

U.S. Department of Justice National Institute of Corrections

Guidelines for Prison Industries

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In a project as voluminous as this one, there are several persons who merit special recognition. First and foremost, we want to express our appreciation to the state Directors of Prison Industries, who gave willingly of their time in responding to the survey, who shared their knowledge of prison industries, and who provided us with copies of requested materials. Several directors also provided evaluative feedback on draft sections of the report: Charles Anderson, New Hampshire; Frank Beetham, Michigan; Timothy McCue, Iowa; Max Newberry, Oklahoma; Donald Tomsche, Minnesota. The contents of the report were enhanced by their comments, but any errors remaining are our responsibility.

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Foreword

The pressures of prison crowding, inmate idleness, changing inmate populations, and scarce resources have led to a rediscovery of the potentials of prison industry.

Realizing this, the National Institute of Corrections—in cooperation with the Institute for Economic and Policy Studies, Inc.—developed this Guidebook as a resource document on state prison industries programming throughout the United States. The Guidebook is intended for correctional administrators and for those decisionmakers outside of corrections whose decisions have an impact on corrections.

The document has been designed to be “user friendly.” Its content is of a practical nature and its usefulness will be unlimited.

Raymond C. Brown, Director
National Institute of Corrections
February 1984

How to Use the Guidelines

Guidelines for Prison Industries is presented in four parts to facilitate access to the appropriate information sought by the user. These four parts correspond to the four key component areas of the study, i.e., first, the responses to the 50-state survey; second, the legislative guidelines; third, model policies and procedures; and fourth, court actions and standards impacting prison industries. A brief synopsis of the content and format in each part will assist the reader in using the *Guidelines*.

Part I, "State-of-the-Art Survey," begins with an introduction to the study and a brief description of the methodology used to accomplish the results in this report. This is followed by detailed examination of the findings from a 50-state telephone survey conducted as part of the study. Several tables which depict the responses to our survey on a state-by-state basis are included with the discussion. Looking at the tables, the user can quickly determine, for example, which states assign security personnel to supervise industries inmates, or which states provide extra good time for inmates employed in industries.

Part II, "Legislative Guidelines," reports on the multitude of state laws relating to prison industries, focusing on five major areas: (1) organizational issues; (2) operational issues; (3) inmate compensation issues; (4) purchasing law requirements and authorities; and (5) marketing. Under each of these major headings, excerpts from the legislation are presented to illustrate the objective which these laws are intended to accomplish. For example, the section on state-use laws shows those laws that are used to determine pricing decisions, those that require local units of government to buy from industries, those that specify how purchases are to be made. Each of the issue areas is followed by a discussion of the relative merits of the various statutes presented. At the beginning, a section is provided on legal and political strategies for using the legislative guidelines. An attachment at the end of Part II illustrates the statutes currently in effect related to prison industries on a state-by-state basis. This attached matrix will tell the user, for example, how many states have limits or other restrictions on their revolving funds. The matrix can also serve as a checklist for any state looking to revise particular areas of its legislation.

Part III, "Model Policies and Procedures," which is based on materials collected from a number of states, addresses specific policies and procedures and should serve as guidelines for state industry operations. The particular areas covered include general administration, budget and accounting, recruitment and training of inmate workers, safety programs, wages and reimbursement, inmate supervision, security, and scheduling. The policies and procedures follow the American Correctional Association format which outlines the authority, purpose, applicability, and definitions related to the areas covered.

Part IV, "Court Actions and Standards Impacting Prison Industries," is divided into two sections. The first section analyzes court decisions relating to prison industries; the second examines the relevant standards impacting on industry programs. A table in each section provides the reader with a cross-reference of both court decisions and standards by relevant issue area which may be affected. For example, the standards cross-reference tells the user what the various groups of standards say regarding inmate wages or wage disbursements.

Finally, a Critical Issues Index is provided after the Table of Contents. The index is organized by key issue area. A number of issues exist, e.g., wage compensation, which are discussed in each of the four parts. Thus, the Issues Index enables the reader concerned with a particular issue such as wage compensation to quickly locate discussion on this issue with respect to the survey findings, the legislation, policies and procedures, court actions, and standards.

In sum, the *Guidelines* may be used by legislators, corrections officials, industries directors, and institutional personnel in a number of ways. Part I serves as the foundation for the *Guidelines* by reporting on the current status of prison industries across the nation. Parts II and III represent the bulk of the report since they provide the necessary tools to help a state create or modify both its authorizing legislation and operational procedures. Part IV focuses on questions of prison industries accountability as it assesses the implications of court actions and standards.

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Part I. State-of-the-Art Survey of Prison Industries

Introduction to the Report

The 20th century has witnessed a dramatic decline in the correctional significance of prison industry programs. At the turn of the century, 80 percent of inmates were engaged in industrial operations; today less than 10 percent are.¹ The reasons for this decline are numerous. They include the growth of alternative institutional programs, the imposition of legal restrictions on the sale of industries' goods, and the failure of correctional and industries directors to adapt operations to new conditions. This failure to adapt has become particularly critical in the past two decades. During that time there have been extreme fluctuations in the total inmate population with which industries might be expected to help corrections to cope. However, over this period prison industries have diminished in their importance to corrections' objectives. Benign neglect from corrections administrators has often been the result.

The decline of prison industries has not passed unnoticed by policymakers. Three major studies of state prison industries have been sponsored by the Federal government in the past 15 years.² State legislators in California, New York, and other states have commissioned studies of their states' industries.³ Correctional administrators in Maryland, New York, South Carolina, and other states have similarly undertaken reviews.⁴ Private groups in Indiana and New Jersey have also studied their states' industries.⁵ Two reports have been issued by the General Accounting Office on prison industries and other correctional programs to improve inmate employability.⁶

Statutory reform of prison industries has been a common response. Perhaps half the states have changed their industries laws in the past decade, beginning with Massachusetts and Illinois in 1972.⁷ These legislative actions cover a wide variety of topics including the legal structure of industries, inmate wage scale systems, industries' fiscal authorization mechanism, marketing authority, and relationships with other institutional education and training programs. Major areas of concern remain untouched by statutory action, however, including procurement authorizations, relationship to post-release employment, and operational specifics.⁸

In the main, these legal reform efforts have focused on two areas. First has been the elimination of barriers to the sales of industries products and services. Thus, whereas in 1970 almost all the states limited industries sales to state-use, at least 20 states now explicitly authorize sales to the private sector as well. Second have been the laws calling for "business-like" operations of prison industries now found in about 12 states.⁹ In general, these laws have been exhortations toward this objective, rather than imposition of specific operational requirements.

Just as critical to successful modernization of prison industries as appropriate legislative authority is the establishment of an effective administrative structure, the adoption of appropriate managerial procedures and policies, and their implication. Laws by themselves are not self-executing; they require interpretation in covering omissions and discretion in application.

The complexity of the task of convincing superiors of the need to take action, draft suitable legislation, or implement new and appropriate procedures suggests that assistance is required before change can come from below. Without such action, change may be externally mandated by noncorrectional political forces.

Prior efforts to offer assistance have, of course, been the province of various U.S. Department of Justice offices. Chief among them is the LEAA Free Venture Program. Based on research protocol,¹⁰ the Free Venture Program diagnosed industries' problems as a failure to operate in a business-like manner. This was defined to include several factors¹¹ and assistance was provided to help pilot states implement the research design prescription. Only moderate success was achieved in the pilot states¹² and relatively few states have specifically examined the applicability of this model to their operations.¹³ Indeed, the term "free venture" is now taken to indicate private business involvement in the operation of prison industries (e.g., Washington law).

The advent of LEAA technical assistance programs enabled some limited national data to be collected about state prison industries programs. Little of it, however, was published or otherwise made accessible. Descriptive in content, this data is useful primarily as a basis for assessing the degree of recent change

in the field. Yet none of these earlier efforts at technological transfer provided any comprehensive systematic view of the status of prison industries nationwide.

New approaches are required. Indeed, ideas are relatively plentiful on both the areas for reform and methods of inducing change.¹⁴ A common element of all such approaches is the need of industries managers for "how-to" assistance in a variety of areas. Such assistance has become critical as states face burgeoning populations and the idleness and managerial problems which accompany prison overcrowding. Budget constraints and excess populations are not likely to diminish soon.

It is in this context that the National Institute of Corrections has sponsored the development of a series of materials to "assist the field in improving and expanding prison industry programs." The four different components of the *Guidelines* that this project has prepared are:

1. Survey of prison industry programs in the United States in 1983 with a summary of activities by state.
2. "Model" state legislation enabling the creation and use of prison industry programs. This includes legislation to assist such programs in acquiring high quality raw materials at competitive prices and in marketing their products and services.
3. "Model" institution policies and procedures for prison industry programs that cover:
 - general administration
 - budgeting and accounting
 - selection and training of inmate workers
 - safety programs
 - inmate reimbursement
 - inmate supervision
 - security and other institutional policies and procedures
 - scheduling of inmate work programs to complement and coincide with other inmate activities.
4. Legal actions and professional standards that impact prison industry programs.

Assumptions

The IEPS approach to the task of providing materials for prison industries and corrections practitioners is premised on the view that there is no single approach that will serve all of prison industries' needs. The wide diversity among the states in resources, personnel abilities, political limitations, different sized institutions and differences in inmate populations is but one reason for this view. The different operations seen among the states, including agricultural, manufacturing, and even service operations is another. Last, but perhaps most significant, is the fact that no clearly defined goal or purpose of prison industries is agreed upon, neither among states nor for the most part within them. This is the single core issue which pervades prison industries from the level of organizational concerns to the context of daily operations. The absence of a single goal or priority is the number one reason why no single model can be suggested in these guidelines.

This report is not without any judgmental criteria, however. A recent IEPS examination of prison industries in five states showed that the most significant problem of most states' prison industries is organizational ambiguity.¹⁵ From a corrections system perspective, the broad goal of industries, similar to that of other institutional programs, is the reduction of idleness. Yet the more targeted mission of industries is, in most states, derived from a business-like or self-sustaining goal that requires inmate training as a precondition to success. While there may be some disagreement over some specific applications of this principle (e.g., inmate wage levels), other issue areas such as the elimination of featherbedding can claim concurrence among most industry practitioners.¹⁶

Industries must operate within the correctional context however, and are largely dependent upon the parent correctional agency for space, inmate workers, and many other support services. In return for support from the correctional agency, industries employ inmates at a cost far less than that of other programs. The interdependency between corrections and industries is not always maximized to their mutual benefit, however. Corrections authority over industries may not mean political responsibility for its health. Hence policymakers from such diverse perspectives as the legislator, the judiciary, or the central corrections chief may establish rules to ensure that the day-to-day operations of a correctional institution facilitate rather than retard industries efforts. Given these assumptions, the Institute proceeded with the following methods to accomplish the goals of the study.

Report Methodology

Since each component of the research had its own associated requirements, alternative strategies were used for developing the various components. Each has been treated in a separate part. Since the telephone survey was paramount to the overall effort, it is discussed first in both the methodology and the guidelines.

Research Component #1

Survey prison industry programs in the United States on a given day in 1983 and summarize the activities by state.

Telephone Survey

The central data collection effort for this study around which each of the other components revolved was a telephone survey of prison industry directors from all 50 states which coordinated data collection needs for each component of the guidelines. This process not only served to organize the data collection efforts; it also effectively minimized data requests imposed on state prison industry directors.

The telephone survey asked questions on all areas related to prison industries operations (see Appendix A). The survey took an organizational focus since structural issues are critically important as they permeate the entire operation. When completed,

the survey contained 96 questions distributed across the topic areas displayed in the table below.

Table 1.1

Topic Area	Number of Questions
Scope of industries	7
Organizational structure	10
Personnel	11
Inmate data	20
Fiscal information	19
Production/marketing	15
Legal and policy issues	8
Future of industries	6
	96

There were no questions on existing shops or percent of inmates in prison industries since these baseline type data have been collected in several recent studies.¹⁷ Appendix B provides a listing of state industries programs as reported in the 1983 Correctional Industries Association directory. Rather, the survey was intended to build on existing data by asking questions such as which shops made a profit or which ones were closed over the past 3 years. In addition, a number of questions were geared toward evaluating legislation, policies and procedures, court actions and standards. Thus relevant data was collected for redeveloping the guidelines while conducting the comprehensive survey of industries programs.

Prior to finalization of the survey instrument, it was pretested on site visits to Florida and California. The site visits were designed to accomplish several purposes. First was to insure that all relevant issues were comprehensively covered and that sufficient data was readily available in each topic area. Second, the pretest provided an opportunity for feedback from practitioners on the scope and inclusiveness of the questionnaire.

The survey was conducted over the 3- month period from June to August 1983. The telephone protocol involved establishing an appointment time to conduct the interview. While all 50 states responded to the survey, 6 of those requested that the survey be sent to be completed by mail.

The final section of Part I reports the findings of this snapshot survey.

Research Component #2

Development of model state legislation enabling the creation and use of prison industry programs, including legislation to assist such programs in acquiring high-quality raw materials at competitive prices and in marketing their products and services.

Legislative Guidelines

Three steps were taken to identify and develop model legislation. First, all relevant legislation on the creation and use of

prison industry programs as well as the relevant marketing and purchasing laws were collected for each of the 50 states. Second, a detailed schema was developed for the purpose of making a preliminary analysis of the legislation, i.e., those areas covered by the laws, restrictions imposed, etc. The scope of this review of prison industries enabling legislation included the following elements:

1. Authorization locus
2. Purpose specified
3. Authorized operations
4. Advisory or oversight board role
5. Specific authority/requirements
6. Operational limits
7. Revolving fund
8. Inmate compensation
9. Private industry authorization.

In the marketing area, laws were reviewed to determine the ability of prison industries to sell to:

- state-use market only
- nonprofit organizations
- private sector sales for surplus goods only
- private sector sales generally.

In the areas of purchasing, laws were reviewed to determine whether prison industries were exempt from state purchasing requirements or given a limited waiver. As a result of this analysis, a matrix was created summarizing the existing legislation in each of the states. (Note: Federal prison industry legislation was not included in the legislative analysis.)

A third step involved asking questions of prison industries directors on the telephone survey with respect to their legislation. Two primary questions were asked. One dealt with recent changes in the law over the past 3 years (to insure our analysis was current); the second concerned problem areas that they perceived in the present legislation. This information was then incorporated into the matrix and used for writing the legislative guidelines which follow.

The final step involved the development of the accompanying narrative which assesses the utility of specific legislative approaches. An outline corresponding to that of the matrix was followed. Part II represents the results of this review.

Research Component #3

Development of model institutional policies and procedures for prison industry programs that cover:

- General administration
- Budgeting and accounting
- Selection and training of inmate workers
- Inmate reimbursement
- Security and other institutional policies and procedures
- Scheduling of inmate work programs to complement and coincide with other inmate activities.

