

**U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons**



**PROGRAM STATEMENT
Definitions of Prison-Made Products and Services**

Approved by	 William K. Marshall III Director, Federal Bureau of Prisons
DPI	FPI
Number	8400.04
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Summary of Changes

Program Statement Rescinded:

- 8400.03 Prison-Made Products and Services, Definition of (07/31/2003)

Changes:

- Updates definitions to be clearer and more accurate.
- Adds definition of “ancillary items.”
- Adds section on importance of correctly defining “prison-made products” and “services.”
- Removes content that conflicted with other program statements.
- Adds references to relevant program statements, statutes, and standard operating procedures.

1. PURPOSE AND SCOPE

To advise Federal Prison Industries (FPI) staff of the definitions of “prison-made products” and “services” and the importance of understanding these terms. FPI staff must use these definitions when determining whether a given activity or process constitutes a prison-made product or a service.

This program statement also defines and explains the rules and procedures regarding “pass-throughs” and the purchase of ancillary items for customers.

a. Program Objectives.

- FPI staff will understand the definitions of “prison-made products” and “services” and their importance.

- FPI staff will understand the distinction between pass-through sales and ancillary products purchased for customers and will know how to obtain approval for the latter.
- FPI staff will know who to contact with questions on these topics.

b. **Institution Supplement.** None.

2. DEFINITIONS

The following definitions apply to products produced and services performed by FPI:

a. **Prison-made products** refer to products manufactured and/or assembled in whole or in part by inmates. FPI's value added (defined as the sales price of an FPI product minus the cost of raw materials) must contribute at least 20 percent to the selling price of a product.

- **Manufactured** refers to the process of transforming materials into products. Manufacturing results in new forms, qualities, properties, and combinations. It includes fabricating, processing, converting, finishing, and assembling.
- **Assembled** refers to the process of uniting or combining materials or components. Assembly results in a change in form or utility. Assembly is associated normally with manufacturing processes resulting in a product, not a service.
- **Components** refer to products, accessories, parts, supplemental items, or subassemblies that have been formed into items with specific form or function. They are combined, processed, or modified to create "prison-made products." FPI may or may not physically attach components to the end product.

b. **Services** refers to FPI inmate labor activity that does not result in goods, wares, or merchandise manufactured or produced by FPI. Services may or may not culminate in a tangible product. Some services, such as call centers, data conversion, or computer-aided design do not involve a tangible product. However, services may involve FPI acting upon a product provided by the customer as long as FPI's work:

- does not create entirely new items,
- does not change the function or capability of the customer-provided products, and
- does not result in upgrades to the product's capabilities.

An example is repair or maintenance work, which involves an object's restoration. A service is performed by renovating a non-functional or unused item into one that is fully serviceable. The item's owner supplies it to FPI with the expectation that the item will be returned to its prior condition or rendered fully functional. Additional examples are laundry service, furniture refinishing or restoration, and engine and forklift rebuilding services.

Sometimes, determining whether potential work is manufacturing a product or providing a service is a fact-specific inquiry based on factors including, but not limited to, which party is providing the materials or other inputs and whether the customer retains ownership of the product through the process. For example, depending on the details, upfit, recycling, kitting, packaging, distribution, and printing activities could be categorized as either a “prison-made product” or a “service.”

c. **Finished Goods** refers to products that will not undergo further processing and are ready for sale to the final user.

d. **Pass-through** refers to the practice of fulfilling a customer’s order by buying the finished goods FPI would otherwise manufacture from one of FPI’s business partners and supplying it directly to the customer without any inmate labor involved.

e. **Ancillary Items** are products and services FPI does not otherwise manufacture that are related to the products and services provided by FPI and ordered for the customer as part of a “packaged solution.”

3. IMPORTANCE OF CORRECTLY DEFINING “PRISON-MADE PRODUCTS” AND “SERVICES”

Correctly defining “prison-made products” and “services” is particularly important when FPI is performing work for a customer under FPI’s commercial market services authority. Under 18 U.S.C. § 1761(a), it is illegal to knowingly transport in interstate commerce “any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners” unless one of the exceptions in subsections (b), (c), or (d) of the statute applies. When FPI manufactures products, it is either pursuant to one of the exceptions in this statute (i.e., federal government end customer, agricultural commodities, Prison Industry Enhancement Certification Program, or repatriation) or one of the authorities provided under 18 U.S.C. § 4130.

The prohibition in 18 U.S.C. § 1761(a) does not apply to services. However, because some services involve a tangible product, it is critical for FPI to ensure work opportunities being performed as a commercial market service are considered a service under federal law.

Accordingly, prior to agreeing to perform a new service or a service that could be construed as a product for a non-federal government customer, FPI’s business groups must obtain approval from FPI’s Office of General Counsel. For more information on FPI’s legal authorities, see the Standard Operating Procedure Establishing Binding Agreements with Non-Federal Customers.

4. PROHIBITION ON PASS-THROUGHS

In 2002, FPI’s Board of Directors issued a resolution ending the use of pass-through sales. FPI’s operations are prohibited from obtaining finished goods that FPI otherwise manufactures from its

vendors, unless a prior exception has been obtained from FPI's Board of Directors. For example, during a major consolidation of FPI's office furniture operations, the Board of Directors temporarily granted FPI a limited exception to provide pass-through products to FPI's customers.

For additional information on FPI's requirements when managing unanticipated production delays, see Program Statement **Federal Prison Industries Production Scheduling**.

5. NON-APPLICABILITY OF PASS-THROUGH RESTRICTIONS

FPI may offer products via a "packaged solution," wherein FPI provides ancillary items related to the products and services FPI provides for the customer, to fulfill a procurement convenience the customer requires. The purchase of these items, which FPI does not otherwise manufacture, is distinct from, and not affected by, the prohibition on pass-through sales.

The purchase of ancillary items as part of a packaged solution is also distinct from assisted acquisitions under the Economy Act, 31 U.S.C. § 1535, which FPI corporate management and FPI's Board of Directors decided to stop offering in order to focus FPI's efforts on areas that better support FPI's financial viability and fulfillment of its mission.

To ensure the purchase of ancillary items remains aligned with FPI's mission, FPI's business groups must follow the procedures and requirements in the Standard Operating Procedure Purchasing Ancillary Items for Customers.

6. ASSISTANCE

Any questions related to these topics should be directed to FPI's Office of General Counsel.

REFERENCES

Program Statements

Federal Prison Industries Production Scheduling

Federal Statutes

18 U.S.C. § 1761

18 U.S.C. § 4130

31 U.S.C. § 1535

Other References

Standard Operating Procedure Establishing Binding Agreements with Non-Federal Customers

Standard Operating Procedure Purchasing Ancillary Items for Customers

ACA Standards

None

Records Retention Requirements

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on the Bureau's intranet site.