that would actually alter the whole nature of what they do right now. That is a big shift.

Chairman AKIN. Yes, when you change the purpose of what it is set up for. Yes. I understand the subtlety of what you are saying, I think. Yes. Thank you.

John?

Mr. PALATIELLO. Mr. Chairman, number one, we do support the objective and the original intent of Federal Prison Industries.

Chairman AKIN. Which was?

Mr. PALATIELLO. Which is to reduce idleness, to contribute to rehabilitation, to help provide skills so that they are marketable

upon release. Those are admirable goals, and we think they are as valid today as they were when they were created.

Chairman AKIN. Are you disagreeing with our second witness that the function was just to keep them busy, as opposed to having them have marketable skills? It seems like you blurred those two together a little bit.

Mr. PALATIELLO. I think Mr. Lappin articulated what he thought their objectives were. He mentioned three. I think all three that he mentioned are certainly valid.

To me, and we have had hearings on this in the past as well, and I think this gentleman's point is a very good one about more of the rehabilitative, the life skills training, things of that nature probably are much more important. The education, as Mr. Hoekstra, pointed out, are probably much more important than the job training aspect.

Chairman AKIN. Just keeping them busy, per se? Okay.

Mr. PALATIELLO. Okay.

Chairman AKIN. I did not mean to shortcut you. Go ahead. What was your point?

Mr. PALATIELLO. With regard to the first part of your question, the goals and missions of the program we support.

We regard to your second question, my flippant answer would be the one thing would be to pass Mr. Hoekstra's bill, but I know there is a lot in the bill. I would say that the one——.

Chairman AKIN. I understand that.

Mr. PALATIELLO. But I think to get to the heart of the issue is the one thing if I were in your shoes, in your chair, the one thing that I would do would be to simply open access to the market and allow the private sector to compete in government procurement with all those other advantages, at least open it up and provide some means by which FPI, like any other entity, has to sink or swim on the ability to provide a good product or service at a fair market price and deliver it to the specifications and schedule that the client or customer is looking for.

Chairman AKIN. That is the main thing that Congressman Hoekstra's bill would do, is it not?

Mr. PALATIELLO. That is what we believe. Yes, sir.

Chairman AKIN. Okay. That would be your main thing would be to basically remove the umbrella and say everybody has to compete just like everybody else in spite of the fact that FPI has these other advantages which we have talked about.

Mr. PALATIELLO. Yes, sir.

Chairman AKIN. Okay. Fine. Thank you.

Yes? I am sorry.

Ms. BOENIGK. Boenigk.

Chairman AKIN. Boenigk. That is right.

Ms. BOENIGK. It is a tough one. I agree with the mandatory part of it going away, and I think it may be something that 10 or 12 years or 20 years from now we have to look at again because maybe it changes things. They do take into account the fact that they get all of these other things paid for.

If I add up the amount of money that they get for free that I have to pay for, it makes up about 60 percent of my total cost. The

rest of my costs are coming in because I have to buy the materials to build the chairs.

I would be so amazingly profitable that I probably would not be sitting here. I would have retired by now because I would have made so much money if I had a 60 percent margin on everything that I do.

If you look the way prisons used to be, they were self-sufficient. We had a prison in Brazoria, Texas, that did everything on their own. They had their own. They grew their own food. They grew their own cotton to make their own clothes.

That is a great way for you to learn life skills because if you get out you know how to grow food to feed yourself instead of doing something that is going to take that business away from us.

Chairman AKIN. So you have one thing to change right now with a magic wand. What would you do, just basically the same thing; make it so that the markets are all competitive? Is that what you are saying, or would you just get rid of FPI entirely?

Ms. BOENIGK. I think if I had a magic wand, yes, I would get rid of FPI entirely. I do not think that that is a realistic thing to have happen today. I think we do have to phase it out over time and at least give the marketplace the opportunity to see if they can survive.

If they cannot survive in our world, then they have to deal with it just like I have to deal with it. If I do not have a product that the customer wants, I am going to go out of business. If I lose productivity or efficiency because of that, that is my issue to deal with.

Chairman AKIN. Do you think there is any benefit from what you understand of FPI providing anything for the prisoners? Do you think it is providing any kind of an important service at all to inmates or not particularly?

Ms. BOENIGK. I think that when you look at the fact that the educational side of it is getting a much better return on investment——.

Chairman AKIN. In terms of recidivism, et cetera.

Ms. BOENIGK. Exactly. Exactly. I mean, I have to look at every dollar I spend from a return on investment standpoint. If I can get a 33 percent return versus a 24 percent return, I am going to spend my money on the 33 percent. It seems like they should be doing the same thing.

Chairman AKIN. Okay. Thank you, Ms. Boenigk.

Mr. FAY. Could I add one quick thing to that?

Chairman AKIN. Sure.

Mr. FAY. The individuals who are in Prison Industries often are occupied for 40 hours a week. Therefore, their ability to go do educational programs is reduced, so you often have the choice of going into Prison Industries or getting that education.

Chairman AKIN. Okay. Ms. McClure?

Ms. MCCLURE. You said one thing?

Chairman AKIN. If you had to change one thing.

Ms. MCCLURE. Stop them from building doors and frames really.

Chairman AKIN. That is practical.

Ms. MCCLURE. Well, that is my number one hope. You asked me.

My second choice is just to get rid of the whole thing. I mean, I liked his idea. Let us educate them. Let them be more functional

to society. I agree. It has just gotten too big, too out of hand, and the whole intent is gone.

Chairman AKIN. I think there was originally in their mission statement the idea that they were supposed to be sensitive to what they were doing to competition and to private industry. From what I am hearing, you are saying there is not any of that——.

Ms. MCCLURE. No, sir.

Chairman AKIN.—in the way that it is managed now.

Ms. MCCLURE. No.

Chairman AKIN. Is this all under this Director Lappin? Does he really have control over this, or are there other people that make decisions? Do any of you know?

Ms. MCCLURE. We went in front of the board of directors, and there were like I believe six or seven of those. They basically control.

Chairman AKIN. What is going on?

Ms. MCCLURE. Yes, sir.

Chairman AKIN. Okay. Good. I am just going to do one more question, and that is if there were a question that somebody on the panel could ask you and they have not asked you, what would the question be and then what would your answer be to that question? This is like trying to write a college application.

Anything we have not covered is what I am saying that I need to know about?

Ms. BOENIGK. I have a question for you.

Chairman AKIN. Yes?

Ms. BOENIGK. I do not remember when I read the bill if there was anything in there about the waiver process. Is that something that even though the mandatory part is going to be lifted, obviously that is going to be phased out over a number of years, and they still are going to have some preference in there.

Chairman AKIN. I do not know the details of Congressman Hoekstra's bill. This is not an issue that I have been tracking on. I am a Subcommittee Chair on this Committee, so this is not one, but I think we may have an answer.

We have an answer I think to your question. The waiver process is eliminated by the bill.

Ms. BOENIGK. Okay. Thank you.

Chairman AKIN. Okay.

Mr. PALATIELLO. Mr. Chairman, there is one point that I think needs to go on the record. I have it in my prepared statement, but I think it is worth highlighting because it was addressed I believe in some of the colloquy earlier.

Remember, this program was created in 1934 by legislation, so it is 69 years this year. There is a provision in law that says, enacted in 1934, that it is illegal to engage prison made products in interstate commerce, and that is what prohibits Federal Prison Industries and in most cases the state prisons from selling products in the commercial market.

Think about what our economy was like in 1934. We were a manufacturing based economy. We had just gone through the industrial revolution and just made the transition from an agricultural based economy to a manufacturing based economy.

The opinion that was mentioned before, and if I can I would like to subsequently submit it for the record. The opinion that was written under the Clinton Administration said that since Congress was silent on the issue of services in 1934, it must not be prohibited. Therefore, Prison Industries can engage in services in the commercial market.

That is an absolutely ludicrous opinion for any attorney to arrive at. To think that Congress was consciously in 1934 distinguishing between products and services when we did not yet have a services based economy is outrageous. That is the opinion upon which they believe that they have the authority to enter the commercial market.

A few years ago, and my memory is failing me on this, but it was three or four years ago. It may have been longer since I have been working on this issue for so long now. They actually put a rule making in the Federal Register on their ability to go into the commercial market. They sought public comment.

There was such an outcry from the private sector that they really lacked the authority to do that. They did shut it down. They have never done anything with rule making, but they are still——.

Chairman AKIN. They are still doing it anyway.

Mr. PALATIELLO. They are doing it anyway.

Chairman AKIN. They are doing it anyway.

Mr. PALATIELLO. Yes, sir.

Chairman AKIN. Proceeding without a rule.

Mr. PALATIELLO. Yes, sir.

Chairman AKIN. Does that make them subject to a lawsuit perhaps?

Mr. PALATIELLO. I believe there has been some litigation. I do not know. I guess none of us have felt like we wanted to invest the money——.

Chairman AKIN. Okay.

Mr. PALATIELLO.—in that. We have been trying to work with the board of directors. We have been trying to work with Mr. Lappin's predecessors. We have been trying to work the legislative process.

I guess our strategy has been that perhaps we would have a more favorable return on investment by pursuing those options rather than litigating.

Chairman AKIN. Thank you.

I thank you all for your attendance today and for your input. I also appreciate some of you bringing your congressmen along with you as well.

Have a good day. The hearing is adjourned.

[Whereupon, at 4:58 p.m. the Subcommittee was adjourned.]

OPENING STATEMENT
1 OCTOBER 2003

SUBCOMMITTEE CHAIRMAN W. TODD AKIN
SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT &
GOVERNMENT PROGRAMS

"Joint Hearing on Federal Prison Industry's Effects on the U.S. Economy and the Small Business Environment"

Good afternoon.

I would like to begin by thanking my friend and colleague, Congressman Pat Toomey, who chairs the subcommittee on Tax, Finance and Exports, for joining me in holding this joint hearing. I know Federal Prison Industries (FPI) is of great interest to him. Like many other members, he has concerns about the impact of FPI on small business.

Federal Prison Industries was established sixty-nine years ago with the following goals:

- Employing and providing skills training to inmates, keeping them constructively occupied;

- Producing market quality goods for sale to the Federal Government;
- Operating FPI in a self-sustaining manner;
- And minimizing FPI's impact on private business and labor.

While acknowledging these as admirable goals, the Committee is concerned as to how well FPI is achieving these goals - particular whether or not FPI is minimizing its impact on private business and labor.

Congressman Pete Hoekstra of Michigan has recently proposed HR 1829, the *Federal Prison Industries Competition in Contracting Act,* that would significantly change the way business is done at FPI. Congressman Hoekstra, thank you for joining us. I am grateful that you have agreed to testify before this Committee as to the merits of your bill.

I would also like to recognize Dr. Harley Lappin. Dr. Lappin, recently become the CEO of Federal Prison Industries. Congratulations, Dr. Lappin. I look forward to hearing your testimony and that of the others who have been kind enough to join us here today.

Before we begin, however, I would like to give my other colleagues an opportunity for an opening statement.

Opening Statement of Rep. Pat Toomey
Hearing on Federal Prison Industry's Effects on the U.S. Economy and the Small Business Environment
October 1, 2003

Good afternoon. Thank you all for being here. Today, our committees are going to examine Federal Prison Industries' (FPI) place in our free market economy.

Before we begin, I would like to thank the gentleman from Missouri, Mr. Akin, for joining with me to hold this hearing. I know that I myself and many of my colleagues in the House are very grateful to the good people of Missouri for sending Todd to Congress. He has become an invaluable asset not only to the Small Business Committee but also to the Congress as a general matter. It has been an honor and a privilege serving in Congress with you and I look forward to continuing our work together in the future.

Today, our committees are going to examine Federal Prison Industries' (FPI) place in our free market economy. Established by President Roosevelt in 1934,FPI was established as a government-owned corporation. FPI was given special "mandatory source" status in the government procurement process, forcing government agencies in need of a product to purchase that product from FPI. No consideration can be given to a private sector competitor unless that agency asks FPI for an exception from its own monopoly.