Policies and Procedures

The third aspect of our research involved the identification of model policies and procedures in a number of areas specifically relevant to prison industries. Areas covered include administration (organizational structure and areas of responsibility, presence of an advisory board), budget and accounting (inventory, pricing, purchasing, use of revolving fund, areas of responsibility), safety, inmate reimbursement (wages and benefits), inmate supervision, security and related institutional policies and procedures (such as classification, discipline, inmate transfers), and scheduling (work hours and interface with other programs.)

As part of the telephone survey, industries directors were asked if they had written policies and procedures in each of the areas mentioned above. They were then requested to send us their policies and procedures for use in developing the guidelines. While many states had policies and procedures on a departmentwide basis, i.e., for corrections as a whole, only a limited number had them designed specifically for prison industries. Materials collected from these states were subsequently examined for their utility as models. Certain characteristics were assessed in reviewing the policies and procedures, including clarity of language, comprehensiveness of subject matter, and adaptability for other states' use.

A second aspect of developing the model policies and procedures involved on-site observation. Field visits were made to five state operations as part of a parallel study. During these visits, each of the policy areas in question was examined for procedural approaches related to their implementation. These observations served to verify or reinforce empirical data collected through the telephone survey. The challenge in developing these procedures, similar to that of the legislative guidelines, has been the synthesis of data collected from multiple sources.

Research Component #4

Analysis of court actions and professional standards that impact industries operations.

Court Suits/Standards

The court cases identified in this component were located by several means. First, court decision reporter systems were checked for relevant cases. This included both general case reporting systems such as the West "key-note" digests, and more corrections specific reporters such as that edited by Professor Merrit at the University of Toledo Law School. In addition there were two questions on relevant court suits in the telephone survey of prison industry directors. Case decisions were reviewed for inclusion using three criteria: First, they directly involved legal issues arising from industries operation; second, they involved legal issues arising from the interaction of industries with the correctional agency; third, the decision involved issues analogous to the prior two points.

A research methodology that focuses on the past actions of courts cannot result in an infallible predictor of future court

actions. For one reason, different states' courts may provide distinctly different answers to the same legal question. Second, many significant legal issues have either not been raised in court proceedings or have not been reported in published opinions. Nonetheless, Part IV does recount those generally accepted legal principles affecting industries. The recommendations following each analysis suggest possible actions that industries managers can take to protect industries from legal challenge.

The analysis of standards impacting prison industries involved the collection and review of several sets of standards established by professional and advisory groups over the past decade. Those standards included in this analysis are the following:

- 1. Correctional Industries Association (CIA)
- 2. National Advisory Commission (NAC)
- 3. Model Sentencing and Corrections Act (MSCA)
- 4. ACA Standards for Adult Correctional Institutions (ACI)
- 5. Department of Justice (DOJ)
- 6. ACA Standards for Correctional Industries (SCI)
- 7. American Bar Association (ABA)

Similar to the approach used for developing the legislative and policy guidelines (Parts II and III), the standards were assessed for their comprehensiveness of scope, specificity, and clarity. A comparative analysis was then made to examine each set by particular substantive focus.

Survey Findings

Organization and Scope

The first two sections of the telephone survey dealt with questions of the scope and organizational structure of prison industries in the 50 states (see Table 1.2). While all of the states now have prison industries, eight states reported having only one major institution with industries. Of those eight, seven only have one institution in the state. (Alaska has 12 institutions, only 1 of which has prison industries.) The state with the most institutions having industries is Florida, and the average number of institutions with industries shops in any given state is 5.18

Of those 41 states having industries at more than one institution, 11 reported industry programs in all of their major facilities. Of that same group of states, 28 reported they have the same shops at more than one institution. Typically it was the more traditional shop that existed at more than one facility within a state, i.e., furniture, printing, garment, metal, and farming. Moreover 29 states said they had joint-type ventures existing between institutions whereby a product made at one facility is shipped to another to be used for producing the finished product, e.g., metal produced at one shop is used for making frames at another. Finally, 17 states reported having industries at facilities other than at major institutions, including farms, camps, and independent private ventures.

Florida had the highest total number of shops of any state (53); Alaska, having only recently started its prison industry operations, had the fewest (2). The mean number of shops for all states was 16. A question was asked regarding shops at the women's facilities. Of the 39 states that have women's facilities,

Table 1.2 Organization and Scope by State

ORGANIZATION AND SCOPE	STATE																																		
	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO										
Number of major institutions with industries ¹	5	1	5	5	10	8	4	4	17	7	2	1	12	4	4	3	5	4	1	5	6	3	5	1	4										
Same shops at multi-institutions	NA	X			X	X	X	X	X	X	X	NA	X	X	X			X	NA		X	X	X	NA	X										
Total number of shops	9	2 ³	10	8	38	20	19	7	53	13	2	12	34	39	13	7	14	18	5	18	25	13	19	11	15										
Inter-institutional joint products	NA	X	X		X			X	X	X		NA		X	X		X		NA	X	X	X	X	NA	X										
Number of shops at women's institutions	2	NA	1	2	2		1	1	3	1		NA	2	1	2	1		1	NA	4	3	4	4	1	3										
Prison industry director reports to (1 = Commissioner; 2 = Assistant/Deputy Commissioner; 3 = Warden; 4 = Other)	2	4	1	2	4	1	2	1	2	2	1	3	2	2	2	2	1	2	3	1	1	1	2	2	2										
Prison industry director attends DOC executive staff meetings		X	X	X	X	X		X	X		X		X		X		X			X		X													
Prison industry director administers agricultural programs		X	X		X	X	X	X	X			X	X			X	X								NA	X									
Other labor under prison industries (1 = Institutional maintenance; 2 = Work release; 3 = Public works; 4 = Vocational training)	1-3		3			6	1			4								7		2															
Industrial coordinator at facilities	X	X	X	X	X	X	X	X	9	X	X	NA	X	X	X	9	X	X	NA	X	X	X	X	X	X										
Coordinators report to (W = Warden; PI = Prison industries director; B = Both)	B	B	PI	PI	PI	PI	W	PI	W	B	PI	NA	PI	W	B	PI	PI	W	PI	PI	B	PI	W	PI	PI										
Direct participation on classification board (1 = Sits on board; 2 = Hire/fire authority thru job application procedure; 3 = Varies by institution; 4 = Little or no input)	1	4	1	4	1	4	1	4	4	4	4	4	3	1	1	2	4	4	2	4	4	1	1	4	1										
Regional prison industries offices				X		X		X	X																										
Functions performed (C = Central office for prison industries; I = Institutional; B = Both central/institutional; D = DOC central office; S = Other state office)																																			
- Planning	C	C	C	B	C	C	C	C	C	C	C	I	C	B	C	C	C	C	I	C	C	C	B	I	C										
- Fiscal management	C	C	C	C	C	I	C	C	B	C	C	I	C	B	C	C	C	C	I	C	C	C	B	I	C										
- Quality control	I	B	I	I	I	I	I	I	I	I	I	I	B	I	I	I	B	I	B	I	C	I	I	I											
- Ordering/customer relations	C	B	B	C	C	B	C	B	B	C	I	I	C	12	C	C	B	C	I	C	B	C	B	I	C										
- Pricing	C	C	B	C	C	C	I	C	C	B	I	I	C	C	I	C	C	C	I	S	C	B	I	I	C										
- Purchase of raw materials	C	C	C	C	B	I	C	C	B	B	C	I	B	C	S	C	C	D	I	C	B	C	I	I	C										
	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO										

1. Sixteen states reported having industries at facilities other than major institutions, including farms, camps, and independent private ventures.
2. Tennessee was reorganized on July 1, 1983, moving all industries and farms (except two at women's facility) to one facility in a 12-18 month period. They will be headed by an Industrial Warden and placed under the Division of Adult Services. Division of Agriculture-Industry was abolished.
3. Alaska prison industries is still in its early stages of development, having only been authorized since July 1, 1982.
4. Anticipated start-up by end of 1983 as a result of court order.
5. New York has three shops at a coed facility; the women's facility had an automotive shop that was closed due to lack of interest.
6. Legislation says institutional maintenance is under prison industries but funds have been transferred back to the institutions to operate.

Table 1.2 Organization and Scope by State (Cont.)

ORGANIZATION AND SCOPE	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Number of major institutions with industries ¹	1	2	2	1	6	3	12	3	2	8	5	2	8	4	7	1	4 ²	10	1	2	7	4	2	4	3
Same shops at multi-institutions	NA			NA	X	X	X	X		X	X		X	X		NA		X	NA		X	X	X		
Total number of shops	9	8	8	10	17	14	29	25	10	27	17	8	35	11	10	5	13	23	7	6	19	20	8	8	4
Inter-institutional joint products	NA			NA	X	X	X			X	X	X	X	X	X	NA	X	X	NA	X	X	X	X		
Number of shops at women's institutions	NA	1		NA	1		3 ³	4	NA	1	2	2	3	1	1	NA	1	1	NA	NA	3	1	NA		DK
Prison industry director reports to (1 = Commissioner; 2 = Assistant/Deputy; Commissioner; 3 = Warden; 4 = Other)	1	1	2	3	2	2	4	2	3	1	2	4	1	1	2	3	2	1	3	4	4	2	1	2	3
Prison industry director attends DOC executive staff meetings	X	X	X			X				X		X	X	X	X	X	X	X		X		X	X	X	
Prison industry director administers agricultural programs	X			X		X		X	X			X	X	X					X	X		X			
Other labor under prison industries (1 = Institutional maintenance; 2 = Work release; 3 = Public works; 4 = Vocational training)	4			3				4	3										1	3 ⁷		2	1		
Industrial coordinators at facilities	NA	X	¹⁰	NA	X	X	X		X	X	X		X			X	NA	X	⁹	NA	⁹	X	X	X	X
Coordinators report to (W = Warden; PI = Prison industries director; B = Both)	PI	B	NA	PI	B	PI	B	PI	B	B	B	W	B	PI	PI	W	PI	W	NA	PI	PI	PI	PI	PI	W
Direct participation on classification board (1 = Sits on board; 2 = Hire/fire authority thru job application procedure; 3 = Varies by institution; 4 = Little or no input)	2	1	4	2	1	1	1	3	1	4	1	1	3	1	1	4	4	4	4	1	1	2	4	2	4
Regional prison industries offices										X									X	"					
Functions performed (C = Central office for prison industries; I = Institutional; B = Both central/institutional; D = DOC central office; S = Other state office)	I	C	I/D	I	C	C	C	D	C	C	C	C	C	C	C	I	C	C	I	C	C	C	C	C	I
- Planning	I	C	D	I	C	C	C	D	C	C	C	C	C	C	C	I	C	C	I	C	C	C	C	C	D
- Fiscal management	I	1	1	1	1	B	1	1	B	B	B	I	I	B	1	1	1	1	1	1	B	C	1	1	1
- Quality control	1	C	I/S	1	C	C	C	B	C	C	B	B	B	C	C	1	C	C	1	C	C	C	C	C	1
- Ordering/customer relations	1	B	S	1	C	C	C	C	C	C	C	C	B	C	C	1	C	C/S	1	C	C	C	B	C	1
- Pricing	1	B	S	1	C	C	C	B	C	C	B	C	B	C	C	1	C	B	1	C	C	C	C	C	1
- Purchase of raw materials	1	B	I/S	1	C	C	C	B	C	C	B	C	B	C	C	1	C	B	1	C	C	C	C	C	1
MT NE NV NH NJ NM NY NC ND OH OK OR PA RI SC SD TN TX UT VT VA WAWV WI WY	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY

7. Both Louisiana and Vermont also operate one vocational technical program under prison industries.
8. West Virginia is in the process of reorganizing, effective July 1, 1983. Prison industry shops are being shifted under vocational training to increase the number of inmates working (two half-day shifts are planned).
9. Not at all facilities.
10. Nevada is a special case having two institutions with industries but no central authority over prison industries. Industries staff are all part-time or shared.
11. Vermont and Michigan have part of their central office administration located at a major institution.
12. Ordering and customer relations are under study in Indiana.

32 had prison industries at them. Again, these shops were primarily traditional, with 22 having sewing/garment operations for women. Seven reported having data entry shops for women and a number of others had some other nontraditional industries, e.g., microfilm, news clipping services, wood refinishing, and school desk repair. One state without any industrial programs for women expected to begin operation next year as a result of a class action court suit.

Lines of Authority. When we turned to organizational issues, prison industries directors were asked whom they reported to, if they attend DOC executive staff meetings, and whether they are responsible for administering agricultural programs. These questions attempted to ascertain the interface between prison industries and the general correctional system of which it is a part. The most typical arrangement was for the prison industries director to report to an Assistant or Deputy Commissioner (22 states). In 15 states the head of prison industries reports directly to the Commissioner of Corrections; in another 6 states (all but 1 of those in states having 1 institution), the director reports to the warden or superintendent of that facility; and in 3 states industries directors report to a chief of programs or operations, which is two administrative layers removed from the Commissioner. Three other states having alternative structural arrangements were New York (reported to an Assistant Commissioner who comes under a Deputy Commissioner), California (reports to a prison industries board that the DOC director heads), and Oregon (reports to the warden on all but fiscal issues on which he reports to the Commissioner). A few states volunteered information that the prison industries director had central office correctional agency duties distinct from that of industries (e.g., Michigan and Nebraska).

On the question of executive level staff meetings, 29 state industries directors reported that they attend; 20 do not. The states were split as to whether agricultural programs were administered as part of prison industries (23 did administer, 25 did not, and 1 was not applicable).

In approximately 12 states, various other types of inmate labor were reported as organizationally under industries (either in whole or in part). This included institutional support work (Utah and Connecticut), work release (Maryland and Washington), public works (Arizona, North Dakota, New Hampshire, and Vermont), and vocational training (Montana, North Carolina, and Georgia). This differs from states where the industries division includes both prison industry programs and vocational training programs, each of which have different operating heads reporting to a division chief (e.g., Delaware and Utah). In Colorado, legislation places institutional support under prison industries; but funds have been transferred back to the institutions to operate this labor. In two other states, selected vocational programs are being operated through industries.

Institutional Relationships. All but eight of the states with industries at multiple institutions have prison industry coordinators (exact titles may vary by state) located at each facility. Four states do not have industry coordinators, while another four have coordinators at some but not all facilities. A question was then asked as to whom the industries coordinator (or shop supervisor in those states without coordinators) reports regard-

ing operations issues. In 26 states the coordinators report directly to the industries central office; in 12 states they report to both industries and the warden, depending on the particular issue. In another eight states, coordinators report directly to the warden since these states typically do not have a central office per se. Nevada is unique with coordinators at each of its two facilities but no real link between them. (Two other states responded as "not applicable.")

Continuing on this issue of authority lines and organizational relationships, a question was asked about the nature of industries participation in the classification decision for work assignments. Twenty-one states reported that they have direct input on classification decisions through committee representation; another six states said they retain hire/fire authority through the job application process, even though they do not participate directly on the classification review board. Nineteen states, however, still have little or no input on the inmate classification for job assignment decisions. This, in turn, affects the ability of those states to acquire workers suited for industrial jobs.

