



# Federal Prison Industries: Overview and Legislative History

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## Summary

The Federal Prison Industries, Inc. (FPI), is a government-owned corporation that employs offenders incarcerated in correctional facilities under the Federal Bureau of Prisons (BOP). The FPI manufactures products and provides services that are sold to executive agencies in the federal government. The FPI was created to serve as a means for managing, training, and rehabilitating inmates in the federal prison system through employment in one of its industries.

The FPI is economically self-sustaining and it does not receive funding through congressional appropriations. In FY2012, the FPI generated \$606 million in sales, which is greater than the FPI's sales in FY1993 (\$405 million), but it is below the FPI's peak sales of \$885 million in FY2009. The FPI operated at a \$28 million loss for FY2012, the fourth straight fiscal year in which the FPI expenses exceeded revenues. The FPI uses the revenue it generates to purchase raw material and equipment; pay wages to inmates and staff; and invest in expansion of its facilities. Of the revenues generated by the FPI's products and services, approximately 78% go toward the purchase of raw material and equipment; 19% go toward staff salaries; and 3% go toward inmate salaries.

All physically able inmates who are not a security risk are required to work. Data show that the number of FPI work assignments available to inmates has not kept pace with the growing federal inmate population. Starting in FY1988 the proportion of the federal inmate population employed by the FPI started a steady decrease. In FY2012, approximately 8% of all federal inmates had an FPI work assignment.

There are only a handful of rigorous evaluations of the effect that participation in correctional industries (i.e., FPI) has on recidivism. The body of research suggests that inmates who participate in correctional industries are less likely to recidivate than inmates who do not participate. However, questions about the methodology used in most evaluations of correctional industries means that there is no definitive conclusion about the ability of correctional industries to reduce recidivism.

Congress has taken legislative action to lessen any adverse impact the FPI has had on small businesses. For example, in 2002, 2003, and 2004, Congress passed legislation that modified how the Department of Defense (DOD) and the Central Intelligence Agency (CIA) procured products offered by the FPI in its schedule of products. In 2004, Congress passed legislation prohibiting federal agencies from using appropriated funding for FY2004 to purchase products or services offered by the FPI unless the agency determined that the products or services are provided at the best value. This provision was extended permanently in FY2005. In the 110<sup>th</sup> Congress, the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) modified the way in which DOD procures products from the FPI. In addition, the Administration of President George W. Bush made several efforts to reduce the consequences the FPI's mandatory source clause might have on the ability of private businesses to compete for federal contracts.

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## Introduction

The Federal Prison Industries, Inc. (FPI),<sup>1</sup> is a government-owned corporation that employs offenders incarcerated in correctional facilities under the Department of Justice's (DOJ's) Federal Bureau of Prisons (BOP).<sup>2</sup> The FPI manufactures products and provides services that are primarily sold to executive agencies in the federal government. Although the FPI's industries are located within various federal prisons, they operate independently from the prison. The FPI was created to serve as a means for managing, training and rehabilitating inmates in the federal prison system through employment in one of its six industries.

The FPI's enabling legislation<sup>3</sup> and the Federal Acquisition Regulation (FAR)<sup>4</sup> require federal agencies to procure *products* offered by the FPI, unless authorized by the FPI to solicit bids from the private sector.<sup>5</sup> This is commonly referred to as the "mandatory source clause."<sup>6</sup> Such waivers can be granted by the FPI to executive agencies if its price exceeds the current market price for comparable products.<sup>7</sup> Federal agencies, however, are not required to procure *services* provided by the FPI. Instead, agencies are encouraged to do so pursuant to FAR.<sup>8</sup> It is the mandatory source clause, and its effect on private businesses, that has drawn controversy over the years.

This report provides background on the FPI's operations and statutory authority; it does not address the related debates on inmate labor, criminal rehabilitation, or competitive versus noncompetitive federal government contracting.