This hurts American workers in textiles, furniture manufacture, document conversion, e-business, and any one of hundreds of niche industries that are essentially blocked out of government contracting opportunities. Opportunities that can very literally mean the difference between keeping shop doors open or closing them forever.

In December of 2001 we made a positive change for America's small businesses by passing a provision in the Fiscal Year 2002 National Defense Authorization bill which requires the Department of Defense to conduct research and market analysis prior to the purchase of FPI products to determine whether FPI products are comparable in price, quality, and time of delivery as the private sector. If it is determined that FPI is not comparable in the areas stated above, FPI must compete with other entities for procurement of the product.

While this is certainly a positive change for America's small and medium sized businesses, there is much more progress to be made. In Fiscal Year 2001, FPI's total sales were over $583 million. In my view, that is $583 million worth of government contracts that could be awarded to small businesses across the country.

Today we have with us the Honorable Pete Hoekstra of Michigan who is the lead sponsor of a bill, H.R. 1829, the "Federal Prison Industries Competition in Contracting Act of 2003," that would change the way FPI operates so that America's businesses have a chance to compete for various federal contracts.

Competition is critical in our free market economy. Competition not only drives down prices and improves the quality of goods and services, but is also the driving force behind innovation. It is essential that we maintain healthy competition in our economy.

Pete has been a champion of this issue for many years, and I congratulate his recent successes in fighting this battle. Pete worked tirelessly with the House Armed Services Committee last Congress to include the FPI provision in the Defense authorization and earlier this year, Pete worked again with the Intelligence Committee to include a similar provision in the Intelligence Authorization bill.

Although they are not small accomplishments, I know, Pete knows, and Todd knows, we've still got a lot of work to do and I look forward to today's testimony.

Statement
of
Pete Hoekstra
United States Representative, Second District of Michigan

Norwood

Before
Subcommittee on Workforce, Empowerment, and Government Programs
and
Subcommittee on Tax, Finance, and Exports
Committee on Small Business
U.S. House of Representatives

Joint Hearing
on
Effect of Federal Prison Industries on Small Business and the Economy

October 1, 2003

Chairman Akin and Chairman Toomey, I commend you for scheduling today's hearing and I thank you for this opportunity to testify. Federal Prison Industries, Inc. (FPI) continues to be one of the worst examples of unfair Government competition with the small business community. Through its mandatory source status, FPI is abe to deprive small business concerns, and their non-inmate workers, from even being able to bid on more than a half a billion dollars in Federal business opportunities, funded with their tax dollars. For many years, this Committee, and its counterpart in the Senate, provided virtually the only forum for those being harmed by the corrosive manner in which FPI is allowed to operate in the Federal contracting market.

While this is not a legislative hearing, I am very pleased to report that the Committee on the Judiciary has now filed its report on H.R. 1829, the **FEDERAL PRISON INDUSTRIES COMPETITION IN CONTRACTING ACT OF 2003**, which I introduced on April 12, 2003. The bill has again garnered broad bipartisan support. Again, I am fortunate to have as lead cosponsors, Rep. Barney Frank, Rep. Mac Collins, Rep. Carolyn Maloney, Rep. Jim Sensenbrenner, Chairman of the House Judiciary Committee, and my colleague from Michigan, Rep. John Conyers, the Committee's Ranking Democratic Member. In all, the bill has garnered 142 bipartisan cosponsors.

It was ordered reported by the Judiciary Committee on July 25th on a strong bipartisan voice vote. The principal amendment seeking to weaken the bill was defeated on a bipartisan roll call vote of 19 to 8.

The bill enjoys strong bipartisan support within the ranks of the House Committee on Small Business, with fourteen cosponsors, led by the Committee's Chairman (Mr. Manzullo) and the Committee's Ranking Democratic Member (Ms. Velazquez).

The core objective of H.R. 1829 is the elimination of FPI's status as a mandatory source to the various Federal agencies. The bill requires FPI to compete for its Federal contract opportunities rather than simply being able to take them as they can today. The elimination of FPI's mandatory source status will provide access to Federal contracting opportunities now foreclosed.

FPI, and other opponents of the elimination of FPI's mandatory source status, are now trying to hide behind the FPI's stable of suppliers, suggesting that enactment of H.R. 1829 will hurt them.

As with so many of FPI's assertions, this one proves false when subjected to scrutiny.

With FPI operating as a prime contractor, exercising its mandatory source status, an FPI supplier has a very preferential place in the Federal procurement process. Remember what mandatory source means in practical business terms. FPI, rather than the buying agency, determines whether FPI's offered product and delivery schedule meets the agency's mission needs. FPI, rather than the buying agency, determines the reasonableness of FPI's offered price. FPI can demand its offered price provided that it does not exceed the highest price offered to the Government for a comparable item. No Government purchases need to have been made at such price and FPI determines comparability. To make a competitive purchase, the buying agency must actually obtain FPI's permission, a so-called waiver.

As a former businessman, I would like to be part of a team that can force its customers to make purchases. It gives me a guaranteed base of sales. Why would I want to relinquish such a preferred status?

However, from a public policy standpoint, FPI's mandatory source status is simply indefensible.

By eliminating FPI's mandatory source status, H.R. 1829 merely provides access to those Federal business opportunities for all, not just those who are FPI suppliers. FPI's current suppliers will be free to win Government business indirectly as a supplier to FPI or they may chose to sell directly, something which many of them already do. As is the nature of the marketplace, business will be won based on their ability to best meet the Federal agency's needs, or more accurately the taxpayers' needs, in terms of quality, delivery, and price.

Many of FPI's suppliers have reputations as highly competitive, quality performers. One was just featured in a full-page ad in the September 29, 2003 issue of ***Roll Call***. Suppliers like Power Connector, Inc., successful in both the commercial market and the Government market, will be a big help to FPI in successfully making the transition to obtaining its Federal business on a competitive basis. As requested by FPI during extensive discussions during the 107th Congress, H.R. 1829 provides a five-year transition period during which FPI may adjust to

winning its Federal business on a competitive basis, just like any other supplier to the Federal Government.

Further, the enactment of H.R. 1829 will not increase or decrease the business opportunities available through purchases by the various Federal agencies. H.R. 1829 eliminates FPI's status as a mandatory source, not FPI's right to compete in the Federal market, supported by its network of suppliers. In fact, the bill places an affirmative duty on a Federal agency to solicit an offer from FPI, if the agency has a need for a product or service of the type FPI's offers. Other prospective Government contractors, large and small, have to find their Federal contracting opportunities.

Next, FPI's performance in making contract awards to small businesses, including small businesses owned and controlled by women and minorities, some 62 percent, almost seems too good to be true. From my experiences with FPI and their penchant for distorting data, I make an observation.

FPI awards its supplier contracts through a procurement method in in which only FPI can challenge a bidder's certification regarding its status as a small business. Many of FPI's newest and most prominent suppliers, which FPI's refers to as its "Partners", are subsidiaries of larger corporations. As Members of this Committee know, a firm is not entitled to claim the status of a "small business," if such firm is the affiliate of a firm that is "other than a small business." This Committee may want to request the Small Business Administration to facilitate a verification of the small business status of FPI's active suppliers to determine if their have been any false certifications.

As you evaluate the various dire predictions regarding the impact of H.R. 1829 on FPI, keep in mind, that H.R. 1829 leaves in place a broad array of competitive advantages enjoyed by FPI. Proponents of H.R. 1829 like to say that the bill levels the playing field for small business. More aptly, H.R. 1829 allows businesses, small and other than small, to simply get on the playing field for Government contracts, through the elimination of FPI's mandatory source status.

Inmate workers of FPI will continue to be paid at wage rates substantially less than the Federal Minimum Wage, prescribed by the Fair Labor Standards Act. Currently, FPI's highest wage is $1.15 per hour. FPI wage rates, against which American firms and American workers are expected to compete, look to me to be modeled after the wages rates dictated by the Communist Government of China.

The bill does not alter the current situation in which FPI's factory space is provided by the host correctional institution and is constructed at taxpayer expense. Similarly, FPI will continue to receive its utilities from the host institution. As a Government corporation, FPI has a preferential status to receive without cost industrial equipment deemed to be excess to the

needs of the various Federal Departments and agencies, including the substantial quantities of industrial equipment returned to the Department of Defense by its contractors. As a Government-owned corporation, FPI is exempt from any Federal and State income tax, gross receipts tax, excise tax, or state and local sales taxes on any of its purchases. Finally, FPI has had a $20 million line-of-credit from the U.S. Treasury on an interest-free basis since 1988.

A recent experience of one of my constituents, Borisch Manufacturing, a small business with annual sales of $25 million, is worth sharing with the Committee. Their experience demonstrates two points and raises two questions.

The Defense Electronics Supply Center (DESC), part of the Defense Logistics Agency, issued a competitive solicitation for a certain type of 25 foot cable assemblies. Borisch Manufacturing, an experienced manufacturer of this type of item, decided to submit to bid.

The contract was a requirements-type contract, in which the winner would fill DOD orders over the ten-year duration of the contract. It had an estimated value of between $25 and 50 million. The competition was restricted to bidders who were small business concerns.

All bidders had to use specially designed connectors that were available from only one approved source. Materials, including these specified connectors, represented 85 to 90 percent of the cost of manufacture. The winner would be decided on the cost of labor.

The last prior contract award for the product was made to FPI on a sole-source basis, pursuant to its mandatory source status. DESC paid FPI a unit price of $547. Confronted with competition, FPI's offer had been reduced to $510 per unit. As expected, competition saved the taxpayers money.

Borisch Manufacturing simply could not submit the winning bid, paying his employees market-driven wages. No amount worker productivity on the part of Borisch could off-set FPI's wage advantage. FPI's average wage is about 92 cents/hour. Given its numerous advantages, undisturbed by H.R. 1829, FPI will win competitions.

Now for the questions.

First question: What can be done to more truly level the playing field, when FPI competes for Federal contracts against small business? For example, why shouldn't H.R. 1829 require that FPI's bid price be adjusted to reflect an inmate labor cost of at least the Minimum Wage rate required by the Fair Labor Standards? I would respectfully ask that my constituent's questions should be asked today. I would be most interested the response of the new Director of the Federal Bureau of Prisons, who asserts that he is eager to reform FPI.

Second question: Why is FPI allowed to bid in a contract competition limited to a competition among small businesses?

FPI is large among the largest contractors to the Federal Government. In 2002, FPI operated a centrally managed chain of 111 factories at 71 correctional institution, employing 21,778 inmate workers. With FY 2002 sales of $678.7 million, up from $583.5 million in 2001, FPI is the 34th largest Federal contractor.

H.R. 1829 would allow FPI to bid on any Federal contracting opportunity. This is another concession made at the request of a prior Director of the Federal Bureau of Prisons. It annoys many in the small business community. Its fairness has been questioned by Members of this Committee. A question regarding whether he would support deleting this provision from H.R. 1829 should also be asked of the new Director.

Third question: After America has lost 2.7 million factory jobs over the last three years, is it defensible for FPI to be activating new factories at 17 new prisons to furnish more products under its indefensible mandatory source status? Such expansions will probably make FPI the fastest growing manufacturing concern in America.

The Director's written statement cites the benefits of inmate work programs in reducing inmate idleness and in reducing rates of recidivism.

Prison systems at all levels use work opportunities to combat idleness and to impart basic work skills that contribute to an inmate's successful return to society upon release. In the Federal Bureau of Prisons (BOP), as in most state prison systems, the vast majority of inmates work at jobs directly related to the operation and maintenance of the correctional facility. Work assignments encompass the full gamut of activities providing basic services, such as helping to operate kitchens and laundries, helping plumbing and electrical repairs, performing carpentry, painting, and groundskeeping to help maintain the Federal correctional institution (FCI).