Six states reported having regional offices for prison industries, one of which is primarily for sales purposes (Ohio). Another two states have regional-type operations only in the sense that part of their administrative offices are located at a major facility. For the most part, regional offices do not play a large role in prison industry administration.

Management Functions. The final question developed on the structural arrangement of industries asked how a number of key management functions are performed, i.e., whether they are centralized, carried out at the institutional level, or some combination thereof. Six functions were addressed in the question: planning; fiscal management; quality control; ordering and customer relations; pricing; and purchase of raw materials. Table 1.3 summarizes the results of this question.

Table 1.3

Management Function by Organizational Level of Responsibility				
Function	How Performed			
	Central	Institutional	Both	Other
Planning	37	7	3	2
Fiscal Management	35	8	3	3
Quality Control	3	36	10	
Ordering/Customer Relations	27	8	12	2
Pricing	30	11	6	2
Purchasing of Raw Materials	27	9	10	3

The responses demonstrate that planning is the most centralized of the six functions with 37 states planning at the prison industries central office. In the seven states with but one facility, planning was performed at the institutional level; in three states responsibility was shared between central and facility levels. In two cases planning was handled centrally but by the DOC. The fiscal management function closely parallels plan-

ning, with 35 states handling it centrally, 8 at the institutional level; 3 states at both the central office and facility levels, and 3 other states centralized under the DOC. With the exception of those few states that have only a single institution, it appears that both the planning and fiscal management functions are nearly always centralized. A few states have the DOC performing these functions.

The third function questioned on the survey was quality control. This was the only truly decentralized function. Thirty-six states reported this was handled at the institutional level; ten said it was a joint responsibility; only three reported it as centralized.

Ordering and customer relations tended to be more decentralized than planning and fiscal management. Twenty-seven states handled this function centrally, 8 institutionally, and 12 shared between both levels. Pricing, on the other hand, tended to be somewhat more central, perhaps corresponding to the fiscal management function. Thirty states have centralized pricing, 11 institutional pricing, and 6 combined. The sixth and final function surveyed was purchasing. The responses closely followed ordering/customer relations, i.e., somewhat more decentralized and/or joint handling of this management task.

In sum, it appears that planning, fiscal management, and pricing functions are most apt to be centralized. Ordering/customer relations and purchasing are somewhat more likely to be performed at both institutional and central administrative levels. Quality control is the only function which remains decentralized. (For further detail see the discussion of production/marketing functions below.)

Personnel

Central Office Staff. The second major category of questions on the survey examined the industries personnel (see Table 1.4). Questions were asked on the numbers of staff and functional divisions to ascertain the extent and focus of central office operations in the 50 states. The number of professional central office staff for prison industries varied from a high of 15 in two states to only 1 in several of the smaller states. Clerical and support staff ranged from a high of 25 down to zero. The number of marketing and sales staff was also asked and similar varied, ranging from a high of 15 to no staff specifically designated to that function. The mean number of central office staff for prison industries was 5 professional, 3 marketing and sales, and 4 clerical. Finally, states were asked if they had inmates working in their central offices and 26 did employ inmates in this capacity, primarily assisting in the support role. One state employed 20 inmates in their central office.

Only 9 states said they employ staff on a contractual basis; and only 16 reported having engineers on staff, which is a critical position needed in the design and implementation of new industries or products. Fifteen state prison industries reported having a safety coordinator (or someone designated in this capacity) on staff; another 12 states have a systemwide safety coordinator employed by the DOC. States having a prison industry safety staff generally have a DOC safety office as well. In one other state someone from another state office performs this role.

Twenty-one states, however, do not have a safety coordinator for industries although safety and health laws would seem to make a coordinator desirable.

Institutional Staff. The next question dealt with the number of industries staff employed at the institutions. A further distinction was made to differentiate manufacturing and service industries from agricultural operations. The high number of manufacturing/service staff was 400, the low only 5 (in two states, excluding Alaska). The mean was 55. For states having agricultural operations, the high number of staff assigned to this operation was 100, the low was 1, and the average 16.

Eleven states reported their prison industry staff were fully trained as correctional officers, while 17 states said industrial staff received partial security training. Twenty-one states did not offer correctional officer training to industrial staff, other than those who were promoted from within the correctional officer ranks. Surprisingly, 27 states reported hiring prison industry staff predominantly from private industry; another 15 states reported recruitment at about even from private and institutional backgrounds. Only seven states said they hired predominantly from institutional staff. This appears to be a recent shift which probably reflects the greater number of prison industries directors today who have backgrounds in private industry.

Turnover Rate. The turnover rate among prison industries staff ranged from none to a high of 33 percent. One state was in the process of undergoing transition; thus its rate was reported at an exceptional 55 percent. Generally, however, the rate of turnover was low, with an average of around 9 percent. This figure would appear to compare quite favorably to turnover among correctional officers in general, possibly since many industries staff are former correctional officers and have already weathered the stress associated with inmate supervision.

Other Personnel Issues. On the issue of inmate supervision, a question was asked regarding the number of security staff regularly assigned to industries. While 30 states assign security staff to industries, 19 do not. In several states that use security staff for industries supervision, the practice varies considerably by institution with many states having correctional officers assigned only to maximum security facilities. Sixteen states reported having shared personnel, i.e., staff who split their time between industries and institutional operations. Apparently, these employees are not only security but business office personnel as well. Finally, a question was asked on whether prison industries reimbursed the DOC for security staff coverage. This occurred in only seven states and in most cases was for overtime costs necessitated by industries.

Inmate Data

Size of the Workforce. The third category of questions on the survey addressed inmate data issues, ranging from size of workforce to inmate compensation (see Table 1.5). The number of inmates employed in prison industries around the nation as of June 1, 1983, ranged from a high of 4,200 (Texas) to a low of 52 (Vermont) with Alaska and Hawaii excluded. Over the prior 12-month period, the maximum number of inmates employed was almost identical while the lows ranged from 3,800

Table 1.4 Personnel by State

PERSONNEL	STATE																
	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY
Number of central office staff:																	
- Professional	4	2	8	1	12	9	4	5	4	6	1	2	15	3	9	4	3
- Marketing and Sales	3	0	4	1	8	2	3	1	4	9	0	2	6	1	5	2	4
- Clerical	3	1	3	2	25	4	4	2	3	6	1	0	2	4	3	1	2
- Inmate			X				X	X				X				X	X
Contractual									X	X			X		X		
Engineers					X				X	X			X	X	X		
Safety Coordinator (D = Under DOC; S = Other state office)	D	D			X			X	X	X			X	D	D		
Institutional staff:																	
- Manufacture/Service	34	1	29	19	184	38	53	19	100	51	5	7	64	63	75	17	18
- Agriculture		1	7		33	16	2	3	100			1	18				
Trained as correctional officers (P = Partial)		P	P	X		X	X		P			P	P	P	P	P	P
Staff recruited (P = Predominantly private; I = Predominantly institutional; B = Both, 50-50)	P	P	P	I	P	P	B	B	I	P	P	B	B	P	P	P	B
Turnover rate (estimated)	DK	0	55%	20%	DK	8%	10%	5%	Var.	4%	0	30%	10%	6%	<10%	6%	16%
Security staff assigned	X			X			X	X		X	X	X	X			X	X
Shared personnel			X		X		X	X	X						X		
Reimburse DOC for security					X					X		X					1
	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY

1. Kentucky reimburses only if supervisor is out and DOC still operates shops using non-industries personnel.

Table 1.4 Personnel by State (Cont.)

PERSONNEL	STATE																
	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND
Number of central office staff:																	
- Professional	4	1	7	3	1	1	4	6	5	1	NA	2	5	5	15	5	2
- Marketing and Sales	0	0	14	4	2	1	2	3	0	3	NA	1	2	3	15	3	2
- Clerical	2	0	9	6	22	1	0	3	0	2	NA	2	12	1	18	3	1
- Inmate		X	X	X	X		X	X	X	X	NA	X			X		X
Contractual	X						X							X			X
Engineers			X		X			X	X	X					X		
Safety Coordinator (D = Under DOC; S = Other state office)			X	D	X	D			S	X		D		X	D	X	X
Institutional staff:																	
- Manufacture/Service	14	15	76	63	75	96	5	65	18	24	5	14	45	27	230	162	13
- Agriculture	24					NA	5		11			3		12		30	4
Trained as correctional officers (P = Partial)		X			P		X	X		P	P			X		X	P
Staff recruited (P = Predominantly private; I = Predominantly institutional; B = Both, 50-50)	I	I	P	P	P	P	P	B	P	P	B	P	P	P	B	B	P
Turnover rate (estimated)	0	26%	10%	<5%	5%	<5%	0	2%	7%	4%	0	12%	15%	0	<10%	6%	10%
Security staff assigned	X			X		X	X	X		X	X		X	X	X	X	
Shared personnel	X	X	X			X				X	X						
Reimburse DOC for security											X						
	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND

Table 1.4 Personnel by State (Cont.)

PERSONNEL	STATE															
	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Number of central office staff:																
- Professional	7	7	5	2	3	4	1	14	12	3	5	14	4	1	5	3
- Marketing and Sales	6	3	3	2	1	5	1	6	3	1	0	6	4	0	4	0
- Clerical	17	6	2	6	1	3	0	4	4	5	1	3	2	2	2	0
- Inmate	X		X		X		X		X	X	X	X			X	X
Contractual												X				
Engineers		X	X					X				X				
Safety Coordinator (D = Under DOC; S = Other state office)	X	X	D		X	X	D	X	D	D	X	X	D	X		X
Institutional staff:																
- Manufacture/Service	127	42	42	115	11	23	8	82	400	8	10	72	23	12	20	3
- Agriculture			20	30	1	17	2			14	1		27			
Trained as correctional officers (P = Partial)	P	P		X				X	X		P				P	
Staff recruited (P = Predominantly private; I = Predominantly institutional; B = Both, 50-50)	I	B	B	B	P	P	I	B	I	P	B	P	P	B	P	B
Turnover rate (estimated)	20%	7%	2%	5%	10%	0	10%	<10%	<5%	9%	0	0	10%	<10%	33%	50%
Security staff assigned		X			X	X		X	X			X	X	X	X	
Shared personnel		X	X		X		X									
Reimburse DOC for security						X			X				X			
	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY

Table 1.5 Inmate Data by State

INMATE DATA	STATE																
	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY
Total number as of 6/1/83	399	9	623	199	2542	366	420	300	2219	750	15	197	588	DK	320	170	650
- High	403	9	650	250	2800	390	450	300	DK	800	17	210	DK	DK	350	182	400 ²
- Low	368	0	560	175	2500	315	400	200	DK	650	15	170	DK	DK	260	160	250
Number employed by area																	
- Manufacturing	355	0	>536	199	2152	209	288	125	>1500	750	15	102	>493	DK	300	104	360
- Service	30	3		0	123	84	132	275		0	0	55		DK	20	66	40
- Agriculture		6			230	73	30	15				30		DK			250
Inmate-staff ratio	11:1	5:1	17:1	10:1	12:1	7:1	15:1	16:1	10:1	13:1	7:1	22:1	10:1	DK	8:1	13:1	22:1
Percent of production capacity (estimated)	73	42	DK	DK	72	70	50	70	72	80	70	68	60	95	DK	80	80
Industries at maximum capacity			X	X		X	X		X	X		X	X	X	X	X	X
Inmate workforce needs (S = Same; L = Less; M = More)	L	S	M	L	L	L	L	M	L	L	L	S	L	L	L	L	M
Average earnings per day	1.19	6.00	2.96	0	2.88	1.60	3.50	.30	0	0	2.10	4.75	3.75	.85	2.00	.90	2.00
Fringe benefits provided (P = Partial)					X	P							P		P		
Worker's compensation coverage (S = other state agency)			S		X		X								X		
Inmate job descriptions	X	X	X		X	X	X	'	'			X	X		X	X	X
Bonus/incentive pay (1 = Selected shops)				NA					NA	NA			X	1	1	X	
Extra good time							X						X				X
Other incentives			X		X	X		X	X	X		X	X		X		
Worker callouts (O = Often; S = Seldom; N = Never)	O	S	S	O	N	O	S	S	O	Var.	S	O	S	O	S	O	S
Problem with lockdowns (1 = on occasion)				1	X		X			X	1					X	
Injuries: inmates	1	0	0	DK	DK	6	4	0	DK	1	0	4	2	DK	0	1	1
Injuries: staff	0	0	0			2	1	0		0	0	0	1		0	0	0
	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY

Table 1.5 Inmate Data by State (Cont.)

INMATE DATA	STATE																
	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND
Total number as of 6/1/83	261	98	532	400	865	525	421	750	120	163	56	144	611	440	2069	1200	150
- High	300	127	532	400	865	600	500	800	150	163	130	150	630	440	2069	1220	150
- Low	220	91	488	350	825	500	230	700	120	120	40	120	531	250	1900	1180	80
Number employed by area																	
- Manufacturing	201	98	472	360	795	463	207	495	52	145	56	57	611	320	1863	575	98
- Service	60	0	60	40	70	62	0	255	8	18	0	75	0	0	206	400	35
- Agriculture	35					NA	214		60			12		120		125	17
Inmate-staff ratio	Var.	7:1	12:1	6:1	11:1	5:1	20:1	12:1	4:1	7:1	11:1	8:1	14:1	20:1	9:1	16:1	9:1
Percent of production capacity (estimated)	75	80	43	55	70	4	60	50	65 ⁵	40	43	100 ⁵	85	70	60	50 ⁵	90
Industries at maximum capacity		X	X		X	X	X		X		X	X		X		X	X
Inmate workforce needs (S = Same; L = Less; M = More)	L	S	S	L	L	L	L	L	L	L	S	L	L	L ⁶	L	L	M
Average earnings per day	.28	5.00 ⁷	4.00	4.50	4.40	8.53	0	1.60	2.40	4.65	4.20	1.20	2.60	2.66	2.93	.70	6.36
Fringe benefits provided (P = Partial)			X	X	X	X			X	P					X		X
Worker's compensation coverage (S = other state agency)										S						X	
Inmate job descriptions				X	X	X			X	9				X	X	X	X
Bonus/incentive pay (1 = Selected shops)		X	X		X	X	NA	1	X			X			X		X
Extra good time			X						X					X			
Other incentives		X	X			X					X	X	X	X			
Worker callouts (O = Often; S = Seldom; N = Never)	O	O	O	S	N	S	N	O	S	S	S	O	O	N	O	O	S
Problem with lockdowns (1 = on occasion)	X		X		X	X ¹⁰							X				
Injuries: inmates	1	3	3	0	10		2	4	2	3	2	2	0	13		1	1
Injuries: staff	1	0	2	0	0	DK	0	0	0	0	0	0	0	0	DK	1	0
	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND

Table 1.5 Inmate Data by State (Cont.)