## Background

As the federal prison system was established in 1930, factories were constructed within prisons to manufacture products needed by the federal government and to provide prisoners with job skills and keep them from being idle. Labor organizations, however, had been making arguments against prison industries since the late 1800s due to the poor conditions in which inmates were working and their perception that the industries were taking jobs away from law abiding citizens. The Depression of the 1930s and the resulting high levels of unemployment crystallized the debate. The FPI was established in 1934 under an executive order issued by President Franklin Delano Roosevelt.<sup>9</sup> The purpose of the FPI was to consolidate the operations of all federal prison

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<sup>1</sup> The FPI is sometimes referred to by its trade name, UNICOR.

<sup>2</sup> This report does not cover industries in state prison, often referred to as the Prison Industry Enhancement Certification (PIECP) program. The PIECP was authorized by Congress in 1979 in the Justice System Improvement Act (P.L. 96-157).

<sup>3</sup> See 18 USC §4121 *et seq.*

<sup>4</sup> FAR was developed in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974 (P.L. 93-400).

<sup>5</sup> Under current law (18 USC §4124(a)) and regulations (48 C.F.R.), federal agencies must procure products from FPI, unless granted a waiver by FPI (48 CFR 8.604), that are listed as being manufactured by UNICOR in the corporation's catalog or schedule of products.

<sup>6</sup> Also referred to as "superpreference," "sole source," or "preferential status."

<sup>7</sup> See Bureau of Prisons Program Statement 8224.02, *FPI Pricing Procedures*.

<sup>8</sup> The FAR encourages federal agencies to treat the FPI as a "preferential source" in the procurement of services. See 41 CFR §101-26, 107; 48 CFR §302-5, 8.002, 8.602, 8.603, 8.605(f), and 8.704.

<sup>9</sup> See Executive Order 6917.

industries in order to provide training opportunities for inmates and “diversify the production of prison shops so that no individual industry would be substantially affected.”<sup>10</sup>

## **Authority**

The FPI is governed by a six-person Board of Directors that is appointed by the President. Its enabling act<sup>11</sup> requires that representatives of industries, agriculture, labor, and retailers and consumers serve as board members.<sup>12</sup> The board’s decision-making regarding products to be manufactured and areas of expansion are driven by a goal of employing the greatest possible number of inmates and reducing any potential impact on the private sector.

## **Activities**

The FPI has 81 factories in federal prisons representing six different industrial operations.<sup>13</sup> The FPI’s six industrial operations are comprised of roughly 80 different types of products and services. The FPI’s industrial operations include the following:

- clothing and textiles;
- electronics;
- fleet and industrial products;
- office furniture;
- recycling activities; and
- services (which include data entry and encoding).<sup>14</sup>

The FPI is economically self-sustaining and does not receive funding through congressional appropriations. The FPI uses the revenue it generates to purchase raw material and equipment; pay wages to inmates and staff; and invest in expansion of its facilities. Of the revenues generated by the FPI’s products and services, 78% go toward the purchase of raw material and equipment; 19% go toward staff salaries; and 3% go toward inmate salaries.<sup>15</sup> Inmates earn from \$0.23 per hour up to a maximum of \$1.15 per hour, depending on their proficiency, educational level, and time in the position, among other things. Additionally, inmates can earn bonuses based on work performance. Under BOP’s Inmate Financial Responsibility Program, all inmates who have court

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<sup>10</sup> Franklin Delano Roosevelt, *The Public Papers and Addresses of Franklin D. Roosevelt*, vol. 3 (New York: Random House, 1938), p. 497. These principles are reflected in the current statutory authority for FPI, see 18 USC §4122(b).

<sup>11</sup> See 18 USC §4121.

<sup>12</sup> In addition to the four board members who must be from the aforementioned groups (retailers and consumers are represented by one board member), the Attorney General and the Secretary of Defense (or their designee) also serve as board members.

<sup>13</sup> U.S. Department of Justice, Bureau of Prisons, Federal Prison Industries, *Fiscal Year 2012 Annual Management Report*, November 15, 2012, <http://www.unicor.gov/information/publications/pdfs/corporate/FPI%20Annual%20Mgt%20Report%20to%20Congress%20FY2012.pdf>.