A much smaller percentage of inmates have work assignments in prison industry programs, which assemble products or furnish services which are generally sold exclusively to governmental agencies. Within the BOP only about 18 percent of the inmates work for FPI. The remaining 82 percent of the able-bodied inmates within BOP are engaged in institutional work assignments. It should be noted that the percentages of inmates employed by prison industry programs at the state and local levels are substantially lower than the percentage employed by FPI.

Proponents of FPI, often assert that participating in FPI helps reduce recidivism. The data underlying that assertion is drawn from the Post Release Employment Project (PREP) study Beginning in 1983, BOP has conducted a on-going study of the effects of vocational training and inmate work experiences on post-release success. The most recent analysis of the Post Release

Employment Project (PREP) data covering 1984 through 1987, issued in 1997, shows that work experiences have a positive effect on post-release employment success, resulting in a 24% reduction in recidivism.

This recitation fails to make several important distinctions. First, the PREP study does not confirm any rehabilitative benefit to the inmate associated with the corrosive manner in which FPI can treat its captive Federal agency "customers" through its status as a mandatory source. As previously noted, FPI's mandatory source status deprives the Federal agencies of being able to assure themselves that they are getting "best value" for the taxpayer dollars being paid to FPI. Private sector firms, and their non-inmate workers, are deprived of the opportunity to even bid on Federal business opportunities funded with their tax dollars. Contract workers to FPI handle sales, installations, and "customer satisfaction" follow-up. For many commercial-type items, FPI inmate workers are increasingly reduced to simply assembling complete finished kits furnished by one of its contract suppliers. Quality and timeliness of delivery are both improved to the extent that the inmates' participation in the manufacturing the product is reduced. Reducing the inmate content of the product furnished helps reduce the friction with FPI's captive Federal agency customers and helps expand FPI sales. Such programmatic shifts call into question FPI's justification as an inmate work program.

Second, the PREP study did not find that one type of work has more rehabilitative benefit then other types of work. The PREP study focused on FPI, because within BOP, FPI is the primary source of non-institutional work assignments. H.R. 1829, as reported, and a pending Floor amendment, proposes alternative inmate work opportunities by doing work for not-for-profit organizations. The rehabilitative benefit to the inmate can reasonably be expected to be similar if, for example, an inmate spends eight hours building components for Habitat for Humanity, while learning the building trades, rather than assembling a kit to be "sold" to a Federal by FPI through its mandatory source status. The same can be said with respect to combatting idleness.

Third, the same PREP data showed that vocational and remedial education programs have even a more positive effect on reducing recidivism, resulting in a 33% reduction in recidivism. Similarly, such educational program help combat idleness.

Recognizing the PREP study's finding regarding the superiority of vocational and remedial education to reduce recidivism, H.R. 1829 contains a broad provision to expand such programs within the federal prison system. This provision was added to the bill by a Conyers-Frank amendment to the Federal Prison Industries Competition in Contracting Act of 2001 (H.R. 1577; 107th Cong.), which was adopted on a voice vote without dissent. Modern "hands-on vocational training better prepares inmates to obtain work with higher prospects for earning a liveable wage.

Further, the bill supplements these programs with a demonstration program of cognitive ability assessment techniques which have been shown to improve the application of available educational and training resources to maximize the benefits to the recipients, in this case federal inmates. Such programs have a persuasive record of success in the special needs adult education setting, including within a limited number of non-Federal correctional settings.

To further enhance the prospects of Federal inmates making a successful return to society, H.R. 1829 makes available pre-release assistance to improve their prospects of finding and keeping a job upon release. Research has consistently shown that being able to find and maintain employment paying a liveable wage is central to avoiding a return to criminal activity and ultimately returning to prison.

The Director's written statement also recites the assertion that FPI is totally self-supporting, covering all its operating costs from its sales' revenues. The proponents of H.R. 1829 reject this assertion as blatantly false. Rather, FPI's preferential status in the Federal contracting process permits FPI to charge prices that exceed prices that an agency customer could obtain for comparable or higher quality products furnished by private sector vendors with better performance records in terms of timeliness of delivery and full compliance with the buying agency's specifications. FPI's asserted "self-sufficiency" is founded upon its ability to overcharge its agency "customers" for products of lesser quality, insulated from any means of effective challenge by the aggrieved buying agency.

Again, I commend you for holding this hearing and helping to advance fundamental and comprehensive legislative reform FPI through the enactment of the H. R. 1829, the Hoekstra-Frank-Collins-Maloney-Sensenbrenner-Conyers **FEDERAL PRISON INDUSTRIES COMPETITION IN CONTRACTING ACT OF 2003**.

Department of Justice

STATEMENT

OF

HARLEY G. LAPPIN
DIRECTOR
FEDERAL BUREAU OF PRISONS
AND
CHIEF EXECUTIVE OFFICER
FEDERAL PRISON INDUSTRIES

BEFORE THE

SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT,
AND GOVERNMENT PROGRAMS
AND THE
SUBCOMMITTEE ON TAX, FINANCE, AND EXPORTS

COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

FEDERAL PRISON INDUSTRIES

PRESENTED ON

OCTOBER 1, 2003

Statement of Harley G. Lappin

Director, Federal Bureau of Prisons

and Chief Executive Officer, Federal Prison Industries

Before the Subcommittee on Workforce, Empowerment, and Government Programs

and the Subcommittee on Tax, Finance, and Exports

House Committee on Small Business

October 1, 2003

Chairman Akin, Chairman Toomey, and Members of both Subcommittees:

I appreciate the opportunity to appear before you today. As the Director of the Bureau of Prisons I also serve as the Chief Executive Officer of Federal Prison Industries, a government agency which is a component of the Bureau of Prisons. As the Chief Executive Officer, I am not involved in all the operational details of the FPI program, but I am familiar with the big picture, the philosophical approach of the FPI program and its role in the federal criminal justice system.

Today there are more than 172,000 federal inmates housed in 103 federal prisons and in facilities under contract with the Federal Bureau of Prisons. The federal inmate population has increased by more than 600 percent since 1980 (when we had just 24,000 inmates and 41 prisons), and it is expected to reach 215,000 by 2010. I appreciate the support provided by Congress and the Administration in providing the substantial resources necessary to operate the federal prison system.

The mission of the Bureau of Prisons is to protect society by confining offenders in facilities that are safe, secure, and cost efficient. Our mission is also to provide inmates with appropriate opportunities for self-improvement necessary for a successful return to society. This mission is particularly challenging because the Bureau of Prisons has little control over the number of offenders who come into the prison system or over the length of time they stay in prison. We also do not control the offenders' backgrounds including criminal histories, educational levels, substance abuse problems, etc., all of which impact their ability to adjust to prison and ultimately to successfully reenter society. But, we do have some control over how inmates occupy their time and how the offenders leave our custody and the impact they will have on society, particularly public safety.

We know, based on rigorous research, that the federal prison system is reducing recidivism through our inmate programs that include work assignments, drug treatment, education, vocational training and others, all of which are intended to provide inmates with the skills and the cognitive abilities necessary to function as law abiding, taxpaying citizens when they return to our communities. In recent years, the Bureau has released more than 40,000 inmates per year, a number that can only increase in years to come as the inmate population continues to rise, with the vast majority of inmates eventually being released from prison.

Federal Prison Industries is a critical component of the Bureau of Prisons' efforts to prepare inmates to successfully reenter society. Inmates who work in Federal Prison Industries are 24 percent less likely to commit crimes and 14 percent more likely to be employed for as long as 12

years after release, when compared to similar inmates who did not have FPI experience. Indeed, the FPI program provides the greatest benefit to minorities, who are often at greater risk for recidivism. These research findings have been favorably reviewed by nationally respected social scientists and economists.

Some have attempted to criticize our recidivism findings by claiming that the FPI program only takes inmates who are already at lower risk. But this is not the case. We focus our FPI program in higher security institutions – those that generally have the most serious offenders. Even before they are released from prison, it is apparent to prison staff that inmates who work in the FPI program have made substantial adjustments in their thinking and their behavior. When compared to similar inmates without FPI experience, the FPI program inmates are substantially less likely to violate prison rules, despite the extensive and violent criminal histories that are so common to these individuals. In fact, 76 percent of inmates working in the FPI program have been convicted of drug trafficking, weapons, and violent offenses. Federal Prison Industries is unique among our inmate programs in that it operates at no cost to the taxpayer. By statute, the FPI program is self-sustaining and receives no direct appropriated funds for its operations. But, the FPI program's purpose is not to be a business that generates revenue. It is a correctional program. There are many ways in which it does not and should not operate as a business: it does limited advertizing or marketing; it does not sell its products on the open market; it does not buy its supplies as a business would; and, most significantly, it is deliberately labor-intensive in order to engage the largest possible number of workers. Although the FPI program produces products and performs services, the real output of the FPI program is inmates who are more likely to

return to society as law-abiding taxpayers because of the job skills training and work experience they received in the FPI program.

Another secondary but important benefit of the Federal Prison Industry program is its ability to provide inmates wages that can be used to provide restitution to victims. The FPI program mandates that 50 percent of inmate wages be used to pay fines, restitution, and child support obligations, which helps to make whole those outside the prison system who were affected by inmates' conduct. In Fiscal Year 2002, inmates working in FPI paid more than $3 million towards these obligations, with the vast majority going to victims or victims restitution organizations.

The FPI program also contributes significantly to reducing inmate idleness. Inmate idleness is deleterious in a number of ways – it undermines other rehabilitation programs and increases the risk of violence, escapes, and other disruptions. Idle inmates require more staff to monitor, which increases the cost to taxpayers. Furthermore as the amount of time inmates are idle increases, the rate of these problems does not increase linearly, but geometrically.

With regard to the FPI program's effect on small business, last year the FPI program spent more than half a billion dollars in raw materials, equipment, and services from private vendors. This money represented 74 percent of the entire revenue earned by the FPI program, and more than 62 percent of this money went to small businesses, including businesses owned by women, minorities, and those who are disadvantaged. In addition to the requirement that the FPI program

provide training to the greatest possible number of inmates, the law requires the FPI program to minimize any negative impact on private sector businesses.

Despite the FPI program's positive impact on recidivism, restitution to the victims of crime, and its support for small businesses, there is an on-going debate regarding the FPI program and its impact on the private sector, particularly as it relates to the FPI program's mandatory source authority. I would like to clarify that the so-called "mandatory source" rule does not mean that the FPI program can impose itself on 100 percent of any particular kind of procurement. Our mandatory source rule can only apply so long as the FPI program is supplying less than 20 percent of a particular product to the federal government. Because the FPI program is prohibited from selling its products in the open market, in most cases, the 20-percent limitation means the mandatory source rule generally applies when the FPI program's production is no more than 1 or 2 percent of the U.S. market for a given good.

Having clarified the true scope of mandatory source, however, I would like to assure you that we are sensitive to the concerns of government contract bidders and agree that any negative impact of the FPI program on the private sector should be minimized. I want to be clear that we do not oppose balanced reform of the FPI program. Consistent with the Administration's position, any reform of the FPI program should simultaneously provide federal agencies with greater flexibility in buying products, increase access by private sector companies to government purchases, and ensure that the Attorney General maintains adequate work opportunities in federal prisons to reduce recidivism and counter the potentially dangerous effects of inmate idleness.

Efforts to reform the FPI program in a balanced manner are already underway. We are already working to reduce the FPI program's reliance on mandatory source, reduce production in office furniture and textiles, and emphasize new areas for inmate jobs, particularly service jobs that are moving overseas. The FPI program's Presidentially-appointed Board of Directors has already taken several very significant and proactive steps as part of this effort. Since March of this year, the FPI program's Board has instituted several measures to ensure the FPI program does not place an undue burden on private industry and small businesses:

- FPI's Board eliminated the FPI program's mandatory source for purchases up to $2,500. This change applies to all federal agencies and recently became effective pursuant to a Federal Acquisition Rules change.

- FPI's Board directed that the FPI program grant requests for waivers in all cases where the private sector provides a lower price for a comparable product that the FPI program does not meet.

