



Department of Justice

STATEMENT OF
HARLEY G. LAPPIN
DIRECTOR
FEDERAL BUREAU OF PRISONS
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY

CONCERNING
“FEDERAL PRISON INDUSTRIES – EXAMINING THE EFFECTS
OF SECTION 827 OF THE NATIONAL DEFENSE
AUTHORIZATION ACT OF 2008”

PRESENTED

MAY 6, 2008

Good Afternoon Chairman Scott, and Members of the Subcommittee:

I appreciate the opportunity to appear before you today to discuss Federal Prison Industries (known as FPI or under its trade name UNICOR). As the Director of the Bureau of Prisons (BOP), I also serve as the Chief Executive Officer of FPI, a government agency program that is one of the BOP's most important correctional management programs. Currently, there are more than 22,000 inmates participating in the FPI program.

The BOP's mission is to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure. We also seek to provide work and other self-improvement opportunities to assist offenders in returning to their communities as productive law-abiding citizens. In fulfilling its mission, the BOP is facing several challenges. The federal inmate population has grown from 43,000 two decades ago to more than 201,000 today. Not only are the numbers of inmates growing, but we are managing more dangerous and aggressive offenders, including more gang-affiliated inmates. In an effort to keep pace with the increasing inmate population, the Bureau has activated 15 new prisons during the last four years. Each of these new facilities is designed to confine high and medium security male inmates.

Our mission is particularly challenging because the BOP has no 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 their ability to successfully reenter society. We do, however, have control over how inmates occupy their time while incarcerated. We also have some influence over how offenders leave our custody and the impact they will have on society, particularly public safety.

Federal Prison Industries is one of the most critical components of the BOP's efforts to prepare inmates to successfully reenter society. The goal of the FPI program is to provide inmates with job skills training and work experience, thereby reducing recidivism and undesirable inmate idleness. Inmates who work in FPI are 24 percent less likely to commit crimes for as long as 12 years after release, when compared to similar inmates who do not have FPI experience. These research findings have been favorably reviewed by nationally-respected social scientists and economists.

We focus the FPI program in higher security institutions -- those that generally have the most serious offenders. In fact, 76 percent of inmates working in the FPI program have been convicted of drug trafficking, weapons, and violent offenses. FPI provides a program of constructive industrial work, providing sound job skills and positive work habits to inmates. 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.

Federal Prison Industries is unique among our inmate programs in that, by statute, it receives no appropriated funding for its operations. Earnings from the FPI program are used for all its operating costs, including the purchase of raw materials and equipment, staff salaries and benefits, and compensation to inmates performing in industrial work details. In addition, the FPI program pays for equipment and other start-up costs associated with activating new prison factories.

The FPI program's purpose is not to be a business that generates revenue. Rather, it is a correctional program charged with the goal of providing meaningful work opportunities for Federal offenders. There are many ways in which the FPI program does not and should not operate as a business: it does limited advertising and marketing; it spreads its operations across multiple business areas to lessen its potential impact on each of the industries in which it operates; and, currently, it is deliberately labor-intensive in order to provide job skills training to the largest possible number of inmates. 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 important benefit of the FPI 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, victim restitution, and child support obligations, which helps those outside the prison system who were affected by inmates' conduct. In FY 2007, inmates working in the FPI program paid more than \$2.7 million towards these obligations, with the vast majority going to victim restitution.

The FPI program also contributes significantly to reducing inmate idleness. Inmate idleness is problematic 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. Rapid growth of the inmate population has led to increased system-wide crowding, with the most significant crowding at medium and high security institutions. Our data indicates a high correlation between increasing inmate-to-staff ratios and higher rates of assaults. Thus, the FPI program is particularly important at higher security level institutions.

With regard to the FPI program's effect on the private sector, FPI attempts to go beyond its legal obligation to minimize any adverse effect, to focus on maximizing positive effects wherever possible. Last year the FPI program spent more than a half-billion dollars buying raw materials, equipment, and services from private vendors. This money represented 77 percent of the entire revenue earned by the FPI program, and more than 60 percent of this money went to small businesses, including businesses owned by women, minorities, and those who are

disadvantaged. As a result of the FPI program's purchases, there are thousands of jobs in the private sector that are tied directly to the continued viability of the FPI program.

While BOP is pleased with the FPI program's positive impact on recidivism, restitution to the victims of crime, and its support for private sector businesses, we recognize that there has been some concern about the FPI program's mandatory source authority. I would like to clarify that FPI's "mandatory source" rule does not mean that the FPI program prohibits Federal customers from purchasing from private vendors. Many of the FPI program's products are only offered as "non-mandatory" items, meaning that competitive procurement procedures apply. Finally, for those FPI program products to which mandatory source applies, it does so only in a limited way. Recent legislation and FPI Board of Directors resolutions have dramatically reduced the effect of mandatory source.

Provisions of the National Defense Authorization Acts of 2002 and 2003, and the FY 2004 and FY 2005 Omnibus Appropriations Bills, require that when Federal agencies wish to purchase an item that is offered by the FPI program, the contracting officer must first conduct market research to determine if the FPI program's product is comparable to that offered by private vendors in terms of quality, price, and delivery. If the buying agency determines that the FPI program's product is not comparable, competitive procurement procedures apply. The impact of these provisions was felt primarily by the FPI program's office furniture program, where sales decreased by nearly 40 percent since FY 2002.

Most recently, the National Defense Authorization Act of Fiscal Year 2008 (Pub. L. 110-181) included a provision that amends the process by which the Department of Defense purchases certain products from the FPI program. Section 827 of that law requires the Department of Defense (DoD) to use competitive procedures when procuring products for which the FPI program has a significant market share. The FPI program is considered to have a significant market share if its sales to DoD represent more than five percent of DoD purchases in a product category.