<sup>14</sup> *Ibid.*

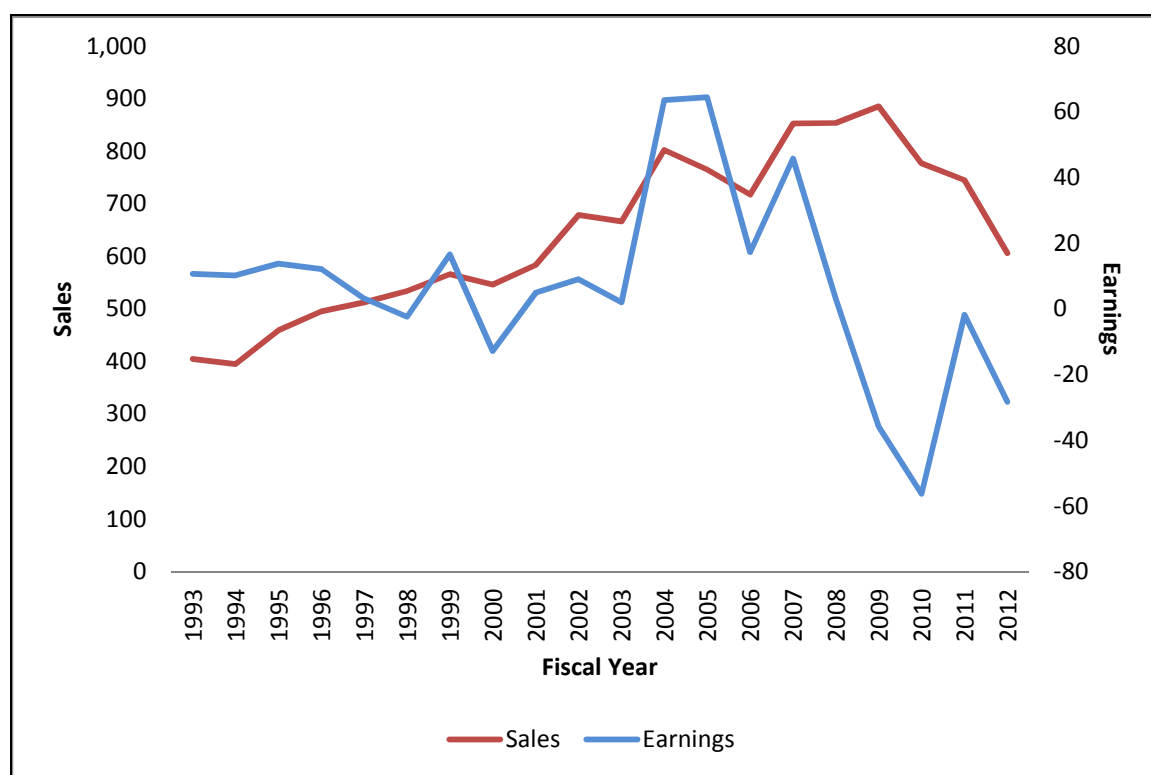
<sup>15</sup> Federal Prison Industries, *FPI General Overview FAQs*, <http://www.unicor.gov/about/faqs/faqsgeneral.cfm>.

ordered financial obligations must use at least 50% of their FPI income to satisfy those debts; the rest may be retained by the inmate.<sup>16</sup>

## The FPI's Sales and Earnings

**Figure 1** presents data on the FPI's sales and earnings (i.e., profits) since FY1993. In general, the FPI's sales increased between FY1993 and FY2009, increasing from \$404.9 million to \$885.3 million. In most of these fiscal years the FPI generated a profit. The two exceptions were FY1998 and FY2000, when the FPI operated at a \$2.4 million and \$12.8 million loss in those respective fiscal years. The FPI's sales have decreased in each of the past three fiscal years. The recent string of declining earnings represents a break with past trends. Between FY1993 and FY2008, when the FPI's sales decreased in one fiscal year, they almost always increased in the subsequent fiscal year. The FPI's sales in FY2012 were the lowest they have been, in nominal dollars, since FY2001. The FPI has reported an operating loss for each of the last four fiscal years, even in FY2009 when the FPI's sales peaked at \$885.3 million.