- FPI's Board directed that the FPI program waive mandatory source for products where the FPI program's share of the federal market is 20 percent or more.

- FPI's Board directed the FPI program to stop selling products for which prison labor does not contribute at least 20 percent of the value of the product.

Beyond the efforts of the FPI program and its Board, Sections 811 and 819 of the National Defense Authorizations Acts of 2002 and 2003, respectively, changed the procedures for Department of Defense (DoD) procurement from the FPI program. The collective effect of these and other factors has been a decline in the FPI program's sales and earnings. As a result, the FPI program has had to close or downsize 13 factories and reduce inmate participation by approximately 2,000 inmates.

If the FPI program is not able to maintain its viability as a correctional program or is not able to maintain adequate levels of inmate enrollment, there will be a negative ripple effect. First and foremost, if fewer and fewer inmates develop the social skills of the workplace, recidivism will likely increase, at substantial future cost to taxpayers and victims of crime. Second, there may be a disruption to the small businesses that currently depend on the FPI program for their continued business success. Third, opportunities to provide restitution to victims of crime will decrease. Fourth, the risk of dramatically increased inmate idleness will threaten the safety of our federal correctional institutions. Finally, if the FPI program is no longer available to provide training to inmates, we will need to further develop alternative programs.

The Bureau is getting significantly greater numbers of federal inmates who are serving more time in prison, are unskilled, undereducated, criminally sophisticated, and physically violent. Virtually all of these inmates will be released back into our neighborhoods at some point and will need job skills (vocational training), work experience (the FPI program), and secondary education if they are to successfully reintegrate into society. The FPI program creates the opportunity for inmates

to work in diversified work programs that teach work skills and a work ethic through day-to-day work experience, both of which can lead to viable employment upon release.

With the Bureau inmate population, projected to increase 27 percent by the year 2010, the greatest challenge facing the FPI program in the future will be its ability to continue to generate the requisite number of new inmate jobs and thereby help prisoners prepare for a crime-free return to their community after release.

Chairman Akin and Chairman Toomey, this concludes my remarks. I would be pleased to answer any questions you or other Members of the subcommittees may have.

TESTIMONY

Christopher Fay
Of The Milton S. Eisenhower Foundation

For the
Subcommittees on Workforce, Empowerment and Government Programs
And Tax, Finance and Exports of the Committee on Small Business
Of the United States House of Representatives

October 1, 2003

I would like to thank Chairman Manzullo, Ranking Member Velazquez, Subcommittee Chairs Toomey and DeMint, and Tom Bezas for inviting me to speak on this important societal issue, and for their vision and compassion for the needs of every citizen, even those who are incarcerated. It is great honor to appear before you.

I come to the subject of Prison Industries as someone who for many years has worked closely with individuals who have come out of prison and who, for the most part, failed to adjust to the demands of life on the outside. The particular topic of my testimony is whether inmates engaged as workers in the various prison industries learn the kind of skills they need to equip them for productive employment on the outside. I am not here as an expert on how prison industries impact other small businesses, or on whether they as a positive effect on the safety, security and morale of the prisons in which they are located, or on the degree to which they contribute financially to the cost of operating prisons. However, I can speak with some authority as to whether prison industries tend to prepare the inmates for productive employment once released.

I think it is important to address this issue. One of the benefits of Prison Industries, according to their own literature, is that it allegedly helps equip the inmate for eventual employment on the outside. Perhaps in some small measure it does, at least to the degree that it gets the person into the daily routine of a working life. It has the value of keeping the inmate busy, which is good for the inmate and the prison as a whole. But from what I have witnessed, training the inmates in truly marketable skills seems to be a goal far down the list of priorities, far beneath the goal of making money for the prison and its' private subcontractors. I think it is ironic that they list as one of their goals the training of inmates for jobs upon their release, when at the same time they openly acknowledge their preference for employing inmates serving life terms. Prison Industries may have numerous merits, but their record of equipping inmates for productive employment on the outside is not one of them. In fact, the belief that training the inmate for productive employment on the outside was essentially scrapped in the 1975 under the leadership of Norman Carlson, who stated, "there are limitations to what government can do in people's lives when there is no desire to change."

In the Prison Industries literature, when they describe actual job skills learned, they tend to focus on those elementals of good work skills such as learning to show up on time, learning to work under authority, to focus on a task, and so on. I wholeheartedly agree

that most inmates need to be brought up to speed on these most rudimentary of work skills before they can ever hope to attain a well paying job. But Prison Industries do have this certain advantages over most privately run programs which also focus on teaching ex-offenders work skills. First, they have the inmate for a long duration of time – often many years. In terms of lifers, of course, they have them for good. It is certainly conceivable that in that duration of time the inmate could learn a multitude of marketable skills, and even attain management positions in some of the businesses. However, this could only occur if the primary objective of the Prison Industries was to equip the inmates with marketable and transferable skills. And I would argue that equipping the inmate with such skills is the least of their goals.

What qualifies me to speak on this issue? In 1992, in the Harlem neighborhood of New York City, I founded a program called Broadway Community, Inc., the focus of which was to assist individuals to attain the skills and resources they needed to rebuild their lives, and to eventually establish lives of responsible and productive self-sufficiency. The vast majority of our clients had been incarcerated prior to coming to us, and had returned to lives of drug and alcohol use, become homeless, and in some cases, returned to criminal activity. Our clients were individuals who came out of prison wholly unprepared for life on the outside. At least half, if not more, had been engaged in various Prison Industries while incarcerated, and they had planned to use that experience to find employment on the outside. We typically worked with these clients for a minimum of one year. We found that for the most part, they had few skills for the kind of jobs that actually were available to them. And their experience in the various prison industries had not allowed them to attain positions of sufficient expertise that they could earn the kind of salary they needed to survive in a city as expensive as New York. And many of their jobs were not transferable. But they could never find a job that paid enough to sustain them, let alone sustain dependent children. The longer they stayed in our program, the better they did, the more they learned, because we concentrated on assisting them in finding apprenticeships in jobs where there was a promise of upward mobility and where the salary they earned could actually pay for the cost of living.

I ran this program for ten years, during which time we earned numerous awards for our work, due to the fact that we focused on individuals who were otherwise considered intractable and beyond hope. Many of them had spent long stretches in prison, hence their familiarity with prison industries.

I continue to work with the same clientele in my present position. I am now a Director of the Milton S. Eisenhower Foundation, headquartered here in Washington, DC. The Eisenhower Foundation is a private sector continuation of the Kerner Commission and the Violence Commissions chartered by President Johnson in the late 1960's to study the causes of violence in our inner cities. My particular responsibility is to replicate a model program for ex-offenders, the Delancey Street Foundation, which has five facilities around the country and is headquartered in San Francisco. Delancey Street is widely considered to be the most successful educational and rehabilitative institution for ex-offenders and drug addicts in the world, having established unprecedented success working with individuals whose arrest and conviction records average in the double

digits. People stay in Delancey for a minimum of two years and an average of four years – far longer than the average program addressing the needs of drug addicts and ex-offenders.

Part of what makes Delancey so distinctive is the fact that they run their own businesses, which function simultaneously as training schools. These business training schools are run entirely by the participants themselves, and they accomplish two things – and both things exceedingly well: they earn income, sufficient enough to be a self-sustaining organization – about six million a year; and they train the participants in the kind of skills they need to earn a good living. The participants learn not just one but three marketable and transferable skills. Residents stay in the program long enough to work their way up through the businesses to junior and senior level management positions, so that when they graduate, they can earn a truly decent living. And it is important to note that these skills are highly transferable from one locality to another – skills in such fields as culinary arts, accounting, commercial truck driving, automotive repair, business management and sales positions of all kinds. Graduates of Delancey include many successful businessmen and women, lawyers, doctors, firemen, teachers, counselors, even a member of the San Francisco Board of Supervisors. Delancey Street proves that it is possible to train and equip the offender – it can be done. They do it in four years, with individuals who were considered by everyone else to beyond repair. Surely we could all learn from this model and give a much higher priority to training the inmates for a successful life on the outside.

Prison Industries may have many merits, but when it comes to training the inmate in marketable skills which can be transferred to the outside world, it currently falls short. I am not in favor of scrapping the program altogether. I do suggest that we recover the belief, so eloquently modeled by the early pioneer of Prison Industries, James Bennett, that the Prison Industries be designed to benefit the inmate, as well as the prison. If that is not an aim, let's not pretend it is. If it is an aim, then let us adjust our priorities so that the training of the inmate is on equal if not greater footing than the objective of making money for the prison or its corporate partners. In the long run, we will reap considerable benefits - fewer of our brothers and sisters incarcerated, far lower recidivism, and a more humane society.

Thank you.

Statement of the U.S. Chamber of Commerce
Presented by John Palatiello for the hearing on the
Economic Impact of Federal Prison Industries and
the Small Business Environment
Before the House Small Business Subcommittees on Workforce,
Empowerment, and Government Programs and Tax, Finance and Exports
September 24, 2003

Chairman Toomey, Chairman Aiken and Members of the Committee, I am John Palatiello, Executive Director of MAPPS, a national association of firms in the mapping, spatial data and geographic information systems field. I am also a member of the U.S. Chamber of Commerce and have the privilege of serving as the Chair of the Chamber's Privatization and Procurement Council. It is on the Chamber's behalf that I appear before you today.

The U.S. Chamber is the world's largest federation of business organizations, representing more than three million businesses and professional organizations of every size, sector and region of the country. The Chamber serves as the principal voice of the American business community. Over ninety-six percent of the Chamber members are small businesses with fewer than 100 employees. The Chamber commends the Subcommittees for their dedication and interest in holding this hearing on the effect of Federal Prison Industries (FPI) on the U.S. Economy and the Small Business Environment. The Chamber respectfully submits these comments for the record.

FPI in the Free Market

Our free market system is essential to achieving and maintaining a vibrant and productive economy and is a necessary foundation of political and social freedom. The United States government is responsible for enforcing laws that promote competition in the marketplace and ensure a level playing field among competitors to benefit American consumers. Monopolies do not belong in a free market economy. When you remove competition from the equation you are left with higher prices, lower quality or service, and lower productivity as a result of lower efficiency. Non-market practices also stifle innovation and reduce the availability of goods and services. This is exactly the situation with respect to FPI sales in the federal market. The federal government – the consumer in this case – is paying above market prices for lower quality goods and in doing so, is squandering American taxpayer dollars while completely ignoring the very rules it enforces in the commercial market.

The Need for Reform

In 1934, President Roosevelt established FPI as a government-owned corporation. FPI was given special "mandatory source" status in the government procurement process, forcing government agencies in need of a product to purchase that product from FPI. No consideration can be given to a private sector competitor unless that agency asks FPI for an exception from its own monopoly. It is ironic that there are laws prohibiting the U.S.

from importing goods that are made by prisoners in other countries, yet we have laws that require our own federal government to buy goods and services from prisoners in this country.

Each year, FPI expands to produce even more goods and services. FPI's sales growth, all through non-competitive contracts, has been formidable: $546 million in 2000, $339 million in FY 1990, up from $117 million in 1980, and $29 million in 1960. Today, FPI produces over 300 products and services that in 2002 alone totaled nearly $700 million worth of sales to the federal government, making it the 39th largest Government contractor. This makes FPI a formidable competitor even for a large private sector enterprise, much less a small business. Evidence indicates that FPI will continue its expansionist behavior, by exploiting its mandatory source status and increasingly encroaching on private sector industries in order to be a profitable enterprise, forcing small businesses to halt production lines, lay off employees and close their doors for good.

Ensuring a level playing field for the private sector, particularly small businesses, in the federal procurement process by ending FPI's unfair advantage is a major priority for the Chamber. The Chamber has long-standing policy that the government should not perform the production of goods and services for itself or others if acceptable privately owned and operated services are or can be made available for such purposes. The private sector should be allowed to compete fairly with FPI for federal contracts – plain and simple – by eliminating the requirement that government agencies purchase products and services from FPI.