INMATE DATA	STATE															
	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Total number as of 6/1/83	1800	330	736	1600	150	700	101	535	4200	200	111 ¹	737	387	110	300	575 ¹
High	1900	330	417 ²	1650	160		125	600	4200	200	55	737	387	120	300	575
Low	1500	290	282	1500	145		75	500	3800	150	46	675	300	85	300	517
Number employed by area																
Manufacturing	1600	285	246	1050	135	245	>75	425	1935	130	40	442	286	110	210	66
Service	200	50	150	0	0	455		88	2265	0	60	295	16	0	90	0
Agriculture		200	340	550	15	165	26			70	11		85			
Inmate-staff ratio	11:1	15:1	12:1	11:1	13:1	20:1	10:1	6:1	11:1	10:1	5:1	10:1	8:1	9:1	13:1	22:1
Percent of production capacity (estimated)	DK	75	42	60	60	60	80	60	85	80	75	95	70	50	60	60
Industries at maximum capacity	X		X	X	X	X	X	X	X	X	X	X	X			
Inmate workforce needs (S = Same; L = Less; M = More)	L	S	M	L	L	L	S	L	L	L	L	S	L	L	L	L
Average earnings per day	1.00	1.60	2.73	2.15	1.75	1.50	2.00	3.50	0	3.50	3.15	3.50	7.24	1.75	6.20	1.85
Fringe benefits provided (P = Partial)					X	X	X	X		X	X		X		P	X
Worker's compensation coverage (S = other state agency)			X			X		S		⁸			X		X	
Inmate job descriptions	X	X	X		X	X		X	⁹		X	X	X		X	
Bonus/incentive pay (1 = Selected shops)		X		X	1	1		X	NA		X	X		X	X	X
Extra good time			X		X				X		X		X			
Other incentives			X				X				X					X
Worker callouts (O = Often; S = Seldom; N = Never)	O	S	O	S	O	O	S	S	O	S	N	O	S	S	N	O
Problem with lockdowns (1 = on occasion)		X								1	1				X	
Injuries: inmates	6	6	3	7	10	2	0	10	9	5	4		0	DK	10	2
Injuries: staff	0	0	1	1	1	0	0	2	1	1	0		1	0	2	
	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY

1. Vermont—includes 60 inmates in public works; Wyoming—includes institutional support jobs.

2. High and low inmate figures are for prison industries only and do not include farming.

3. South Carolina has high fluctuation in the number of inmates employed in industries programs.

4. Most shops are near full capacity with the exception of Stillwater which is only operating at 30% (since phaseout of Cordage Industry).

5. Montana is at 40% by private sector standards; New Hampshire is at full capacity based on a 5-hour workday; North Carolina is at 90% but could add a second shift.

6. Manufacturing inmate needs are the same, agriculture needs are less.

7. Maine has profit-sharing and sale of inmate crafts; craft inmates can make up to \$8,000 per year.

8. Only those inmates working under the Percy legislation are covered in Utah.

9. Only for some positions.

10. Only a problem at one institution.

(Texas) down to 40 (Nevada). The average number employed on June 1 was 637; during the prior 12 months, the average high was 648 and the average low 561.

Another question examined the number of inmates employed by industry area, i.e., manufacturing, service, and agriculture. The high for the manufacturing area was California with 2,152 inmates employed; Vermont had the fewest with 50. In the service area, the high was 2,265 (Texas) with the next highest being South Carolina (455); in agriculture the high was 1,719 (Florida). The low numbers for both service and agriculture were zero since not all states had these types of operations. The average number of inmates for manufacturing and service combined was 570, and 140 for agriculture. The ratio of inmates to industries staff at the institutional level varied from 4:1 (Montana) to 22:1 (Kentucky and Idaho); the mean ratio for all state prison industries was 11:1.

Production Levels. Prison industries directors were asked to estimate the percent of production capacity at which they were currently operating. There was wide variation in the responses which ranged from a low of 40 percent to full capacity. The mean production capacity of prison industry operations in the states was 68 percent. Several states offered multiple responses, making distinctions between private sector standards and the prison setting. Thirty-five states had at least one shop which was operating at full capacity.

A followup question asked if states would be employing more or fewer inmates than they are currently if they were operating under conditions analogous to the private sector and assuming production levels remained constant. Not unexpectedly, 36 states said they would be employing fewer inmates than they are at present. Five states said they would employ more and eight states said there would be no change. This finding substantiates common knowledge that the practice of featherbedding is still a serious problem plaguing prison industries.

Interface with Other Programs. Two survey questions addressed the issue of interface between industries and vocational training and education. In the former area, i.e., vocational training, only 12 states reported high cooperation and interface between industries and vocational programs. Twenty-four reported interface with vocational training to be little or none in terms of formal relationships, and 11 states fell somewhere in the middle. States reporting a high degree of relations with vocational training gave tangible examples of formal cooperation between programs, e.g., California has a joint venture whereby vocational tech operates the shop and prison industries provides the necessary equipment and raw materials and sells the finished products. Those states having very little interface with vocational training ranged from acrimonious relations to simple peaceful coexistence and friendly competition for the best inmates. The latter more often appeared to be the case than any outright hostilities between programs. Similar to other areas discussed, such as classification, there is also a fair amount of variation by institution within a given state.

The academic education area had even fewer formal ties with industries, with certain exceptions. A few states reported initiating minimum academic standards which must be met by inmates passing an exam prior to being hired in an industrial

operation. But for the most part, the concept of peaceful coexistence best describes industries relationship with education within the institution.

Wages and Other Compensation. Several questions were asked about inmate wages and other compensation. All but five states pay inmates for prison industries labor, yet the level varies considerably from a low of approximately \$.32 p.r day to a high of around \$8.50. The average wage paid was just over \$3.00 per day. Several states reported having different rates of pay for inmates working in private sector operations, with a few paying the prevailing market wage. Twenty states reported providing fringe benefits to inmates, including holidays and paid leave time. Of these 20 states, 5 said they paid only limited fringe benefits. Most states still do not cover fringe for inmates. Only eight states reported inmates being covered under worker's compensation, with three reporting other state coverage for injury claims.

Job Descriptions. Twenty-nine states reported having written job descriptions for all inmate positions available in prison industries; 4 more states had job descriptions for some but not all positions; 16 states did not have inmate job descriptions. The formalization of job descriptions and hiring/firing processes is apparently an area where progress has been made since it is critically important for industries to maintain control over its workforce.

Other Incentives. Seventeen states provide some type of bonus or incentive pay tied to inmate job performance. Another five states have incentive pay in selected shops. Yet in 22 states, the inmate wage scale is still not set up to reward performance on the job. In 11 states, extra good time allowances are provided for inmates working in prison industries. In most other states, good time provisions are the same as those given to the general inmate population. Finally, aside from increased pay or increased good time, the survey asked what other incentives were available to motivate inmates to work. Nineteen states had created a number of different incentives, though mostly informal, as a means of motivating their workforce. Such incentives varied from more tangible rewards, such as preferred housing, to more symbolic reinforcement, e.g., worker of the month awards. In any case, a wide range of creative ideas have been developed (including extra leave time, steak dinners, etc.) which may be of great utility to prison industry directors and coordinators, given the otherwise limited formal compensation methods provided by statute or administrative policy.

Callouts. Directors were asked how frequently inmates were called out from their work assignments temporarily for programs or administrative reasons. While 21 states said that this occurred often, an equal number responded that callouts were infrequent. Another six states said that this never occurred. Thus from the reported data, it appears that this may be another example where prison industries is beginning to regain control over its workforce. Two states in particular reported innovative means by which to limit the problem of inmate-caused callouts. One state does not pay inmates if they leave their assigned jobs for any reason other than a parole hearing, classification, or drug counseling; another has an inmate sign a contract stating that

if he remains on the job and does not leave to attend programs or for other purposes, he is paid an additional \$1.00 per day.

Lockdowns. Ten states reported that lockdowns were still a problem and another four said they were sometimes a problem. In a fifth state (Minnesota), lockdowns presented a problem at one institution. The majority of states, however, did not have problems with lockdowns, or at least lockdowns caused minimal disruptions when they occurred. In some states, prison industries directors said they knew beforehand when this would occur and thus were able to plan accordingly. Moreover, prison industry inmates were given priority to return to their jobs when lockdowns did occur. Such examples illustrate the kinds of managerial cooperation needed between prison industries and corrections if prison industries are to operate effectively.

Injuries. Finally, there was a question on the number of injuries that occurred last year (both staff and inmate) that resulted in a loss of productive time. Eight states did not have this data readily available. Of those states that maintained these records centrally, the reported high for inmates injured was 13 and 3 for staff injuries. The low for both was zero injuries. Overall, injuries did not appear to represent a significant problem.

Fiscal Budget Information

The fourth category of questions addressed in the survey dealt with fiscal and budget information (see Table 1.6). Virtually all states had separate prison industries budgets. In two states (New Hampshire and Maine), personnel for industries are funded under the institutional budget. In a few states there was no industries budget per se, other than the maximum amount of revenue generated to spend out of the revolving fund. What distinguishes a revolving fund from normal operating accounts is that moneys deposited in such a fund are not subject to annual appropriations from the legislature and may be used as necessary without a time limit. A few other states have a quasi-revolving fund in the sense that they must get legislative approval in order to spend. While there are a number of qualifications with respect to industries revolving funds (including upper limits, transfers, capital authority, etc.), the revolving fund is the primary method of operative funding for industries programs. Thirty-six states receive no other legislative appropriation for operating in addition to moneys generated by the sale of industries products and deposited into their funds. Eleven states receive supplementary funds from their legislatures for operating costs.

The size of operating budgets ranged from a high of \$36.3 million (Texas) to a low of only \$400,000 (New Hampshire), excluding Hawaii. The average budget size was around \$7.9 million. It was much more common for states to receive appropriations from the legislature for capital expenditures, with 19 states receiving such appropriations. Nearly all states expended money for capital projects, which included new equipment as well as renovation and expansion of facilities. The maximum amount spent for capital projects last year was \$2.8 million (North Dakota).

Gross Sales. States were asked to report their total gross sales for Fiscal Year 83 (which in most cases ended June 30, 1983),

distinguishing between manufacturing/services and agriculture. For the former, \$37 million was the high volume of sales (Texas), with \$54,000 reported as the low (Delaware). For agriculture, the high volume of sales was \$11.8 million (Florida). The mean level of sales for all industries was \$7.0 million. A followup question addressed percent of internal sales for the DOC. The responses here varied from a low of only 4 percent (North Dakota) up to 90 percent (Louisiana). The average percent of industries sales to DOC among all states was 30 percent.

Profit/Loss. States were also asked what their profit or loss was for FY 83, again differentiating between manufacturing/service and agriculture. For manufacturing/service industries, 15 states reported an overall loss with the remaining states earning a profit. The reported figures ranged from \$4 million profit (Texas) to a \$2 million loss (New York). Of 18 states reporting separate information for agriculture, 11 of them lost money. The range for agriculture went from \$634,000 loss to \$100,000 profit. Clearly, these figures suggest agriculture is not a large money-making operation.

States were also asked how many of their shops make a profit and how many operate at a loss. In 30 states the majority of their shops earned a profit; conversely, the majority of shops were operating at a loss in 12 states. Respondents were also asked to specify which shops were making or losing money. With one consistent exception, i.e., farming, the results demonstrate no clear pattern of profit-making or loss industries. Agricultural operations were quite often losing money and being subsidized by profits from manufacturing operations.

Apart from agriculture, there are a few general trends that can be reported. More often than not, those industries that tended to make a profit included laundry, printing, mattress, license plates and validation stickers, soap and janitorial supply, shoes, chemicals, data entry, and box or carton shops. Plates and validation stickers come as no surprise since these shops have a monopolistic market. The only agricultural-related operations which tended to make a profit were dairy and meat processing. Conversely, shops which tended to lose money include tire recapping and brick and concrete operations. Industries such as signs, metal, furniture, reupholstery, autobody, garment, bookbinding, and microfilm fell somewhere in between, losing money in as many instances as they earned a profit. For the most part, however, shops were inconsistent as to whether they made or lost money, i.e., they varied considerably by state and even within a state having similar shops in multiple facilities. The definition of all those factors assigned as industries costs, e.g., reimbursement to DOC for security staff, is likely to play a significant role in any bottom line profit or loss reported.

Assumption of Costs. States were asked if prison industries costs are absorbed by the DOC and/or if DOC costs are absorbed by prison industries. Thirty states reported that the DOC absorbs prison industries costs, while 28 states said prison industries absorb DOC costs, thus indicating substantial assumption of costs on both sides. Examples of costs picked up by the DOC are security, facilities, and maintenance; costs absorbed by prison industries include utilities and transportation. Yet it is interesting to note that while 18 states said that both sides

Table 1.6 Fiscal/Budget Information by State

FISCAL/BUDGET INFORMATION	STATE																
	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY
FY 84 Budget (in millions)	DK	.8	1.6	5.4	32.0	6.5	4.7	1.6	23.0	9.0	.2	2.3	10.9	9.3	7.5	3.5	Fund
Legislative appropriation—operating		X	X					X									
Legislative appropriation—capital		X		X		X			X				X	X			
Capital expenditure last year (in thousands)	70	55	DK	0	150	244	50	26	240	<1m	0	60	150	DK	250	164	200
Gross sales																	
- Manufacturing/service (in millions) ³	6.0		1.7	1.1	24.7	3.2	2.7	.1	11.9	8.2	.1	1.0	6.3	DK	5.8	2.9	3.0
- Agriculture		<.1	2.3		5.6	1.6	.2	.1	11.8			.8	2.6	DK			3.5
Percent of sales to DOC (estimated)	23	NA	High	60	DK	38	55	20	66	22	<10	22	57	20	DK	15	28 ⁵
Profit and loss (P and L)																	
- Manufacturing/service (in thousands)	1.5m	NA	DK	2	1.9m	(100)	(760)	DK	2.6m	530	DK	2	772 ⁶	DK	(250)	132	P
- Agriculture		NA	DK		P	(70)	(50)	DK	(634)			17	(141)	DK			
Number of shops with profit ⁸	9	NA	6	4	32	5	4	6	37	10	1	Var.	31	DK	5	5	9
Number of shops with loss	0		3	2	6	15	15	1	16 ¹⁰	3	1	Var.	3 ¹⁰		6	1	3
Non-prison industries deposits into fund			X		X		X	X				X					
Audit frequency (S = Semi-annual; A = Annual; B = Biennial or less; N = Never)	A	A	A	B	A	A	A	A	DK	A	B	B	A	B	A	B	A
FISCAL/BUDGET INFORMATION	STATE																
	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND
FY 84 Budget (in millions)	15.7	DK	7.2	¹	4.0	5.4	1.1	7.5	<5.0	3.8	.8	.4	5.5	8.9	30.7	15.0	3.0
Legislative appropriation—operating		²			X	X				X		²		X	X		
Legislative appropriation—capital					X				X					X	X		
Capital expenditure last year (in thousands)	DK	DK	300		0	175	30	450	350	50	DK	0	250	725	40	1m	2.8m
Gross sales																	
- Manufacturing/service (in millions) ³	>9.4	.7	5.9		11.2	4.1	.4	5.5	1.0	1.8	.4	.8	4.6	1.4	28.7	23.0	1.6
- Agriculture							.1		1.8			.1		1.2		5.0	.4
Percent of sales to DOC (estimated)	90	7	25 ⁵	DK	50	<10	50	33	10	DK	48	DK	24	20	7	55	4
Profit and loss (P and L)																	
- Manufacturing/service (in thousands)	638	70	(90)		2.6m	(414)	L	(450)	DK	60	(138)	(77)	69	(110)	(2m)	3m	140
- Agriculture	L						P		DK			(44)		(50) ⁷		100	(20)
Number of shops with profit ⁸	4	5	13		10	8	6	6	4	7	2 ⁹	3	9	9	21	22	6
Number of shops with loss	3	0	3		3	11	5	8	4	1	1 ⁹	3	8	5	8	3	5
Non-prison industries deposits into fund	X						X				X			X			
Audit frequency (S = Semi-annual; A = Annual; B = Biennial or less; N = Never)	A	A	A	A	B	A	A	A	B	A	N	N	B	A	B	S	A
FISCAL/BUDGET INFORMATION	STATE																
	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND

Table 1.6 Fiscal/Budget Information by State (Cont.)