**Figure 1. Sales and Earnings for the Federal Prison Industries, FY1993-FY2012**  
(Sales and earnings in millions of dollars)



**Source:** CRS presentation of data provided by the U.S. Department of Justice, Bureau of Prisons, Federal Prison Industries.

**Notes:** Sales and earnings amounts reported in **Figure 1** are in nominal dollars.

<sup>16</sup> U.S. Department of Justice, Bureau of Prisons, *Work Programs*, [http://www.bop.gov/inmate\\_programs/work\\_prgms.jsp](http://www.bop.gov/inmate_programs/work_prgms.jsp).

## **Inmate Participation in the FPI**

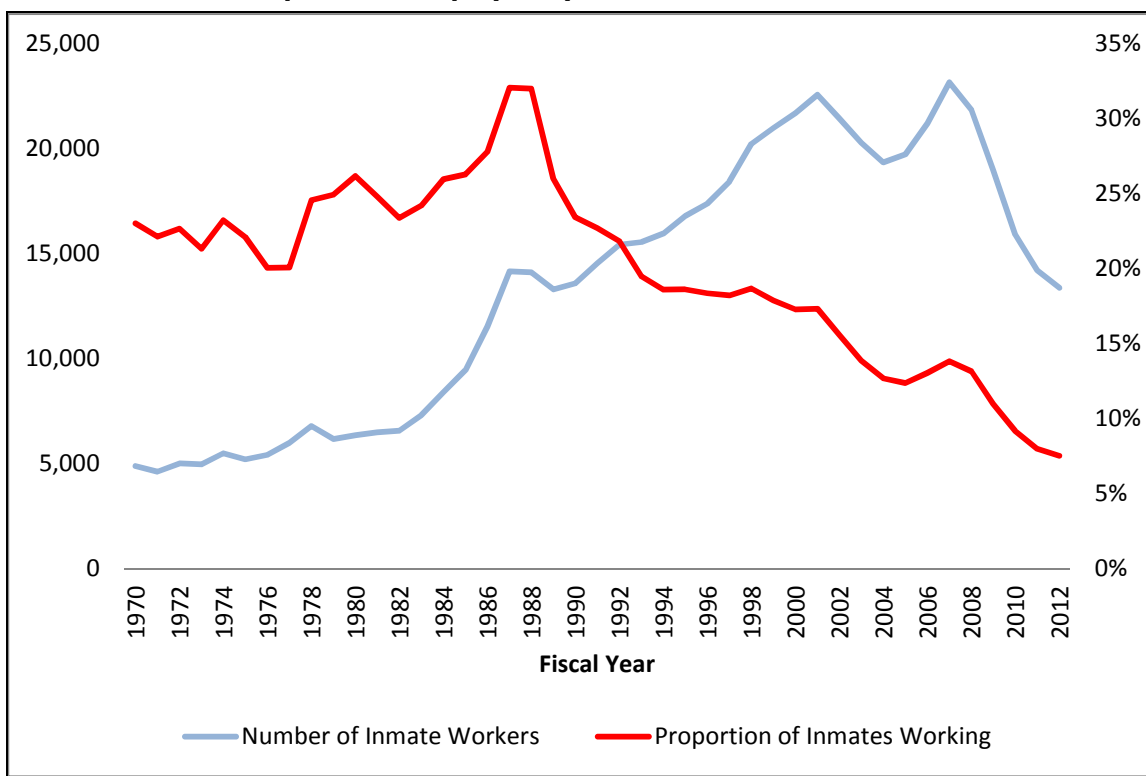
Under current law, all physically able inmates who are not a security risk are required to work.<sup>17</sup> Those inmates who are not employed by the FPI have other labor assignments in the prison. FPI work assignments are usually considered more desirable because wages are higher and because they allow inmates to learn a trade. However, this is not to discount the importance of regular prison work assignments. Both regular and FPI work assignments can provide inmates with “soft skills” (e.g., punctuality, learning the importance of doing a job correctly, following directions from supervisors). Also, both types of work assignments can contribute to institutional order by reducing inmate idleness. Nevertheless, regular prison work assignments provide for the operation and maintenance of prison facilities; hence, these work assignments will exist as long as BOP operates prisons. The availability of FPI work assignments is more volatile.