Reform of FPI starts with the realization that FPI currently exceeds its statutory authority. They can set any price they want within the range of market prices and have no incentive to charge the lowest price. FPI, rather than federal agencies, determines whether FPI's products and services and delivery schedule meets the agency's needs. By granting FPI a monopoly, issues of price, quality and efficiency fall by the wayside at the expense of U.S. taxpayers. Contrary to FPI's assertions, the General Accounting Office (GAO) reported in 1998 that FPI cannot back up its frequent claims about being a quality supplier to Federal agencies, furnishing quality products at low prices to meet their needs. Once FPI commandeers a product, it erodes, displaces, or eliminates private sector competition, thus opening the door for it to raise its prices.

Recent aggressive expansion by FPI into the services arena has caused great concern in the business community. Even though FPI's authorizing statute does not specifically mention services, FPI has interpreted that it is a "preferential source" for services and used this to enter into sole source contracts with Federal agencies for services. They are quickly expanding their services portfolio, which includes printing, environmental testing, recycling, mapping and imaging, distribution and mailing, laundry services, data conversion, and call center and help desk support.

This expansion is alarming not only because it adversely impacts the private sector but also because it is wholly inappropriate to allow inmates access to classified or infrastructure information used in mapping projects or the personal or financial information of private citizens used in call center operations. We should be extremely cautious with the information we arm our federal inmates with in preparation for life beyond bars.

FPI's desire to expand into the commercial marketplace is an alarming development that is seen as a call to arms by industry. The Chamber for three reasons opposes FPI's move into the commercial marketplace. First, the decision to expand into the commercial marketplace is in conflict with the clear language of FPI's enabling legislation and beyond the discretion of the Board. Second, it is a reversal of more than sixty years of public policy. Finally the creation of a state run enterprise, competing with its own citizens, is a policy so at odds with the role of government in a free society, that it is a decision best left to Congress.

Title 18 U.S.C. section 4122(a) specifically states:

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

Now, however, despite this seemingly clear prohibition on entering the commercial market found in the statute, recent evidence shows that FPI has engaged in expansionist practices. Sixty-five years of public policy should not be overturned, especially without public debate. The United States should not be selling commercial services in competition with law-abiding taxpaying businesses, using prison labor that is paid no more than $1.25 an hour. FPI's expansion in the commercial market is a dramatic shift in policy, and in conflict with the clear language of 18 U.S. C. 4122(a). We urge that no proposal to inject Federal inmate provided services in the commercial marketplace be entertained by Congress.

While we are empathetic to FPI's goal to employ federal inmates to reduce recidivism by providing vocational and remedial opportunities while incarcerated, it should not be done at the expense of law-abiding, taxpaying businesses. It is unfortunate that in today's society we are faced with an increasing inmate population. However, we believe other sources of work opportunities for inmates should be explored that do not infringe upon the private sector's opportunities to compete for government contracts, threaten the general safety of our citizens, and provide for expansion in the commercial market.

Legislative reform addressing these concerns is way overdue and more oversight by the FPI Board and Congress is needed now. The Hoekstra-Frank-Collins-Maloney-Sensenbrenner-Conyers Federal Prison Industries Competition in Contracting Act Coalition of 2002, H.R. 1829, strikes a proper balance between reforming FPI's unfair

monopolistic practices and providing adequate programs designed to rehabilitate inmates and reduce recidivism.

H.R. 1829 - Balanced Reform

For many years, the Chamber has been a leader in the broad-based Competition in Contracting Act Coalition, comprised of the business, labor and federal manager communities that advocate comprehensive, fundamental reform of FPI. The Chamber and the Coalition strongly support H.R. 1829. This bipartisan legislation would impose overdue and much-needed restraints on the unfair competitive practices of FPI that inflict damage on law-abiding businesses and the workers they employ.

The Competition in Contracting Act would require FPI to be a more responsible supplier to Federal agencies and the taxpayer, and would allow the private sector to compete fairly with FPI for federal contracts by eliminating the requirement that government agencies purchase products from FPI. The legislation provides a 5-year transition period for FPI as it adapts to the loss of its preferential status and adjusts to competition. It would protect taxpayer dollars and federal agency operating budgets by eliminating FPI's ability to overcharge for its products. Agency contract officers, not FPI, would determine if FPI's offered product best meets buying agencies' needs in terms of quality and time of delivery.

The bill would provide inmates additional opportunities for remedial and vocational education, which have been demonstrated to be more effective in reducing recidivism. It also provides inmates broader access to release preparation programs, including programs focused on the development of job-hunting skills thereby increasing the likelihood of securing post-incarceration employment. H.R. 1829 allows for partnerships with non-profit organizations, such as Habitat for Humanity, which provides inmates alternative work opportunities to apply skills learned in vocational training. These provisions are the direct result of many years of negotiations between reform supporters and opponents, where many concessions were made to satisfy concerns that real reform found in H.R. 1829 would result in a spike in recidivism, inmate idleness, and subsequent dangers to prison guards. The Congressional Budget Office estimates that the costs of implementing H.R. 1829 are minimal.

You are likely to hear FPI proponents – perhaps even today - argue that H.R. 1829 will adversely impact small businesses as it will result in such a drastic reduction in FPI contract workload, which will render them unable to sustain relationships with small business suppliers. This is simply not the case. Although difficult to forecast the true amount, real, fundamental reform of FPIs mandatory source status will likely result in the loss of some contracts for this government monopoly, but H.R. 1829 does not prohibit partnerships with small businesses. In fact, opportunities for small businesses in general will increase under these reform measures. The benefits of competition and the opportunities that reform will create for small businesses far outweigh the potential loss of some existing contracts.

FPI proponents will also argue that real reform found in H.R. 1829 will result in a reduction of inmate jobs thereby increasing inmate idleness and safety concerns. Federal inmates are currently not fully benefiting from the program because they are largely not manufacturing the products they sell. Instead, an outside manufacturer makes the product and ships it directly to the buying agency, commonly known as "pass throughs" or "drive-by manufacturing." H.R. 1829 corrects this problem by focusing on the needs of inmates and not FPI's profit margins. Pass-throughs hurt inmates and small businesses and only help create large profits for FPI. If proponents of the FPI program are concerned about sustaining inmate jobs then we suggest a thorough look at current practices rather than opposition to any fundamental reform proposal, especially ones crafted by compromise like H.R. 1829.

For this and many of the other arguments you will hear against H.R. 1829, I urge you to keep in mind these arguments are based solely on assertions from FPI itself. FPI asserts that inmate employment has declined, factories have been shut down, and sales have decreased as a direct result of the recently enacted reform that allows the Department of Defense to procure products on a competitive basis if market research proves the private sector can offer a comparable product. While perhaps too early to quantify the impact of this reform, FPI will argue that these concerns warrant holding off further reform measures. We argue that for decades small businesses have suffered from declining employment rates and a decrease in sales, and been forced to shut down factories and production lines because of FPI's unfair competitive advantage and practices, therefore the time is now for reform. FPI stakeholders, reform supporters and FPI proponents alike, agree that FPI's mandatory source status should be eliminated. H.R. 1829, a byproduct of years of debate and negotiations, is that vehicle.

Conclusion

Thank you for the opportunity to appear before you today on behalf of the U.S. Chamber of Commerce and submit these comments on behalf of Chamber members that rely on an efficient, fair competitive process in providing the federal government with goods and services to maintain and grow their businesses. We appreciate the Subcommittee's examination of FPI's impact on the private sector, particularly small businesses, and dedication to implement fair, comprehensive reform. I'd be happy to answer any questions you might have. Thank you.

WOMEN IMPACTING PUBLIC POLICY

Testimony Before
Subcommittees on Workforce, Empowerment and Government Programs,
and
Tax, Finance, and Exports
of the
U.S. House Committee on Small Business

On

"Federal Prison Industry's Effects On The U.S. Economy and The Small Business Environment"

October 1, 2003

Rebecca Boenigk

National Founding Partner
Women Impacting Public Policy, Inc.
www.WIPP.org

Good afternoon. Mr. Chairman and Members of the Committee, my name is Rebecca Boenigk and I am the CEO and Chairman of the Board of Neutral Posture, Inc, located in Bryan, Texas. I am appearing today on behalf of Women Impacting Public Policy (WIPP), a national bi-partisan public policy organization, advocating in behalf of women in business, representing 460,000 members. I am also a member of the Women Presidents Organization and certified by WBENC, a national certifying organization for women owned businesses.

Neutral Posture is a certified Woman Owned Small Business that was founded by my mother, Jaye Congleton, and myself. We have been in business for fifteen years. We have ninety employees at the Texas facility and twelve at our new manufacturing facility in Cambridge, Ontario, Canada.

I want to commend you for holding this hearing because it is of vital importance to the success of our company. When WIPP asked me to represent its members on this issue, I dropped everything to have the opportunity to tell my story to the Subcommittees—so thank you for inviting me to testify.

Approximately twenty five percent of Neutral Posture's business is comprised of federal government sales and we have held a GSA Schedule contract for over ten years. We manufacture ergonomic chairs. Our Neutral Posture chair, which accounts for approximately 75% of our sales, comes with ten standard adjustments including an inflatable air lumbar support. The chairs have contoured seats, which reduce seated pressure. The Neutral Posture chairs have been proven to reduce injuries and worker's compensation costs.

The State of Washington, for example, reduced its injury rates by 60% by using ergonomic chairs. This equated to a 90% savings in worker's compensation costs, lost work time and medical costs.

The Federal Prison Industries (FPI) or UNICOR, our major competitor, does not produce a chair that is comparable to our high- end task intensive seating. The competing product manufactured by FPI is produced at a higher cost, has a longer production lead time and the quality, we are often told by government agencies, is inferior to our products.

Although government agencies would like to buy our products, it is not easy for them to do so. For ten years, government agencies have continually told us they would prefer to purchase our chairs because of the quality and price, but they cannot buy them because government purchasing policy requires that they buy from FPI For example, if a government agency wants to buy office furniture, it must first look to purchase these items through FPI, regardless of price, quality of product, or service. If FPI can provide it, the agency must buy the product from them, even if the agency can get a better product for less money from a small business like mine. We estimate that Neutral Posture has lost approximately $10,000,000.00 in sales due to this requirement over the past 10 years.

And, here's the part that continues to astound me – the agency that wishes to buy from us has to apply for a waiver from none other than my competitor—the FPI. So, Mr. Chairman, as you can guess, the waivers granted are few and far between. Sometimes, we are told up front that no waivers will be granted before we can show our product to the agency, as was the case in San Francisco recently. As a small business owner, I don't have a problem with open and fair competition-- in fact we thrive in that arena. But we are not on a level playing field with FPI.

The Subcommittees should also know that at least in the case of chairs, the prisons do not manufacture all of the chairs. What has happened is that a large company who partners with the FPI, not the prison, manufactures the chairs. The chairs are then assembled and the UNICOR label is attached to the box, therefore, making it an FPI product. I suspect that is not what Congress had in mind when it initiated this program in 1934.

In addition, I would note that FPI's overhead and wage rate is dramatically lower than a small business, so the potential exists in the commercial space that they really have an unfair advantage to pricing which can only harm small businesses. According to a House Committee report on H.R. 1577, which accompanied the legislation, the FPI pays "up to $1.25 an hour" to inmates. Everyone knows, U.S. based small businesses cannot begin to compete with those labor rates.

Recently, the FPI has begun to broaden its interpretation of the current statute governing the way it operates in a way that allows them to enter and sell their products not only in the government marketplace, but also in the commercial marketplace. For the last two years the FPI has exhibited at NEOCON, the largest trade fair of its kind for contract furniture. The FPI has had a huge exhibit area and, at least for commercial vendors, like Neutral Posture, their space is in excess of $80,000 for a three-day show. I would be interested in whether the FPI is paying the commercial rate for its space. Their brochures are expensive and I question if the taxpayers are footing the bill for these marketing materials and exhibits all over the country.