FISCAL/BUDGET INFORMATION	STATE															
	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
FY 84 Budget (in millions)	20.0	5.6	3.2	15.0	Fund	3.0	.8	7.0	36.3	3.0	1.4	11.0	4.0	.6	3.5	.8
Legislative appropriation—operating									X	X			X			X
Legislative appropriation—capital	X	X				X		X	X	X	X	X	X			
Capital expenditure last year (in thousands)	1m	700	270	450	80	285	40	0	0	40	400	500	800	0	130	
Gross sales																
- Manufacturing/service (in millions) ³	15.0	5.4	3.3	13.0	.6	3.3	DK	7.0	37.0	1.8	1.0	11.5	>3.5	.6	3.2	<.1
- Agriculture		1.0	⁴	3.0	⁴	1.2	.3			1.2	.2					
Percent of sales to DOC (estimated)	15	45	60	25	10	30	25	DK	30	35	DK	40	DK	<10	8	0
Profit and loss (P and L)																
- Manufacturing/service (in thousands)	66	111	(400)	440	45	(52)	DK	250	4m	DK	82	DK	>(783)	L	(500)	⁶
- Agriculture		(374)		(344)		0	DK			DK	43	DK				
Number of shops with profit ⁸	15	10	1	28	9	4	1	5	2	5	5	18	4	1	4	
Number of shops with loss	11	7	3	7	2	7	4	8	21	3	1	1	2	6	5	
Non-prison industries deposits into fund		X							X		X					
Audit frequency (S = Semi-annual; A = Annual; B = Biennial or less; N = Never)	A	S	S	A	A	A	A	B	A	A	A	A	B	B	B	N
	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY

1. Massachusetts information unavailable.
2. Prison industries personnel in Maine and New Hampshire are funded out of the institutional operating budget.
3. Unless otherwise indicated, figures based on fiscal year ending 6/30/83.
4. Agriculture produced for internal use only in Oregon and Rhode Island.
5. Now about 80% with opening of new institution in Kentucky; Maryland currently at 40% due to prison expansion.
6. Illinois profit and loss figures do not include overhead costs; Wyoming—all receipts are deposited into general fund.
7. Loss is after subsidy for agricultural operations.
8. Number of shops may not necessarily add to total. In most cases discrepancies are due to balance of shops breaking even.
9. Information only available for Nevada State Prison.
10. Florida losses are for agriculture and new programs; Illinois losses are in farming operations.

absorbed costs of the other, 19 states said that the DOC or prison industries picked up costs for the other without the converse holding true. In these 19 states, however, there was a split with 11 of them saying the DOC assumed the financial burden and 8 suggesting prison industries bore more nonproduction related costs. These findings suggest that there are still many financial tradeoffs that occur between prison industries and corrections, yet it does not appear that industries are being overburdened financially. Due to the trend toward business-like and self-sustaining operations, there has been and will continue to be greater efforts to identify the actual costs of operating prison industry programs. Since the capacity of prison industry programs to yield a profit is affected by virtue of their secure setting, limited production capacity, etc., it is likely that few industries would be profitable if they had to absorb all overhead costs.

Only four states reported paying inmates working at nonindustries jobs out of their revolving funds. Twelve states, on the other hand, reported depositing monies not generated by industries activities into the industries fund. Examples of such revenue include income from public works projects and lease of state land. Finally, five states reported loaning or transferring money from their revolving fund to the DOC or back to the state treasury. Such constraints on industries' funds limit their capacity to generate sufficient capital to start new programs or expand existing operations.

Cash Position. Two questions were asked on industries' cash position; the first dealt with current cash balance and the second with accounts receivable. The cash balance across the states varied from zero to \$5.5 million. Similarly, accounts receivable ranged from only \$9,000 to \$4.9 million. More often than not, accounts receivable exceeded the cash balance, with the mean cash on hand balance at \$600,000 and the average accounts receivable at \$800,000. The low cash position and high accounts receivable reflects a persistent cashflow problem affecting prison industries in many states. As was expressed by directors in the survey, prison industries are often the last vendor to be paid. Consequently, this creates a serious problem which again impacts on industries' ability to expand its operation.

Audits. The final question in this survey category examined the frequency in which prison industries must undergo a complete audit. Thirty states had annual audits with another three states audited twice annually. Eight states were audited on a biennial basis and five less frequently.

Production/Marketing

Pricing. The fifth section of the survey examined a number of issues related to production and marketing (see Table 1.7). As discussed earlier in the section on centralization/decentralization of management functions, prices are primarily set at the central office level. Of the 30 states which have central authority for industries pricing, there is considerable variation as to who actually establishes those prices. In some cases prices were set in conjunction with marketing analysts; in other situations the expertise of a fiscal officer or cost accountant was used. Finally, a few states sought assistance from their industries ad-

visory boards or commissions. In nearly all cases, pricing for industries products and services is established by prison industries. In only a couple of cases were the state purchasing or general services agencies responsible for setting industries prices.

A related question looked at how prices for industries products were established. Thirty-five states, or more than two-thirds of the respondents, used formal cost accounting procedures to set prices. They included the price of raw materials, labor, overhead costs, and a margin for profit. Those states that did not use formal pricing methods typically used only the competitive market price as a base for comparison without determining production costs for a given item.

Fourteen states discounted their prices on industries' goods and services for DOC internal use. Five of those states had preestablished discounts for corrections, while the other nine negotiated price ad hoc depending on the item. Apparently those states still providing price breaks also depend to a greater extent on corrections for a larger share of their sales market. One means of eliminating this practice (if it were so desired) would be to broaden industries' market to rely less on corrections as a potential customer.

Quality Control. As anticipated, there was substantial variation in quality control measures reported, since this was primarily a decentralized function performed at the institutional level. Types of measures varied from visual inspections to elaborate written checklists designed for a particular product. Formality of the measures usually depended heavily on the nature of the industry. Thus quality control is subject to only limited central monitoring capacity and as a result, may vary more within a state than between them. Central quality control procedures included having a full-time service repair staff to respond to customer complaints.

Inventories. A question on the survey addressed frequency of inventory for equipment and raw materials. Most states (27) conducted equipment inventories annually; seven states performed them monthly, four quarterly, and eight semi-annually. Inventories of raw materials were conducted slightly more often; respondents reported 13 monthly, 3 quarterly, 9 semi-annually, and 22 annually.

A second question surveyed inventory levels for finished goods. Only five states maintained finished goods inventories more than 3 months. Another 12 states reported inventory levels of from 1-3 months; 12 states had inventories of 1 month or less. Fourteen states did not maintain finished goods inventories but operated on an order basis. Twenty-eight states said that shortage of space is a problem in keeping an appropriate inventory level. Inventory levels for finished goods can be important criteria as they may determine the speed of delivery which is sometimes as important a customer consideration as cost. Thus limited inventories may in turn limit the potential market for sale of industries products.

Private Sector Involvement. Twenty-two states reported ongoing relations with organized labor or private business while 27 states did not. The nature of these relations varied from participation on advisory boards to privately run industries operating in a state; the former was the more common arrange-

Table 1.7 Production/Marketing by State

STATE

PRODUCTS/MARKETING

Price variation for DOC institutional use

Inventory frequency:

M = Monthly or more often

Q = Quarterly

S = Semi-Annually

A = Annually

B = Biennially or less

N = Never

Equipment

Raw materials

Inventory level:

(in months; O = Order basis)

Finished goods

Space shortage

Percent of state-use market (estimated)

AL AK AZ AR CA CO CT DE FL GA HI ID IL IN IA KS KY LA ME MD MA MI MN MS MO																									
X	X	X		X	X	X		X		X															X
M	S	M	M	A	A	A	M	M	S	A	A	A	A	A	S	A	Q	A	A	Q	A	B	S	A	
M	S	M	M	A	M	A	M	M	S	A	A	A	A	A	S	M	M	A		Q	A	B	S	A	
<1	O	O	.5	DK	O	>1	1	Var.	1	2	3	<3	Var.	2	≤3	O	O	>3	≤3	3	3	1	4	O	
X	X		X	X	X		X	X		X		3	3			X	X	X					X	X	
DK	NA	5	DK	DK	12	30	DK	DK	DK	<10	NA	68	90	DK	90	DK	<10	NA	DK	DK	Var.	4	NA	<1	
AL AK AZ AR CA CO CT DE FL GA HI ID IL IN IA KS KY LA ME MD MA MI MN MS MO																									

STATE

PRODUCTS/MARKETING

Price variation for DOC institutional use

Inventory frequency:

M = Monthly or more often

Q = Quarterly

S = Semi-Annually

A = Annually

B = Biennially

N = Never

Equipment

Raw materials

Inventory level:

(in months; O = Order basis)

Finished goods

Space shortage

Percent of state-use market (estimated)

MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WAWV	WI	WY	
	X								X								X	X	X				NA	
A	A	A	A	A	S	S	Q	M	S	A	A	A	B	Q	A	S	A	M	A	A	A	B	A	M
Q	A	A	A	A	S	S	S	M	S	A	A	A	A	Q	A	S	M	M ²	M	A	A	M	A	M
1	Var.	1	O	5	1	3	Var.	O	3.5	3	1	4.5	O	.5	O	3	O	1	1	O	O	O	Var.	
X		X	X	³		X	X	X	X				X	X		X	X	X	X	X		X	X	
<20	<15	DK	Var.	⁴	45	10	75	NA	25	NA	2	10	12	<1	DK	DK	3	60	NA	50	12	<5	Var.	O
MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WAWV	WI	WY	

1. Maryland conducts raw material inventories for some industries monthly and others on an annual basis.
2. Utah inventories its agricultural equipment and raw materials two times a year.
3. Illinois—only in certain shops; Indiana and New Jersey occasionally have space shortages.
4. Only those goods produced by prison industries which the state is obligated to purchase.

ment. Thirty-six states, however, said they would like to increase private sector involvement in prison industries. The way in which increased involvement was foreseen also varied from a traditional technical assistance relationship to the more recent move toward contracting for inmate labor and open market sales. Historically prison industries have not been allowed to function like a private industry due to the many constraints described above, i.e., short workdays, lack of control over workforce, featherbedding, security requirements, etc. However, the large number of states wanting to increase external involvement demonstrates the fact that prison industries is often looking to the private sector for solutions to its deep-rooted problems, including capital assistance, marketing assistance, design of new products and services, and possibly public relations assistance as well.

A question was also asked to ascertain the extent to which production in specific shops or program expansion has been limited due to potential business or labor complaints. Twenty states responded that such potential complaints have been a factor in limiting production or expansion. Increased involvement with the private sector through advisory boards or other means may serve to limit such complaints.

Relations to Other States. Twenty-seven states reported having production or marketing relations with other states. Some of these relations were quite extensive; some are formal, while others are not. One state serves as a middleman by purchasing from other state prison industries those items not produced in-state and selling them to the state-use market. Several states sold products to other countries, including several Latin American countries.¹⁹

State-Use Market. States were also asked to estimate the percent of the state-use market they tap for goods they produce. The responses ranged from less than 1 percent to a high of 90 percent, while 13 said they did not know. Of those that did provide an estimate, the mean percent of the state-use market was 26 percent. With a few exceptions, most estimates given were quite small, indicating that the state-use demand is still largely unmet by prison industries.

A question was asked about the cooperation received from the state purchasing and finance agency in enforcing the state-use law (in applicable states). Twenty-two states said they were cooperative or the situation was improving; ten said they were not cooperative, and six said the law was simply not enforced. Eleven states have no state-use laws.

Legal/Policy Issues

Legislation. The sixth area of the telephone survey covered legal and policy issues (see Table 1.8). The first question examined the number of states undergoing revisions in their statutes in the last 3 years. Not surprisingly, 36 states have experienced legislative change over this time period. A followup question was asked about particular areas in the legislation perceived as hampering industries' efforts. Thirty-two prison industry directors responded affirmatively that problem areas did exist in their legislation. While these issues are addressed

more fully in the legislative guidelines, they will be reported in capsulized form here. Essentially, the three most problematic areas reported were marketing, purchasing, and industries personnel.

Thirteen states indicated marketing was a problem area. Marketing problems can be subdivided in several ways. Six states said they wanted open market sales; three states indicated that restrictions on out-of-state markets were a problem; six reported they needed a state-use law or the current law needed enforcing. Other marketing concerns dealt with sales to nonprofits.

Fifteen states said purchasing laws were a problem; six expressed a problem with personnel, and six said revolving fund legislation was problematic. In the personnel area there were two issues hampering prison industries. One was the time involved in hiring due to the state merit process, and the other concern was the lack of ability to pay adequately to recruit and maintain qualified staff (in the sales area — the inability to pay commission). Thus problem areas in the legislation continue to plague prison industries.

Court Actions. Only 16 states reported any court decisions that have impacted their industries operations; 2 other states indicated that court actions have had an indirect impact. Thirty-one states, however, reported no effect of court suits. Part III of the guidelines deals specifically with this issue and illustrates that while the number of cases directly impacting industries has been limited, there are numerous cases that may have an implied effect for the industries administrator.

A second question on court actions surveyed the number of states where industries personnel have been sued on an individual basis. Twenty states responded affirmatively to this question. While many of these suits are reported to be frivolous, this represents another area of potential liability for which the prison industries manager must be prepared to be held accountable.

Overcrowding. A third area addressed under legal and policy issues was prison overcrowding. An overwhelming 38 of the states said that prison overcrowding has been a significant factor affecting industries. There are two primary ways in which overcrowding has manifested its effect on prison industries. First is the pressure for more inmate jobs and rapid expansion which has led to featherbedding; second is the competition between space for industries programs vs. increased bed space. In this competition industries often suffered the short end of the stick. Effects from prison overcrowding have not only been negative, however, with seven states reporting the impetus by corrections officials to expand prison industries. (One of the court suits reports on resource allocation issues that have resulted from overcrowding suits; see Part IV.)