Data show that the number of FPI work assignments available to inmates has not kept pace with the growing federal inmate population. As shown in **Figure 2**, even though the number of inmates employed by the FPI generally increased between FY1970 and FY2001, starting in FY1988 the proportion of the federal inmate population employed by the FPI started a steady decrease. There has been a noticeable decrease in the number of inmates working for the FPI since FY2007, when the number of inmates holding FPI work assignments peaked at approximately 23,200 inmates. Since FY2007, the number of inmates working for the FPI decreased to approximately 13,400 in FY2012.

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<sup>17</sup> Title XXIX, §2905 of the Crime Control Act of 1990 (P.L. 101-647) required that all offenders in federal prisons must work (the act permitted limitations to this rule on security and health-related grounds).

**Figure 2. Federal Inmates Employed by the FPI and Proportion of Total Inmate Population Employed by the FPI, FY1970-FY2012**



**Source:** CRS presentation of data provided by the U.S. Department of Justice, Bureau of Prisons, Federal Prison Industries.

## Effect of Correctional Industries on Recidivism

Although there have been many studies on the recidivism rate and societal factors that may contribute to it, there are only a handful of rigorous evaluations of the effect that participation in correctional industries (i.e., FPI) has on recidivism. What research exists suggests that inmates who participate in correctional industries are less likely to recidivate than inmates who do not participate. However, questions about the methodology used in most evaluations of correctional industries means that there is no definitive conclusion about the ability of correctional industries to reduce recidivism.

A 2006 analysis of two different studies of correctional industries programs evaluated the impact of these programs on recidivism.<sup>18</sup> The results of the analysis indicated that inmates who worked in correctional industries were less likely to recidivate than those who did not. However, the researcher concluded that given the limited number of rigorous evaluations of correctional

<sup>18</sup> Doris Layton MacKenzie, *What Works in Corrections: Reducing the Criminal Activities of Offenders and Delinquents* (New York: Cambridge University Press, 2006), p. 102.



industries programs, it was not possible to make any definitive conclusions about the ability of these programs to reduce recidivism.<sup>19</sup>

Another analysis conducted in 2000 that summarized the results of four evaluations of correctional industries programs also found that inmates who participated in correctional industries programs were less likely to recidivate.<sup>20</sup> However, the researchers reported that they could not rule out sampling error as a possible explanation for the positive effect. The researchers also reported that many of the studies included in the analysis lacked stringent methodological rigor, thereby preventing the researchers from concluding that the programs lead directly to decreased re-offending.

## Legislative History

While the FPI was originally created in 1934 through P.L. 73-461 and implemented by Executive Order 6917, the *current* statutory authority for the FPI was first codified in the 1948 revision of the “Crimes and Criminal procedure” statutes.<sup>21</sup>

Concerns about whether the mandatory source clause has prevented private businesses from competing for federal contracts has led Congress to include language in certain legislation that modified how federal agencies procured products under the FPI’s mandatory source clause.

### The Anti-Drug Abuse Act of 1988

The Anti-Drug Abuse Act of 1988 (P.L. 100-690) required that the FPI meet specific requirements to ease the potential impact of its activities upon the private sector. Before approving the expansion of an existing product or the creation of a new product, the act required the FPI to

- prepare a written analysis of the likely impact of the FPI’s expansion on industry and free labor;
- announce in an appropriate publication the plans for expansion and invite comments on the plan;
- advise affected trade associations;
- provide the FPI’s Board of Directors with the plans for expansion prior to the Board making a decision on the expansion;
- provide opportunity to affected trade associations or relevant business representatives to comment to the Board of Directors on the proposal; and
- publish final decisions made by the Board of Directors.

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<sup>19</sup> Ibid., p. 103.

<sup>20</sup> David B. Wilson, Catherine A. Gallagher, and Doris L. MacKenzie, “A Meta-analysis of Correctional-based Education, Vocation, and Work Programs for Adult Offenders,” *Journal of Research in Crime and Delinquency*, vol. 37 (2000), p. 356.