WIPP has not had the opportunity to review all of the provisions of H.R. 1829, which we note Chairman Toomey has cosponsored. We intend to ask our issue

committees to take a close look at the legislation. We note however, that the stated purpose of the legislation—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--sounds compelling to us. WIPP believes that fair and open competition should apply to the FPI as required with other government purchasing practices, given the tremendous barriers small business already face in the federal market with a weakened economy.

We ask the Committee to take a close look at whether the FPI is meeting small business goals required by prime contractors in the government sector. If large businesses are partnering with the FPI, it seems reasonable that those businesses should be held accountable to the small business goals primes are required to adhere to in their subcontracting plans. Although the FPI purports to use a high percentage of small businesses as subcontractors, this is certainly not the case in my industry.

Mr. Chairman, thank you again for bringing this issue to light. We look forward to working with you. I would be happy to answer any questions.

Testimony of:

Angie McClure, Vice President, Habersham Metal Products, Cornelia, Georgia

Ladies and Gentlemen:

Thank you for this opportunity to speak with you regarding HR 1829 and the effect that The Federal Prisons Industries has on our industry. I represent Habersham Metal Products, a small manufacturer in Cornelia Georgia. We produce Metal Doors and Frames for the detention industry and our work is 95% dependent on governmental contracts. The 1996 impact study performed by the FPI before they entered our market predicted that their entry would only have a 6.2% effect on Habersham Metal Products specifically. What the study did not take into account was the effect it would have on our entire market. When virtually all Federal Work was taken over by the FPI, the pool of other work became more competitive. Less work and the same number of companies clamoring for the work, has created such a tight market that FPI's entry has driven the price so low that it is very difficult to remain healthy. Since 1996, prices in our industry have reduced by 26% while the costs of goods sold have increased. This affects the job security of thousands of tax paying citizens. Furthermore, tax dollars are taken away from the State and Federal Governments.

We are only one of many firms that continue to struggle to remain viable. I hold in my hand a list of approximately 627 manufacturers in the State of Georgia who manufacture products in the same SIC categories as the FPI. Each of these 627 companies has at least 50 employees. This figure reflects 31,350 taxpayers that have been affected by FPI. This calculation does not take into consideration that some of these companies have more than 500 employees nor does it consider the companies with fewer than 50 employees. Just using the state of Georgia as an example, how many taxpayers has this affected in all of the United States?

Let me share with you some examples of how the FPI directly affects my company. We worked on a design build project for several months in Pollock, Louisiana. This project would have meant work for the employees of Habersham Metal Products for three months. However, when the specification and request for pricing hit the street the FPI had taken all the prime doors and frames and left only the advance testing and difficult custom work for public bid. This reduced possible work for our employees from 3 months to 3 weeks. The same thing happened for a project in Hazelton, West Virginia. Another example is Butner, North Carolina. The supplier of doors and frames had completed design drawings and already started production planning for over a half million-dollar contract when the FPI decided they wanted to produce the doors and frames on the project and requested that the suppliers contract be reduced. Furthermore, this supplier is a certified hubzone manufacturer in an impoverished area. The reduction of this contract has severe repercussions. This dispute is still ongoing as we speak. The FPI takes without thinking. How can our government allow this to go on?

The loss of income and tax monies is not our only concern. Allowing inmates to build their own metal detention doors and frames is jeopardizing the safety and well being of all of us. Inmates are incarcerated because they committed crimes against society and now society is being put at risk by allowing inmates to hold their containment in their own hands. Those who oppose reform to the FPI do so with a well intended, but misguided desire to rehabilitate inmates. There are other ways to teach and rehabilitate the inmates than taking away jobs from the very workforce that drives the economy of this nation. Rehabilitate inmates by having them participate in meal preparation for the hungry, building homes for habitat for humanity, and working with other charitable organizations, not by letting them build their own housing.

We implore you to reform the FPI for the sake of millions of law-abiding citizens. Thank you.

1 October 2003

The Honorable Donald Manzullo
Chairman
House Small Business Committee
Washington, DC 20515

RE: Hearing on "Federal Prison Industries Effects on the U.S. Economy and the Small Business Environment"

Dear Chairman Manzullo:

The American Apparel & Footwear Association (AAFA), which represents over 600 companies in the sewn goods industry - including nearly 100 that compete in the government contracts arena – supports H.R. 1829, the Federal Prison Industries Competition in Contracting Act.

As written, this bill provides breathing room for U.S. companies who currently face unfair competition from FPI and helps the government agencies that must deal with it. As you know, FPI's mandatory source status allows it to sell to a captive government market regardless of the quality or price of its items. Private companies have no such luxury.

Unfortunately, it has been suggested by some that small companies currently doing business with FPI will suffer if H.R. 1829 is passed. **However, many AAFA supplier members are currently doing business with FPI and have made no such argument.** In fact, AAFA sees many opportunities for these members should the bill pass. After all, the government will still have buying needs, and suppliers to manufacturers making the end product will still have opportunities to do business. Therefore, any arguments that small businesses will suffer as a result seems more like camouflage for companies seeking to protect current contracts. While understandable from their point of view, the protection these companies are fighting for should not be at the expense of similar companies looking for the same opportunities.

Additionally, AAFA is concerned about amendments to H.R. 1829 that allow any of the following:

1. Allow FPI to expand into the commercial marketplace. Should this happen, governments all over the world (ex: **China) may sue the United States** through the World Trade Organization **for fair access to our market for their prison labor goods.** They can do this by citing 19 U.S. Code 1307 entitled, "convict-made goods; importation prohibited". If the U.S. can sell its convict-made goods in the local department store, so can Beijing.

1601 North Kent Street, Suite 1200, Arlington, VA 22209 www.apparelandfootwear.org p (703) 524-1864 (800) 520-2262 f (703) 522-6741

2. Cloak an expansion into the commercial marketplace with the term, "repatriation". As noted above, any expansion into the commercial marketplace, even under the guise of "repatriation" opens the door to challenges under the WTO. Moreover, it's impossible to identify which items are genuinely no longer produced now nor will be produced in the future by any U.S. manufacturer. Additionally, permitting FPI to expand into the commercial marketplace under the "repatriation" loophole would hamper any new investment opportunities in these industries.

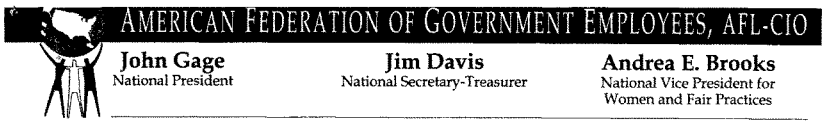
As it stands, H.R.1829 is a good bill that provides much-needed relief for AAFA's government contractor members (most of whom are small businesses). In fact, many of these companies depend heavily on government contracts for their very survival. Many produce for the commercial market to supplement their income (as government contracting opportunities are always scarce) but commercial competition is fierce. Should FPI "repatriate" commercial sewn goods items or in any other way force their way into the commercial marketplace, the impact will severely damage these government contractors on two fronts, instead of just one.

Again, AAFA encourages your support of H.R. 1829 and ask you to oppose any amendments that allow FPI to expand into the commercial marketplace, allow for dubious "repatriation" goals or in any way change the way FPI's mandatory source status will be repealed under the bill.

I thank you for your consideration. If you have any questions, please feel free to contact me at 703.797.9039.

Sincerely yours,

Rachel Subler
Manager, Government Relations & Communications



John Gage
National President

Jim Davis
National Secretary-Treasurer

Andrea E. Brooks
National Vice President for
Women and Fair Practices

8d/132200

October 1, 2003

Dear Representative:

On behalf of the American Federation of Government Employees, AFL-CIO, which represents 600,000 federal employees, including 33,000 employed by the Federal Bureau of Prisons (BOP), we strongly urge you to oppose the Federal Prison Industries Restructuring Act (H.R. 1829).

As you know, the Federal Prison Industries (FPI) is a self-supporting government corporation that provides job skills opportunities to federal prison inmates by producing goods and services for federal agencies. By statute, FPI goods and services must be purchased by federal agencies (a requirement referred to as "mandatory source preference") and are not available for sale in interstate commerce or to non-federal entities. Federal agencies can obtain products and services from the private sector through a FPI-issued waiver if FPI is unable to provide the needed good or service at a competitive price, with the necessary quality or in a timely manner.

AFGE's Council of Prison Locals – which represents the federal corrections officers and other federal employees who work at the 101 prison facilities in the Federal Bureau of Prisons system – strongly opposes H.R. 1829 because it would serious undermine FPI work programs. By eliminating the "mandatory source preference" for FPI goods and services, it would endanger countless numbers of federal prison inmate jobs, thereby (1) creating substantial problems for the safe and secure operation of federal prisons and (2) eliminating real opportunities for federal prison inmates to learn marketable job skills and values.

FPI has been – and continues to be – an essential prison management tool that contributes significantly to the safety and security of federal prisons. FPI helps keep thousands of federal prison inmates productively occupied in labor-intensive work activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides incentives to encourage good inmate behavior, as those who want to work in FPI must maintain clear conduct and participate in educational programs.

In addition, FPI is an important rehabilitation tool that provides federal prison inmates an opportunity to develop job skills and values that will allow them to

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reenter our communities as productive, law-abiding citizens. A multi-year study of FPI, completed in 1999 by the Federal Bureau of Prisons, demonstrated that FPI work programs contribute substantially to lower recidivism and increased job-related success for inmates after their release. Inmates employed by FPI were found to be 24 percent more likely to become employed after release and remain crime-free for as long as 12 years after release.

FPI is already experiencing substantial reductions in sales earnings and prison inmate employment levels due to the impact of past legislative efforts concerning the Defense Department and FPI. To date, 1,750 inmates have been laid off from their FPI jobs with another 1,000 inmate jobs losses projected by the end of the year. H.R. 1829, if passed, will further undermine FPI's ability to fulfill its statutory obligation to "provide employment for the greatest number of inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible."

We support the free enterprise system, and recognize that FPI and its mandatory source preference may deprive some private sector companies of certain federal government job opportunities. However, we do not believe the current FPI program should be radically changed – as H.R. 1829 would do - until an alternative job skills work program is designed and put into place that will: (1) contribute significantly to the safety and security of federal prisons and (2) provide inmates with job skills and values that will allow them to reenter our communities as productive, law-abiding citizens.

H.R. 1829 does not represent sound correctional policy. We strongly urge you to oppose H.R. 1829 if and when it is considered by the House of Representatives.

If you have any questions, please contact Beth Moten or Alan Kadrofske in AFGE's Legislative Department at (202) 639-6413.

Sincerely yours,

John Gage

John Gage
National President, AFGE

Phil Glover
President, AFGE Council of Prison Locals

STATEMENT FOR THE RECORD
CONTRACT SERVICES ASSOCIATION OF AMERICA

House Small Business Committee
Joint Hearing

Impact of Federal Prison Industry on Small Businesses and Economy

October 1, 2003

Mr. Chairman and Members of the Committee, the Contract Services Association of America (CSA) requests that this statement be included in the official record for your October 1 hearing on the Federal Prison Industries. CSA is the nation's oldest and largest association of service contractors. CSA represents more than 300 companies that provide a wide array of services to Federal, state, and local governments. Our members are involved in everything from maintenance contracts at military bases and within civilian agencies to high technology services, such as scientific research and engineering studies. Many of our members are small businesses, including 8(a)-certified companies, small disadvantaged businesses, women-owned, HUBZone and Native American owned firms. Our goal is to put the private sector to work for the public good.

Last November, CSA appeared before the full Committee on Small Business to share our views and concerns on the potential impact of the Federal Prison Industries on the services industry, in both the Federal government and commercial markets. We have worked closely with private sector labor unions, the U.S. Chamber of Commerce and other associations and individual companies to work on an equitable resolution of the problems that FPI has caused for the small businesses of this Nation. As we have noted in the past, while the goals of FPI are laudable, the manner in which it has aggressively pushed itself into the Federal marketplace – and many legitimate businesses out of that same market – is not.