Other negative impacts of overcrowding include the high turnover caused by constant shifts and transfers of inmates due to increased numbers in the system and the resulting morale problem. Another positive effect has been the increased volume of sales to DOC as a result of necessary expansion. While there appear to be some positive side effects of the overcrowding phenomenon, it seems overall that overcrowding has been a problem for prison industries just as it has been for corrections. 21

LEGAL/POLICY

Changes in legislation over last 3 years
Court decisions impact prison industries
Industries personnel sued as individuals
Overcrowding affected prison industries
Written policies and procedures

Changes in legislation over last 3 years
Court decisions impact prison industries
Industries personnel sued as individuals
Overcrowding affected prison industries
Written policies and procedures

1. Revised legislation in process in South Carolina and Tennessee.
2. Court suits have had indirect impact in Iowa and Utah.

Table 1.8 Legal/Policy Issues by State

STATE																													
AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO					
	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X					
X					X			X	X			X	X								X	X	X	X					
X		X			X	X	X		X			X					X		X	X		X							
X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X		X		X			X	X				
X	X				X	X	X	X	X	X	X	X	X	X					X	X	X	X	X	X	X				
MT NE NV NH NJ NM NY NC ND OH OK OR PA RI SC SD TN TX UT VT VA WA WV WI WY																													
X	X	DK	X		X	X			X		X	X					X	X		X	X		X	X					
X	X		X		X				X	X	X	X						X						X					
X							X		X			X	X				X						X	X					
X	X		X	X		X			X	X	X	X	X	X			X	X	X	X		X		X	X				
X	X	X		X	X	X			X	X	X	X	X	X				X	X	X	X	X	X	X	X				

Table 1.9 Future of Industries by State

FUTURE OF INDUSTRIES

Phased out industries over last 3 years
Plan to phase out
Plans for new industries
Emphasis on service-type industries

Phased out industries over last 3 years
Plan to phase out
Plans for new industries
Emphasis on service-type industries

1. Farm was operated independently of industries for a short time but is currently under industries.

STATE																												
AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	MEMD	MA	MI	MN	MS	MO					
NA	X				X	X		X	X		X¹	X	X	X	X		X	X		X		X	X					
NA	X				X	X		X									X				X		X					
X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X		X	X	X	X		X	X			
X	X	X	X	X				X	X			X	X	X	X				X			X	X	X				
MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY				
X	X	X		X	X	X	X		X		X	X	X		X		X			X		X	X					
	X								X		X		X	X		X	X					X						
X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X		X				
		X	X		X				X	X			X	X				X		X	X		X					

Standards/Policies and Procedures. Twenty-eight states reported using standards as a benchmark for their industries operations; 38 states reported having written policies and procedures in selected areas of their operation. Several states reported their policies and procedures were in the process of being revised. In only a few states were their policies and procedures comprehensive, covering all areas specified in the guidelines (see Part III). The most commonly existing policies and procedures were in the areas of safety and inmate compensation.

Future of Industries

The final section on the survey attempted to ascertain the direction in which prison industries are heading by examining those shops that have been phased out as well as plans for starting up new ones (see Table 1.9). The first question surveyed which shops were phased out over the last 3 years. Thirty states, or nearly two-thirds, had in fact phased out selected industries during this time period. Fourteen states said there are industries currently in operation which they plan to phase out in the near future. Yet 25 states reported there are nonprofitable industries that should be discontinued but are maintained for other reasons. These industries, while consistently losing money, were invariably maintained due to their capacity for employing a number of inmates. Thus phasing them out would represent a loss of valuable inmate jobs, which is not plausible due to enormous pressures imposed on the system by overcrowding. Moreover, some of these industries represent in-kind resources to corrections since they have traditionally served to provide goods and services to the institution, i.e., agriculture, mattress, and related industries.

This question of phase out and start up of prison industries relates directly to the problem of prison industries goals in relation to those of the DOC. Only a few states have stated explicitly in their organizational policy that industries not reaping a profit are to be discontinued. Most, however, while listing profit as a goal, place greater emphasis on the reduction of inmate idleness. If nonprofitable industries are phased out, this would reduce even further the already limited work activity available in prisons. Moreover, the replacement value of starting up a new industrial program must also be considered. Since capital needed for expansion is at a premium in many states (as discussed earlier), the decision is more often to subsidize a losing operation with more profitable industries.

An overwhelming 42 states report plans to startup new prison industry programs. While the types of programs varied considerably, 26 states reported emphasis was being placed on service-type industries. Reasons for this new focus include the demand for more jobs which in turn require that labor intensive industries be given limited capital. The simultaneous phasing out and starting up of new industries would indicate industries are in a transitional period. States are attempting to have industries change with the times with a renewed emphasis on business-like and self-sustaining operations.

An analysis of those industries which have been phased out and plans for starting up new operations demonstrates the

following trends. Industries which have been most commonly phased out include canning, dental, concrete, tire recapping, and autobody. The autobody shops in several states have been converted to vocational training. Those industries typically planned for start-up include optical, moving services, paint, school bus renovation, data entry, binders, warehousing, and service-type industries in general. Industries geared toward the school market appear to be on the increase.

This assessment of industries that are closing as well as those that are being planned does not necessarily indicate which industries are the most viable. An industry that may be phased out in one state due to lack of profit is being selected for a new operation in another, e.g., microfilm. Generally there are numerous factors to consider when planning for expansion or development of industrial programs, including at a minimum, start-up costs, number of jobs created, and market availability.

Major Problems. A closing question on the survey examined the most pressing problems facing prison industries today. As one might expect, at the top of the list of concerns were overcrowding and the resulting problems that emerge such as lack of space and high inmate turnover. An almost equal number of prison industry directors responded that organizational issues and/or the lack of clear goal definition were among the most immediate problems which industries must address. Included here is the issue of centralized versus decentralized industries management. This issue has long been discussed and there are pros and cons on both forms of management. Conflicts, both potential and real, exist between wardens and industries' central office management which are not easily resolved. The third most pressing issue expressed was the lack of resources necessary to develop new programs. Other problem areas mentioned were marketing issues, followed by personnel, the economy, and industries legislation.

Two key points can be made from this depiction of the major problems of prison industries. First, the number of industries directors identifying goals and/or organizational issues demonstrates the sophistication of deep-rooted problems which goes beyond the more traditional concerns of the limited market of industries. Second, nearly all of the critical problem areas identified are external issues that in turn have a profound effect on industries operations. Addressing some of these basic organizational questions, as well as responding proactively to those external constraints, represent the most serious challenges facing industries today.

Conclusion

In sum, two main points emerge from this analysis of the survey data. First, as has been stated a number of times throughout this volume, wide variation exists within states, especially, although not limited to, the larger ones. In some cases, programs within a state may show more pronounced variation than those between states. This conclusion leads to the second and perhaps more significant point; that is, while certain states may appear to be leaders in a given area, e.g., marketing, no single state prison industry program stands out as the model for others to follow in all areas of organization

and operation. This is because elements exist in almost every state's industries program that can be designated innovative or creative and which are useful to industries managers elsewhere. Thus if we were to characterize the typical state prison industry program, it would be one facing many serious problems, yet

most likely it would have model components that could be singled out as worthy of emulation. The data clearly supports this finding; as a result, we have been able to draw from model examples in many of the states in developing the guidelines.

Footnotes

1. U.S. Department of Labor, *Prison Labor in the United States* (Washington, DC: U.S. Government Printing Office, 1905); General Accounting Office, *Improved Prison Work Programs Will Benefit Correctional Institutions and Inmates* (Washington, DC: General Accounting Office, 1982).
2. J.R. Stratton and J.P. West, *The Role of Correctional Industries* (Washington, DC: U.S. Government Printing Office, 1972); Georgetown University Institute of Criminal Law and Procedure, *Prison Industries Planning Study* (Washington, DC: Georgetown University, 1974 [for the U.S. Department of Labor]); Econ, Inc., *Analysis of Prison Industries and Recommendations for Change* (Washington, DC: U.S. Government Printing Office, 1978).
3. Assembly Office of Research, *Report on the Economic Status and Rehabilitative Value of California Correctional Industries* (Sacramento, CA: Author, 1970); Select Committee on Correctional Institutions and Programs, *Final Monitoring Report* (Albany, NY: Author, 1973). Private studies of prison industries have also been conducted in Minnesota (Governor's Task Force and two private companies).
4. Abt Associates, "Study of Maryland State-Use Industries" (Mimeographed, 1976); Vermor, McGill and Bell, Inc., *Correctional Industries Feasibility Study* (Columbia, SC: SC Department of Corrections, n.d.). The New York study was never published.
5. M. Reed, "Prison Industries" (Indianapolis Indiana Lawyers Commission, 1976); Contract Research Corp., "An Evaluation of the Duke Mercier Associates' Food Service Industry Program Development Program" [New Jersey] (Belmont, MA: Mimeographed, n.d.).
6. Note 1, *supra*; General Accounting Office, *Correctional Institutions Can Do More To Improve the Employability of Offenders* (Washington, DC: Author, 1979).
7. The Illinois provisions were part of that state's *Unified Corrections Code*.
8. See N. Miller, *Legal Analysis of Correctional Industries*, Volume One: *Compendium of Laws* (Alexandria, VA: Institute for Economic and Policy Studies, 1980).
9. E.g., *Colorado Revised Statutes* Sec. 17-24-113 (2); *Nevada Revised Statutes* Sec. 209-461.
10. Econ, Inc., Note 2, *supra*.
11. These factors included inmate wages based on productivity, productivity standards comparable to those of private sector, hire and fire procedures within industries, full workday for inmate workers, self-sufficient shop operations as goal.
12. See G. Funke, B. Wayson and N. Miller, *Assets and Liabilities of Correctional Industries* (Lexington, MA: Lexington Books, 1982); G. Grissom, *Impact of Free Venture Prison Industries Upon Correctional Institutions* (Washington, DC: U.S. Government Printing Office, 1981).
13. Foundation for Continuing Education in Corrections, *The Free Venture Model in California: A Colloquium* (Foundation for Continuing Education in Corrections, 1980).
14. One "quick-fix" approach is the lifting of restrictions on the sale of prison-made goods. At the Federal level, some qualified progress has been made through 18 USC 1760 (c).
15. N. Miller, G. Funke, and R. Grieser, *Franchising and Prison Industries: A Developmental Study*, Report to the National Institute of Corrections, August 1983.
16. Stratton and West, Note 2, *supra*.
17. *Correctional Compendium*, Vol. VII, No. 3 (September 1982); Correctional Industries Association, Inc., *Directory: State, Federal and Canada Industries* (Author, 1983); *Prison Industries: A Selected Bibliography* (Washington, DC: National Criminal Justice Reference Service, 1978).
18. Wyoming is included in the tables but not in the analysis since the survey was not received until after the analysis was complete.
19. For a discussion of the benefits to be accrued from joint production and/or marketing relations with other states, see George Delaney speech before Western Correctional Administrators Association, October 8, 1982.

Part II. Legislative Guidelines for Prison Industries

Introduction

The wellspring of prison industries is its authorizing legislation. Legislation determines industries' structure, its operating authority, and its marketing focus. Legislation may also define, in part, industries' status and relations with other elements of the correctional agency which it serves.

The past decade has seen major changes in most states' laws establishing prison industries. In several states there has been a total overhaul of these laws, some of which had been pre-World War I in origin. In other states there has been a continuous process of amending existing laws without a thorough review of their scope. A few states have had virtually no changes made since the passage of restrictive legislation during the Depression years.

The aim of these legislative changes has been varied. In some instances the goal of industries has been redefined to be more consistent with new correctional goals. Some states have passed laws to allow for more business-like operation of prison industries. In a few states, legislation has established industries as an independent entity. Finally, a number of states have authorized the establishment of privately run industries in the prison setting.

Purpose and Content

These several approaches to prison industries legislation show the absence of any consensus among the states on this question. Furthermore, I.E.P.S. work over the years indicates that not only do states reach differing conclusions over prison industries legislation, but that within each state different actors in the legislative process have differing concerns.

As a result of these observations, the "model" legislative program delineated herein does not prescribe to a single perspective or philosophy for prison industries. Rather, it draws on differing approaches that have proven workable. Some of these approaches may reflect differing philosophies about prison industries. While the *Guidelines* does not advocate a point of view, it does stress the importance of industries programs to correc-

tions. Given the importance of work to the free society, one may also point to its significance for corrections. Prison releasees must work in the free world and correctional programs must prepare them for work.

This conviction in the importance of industries leads to the report structure itself. Our field observations and interviews have impressed us with the need for a distinct industries organization. This organization must have sufficient status to be heard by policymakers. It must have sufficient authority to make those decisions necessary for it to achieve its goals. Finally, it must have the necessary resources.

Legal and Political Strategies for Using the Guidelines

There are some specific points to consider when drafting legislation. Whether one begins the drafting process with a "model" act or a copy of another state's laws or with this monograph, the rules of statute writing remain constant. These include:

1. Know your objectives. Specifically, what goals are to be emphasized and which are to be only second priorities.
2. Identify those forces that are likely to be barriers to goal attainment. Can these barriers be circumvented or must they be explicitly overcome in legislation?
3. What are the political realities that limit choices? Is changing the status quo so important that political supporters and allies will need to speak out for the integrity of the legislative package? Alternatively, is there sufficient agreement on the need for legislative reforms to minimize any political opposition? If not, what "sweeteners" may be added without diluting the main reform thrust to attract new supporters or disarm potential opposition?
4. Consider the effect of any proposed changes on the DOC, other state agencies, private businesses, labor, etc. Remember that future adverse effects on external actors may later lead to their proposing new legislative amendments or

even repeals. Either eliminate noncritical legislative items that may have long-term negative factors, begin planning to minimize any negative effects, or initiate public relations efforts to minimize the political damage.

5. Using checklist (see Attachment), make sure the legislation is sufficiently broad. Ensure that there are no conflicts with other laws in other areas of the state code, e.g., state purchasing act, state personnel system.
6. Once the legislative goals are firmly set, the actual drafting should consider the need to provide flexibility in operation. Too great a specificity can result in an inability to respond to changed conditions. While some delay in changing the legislative mandate can be tolerated by some public agencies, this is less true for "business-like" operations. Hence the use of language such as "including but not limited to" may be useful.
7. Where major organizational change is to result from new legislation, be sure to provide for a transition period and a realistic date of the effective date for the legislation.
8. Provide a legislative history report to accompany the introduction of the legislative package. Even in states where no formal legislative history is kept, courts will often look to contemporaneous documents to discover the legislative intent.
9. Monitor the legislative process to keep abreast of any proposed amendments that might dilute the original legislative intent.

With these principles in mind, the legislative guidelines are divided into five parts:

- organizational issues, including the industries structure and interrelations with the DOC; advisory board roles; goals and objectives; and financial structure;
- operational requirements and authorities, including specific operations and operational loci;
- inmate compensation schemes;
- purchasing law requirements and authorities;
- marketing and sales, including scope of market; state purchasing requirements; pricing of goods and services; and miscellaneous sales issues including sales force.