<sup>21</sup> P.L. 80-772, codified at 18 USC §4121 *et seq.*

## **Crime Control Act of 1990**

The Crime Control Act of 1990 (P.L. 101-647) required each federal department, agency, and institution that is required to purchase products pursuant to the FPI's mandatory source clause to separately report acquisitions of products and services from the FPI to the General Services Administration for entry into the Federal Procurement Data System.

## **The Small Business Research and Development Enhancement Act of 1992**

The Small Business Research and Development Enhancement Act of 1992 (P.L. 102-564) modified the reporting requirement established by the Crime Control Act of 1990 so that federal departments, agencies, and institutions reporting data to the Federal Procurement Data System on acquisitions from the FPI report their data in the same manner as they report data on non-FPI acquisitions.

## **General Accounting Office Act of 1996**

The General Accounting Office Act of 1996 (P.L. 104-316) amended the authorizing legislation for the FPI<sup>22</sup> so that the Attorney General, the Administrator of General Services, and the President, or their representatives were the arbitrators of disputes as to the price, quality, character, or suitability of products produced by the FPI. Prior to this, disputes were arbitrated by the Comptroller General, the Administrator of General Services, and the President, or their representatives.

## **The National Defense Authorization Act for FY2002**

The National Defense Authorization Act for FY2002 (P.L. 107-107) required the Secretary of Defense to use competitive procedures for the procurement of the product if it is determined that the FPI's product is not comparable in price, quality and time of delivery to products available from the private sector. In doing so, the act required the Secretary of Defense to conduct research and market analysis with respect to the price, quality and time of delivery of the FPI products prior to purchasing the product from the FPI to determine whether the products are comparable to products from the private sector.

## **The Bob Stump National Defense Authorization Act for FY2003**

The Bob Stump National Defense Authorization Act for Fiscal Year 2003 (P.L. 107-314) amended 10 U.S.C. Section 2410n to require the Secretary of Defense to use competitive procedures for the procurement of the product if it is determined that the FPI's product is not comparable in price, quality and time of delivery to products available from the private sector. With respect to the market research determination, the act made such determinations final and not subject to review. The act required that the FPI perform its contractual obligations to the same extent as any other contractor for the DOD. Under the act, contractors or potential contractors cannot be required to

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<sup>22</sup> 18 U.S.C. §4124(b).

use the FPI as a subcontractor or as a supplier of products or services for performance of a contract. It prohibits the Secretary of Defense from entering into a contract with the FPI under which an inmate worker would have access to sensitive information.

## **The Consolidated Appropriations Act of 2004**

The Consolidated Appropriations Act of 2004 (P.L. 108-199) modified the FPI's mandatory source clause during FY2004 by prohibiting funds appropriated by Congress for FY2004 to be used by any federal executive agency for the purchase of products or services manufactured by the FPI unless the agency making the purchase determines, pursuant to government-wide procurement regulations, that the products or services are being provided at the best value.

## **Consolidated Appropriations Act, 2005**

The Consolidated Appropriations Act, 2005 (P.L. 108-447) permanently extended the provision in the Consolidated Appropriations Act of 2004 (P.L. 108-199) related to the FPI's mandatory source clause. The provision prevents federal agencies from using appropriated funds for purchasing the FPI products or services unless the agency making the purchase determines, pursuant to government-wide procurement regulations, that the product or service provides the best value for the agency.

## **Intelligence Authorization Act for FY2004**

The Intelligence Authorization Act for FY2004 (P.L. 108-177) required the Director of the Central Intelligence Agency to only make purchases from the FPI if he determines that the product or service best meets the agency's needs.

## **The National Defense Authorization Act for FY2008**

The National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181) amended 10 U.S.C. Section 2410n to require the Secretary of Defense to do market research to determine whether the FPI has a significant market share of the product before purchasing that product from the FPI.<sup>23</sup> In cases where the FPI is determined to have a significant market share, the Secretary of Defense can purchase a product from the FPI only if the Secretary uses competitive procedures for procuring the product, or makes an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such a contract. In cases where the FPI does not have a significant market share, the DOD is required to determine whether the product offered by the FPI meets its needs in terms of price, quality, and time of delivery. In cases where the FPI product does not meet the DOD's needs in terms of price, quality, and time of delivery, the DOD is required to procure the product through competitive procedures. The DOD is required to consider a timely offer from the FPI.