Background

We all know the history of FPI, which was created in 1934 to employ Federal prisoners to manufacture products exclusively for all Federal agencies. But, as a mandatory source of supply, FPI has a virtual lock on the Federal market – putting the rights of felon's above the need for the Government to get the best value for its procurement needs, and above the rights of law abiding businesses to bid on Government procurements.

How does this mandatory source status work? Current law and regulation obligates a Federal agency to look first to FPI to fulfill its requirements for a product – and to negotiate a contract with FPI on a **sole source** basis. The final determination of the price to be paid for its products is left to FPI – not to the Federal manager. The only way around buying from the prisons is for an agency to request a waiver from FPI itself, which controls both the waiver and appeals process. This ties the hands of Federal managers on FPI designated items. The mandatory source requirement is completely contrary to normally required competitive procurement practices for Government contracting as well as overall Government policy, which states that *"In the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength."* (Section 4, 1996 Revised Office of Management Budget Circular A-76). It is also contrary to the bi-partisan efforts of the last several years to encourage greater commercial practices in how the Federal government conducts its business. These reform initiatives (*e.g.*, the 1994 Federal Acquisition Streamlining Act, the 1996 Clinger-Cohen Act and the FAR Part 15 rewrite) require Federal agencies to conduct market research, have informal discussions with industry and take similar steps to assist agencies in identifying their needs. Acquisition reform, with its emphasis on best value, also has led to more performance based contracting, the issuance of more refined statements of work, a reduction in procurement lead times, and an improvement in quality control.

Of course, FPI claims it can provide products of equal or better quality than the private sector, make deliveries as promptly as the private sector, and sell some products at a lower price than the private

sector thereby saving taxpayer dollars. But these statements are not true. That is why FPI fights so hard to keep its "super preference" that allows them to force out the private sector and prevent companies from bidding on contracts.

Indeed, contrary to FPI's assertions, the General Accounting Office (GAO) reported in April 1998 that the Federal Prison Industries cannot back-up its frequent claims about being a quality supplier to Federal agencies, furnishing products that meet their needs in terms of quality, price, and timeliness of delivery. Once FPI commandeers a product, it erodes, displaces, or eliminates private sector competition, thus opening the door for it to raise its future prices.

FPI has an additional unfair advantage over the private sector. It need not comply with the laws and regulations imposed on the private sector such as those governing minimum wage rates, retirement and other fringe benefits, insurance costs, and compliance with OSHA requirements. And, according to the General Accounting Office, the cost of prison labor ranges from .25 cents to $1.23 per hour.

Unfair Expansion into Services Contracting

So far, these comments have focused on FPI's mandatory source in the manufacturing arena. So why should the Contract Services Association of America (CSA) and its members care about FPI's impact in the manufacturing world? We've entered the discussion because FPI sees services as ripe for aggressive expansion. While the authorizing statute is silent with respect to services, FPI already is involved in numerous service-related activities including laundry services, distribution and mailing services, data services, and telephone support services.

While the mandatory source requirement does not strictly apply to services, FPI has implied that it is a "preferential source" for services and used this to enter into sole source contracts with Federal agencies for services. Unfortunately, the approval process and the requirement for an adverse market impact study that affords some coverage for private sector manufacturers are not applied to services. Furthermore, FPI does NOT have to pay any competitive wages to prisoners. As was noted earlier, this ensures they have an advantage over service companies that must comply with the Service Contract Act and other labor laws and regulations.

While CSA does not advocate this – because we do not believe the FPI should be allowed to enter the services marketplace at all – it would appear to us that congressional authorization, along with the necessary protections, must be given before the FPI could ever contemplate becoming a services provider for Federal agencies.

The FPI's expansion into services contracting is particularly critical as the Federal government progresses towards greater competitive sourcing of its commercial activities. CSA is concerned about previous statements made by FPI to become the "first-stop" for Federal agencies when they decide to contract out those commercial activities currently being performed by Federal employees.

There is an ever-increasing appreciation of the many benefits offered by thoughtful and balanced efforts to competitively source the Federal government's commercial activities. For example, the Federal Activities Inventory Reform (FAIR) Act is aimed at promoting competition of commercial activities currently being performed by Federal agencies, where doing so represents the best value to the taxpayer. But supporters of the FAIR Act, such as CSA, did NOT work hard to get that measure enacted only to see these commercial activities turned over – without competition – to the FPI.

Turning over commercial activities to FPI without competition raises a very fundamental fairness question. Part of the debate over competitive sourcing focuses on providing fair and appropriate soft landing policies to those Federal employees who are impacted by an outsourcing decision by giving those Federal employees a right of first refusal for jobs for which they are qualified, as well as other benefits. Indeed, the percentage of Federal employees offered a position with a private sector firm taking over a commercial activity is high. But there would be no soft landing or right of first refusal for a Federal employee whose job would be going to FPI. For that matter, how does any employer (private or Federal) explain to his/her

employees that FPI is taking over the manufacturing of a product or the provision of a service that the employees have been performing in order to give jobs to criminals? What will happen to the people who lost their jobs to prisoners? Must they commit a crime to get their job back?

Unauthorized Expansion into Commercial Market

More disturbing is FPI's intent to expand into the commercial marketplace. This is an alarming development that should be opposed for at least three reasons. FPI's attempts to expand into the commercial market is in conflict to the clear language of FPI's enabling legislation and therefore arbitrary, capricious and beyond its discretion. Second, it is a reversal of more than sixty years of public policy. Finally, the creation of a state run enterprise, competing with its own citizens, is a policy at odds with the role of Government in a free society.

FPI's decision to expand into the **commercial market** was based on a series of internal Justice Department legal 'opinions,' which found that expansion into the commercial market is not in conflict with FPI's enabling legislation. In a memo dated November 11, 1997, FPI concludes, "it is not prohibited from selling *services* on the open market." According to FPI's reasoning, because congressional debate on this provision focused mainly on products, that the Congress did not intend to prohibit FPI from entering the commercial services market. The opinion gives only cursory treatment to 18 U.S.C. section 4122(a), which states:

> ***18 U.S.C. 4122(a): Administration of Federal Prison Industries***
> ***Federal Prison Industries shall determine in what manner and to what extent industrial operations shall be carried on in Federal penal and correctional institutions for the production of commodities for consumption in such institutions or for sale to the departments or agencies of the United States, but not for sale to the public in competition with private enterprise.***

Since its inception in 1934, FPI has adhered to this statutory prohibition preventing it from entering commercial markets. They have exclusively, and with preferential status, sold their products to the Federal government. In other words, for more than sixty years, FPI has interpreted their statute to mean what it says, *"but not for sale to the public in competition with the private sector."*

Now, based on an internal memorandum, FPI is attempting to overturn sixty years of policy, without public debate. If FPI pursues this avenue without restriction, the United States will now be selling commercial services in competition with law abiding taxpaying businesses, using prison labor that is often paid less than a dollar an hour. The creation of a state run enterprise, using prison labor to offer products or services to the commercial market in competition with private enterprise is a dramatic shift in policy, and in conflict with the clear language of 18 U.S.C. 4122(a). However, there are absolutely no circumstances that would warrant the Federal government using prison labor to compete with law-abiding employers. Therefore, we strongly urge you to not allow FPI to sell its products or services to the commercial market.

Defense Department Actions

For the Department of Defense (DOD), some positive steps recently have been taken to reign in unfair competition from FPI. Section 811 of the Fiscal Year 2002 Defense Authorization Act requires the DOD to conduct market research before purchasing products which are listed in the catalog for the Federal Prison Industries (FPI), to determine whether the FPI product is comparable in price, quality and time of delivery to products available in the private sector. If the FPI product is not comparable, DOD must use competitive procedures to acquire the product – and NO waiver (from FPI) is required should DOD determine FPI is not comparable. The determination of comparability is *"a unilateral decision made solely at the discretion of the department or agency"* (e.g., the Department, Service or defense agency). Furthermore, the comparability determination is based on whether FPI can provide the product on the basis of price, quality AND time of delivery. Additional clarifying language (section 810) was included in the conference report for the Fiscal Year 2003 Defense Authorization Act. An interim rule to implement this provision was published in the Defense Federal Acquisition Regulation Supplement (DFARS) on April 26, 2002.

For DOD, Section 811 ensures that contracting offices have the freedom to explore the market for products to see if FPI's pricing is reasonable and compares in terms of cost and quality to the private sector, or other agency providers. Thus, Section 811applies the acquisition reform initiatives (including market research) to FPI – and by doing so FPI and the Department of Defense will benefit. And for that reason, this authority should be extended on a government-wide basis to ALL Federal agencies.

If FPI is to become a vehicle for reducing idleness and preparing inmates for the private sector, it should prepare those inmates for the reality of the competitive pressures faced by real life employers and employees, and the need to respond to, rather than dictate, customer needs.

Past Performance

In late August, the Federal Acquisition Regulation (FAR) Council issued a proposed rule to expand the use of past performance evaluation requirements to Federal Prison Industries (FPI) contracts. CSA submitted comments (due in late October) in support of the proposed rule.

The proposed rule is a step towards reform, although questions remain on reconciling its mandatory source status with any past performance evaluations it may receive. The proposed rule would amend the FAR to empower Federal contracting officers to evaluate FPI's performance of its contracts, as is done for all other government contractors. Currently, FPI's past performance (good or bad) cannot be evaluated – but since FPI is a mandatory source, past performance evaluations are irrelevant. This discrepancy needs to be addressed.

CSA believes that FPI should be held to the same standards as private sector vendors and that past performance records should have the same impact on contracting decisions with FPI as they do with private sector vendors, where a contractor's past performance is a factor, often a significant factor, in source selections. In FY 2001, FPI was ranked as the 39th largest government contractor, with total sales of $582.5 million. Given the high dollar volume of revenue generated each year and the number of contracts entered into by Federal agencies with FPI, it is only fair and equitable that contracting officers should have access to FPI's past performance records. Considering that the General Accounting Office has reported that the Federal Prison Industries cannot back-up its frequent claims about being a quality supplier to Federal agencies; furnishing products that meet their needs in terms of quality, price, and timeliness of delivery; contracting officers need to be given the full story.

Vocational Training

Certainly, CSA does recognize that the FPI must balance two legitimate needs currently defined in the law:

1) The need to provide work opportunities to help combat idleness and recurrence of law-breaking through the TRAINING of prisoners for gainful employment so they may become productive members of society upon their release from prison; and
2) The need to minimize the effect of the FPI's work program on the private sector and its non-inmate employees.

However, these goals are not being met. A number of individuals have testified at various hearings that the FPI's current operations fail at inmate rehabilitation while hurting businesses and non-inmate workers. The inmate workers of FPI are not receiving the vocational training that will prepare them for jobs upon release. Instead, their work experiences with the FPI only teach very basic skills. CSA believes believe that vocational skills training is extremely important to a prisoner's future once he/she has returned to the "real world." Yet, such training does not appear to have a place within the FPI.

Conclusion

FPI's mandatory source requirement has been particularly detrimental to our nation's small businesses. Recognizing this, a key recommendation at the 1995 White House Conference on Small

Business was that Government mandatory sources be curtailed from competing unfairly with small private sector firms. It is time to act on these recommendations.

That is why CSA and its members support a common-sense proposal introduced by Representatives Hoekstra, Frank, Maloney, and Collins. This measure, the "Federal Prison Industries Competition in Contracting Act" (H.R. 1577), would eliminate the mandatory source requirement for the FPI, forcing it to follow the same competitive procedures that are required of all Federal government contractors. It also explicitly prohibits the FPI from selling services in the commercial marketplace. Under the Hoekstra-Frank-Collins-Maloney bill, the FPI would be explicitly prohibited from offering products or services as a subcontractor to private sector firms. In addition, the bill calls for deductions to be made from wages earned by the prisoners to cover such purposes as payment of fines, restitution of victims, support for an inmate's family, and for a fund that will facilitate the inmate's assimilation into society.