A matrix which summarizes existing industries legislation in the 50 states is included as Attachment A at the end of Part II.

Organizational Issues

Industries Structure and Relations with DOC

The starting point for the establishment of prison industries is the creation of an industries function within the correctional facility. Typically this is done by giving authority to the corrections agency director to establish industrial work programs.

Example: Kansas Statutes Annotated

Sec.75-5205. (a) The secretary of corrections shall have the general supervision and management of the correctional institutions of the state and such other facilities as

may be acquired by lease, purchase or contract for the housing of persons in the secretary's custody. The secretary shall have general supervision, management and control of any manufacturing or other business that may be carried on in behalf of the state pursuant to law, other than [private] business enterprises and about any correctional institution or facility and shall have the power to receive, take charge, sell or otherwise dispose of any articles manufactured or produced for the benefit of the state, in the manner prescribed by law, other than articles, products and services produced or provided by business enterprises....

(b) For purposes of carrying out the secretary's duties, the secretary shall have the authority to receive and expend federal funds and to contract with other agencies of the state and with the federal government and its agencies.

For another example, see *Montana Code Annotated* Sec.53-1-304 providing that the administration of the industries program is separate from the administration of any institution where the program may be located. Where a state has only one major correctional facility or only a small central corrections office, the warden of the institution may be given this authority.

Example: South Dakota Code Laws

Sec.24-7-5. The board shall appoint a superintendent of industries who shall appoint the employees necessary in the operation of the various plants with all salaries to be fixed by the board. The warden of the penitentiary may act as superintendent of industries.

The Industries Organization. The modern trend is to establish a central industries organization under the corrections agency head. This is done through the establishment of an industries division parallel to other major divisions within the agency. The powers of the industries division head may or may not be specified.

Example 1: Illinois Revised Statutes

Ch.38 Sec.1003-12-3. The Department shall establish or cause to be established industrial production at its institutions and facilities to secure the most practical and efficient use of labor. The office for coordinating such industrial production shall be located at Springfield. It shall assign its personnel to direct the production of goods and shall employ committed persons assigned by the chief administrative officer. The Department may also direct such vocational programs as the institution or facility may require as a part of the employment program.

Example 2: Colorado Statutes Annotated

Sec.17-24-104. (1) There is hereby created in the department of corrections the division of correctional industries, which shall be under the direction of the director of correctional industries, who shall be appointed by the executive director of the department of corrections.

Sec.17-24-105. (1) The director shall have considerable business operations experience, including the supervision and management of production operations. (2) The director shall have the authority to determine the personnel needs and requirements of the programs and shall have the authority to hire all subordinate personnel.

Sec.17-24-102. (4) A portion of the real property at each correctional institution shall be designated by the executive director as an industry area, and all facilities and buildings within this area shall be assigned to the division in cooperation with the division of adult services. The responsibility for the maintenance and upkeep of these facilities, buildings, and grounds shall be vested in the division.

For other examples, see *Connecticut General Statutes Annotated* Sec.18-88 providing for an industries manager with authority to: (1) manage the industries, (2) market and deliver the products and (3) investigate complaints; *Indiana Statutes Annotated* Sec.11-10-6-2 providing for a chief executive officer of the industry and farm programs responsible for planning, coordination, operation, and employment and supervision of personnel of the industry and farm programs at the correctional institutions.

Independent Organization. A few states have turned to the independent industries organization, which by virtue of interlocking leadership is tied to the corrections agency. The Federal prison system's UNICOR is the historical example for this approach. (Title 18, *U.S. Code*, Sec.4121 *et seq.*)

Example: California Penal Code

Sec.2800. There is hereby established the Prison Industry Authority. As used in this article "authority" means the Prison Industry Authority.

Sec.2801. The purposes of the authority are:

(a) To develop and operate industrial, agricultural, and service enterprises employing prisoners in institutions under the jurisdiction of the Department of Corrections, which enterprises may be located either within those institutions or elsewhere, all as may be determined by the authority.

(b) To create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible, to assure prisoners employed therein the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills.

(c) To operate a work program for prisoners which will ultimately be self-supporting by generating sufficient funds from the sale of products and services to pay all the expenses of the program, and one which will provide goods and services which are or will be used by the Department of Corrections, thereby reducing the cost of its operation.

Sec.2802. The authority shall be under the policy direction of a board of directors, to be known as the Prison Industry Board, and to be referred to hereafter as the board. The board shall consist of eleven members:

(a) The Director of Corrections shall be a member.

(b) The Director of the Department of General Services, or his designee, shall be a member.

(c) The Director of the Department of Economic and Business Development, or his designee, shall be a member.

(d) The Speaker of the Assembly shall appoint two members to represent the general public.

(e) The Senate Rules Committee shall appoint two members to represent the general public.

(f) The Governor shall appoint four members. Of these, two shall be representatives of organized labor, and two shall be representatives of industry. The initial term of one of the members appointed by the Speaker of the Assembly shall be two years, and the initial term of the other shall be three years. The initial term of one of the members appointed by the Senate Rules Committee shall be two years, and the initial term of the other shall be three years. The initial terms of the four members appointed by the Governor shall be four years. All subsequent terms of all members shall be for four years. Each member's term shall continue until the appointment and qualification of his successor.

Sec.2803. The Director of Corrections shall be the chairman of the board. The board shall meet regularly at least four times during each fiscal year, and shall hold extra meetings on the call of the chairman or a majority of the board. Six members of the board, including the chairman, shall constitute a quorum. The vote of a majority of the members in office is necessary for the transaction of the business of the board.

Sec.2805. The authority shall assume jurisdiction over the operation of all industrial, agricultural, and service operations formerly under the jurisdiction of the Correctional Industries Commission. In addition, the authority shall have the power to establish new industrial, agricultural, and service enterprises which it deems appropriate, to initiate and develop new vocational training programs, and to assume jurisdiction over existing vocational training programs. The authority shall have control over and the power to buy and sell all equipment, supplies and materials used in the operations over which it assumes control and jurisdiction.

Sec.2808. The board shall, in the exercise of its duties, have all the powers and do all the things which the board of directors of a private corporation would do, except as specifically limited in this article, including, but not limited to, the following:

(a) To enter into contracts and leases, execute leases, pledge the equipment, inventory and supplies under the

control of the authority and the anticipated future receipts of any enterprise under the jurisdiction of the authority as collateral for loans, and execute other necessary instruments and documents.

(b) To assure that all funds received by the authority are kept in commercial accounts according to standard accounting practices.

(c) To arrange for an independent annual audit.

(d) To review and approve the annual budget for the authority, in order to assure that the solvency of the Prison Industries Revolving Fund is maintained.

(e) To appoint a general manager to serve as the chief administrative officer of the authority. The person so appointed shall have wide and successful experience with a productive enterprise and have a demonstrated appreciation of the problems associated with prison management.

(f) To apply and administer grants and contracts of all kinds.

For another example, see *Georgia Official Code Annotated* Sec.77-903 providing for a public corporation-like industries authority.

Partially Independent Organization. A halfway position between the independent industries entity and the divisional status organization is seen in several states (e.g., Arizona, New Mexico, Washington). This takes the form of an independent board to set policy, but with operational authority remaining in the corrections agency.

Example: New Mexico Statutes Annotated

Sec.33-8-5. There is created within the department the "corrections industries commission." The commission shall consist of the department secretary, the director of the purchasing division of the department of finance and administration and four members appointed by the governor with the consent of the senate. The members appointed by the governor shall serve at the pleasure of the governor and shall consist of one member representing the private business community, one member representing the private industry community, one member representing the agriculture industry and one member representing organized labor. The members shall be appointed for terms of four years or less so staggered that the term of one member shall expire on June 30 of each year. The governor may appoint a person to fill a vacancy until the next session of the senate, at which time an appointment shall be made for the balance of the unexpired term. Three members of the commission constitute a quorum for the transaction of business. Members of the commission appointed by the governor shall be reimbursed as provided in the Per Diem and Mileage Act, and shall receive no other compensation, perquisite or allowance. Staff for the commission shall be provided by the department.

Sec.33-8-6. The commission shall have the following powers and duties:

A. to determine those enterprises to be conducted in facilities in such volume, kind and place as to eliminate unnecessary inmate idleness at all facilities and to provide diversified work activities which will serve as a means of enhancing vocational skills;

B. to determine whether any enterprise should be established, expanded, diminished or discontinued;

C. to establish policy with respect to the conduct of all enterprises;

D. to fix and determine the prices at which all services and products provided, manufactured, produced or harvested by enterprises shall be furnished. . . ;

E. to consult regularly and continuously with state agencies and local public bodies in order to develop new enterprise products, adapt existing enterprise products and establish new service functions to meet their needs;

F. to act as liaison with private industry, organized labor, the legislature and the general public;

G. to obtain and provide technical assistance for enterprise programs;

H. to hold meetings at such times and for such periods as it deems essential, but not less than quarterly;

I. to recommend to the department the adoption of rules and regulations necessary to carry out the provisions of the Corrections Industries Act; . . .

J. to review, approve, adopt and monitor an annual budget for all enterprises. The budget process shall include a projected profit analysis, sales forecast and anticipated year-end financial forecast;

K. to submit and recommend the names of one or more qualified individuals to the department secretary for appointment as director of the corrections industries division;

L. to assist in the process of inmate occupational placement upon release from confinement by coordination with the parole board and the field services division; and

M. to prepare an annual report to the governor and the legislature which shall contain:

- (1) a detailed financial statement for each enterprise in each facility
- (2) a detailed financial statement of the fund;
- (3) reasons for establishing or terminating enterprises;
- (4) a summary of plans to develop additional enterprises;
- (5) the number of inmates employed in each enterprise;
- (6) the number of idle inmates available for work at each facility; and
- (7) any further information requested by the governor or the legislature.

For another example, see *Arizona Revised Statutes* Sec.41-1623.01 including on the board persons with experience in personnel management, industrial purchasing management and industrial management in manufacturing and assembly.

Discussion. The legislative imperative for prison industries is that its managers have sufficient authority to accomplish the mandated tasks. This suggests that the role of the corrections agency head be limited to policy direction, rather than opera-

tional control of industries. Without legislative separation of these two powers, the agency head's delegation of operational authority can result in downgrading industries position in the DOC. At the same time it must be recognized that industries is highly dependent upon correctional agency actions. Hence, legislation must ensure that the DOC have at least a veto in the formulation of industries policies.

The key legislative decisions then are for the choice of either establishment of an industries division within the DOC or the creation of a policy board over industries, or having both organizational elements. Related to the policy board decision is the advisory board option. Note here that the line between a policy and an advisory board is not that distinct. Both advisory and policymaking functions can be seen with one board. This issue will be discussed in further detail below.

Where a policy board is desired, the decision to be made is whether the combined industries-board organization will be external to the DOC or even a quasi-public organization. The primary characteristic of a quasi-public organization is its ability to contract or borrow money. Given the dependence of industries on the DOC for qualified inmate workers, the alternative of industries being external to the DOC is more illusory than not. But the quasi-public organization does have some specific benefits such as independence from the legal restrictions on state agencies, e.g., mandatory competitive bidding. However, these benefits may be gained through other legislative devices (see below). And there may be hidden legal dangers that an independent industries organization may face—but which have not yet appeared in the few states with this type of legislation, or which may arise only under specific state constitutional provisions not yet applicable.

On the other hand, the status of an independent, external industries organization gives it greater leverage with the DOC in negotiating for inmate workers or in pricing its goods or services for the DOC. It also makes legislative amendments to take away some advantages, such as purchasing law exemption, more difficult.

Advisory Boards

Advisory boards for prison industries are not uncommon. Our legislative survey found 17 states with laws authorizing such boards. Our survey of industries found a number of other states with nonmandated advisory boards. A few states' laws merely permit the establishment of an industries advisory board at the discretion of the agency head. This authority may be discretionary, e.g., *Michigan Compiled Laws Annotated* Sec.800.324. Most legislation authorizing these boards is mandatory and has two primary elements. First, legislation defines the appointment power and the board's membership. Typically the appointing power is the governor or the correctional agency head. Board membership is usually defined to include representatives from differing societal elements: private business, organized labor and, occasionally, agricultural representatives.

Example: Alaska Statutes

Sec.33.30.470. (a) The Correctional Industries Commission is established to provide general policy direction to the correctional industries program through the commissioner of health and social services. The commission consists of seven members, five of whom are to be appointed by the governor to serve staggered terms of four years. The appointed members must include a representative of private industry, organized labor, agriculture, and the general public, and one ex-offender. The commissioner of administration is also a member, as is the commissioner of health and social services who is to serve as chairperson.

(b) The commission shall meet at least four times during each fiscal year and may hold additional meetings at the call of the chairperson. Four members of the commission constitute a quorum and vote of a majority of the quorum is necessary for the transaction of the business of the commission.

(c) Members of the commission serve without compensation, but are entitled to receive the per diem and travel allowance for attending meetings of the commission and making investigations either as a commission or individually as members of the commission at the request of the chairperson.

For another example, see *Iowa Code Annotated* Sec.216.3 providing board membership for representatives of programs for vocational and technical education.

Second, legislation defines the responsibilities of the advisory board to be either a public check on industries' potential for unfair competition with private businesses and labor or a source of managerial or technical assistance.

Example 1: Alaska Statutes

Sec.33.30.480. (a) The Correctional Industries Commission shall monitor the correctional industries program, annually review the proposed budget of the program, and make appropriate recommendations to the commissioner. This budget must be transmitted in the normal budgetary process to the legislature as part of the governor's budget.

Example 2: Missouri Annotated Statutes

Sec.217.550. (2) No service shall be established or renewed without prior approval by the Industrial Advisory Board of Correctional Industry and Services Programs and the Joint Committee on Correctional Institutions and Problems. Both the board and the committee shall make a finding that the establishment of the service shall be beneficial to those inmates involved and shall not adversely effect any statewide economic group or industry.

Sec.217.55. (3) The board shall provide the division director advice and counsel on proper industrial planning and programs for the correctional industry and services

program within the division and shall make recommendations concerning the services to be provided and the articles manufactured including style, design, and quality, as well as for economy and efficiency in their manufacture.

Legislation establishing an advisory board generally has numerous "housekeeping" provisions regarding board members' meetings, compensation, and related requirements. (See above.)

Discussion. The utility of industries boards with private sector membership is considerable. Boards provide a necessary bridge to the private sector, thereby potentially forestalling many problems. Just as significantly, they can help with industries' need to be heard by the DOC. States differ considerably in the degree of policy direction powers given to industries boards. The states with external membership boards seem to lean toward giving their boards some policy direction powers, rather than having them be either completely powerless or converted into a policy board.

The question of the board's powers is tied to the issue of who makes the appointment: the governor, the DOC head, or the prison industries head. The greater its powers, the higher the appointment authority, is typically the case. Housekeeping issues seem to be similarly related to the board powers question. Staggered terms, for instance, are a common concomitant of greater powers. Length of term may also be positively related to greater board powers.