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<sup>23</sup> The FPI is determined to have a "significant market share" when the FPI's sales of a product within a Federal Supply Code (FSC) constitute more than 5% all sales to the DOD within that FSC.

## **Commerce, Justice, Science, and Related Agencies Appropriations Act, 2011**

In the conference report for the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2011 (P.L. 112-55), Congress expressed concern that inmates did not have access to meaningful work opportunities.<sup>24</sup> In addition, Congress acknowledged that the FPI functions as a means of preparing inmates for reentry and that if the FPI were allowed to enter into partnerships with private businesses, it could bring some lost manufacturing back into the United States while providing inmates with opportunities to learn skills that will be marketable after release.<sup>25</sup> As a part of the act, Congress amended 18 U.S.C. Section 1761(c) to allow the FPI to participate in the PIECP. The act also allows the FPI to manufacture goods for the commercial market if they are currently or would have otherwise been manufactured outside the United States.

## **Administrative Efforts to Reform FPI**

Over the years, critics have asserted that the FPI has an unfair advantage over private business. They argue that the FPI's mandatory source clause produces a monopoly-like environment that usurps and supplants the bidding process for federal contracts. The FPI maintains that the mandatory source clause is paramount to keeping prison industries in operation. Furthermore, the FPI asserts that the work opportunities it provides reduces recidivism and enhances the safety and security of federal correctional facilities by keeping inmates occupied. The FPI has made several efforts, however, to lessen any effect its industries might have on small businesses by exempting federal agencies from the requirement to purchase products from the FPI in certain instances. Efforts have also been taken to reduce the FPI's reliance on its mandatory source preference.<sup>26</sup>

In February 2003, the FPI's Board of Directors adopted a resolution that raises the threshold for mandatory use of the FPI from \$2,500 to \$3,000. By raising the threshold, the FPI's Board of Directors in essence waived the FPI's mandatory source clause for purchases up to \$3,000 and is now allowing federal agencies to go directly to the private sector for any purchase under \$3,000. In March 2003, the FPI's Board of Directors adopted a resolution that now requires that the FPI approve requests for waivers in all cases where the private sector provides a lower cost that the FPI does not meet. In April 2003, the Board of Directors requires prison-made products sold by the FPI to have at least 20% of its value contributed by inmate labor. In the same month the FPI's Board of Directors directed the FPI to waive its mandatory source status for products where the FPI's share of the federal market is in excess of 20%. This requirement was later modified in March 2010 so that the waiver of the mandatory source clause only applies in instances where the FPI's share is greater than 20% of non-DOD managed products. The modification to the

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<sup>24</sup> U.S. Congress, House Committee on Appropriations, *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs for the Fiscal Year Ending September 30, 2012, and for Other Purposes*, Conference Report to Accompany H.R. 2112, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., November 14, 2011, H.Rept. 112-284 (Washington: GPO, 2011), p. 241.

<sup>25</sup> *Ibid.*, p. 242.

<sup>26</sup> A previous effort to eliminate the FPI's mandatory source clause came during the Clinton Administration in 1993 when Vice President Al Gore recommended that the mandatory source provision be eliminated and that UNICOR be exempt from the FAR in order to better compete with the private sector in terms of delivery schedules and costs.

mandatory source clause waiver was made to reflect the way that the DOD procures products from the FPI per the requirements of the National Defense Authorization Act for FY2008.

In addition to the FPI's Board of Director's decisions, federal agencies have begun to evaluate the FPI's contract performance. According to testimony at a Senate hearing on the FPI, "while this [the evaluation of FPI's contract performance] did not change FPI's mandatory preference status, it was an important first step in helping FPI better monitor and improve its own performance ... [which would assist] FPI as they move toward being more competitive in the federal marketplace."<sup>27</sup>

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<sup>27</sup> Testimony of Jack R. Williams, Jr., in U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Financial Management, the Budget, and International Security, *Making Federal Prison Industries Subject to Competitive Bidding*, hearing on S. 346, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 7, 2004 (Washington: GPO, 2004).