As the association that represents the broadest sector of service companies, CSA believes that both industry and the Government benefit from fair competition based on the price and quality of the produce or service in question. CSA looks forward to working with you to promote that goal.

Statement of

The Office Furniture Dealers Alliance

House Small Business Joint Subcommittee Hearing

Before

Tax, Finance and Exports Subcommittee

And

Workforce, Empowerment & Government Programs Subcommittee

Wednesday, October 1, 2003

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Mr. Chairman, Ranking Member, and members of the Committee, I appreciate the opportunity to submit testimony at today's joint subcommittee hearing to discuss Federal Prison Industries (FPI) impacts on small business.

My name is Paul Miller and I serve as the director of government affairs for the Office Furniture Dealers Alliance (OFDA). OFDA is the national trade association for independent dealers of office furniture.

Today's hearing is important because it is our hope that we can shed some light on the facts around H.R. 1829, the Federal Prison Industries Competition in Contracting Act of 2003 and the real impacts of this legislation.

H.R. 1829 is not intended to put FPI out of business. Nor is it intended to be harmful to small businesses, prison guards, or inmates. It's just the opposite. And, I think if opponents to H.R. 1829 really looked closely at what this legislation truly does, they should support it. The only reason not to support this legislation is to support the status quo of a government monopoly that has for years gone unchecked with only now the abuses starting to come to light. The biggest of these abuses in recent months is the case of a FAA project worth $6 million.

Earlier this year, the FPI Board of Directors adopted a policy that authorized federal agencies to solicit bids from private firms if they could offer comparable products at prices that FPI could not match. However, under the new policy, the federal agency was required to submit to FPI the "winning" private sector offer, allowing it to determine whether FPI's products meet the agency's need and allowing FPI to match the private sector "winner's" price. To make its determination, FPI is given access to the entire offer of the "winning" private firm, which frequently includes substantial development and design work. This recently allowed FPI to take the contract from Steelcase, a furniture manufacturer, and matched the price down to the penny. The question has to be why didn't FPI submit an original bid? Well, why would you when you know you're going to get to review your competitors bid and only then submit what you know is the winning bid? This is just one of many problems with FPI today.

Our industry and the large business-labor coalition we belong to supports the FPI program and its original mission back when it was formed in 1934. However, reform is desperately needed today because the 1934 mission does not fit today's environment. FPI appears to be more concerned with turning profits than they truly are about inmate training. If this weren't the case you wouldn't have the persistent problems of "drive-by" manufacturing or pass-throughs as this practice is commonly referred to as. This is the practice by which a government agency places an order with FPI and FPI then passes that order through to a manufacturer who makes the product and ships it directly to the buying agency. While product is sold and distributed under the FPI program, the process takes place with no prison inmate labor whatsoever. Our organization has long

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condemned "drive-by" manufacturing as a practice that undercuts FPI's basic mission of real life job skill training and replaces it with a system that clearly is more about making profits than it is about inmate training.

Regardless of the actual percentage of office furniture that FPI purchases fully assembled each year, it is too high at any level. FPI's mission shouldn't be about how much profit they can make. It should be about rehabilitation and job training. What FPI should be doing is manufacturing the product, not contracting it out and collecting the profits at the expense of private citizens. Pass-through's hurt inmates and small businesses. I cannot see how partnering with foreign companies like Nightengale out of Canada or U.S. companies like Goelst, where in their literature they tout the fact that *"the entire Goelst product line of 50,000 plus items is now available exclusively through the UNICOR contract for federal government customers"* is good for inmates.

At a time when the office furniture industry has been hard hit by the economy how can the government justify these types of relationships? It clearly is contradictory to FPI's original mission. We would like to ask for your help in bringing this practice to an end once and for all. Why should foreign companies be allowed to partner with FPI for U.S. government business when U.S. small businesses are locked out? It's ironic that we have statutes in this country prohibiting the U.S. government from buying prison made products from other countries, but our own government is dependent on U.S. inmates for their goods and services. This is a question I hope Congress will look at when it makes its decision whether to bring this bill to the floor for a vote. H.R. 1829 tries to correct these problems by allowing more U.S. small businesses into the competition process. This is what we hope your committee will take away from today's hearing.

As I said earlier, H.R. 1829 is not a tool to put FPI out of business as claimed by our opponents. This legislation has come a long way from its original version some 12-plus years ago. Numerous provisions have been added to this legislation to deal with such concerns as marketable skills, educational and vocational opportunities, and charitable provisions allowing FPI to team with organizations like Habitat for Humanity to build homes, which should prove that we support FPI's survival and original mission.

The concerns raised by opponents are in fact addressed in this legislation. For instance:

- H.R. 1829 provides additional rehabilitative opportunities for inmates by establishing the Enhanced In-Prison Educational & Vocational Assessment and Training Program. Program provides in-prison assessments of inmates' needs and aptitudes, a full range of educational opportunities, vocational training and apprenticeships, and comprehensive release-readiness preparation;

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- H.R. 1829 provides inmate work opportunities for not-for-profit entities. Allows inmates to make and donate products like furniture to charitable organizations who might not otherwise be able to afford or purchase such items from the commercial market. An example of such a program would be Habitat for Humanity;

- H.R. 1829 creates a prerelease employment assistance program that affords inmates opportunities to participate in programs and activities designed to help prepare inmates to obtain employment upon release. Program includes: training in the preparation of resumes and job applications, training in job interviewing skills, training and assistance in job search techniques, and conduct job fairs;

- H.R. 1829 provides additional opportunities for post release vocational and remedial educational opportunities;

- H.R. 1829 provides FPI a "soft-landing". This legislation phases-out FPI's mandatory source over five years, which is very generous.

Year 1:	FPI keeps 90% of its mandatory source
Year 2:	FPI keeps 85% of its mandatory source
Year 3:	FPI keeps 70% of its mandatory source
Year 4:	FPI keeps 55% of its mandatory source
Year 5:	FPI keeps 40% of its mandatory source

- H.R. 1829 allows FPI to perform work as a subcontractor.

- H.R. 1829 requires that a study be done by the Comptroller General on the effects of eliminating FPI's mandatory source authority. This study is to be completed and a report issued to Congress no later than January 31, 2005. This provision alone should get the opposition to support it. If their claims are accurate, then why not pass this legislation, which requires this study, to prove that their claims are correct.

- H.R. 1829 does not look to displace hard-working prison guards. It is for this very reason that the following provision has been included, which states:

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

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

(2) registered on a Bureau of Prisons reemployment priority list; and

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

- H.R. 1829 is also concerned about prison guard safety. It is for this very reason that the following provision has been included:

  "The procurement activity shall negotiate with Federal Prison Industries on a noncompetitive basis for the award of a contract if the Attorney General determines that -- the contract award is necessary to maintain work opportunities otherwise unavailable at the penal or correctional facility at which the contract is to be performed to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility."

We strongly believe that these provisions will better help inmates once they are released from prison find real long-term opportunities while protecting prison guards and small businesses. Practices like "drive-by" manufacturing do not provide any of this type of training for inmates or protection for prison guards - H.R. 1829 does. What these types of abuses do produce is large profits. FPI can sustain itself by ending these types of practices while at the same time providing inmates with the tools they need in today's marketplace.

We have heard that FPI claims it has had to "lay-off" roughly 50 prison guards and some 1,000 inmates have been idled by the impacts of language added to the FY'02-03 Department of Defense Authorization Bills. These numbers appear to be a bit misleading. Considering earlier this year, at an open forum hosted by the FPI Board of Directors, here in Washington this same issue was brought up by a member of the audience and Ken Rocks, Chairman of the FPI Board of Directors stood up and told the audience that not one prison guard had been laid-off, nor was one inmate left idle. What the Chairman did say was that prison guards have been shifted to different departments based on FPI's needs and the same for inmates.

FPI also claims that since the passage of the DoD bills that their business has dropped off dramatically. How can FPI explain this when, even according to their sales team, this language has not even gone into effect? We are still waiting for the Federal Acquisition Regulations to be published some two years later. Also, considering that FPI's overall revenue grew by some $95.2 million in FY'02 (FY'01 $583.5 million - FY'02 $678.7 million) and some $42.9 million in FY'02 in office furniture (FY'01 $ 174,9 million - FY'02 $217.9 million).

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Our opponents also claim that H.R. 1829 will have a devastating impact on small businesses. As one of many individuals in the Coalition, who represent small businesses, I can assure you this is not the case. This legislation is intended to increase small business participation in doing business with the federal government. Yes, we do not deny that by passing this legislation FPI will lose out on some contracts, but we don't believe, nor is there proof, that it will be at the levels FPI claims. For instance, it is my understanding that FPI is claiming it has lost nearly 30% of its FY'03 office furniture contracts to the private sector. We question this statistic, but even if by chance it was correct, it is my understanding that FPI has made up for those lost profits in the electronic component segment of the program. So, it's not truly a loss. It's a loss in one area and a gain in another. These are the types of misleading statistics we deal with from FPI.

If FPI is serious about inmate training and rehabilitation, then it needs to make immediate changes and focus less on office furniture "job training" & assembly and instead put its focus on job skills in demand in today's market. Inmates assembling furniture, and in some cases not having a hand in making or assembling such products whatsoever, cannot honestly expect to obtain meaningful long-term employment in this industry. FPI should instead be focusing on skills and trades inmates will actually be able to use to become productive citizens in their communities. We believe the improvements to H.R. 1829 address these problems and are good for inmates and FPI. H.R. 1829 is widely supported by members on both sides of the aisle. When business and labor agree it is a historic event. This is not a political issue raised by ours or other industries, but an issue that Republicans, Democrats, business, labor, and even a former inmate supports. Mr. Chairman, if business and labor can spend seven plus years working closely together on an issue like this, that alone should tell Congress something about the importance of this legislation and the need to pass this reform package immediately in the 108th Congress.

Thank you for the opportunity and it is our hope that this hearing will help get this legislation to the floor before the end of this year.

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STATEMENT OF SUPPORT

BEFORE

THE COMMITTEE ON SMALL BUSINESS

SUBCOMMITEE ON TAX, FINANCE AND EXPORTS

AND

SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT & GOVERNMENT

JOINT HEARING ON

HR. 1829 – THE FEDERAL PRISON INDUSTRIES COMPETITION IN

CONTRACTING ACT OF 2003

ON BEHALF OF

THE UNIFORM AND TEXTILE SERVICE ASSOCIATION (UTSA)

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The Uniform and Textile Service Association (UTSA), which represents 95% of the uniform and textile service business across the country, urges House Small Business Committee members to support of the Hoekstra-Frank-Collins-Maloney-Sensenbrenner-Conyers Federal Prison Industries (FPI) Competition in Contracting Act (H.R. 1829). Along with UTSA, a large, bipartisan group of small and big businesses, labor unions, and federal managers support HR 1829 because it is a necessary measure to ensure a more fair and productive federal procurement process.

Under current law, Federal Prison Industries (FPI) has a preferential status in the government procurement process that forces federal agencies to buy only from FPI, rather than using a competitive purchasing process. Specifically, this means that the federal government cannot obtain linen and other textiles from companies in the uniform and textile service industry, even if doing so would provide taxpayers with higher quality at substantial cost savings. Without reform, FPI will continue its unfettered expansion in the federal and commercial marketplaces removing opportunities from our companies before they have the chance to compete for them.

HR 1829 is the result of years of negotiation and compromise. The bill's provisions have been fully vetted in the House Judiciary Committee. It is a balanced bill that requires FPI to be a more responsible supplier to federal agencies and the taxpayer, allows the private sector to compete fairly with FPI for valuable federal contracts, and provides significant measures for inmate rehabilitation by providing vocational and educational opportunities.

We believe now is the time for the meaningful reform found in the Competition in Contracting Act and we urge the members of the Small Business Committee to support this important legislation.

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