DoD recently issued a listing of the Federal Supply Classification (FSC) codes in which the FPI program's sales met the market share criteria as set forth in Section 827. Based on that list, we believe a minimum of \$144 million of the FPI program's sales and a commensurate 3,250 inmate jobs are potentially at risk. This would represent approximately 17 percent of the FPI program's annual sales and 14 percent of its inmate workforce.

It is difficult to say with certainty how much of the FPI program's sales that are potentially affected by Section 827 may be lost. While sales in some product areas may decline, the total impact of this provision on the FPI program will be difficult to predict until it has been fully implemented. The level of impact will depend primarily on how it is interpreted and implemented by DoD contracting officers.

It may take some time until DoD's contract community is fully aware of these changes in the DoD procurement process. It is imperative the FPI program's customers be provided clear guidance on the accurate interpretation of the legislation to ensure it is implemented fairly.

We expect the FPI program's commercial items may suffer greater adverse impact than our military specification items. This is because contracting officers have substantial discretion, as they should have, to determine whether one commercial product is comparable to another. However, when comparing military specification items, such as electronics components that are produced by FPI, the items under review are identical whether manufactured by the FPI program or a private vendor, making price the critical factor for award.

We expect the impact of Section 827 on the FPI program will occur over some period of time. Language in the National Defense Authorization Acts of 2002 and 2003 and the FY 2004 and FY 2005 Omnibus Appropriations Bills, which I mentioned earlier, also mandated the use of competitive procurement procedures when buying certain items from FPI. The impact on the FPI program from those provisions was felt gradually over time.

DoD may modify its list of product categories for which the FPI program has a five percent market share. DoD is by far the FPI program's leading customer, accounting for more than \$500 million in procurements, more than 60 percent of the FPI program's sales.

If the FPI program experiences a loss in sales and a resulting reduction in its inmate workforce, there are no FPI programs or other institution jobs available for inmates to move into as an alternative. The FPI program is already challenged to meet the demand for inmate jobs in light of the continuing rapid growth in the Federal inmate population. In fact, the FPI program has not kept pace with its goal of providing work opportunities for 25 percent of our work-eligible inmate population.

It has been shown that providing constructive programs, such as Federal Prison Industries, results in a more positive correctional environment whereby inmates are less likely to engage in disruptive behavior. Eliminating these opportunities for inmates may lead to higher incidents of violence inside the facilities, creating potential safety concerns for both staff and inmates.

The greater the adverse impact on the FPI program as a result of Section 827, the greater the corresponding adverse effect on the FPI program's ability to continue operating in a self-sustaining manner, as statutorily required. Should the impact be severe enough, it may jeopardize the FPI program's continued future viability as a self-sustaining entity.

And 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 inmates develop the social skills of the workplace, recidivism will likely increase, at substantial future cost to taxpayers and victims of crime. Second, there will be

an economic disruption to the small businesses that currently depend on the FPI program for their continued business success, and an attendant loss of jobs. Third, opportunities to provide restitution to victims of crime will decrease. Fourth, as noted above, the risk of dramatically increased inmate idleness will threaten the safe and orderly operation of our federal correctional institutions.

While we are concerned about the potential impact of Section 827 and the future of FPI, we are also sensitive to the concerns of private vendors seeking to bid on government contract bidders. We agree that any negative impact of the FPI program on the private sector should be minimized. As the Administration has previously articulated, any modification 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 modify the FPI program in a balanced manner are already underway. During the last several years, we have reduced our capacity in office furniture and electronics (two of our traditional industries) and we continue to emphasize new areas for inmate jobs, particularly service jobs that would otherwise be performed outside the United States. The FPI program's Presidentially-appointed Board of Directors has taken several significant steps in this effort, including:

- Eliminating FPI's mandatory source for purchases up to \$2,500. This applies to all Federal agencies.
- Having FPI approve requests for waivers of mandatory source in all cases where a private sector vendor provides a lower price for a comparable product that the FPI program does not meet.
- Waiving the FPI program's mandatory source for products where the FPI program's share of the federal market is 20 percent or more.
- Directing that all prison-made products sold by the FPI program must have at least 20 percent of its value contributed by inmate labor.

The FPI program continues to seek ways to create new work opportunities for its inmate workforce. FPI's future growth is focused on non-mandatory areas such as fleet management, recycling, and services. The FPI program also is continuing to examine ways in which it can improve its operations and increase inmate employment, such as by increasing vertical integration. This allows the FPI program to employ more inmates without a corresponding increase in output.

While this work proceeds, we recognize that if the FPI program is no longer available to provide training to inmates, we will need to further develop alternative programs that have

important shortcomings as substitutes for FPI. The Congressional Budget Office has estimated in the past that substitutes for FPI could surpass the hundreds of millions. The BOP is receiving 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.

Like the FPI program, the BOP's education and vocational training programs have been shown to have a positive impact on recidivism and an inmate's ability to find and maintain employment upon release from incarceration. However, these programs operate best as a complement to the FPI program, not a substitute for it. Education and vocational training programs alone do not provide inmates with sufficient job skills training and work experience during the length of their incarceration. Most education and training programs are provided on a part-time schedule, rather than for a full day. Also, these programs are designed to run for only a limited time (vocational training typically runs 18-24 months in duration). The average sentence length for inmates in the BOP is over 9 years. In addition, unlike the FPI program, educational and vocational training programs require appropriated funding. Simply put, education and vocational training are extremely valuable programs that we utilize to the greatest possible extent. However, they are not substitutes for the extended real work experience provided by the FPI program.

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 Federal inmate population projected to reach 223,320 by the end of fiscal year 2011, 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 Scott, this concludes my remarks. I would be pleased to answer any questions you or other Members of the subcommittee may have.