Membership of the board is the final legislative decision. This decision addresses the question of what are the goals of having a board. Policy-setting authorities require higher status members who must be available to direct their personal attention to the problems of industries. Second, representation of differing societal elements should lead to an expanded membership rather than replacement of political members. On the other hand, advisory boards are more concerned with providing technical assistance or ensuring that the groups which they represent are not adversely affected by industries. Status of board members is less important here.

Industries Goals and Objectives

Probably one of the most commonly voiced complaints about prison industries is the problem of multiple and conflicting goals. These include:

- reduction of inmate idleness;
- skills training;
- work habits development;
- self-sustaining;
- reduce corrections costs.

In practice, of course, some goals dominate over other goals of industries. Often the primary goal selection is the result of some accommodation between industries, the correctional agency, and whatever oversight group is extant.

The present trend is to reduce goal ambiguity by either
30 limiting the number of goals which industries strive to achieve

(e.g., *Utah Code Annotated* Sec. 64-9b-1. "The legislature finds that it is in the best interest of the State of Utah to develop job opportunities to further enhance the rehabilitation of inmates of the Utah state prison") or to better articulate these goals so as to suggest their relative importance (e.g., *New Mexico Statutes Annotated* Sec. 33-8-3. "The purpose of the Corrections Industries Act is to enhance the rehabilitation, education, and vocational skills of inmates through productive involvement in enterprises and public works of benefit to state agencies and local public bodies and to minimize inmate idleness").

Example: Colorado Revised Statutes

Sec.17-24-102. Therefore, it is the intent of the general assembly in this article to:

- (a) Create a division of correctional industries which operates a self-supporting organization, which is profit-oriented, which generates revenue for its operations and capital investment, which partly reimburses the general fund for the expense of correctional services, and which assumes responsibility for training offenders in general work habits, work skills, and specific training skills that increase their employment prospects when released;
- (b) Develop industries that provide forty hours of work activity each week for all able-bodied offenders;
- (c) Provide an environment for the operation of correctional industries that closely resembles the environment for the business operations of a private corporate entity;
- (d) Make the division of correctional industries responsible for and accountable to the general assembly and to the governor for correctional industries programs in this state.

Nonetheless, many if not most states still specify multiple goals for industries. In some instances these laws list additional goals to those described above.

Example: Maryland Annotated Code

27 Sec.680. The purpose of this subheading is to create within the Division of Correction, a State Use Industries organization, which:

- (1) (i) Is financially self-supporting; (ii) Generates revenue for its operations and capital investment; (iii) Reasonably reimburses for the services exchanged between the division and State Use Industries; and (iv) Provides meaningful work experiences for offenders intended to improve work habits, attitudes, and skills with the objective of improving the employability of the offender upon release.
- (2) Has as an objective the development of industries that provide fulltime work experience or rehabilitation programs for all eligible Division of Correction inmates.
- (3) Provides an environment for the operation of correctional industries that resembles the environment for the business operations of a private corporation entity as closely as possible.

This is not the preferred arrangement since such legislation may lead to confusion within industries operations or even within corrections generally over what prison industries are supposed to accomplish.

Secondary Goals. Some secondary goals for industries are also occasionally put forth. These may include some positive goals such as allowing for inmates to pay restitution or dependent support.

Example: Utah Code Annotated

Sec.64-9b-5. It is the legislative intent, and inmates are encouraged, to use their personal earnings from jobs created under this chapter for the following:

- (1) For restitution to the victims of the inmate's criminal offense, where applicable;
- (2) For support of the inmate's family, where applicable;
- (3) For the inmate's personal use; and
- (4) For reimbursement of the inmate's living expenses.

For another example, see *Iowa Code Annotated* Sec.210.1 providing that industries will make it feasible for inmates to pay room and board and accumulate savings.

Finally there is the limiting goal of minimizing any negative impact on private business or labor.

Example: California Session Laws Chapter 1549, 1982 Statutes

Sec.3. It is the intent of the Legislature that: (b) the prison industries program reduces the burdensome cost of the correctional system on the citizens of this state through the establishment of self-sustaining or profit-making enterprises which are operated primarily by inmates and which do not unfairly compete with private enterprise.

Operational objectives for industries complement occasionally the statutory goal specification. For example, legislation may specify that industries strive to employ all available inmates or that it operate in a specified manner.

Example: Kentucky Revised Statutes

Sec.197.070. (1) The bureau of corrections shall provide employment for all prisoners in the penitentiaries and it shall exhaust every resource at its command to provide employment for all prisoners in its custody.

For another example, see *Delaware Code Annotated*. Title 11 Sec.6532 providing that industries equipment, management practices and general procedures approximate those in the private sector.

Finally, we have the rare instance where common statutory goals are seen to be really interim objectives for attaining more fundamental correctional goals.

Example: California Chapter 1549 1982 Statutes

Sec.3. (c) The prison industries program promotes the security goals of the Department of Corrections by reducing idleness and providing an incentive for work in prisons, thereby contributing to an atmosphere in which tension and violence will be reduced.

Discussion. Goal conflict is not uncommon in the public sector. Service roles often are undercut by cost consideration, for example. When government attempts to duplicate private sector operations, even more problems appear, such as challenges to the legitimacy of the activity, questions about the applicability of traditional public sector principles to this new activity or the need to recruit nontraditional staff. In this context the need for goal clarification is even more pronounced.

The main decision is which goals should be primary and which should be secondary. Some industries managers suggest that a profit-seeking goal encompasses most of the remaining goals. That, under ordinary conditions where a prison industries program is profitable, it also provides superior work habits and skill training as well as producing the needed capital for program expansion needed to reduce inmate idleness.

Many states today can be described as operating under extreme conditions. Changes in sentencing and/or parole laws have resulted in inmate population increases equivalent to one new prison per year or even per month. Industries alone cannot provide the needed capital or the technical expertise for program expansion to handle the increased population. Nor would any private sector business consider practical the diversified expansion needed. Decisionmakers must then deliberately choose whether prison industries are to emphasize inmate idleness reduction or the remaining goals that profit-seeking (or self-sustaining) represent.

An alternative to goal specification is for legislation to detail operational actions so as to leave little room for discretion guided by generalized goal statements. See, e.g., Ohio laws presented below.

Financial Structures

A significant characteristic of prison industries is its use of a revolving fund for its financial transactions. In its purest form the revolving fund allows industries to expend moneys without any legislative appropriation or authorization. Industries profits or multi-year appropriations may be retained to pay for future program costs.

Example: Idaho Code

Sec.20-419. All moneys transferred to or hereafter placed in the correctional industries betterment account are hereby perpetually appropriated for the use and purposes specified in this chapter. The correctional industries betterment account or any surplus funds in said account shall not revert to the state general account.

Some states have a revolving fund but require that moneys in the fund at the end of the fiscal year be returned to the state 31

treasury or general fund. Income from sales of goods and services is paid into the fund, usually on an accounts receivable basis. Other states have revolving funds that have no provision for return of profits to the treasury. Rather, they contain a limit on the amount of moneys that may be retained in the fund. Occasionally this limit is not explicitly set; it is left to the discretion of an official such as the head of the corrections agency or the governor to determine when excess funds should be returned to the treasury.

Example: California Penal Code

Sec.2806. There is hereby constituted a permanent revolving fund in the sum of not less than seven hundred thirty thousand dollars (\$730,000), to be known as the Prison Industries Revolving Fund, and to be used to meet the expenses necessary in the purchasing of materials and equipment, salaries, construction and cost of administration of the prison industries program. . . . At any time that the authority and the Director of Finance jointly determine that the balance in said revolving fund is greater than is necessary to carry out the purposes of the authority, they shall so inform the Controller and request a transfer of the unneeded balance from the revolving fund to the General Fund of the State of California. The Controller is authorized to transfer balances upon request. Funds deposited in the revolving fund are not subject to annual reappropriation by the Legislature and may be used without a time limit by the authority.

It is recommended that fund limits not be established since they serve to constrain industries ability to expand by limiting capital investments for new programs.

Fiscal Integrity. Yet the availability of significant amounts of money in the industries revolving fund presents a potential for abuse. Hence, legislation may require that appropriate accounting procedures be used in conjunction with the revolving fund.

Example: Maryland Annotated Code

Sec.68H. The Division of Correction shall submit annually to the Governor, to the Secretary of Public Safety and Correctional Services, and to the Secretary of Budget and Fiscal Planning a complete financial report and program of the operation of State use industries and of the State use industries revolving fund, in the same general manner and form as for the operations and programs of the Division of Correction, including full information as to present and projected personnel and their compensation. The Governor and the Secretaries may include data and figures from the report and program of the State use industries and of the State use industries revolving fund in the preparation of the budget and of the capital improvement bill.

Sec.681I. (a)(1) The Division shall formulate a system of records and accounting which at all times shall indicate the source, nature, and extent of its purchase and the source, nature, and extent of its sales.

(2) The Division shall maintain accounting records and prepare financial statements in accordance with generally accepted accounting principles for enterprise fund type activities.

(3) Such financial statements shall be prepared by the Administration and be available for audit purposes not later than 60 days after the end of each fiscal year.

(b)(1) The Legislative Auditor shall conduct audits of State Use Industries.

(2) At his discretion, the Legislative Auditor may conduct an annual audit of a fiscal and compliance nature of the accounts and transactions of the State Use Industries in place of conducting these audits on a biennial basis. Officials of the State Use Industries shall be advised whether annual or biennial audits will be conducted.

(3) The cost of the fiscal portion of the post audit examinations shall be borne by the State Use Industries.

For another example, see Washington Revised Code Annotated Sec.72.12.090 providing that the director of budget may prescribe regulations for industries accounting.

Diversion of industries moneys from the fund for nonindustries purposes may be barred specifically.

Example: Oregon Revised Statutes

Sec.421.065. (c)(2) No part of the fund shall be expended for maintenance, repairs, construction or reconstruction or general or special expense of a penal or correctional institution, other than the industrial plants.

More commonly, legislation provides general prohibitions against diversion of industries funds.

Example: New Mexico Statutes Annotated

Sec.33-8-7. There is created in the state treasury. . . . the "corrections industries revolving fund" . . . Money deposited in the fund shall be used only to meet necessary expenses incurred in the maintenance, operation and expansion of existing enterprises and in the establishment, maintenance, operation and expansion of new enterprises. All interest earned on money in the fund shall be credited to the fund.

Some specific transfers may be allowed as *Idaho Code* Sec.520-416 allowing funds to be used for vocational training or education, or *Minnesota Statutes Annotated* Sec.5241.27 (2) allowing industries to contribute to the inmate release fund.

Where costs are shared between industries and the correctional agency, legislation may reference it.

Example: Michigan Compiled Laws Annotated

Sec.800.331. (3)(iv) An equitable basis to be proposed by the department of corrections and approved by the department of management and budget for determining costs between the correctional institutions and correctional industries which shall require the institutions to absorb that portion of the supervisory costs that directly relate to custody and security responsibilities.

Finally, legislation may specify that proceeds from the sale of industries property shall be returned to industries. See, *Illinois Revised Statutes Chapter 38 Sec.1003-12-23*.

A separate agriculture fund may be established where distinct administrative structures exist. This is to ensure that funds are not diverted from one activity to another. A primary rationale for maintaining a separate fund is to keep closer accountability for profit and loss purposes (if this is an explicit goal of industries).

Example: Iowa Code Annotated

Sec.217A.47. A revolving farm fund is created in the state treasury in which the department shall deposit receipts from agricultural products, nursery stock, agricultural land rentals, and the sale of livestock. . . . Unencumbered or unobligated receipts in the revolving farm fund at the end of a fiscal year shall not revert to the general fund of the state.

The department shall annually prepare a financial statement to provide for an accounting of the funds in the revolving farm fund. The financial statement shall be filed with the legislative fiscal bureau on or before February 1 each year.

Sec.216.11. (3) The Iowa state industries revolving fund shall not be used for the operation of farms at any adult correctional institution unless such farms are operated directly by Iowa state industries.

Borrowing Authority. Where there are insufficient moneys in the industries fund to pay operating costs or costs of expansion, additional moneys may be gained either through legislative appropriation or through borrowing money to be repaid from future profits. Borrowing may be authorized from the state treasury.

Example: Oregon Revised Statutes

Sec.421-075. (1) Whenever in the judgment of the Assistant Director for Corrections it becomes necessary to borrow money from the General Fund in order to meet current demands on the Penitentiary-Correctional Institution Revolving Fund, the assistant director shall certify to the State Treasurer, that, in his judgment, it is necessary to borrow a specified sum of money for such purpose from the moneys in the General Fund not otherwise appropriated. Upon the receipt of such certificate, the State

Treasurer shall credit to the revolving fund as an appropriation from the moneys in the General Fund, not required for immediate disbursement, the sum so certified.

(2) The sum so credited shall be repaid from the revolving fund to the General Fund by charging the same against the revolving fund and crediting it to the General Fund by the State Treasurer at such time as shall be specified by the State Treasurer, together with interest thereon at such rate as shall be specified by the State Treasurer, not exceeding four percent a year.

(3) For the purpose of authorizing such loans to be made from the State Treasury, there is continuously appropriated from any moneys in the General Fund, not otherwise appropriated, the sum of \$150,000. The total amount of loans under this section existing at any time shall not exceed \$150,000.

For another example, see *Minnesota Statutes Annotated* Sec.241.27 (4) limiting the amount of funds to be borrowed to 50% of the net worth of industries.

Borrowing may also be authorized from the private sector.

Example: California Penal Code

Sec.2810. The board may authorize the borrowing of money by the authority for purposes of:

- (a) Operating the business affairs of the authority.
- (b) Purchasing new equipment, materials and supplies.
- (c) Constructing new facilities, or repairing, remodeling, or demolishing old facilities. Funds may be borrowed from the State Treasury to be repaid over up to 20 years, upon interest rates fixed by the Director of Finance, comparable to the lowest class of risk of state investment. In addition, funds may be borrowed from private sources.

Credit allowances from state purchases of industries goods and services may obviate the need for short-term borrowing of funds from the treasury.

Example: Indiana Statutes Annotated

Sec.11-10-6-9. Upon the request of a state department, agency, or institution and with the approval of the state budget agency, funds appropriated to that department, agency, or institution for goods to be furnished by the department of correction may be wholly or partially advanced to the offender employment revolving fund to assist in purchasing materials, supplies, or equipment used in manufacturing or processing those goods.

Enforced savings by industries for future capital expenses may also obviate the need for borrowing.

Example: Kansas Statutes Annotated

Sec.75.5282. (b) . . . on July 1 of each year the director of accounts and reports shall transfer from the correctional industries fund to the correctional industries equipment

replacement fund a sum equal to five percent (5%) of the total receipts deposited to the credit of the correctional industries fund during the preceding fiscal year which receipts were derived from the sale of inmate-made articles and products and inmate-provided services.

Discussion. The prevalence of revolving funds for industries suggests that they serve a utilitarian purpose. Of 50 states surveyed, 40 report having a revolving fund. In some states, however, the revolving funds were not seen to be explicitly authorized by statute. In other instances, industries managers reported that capital expenditures would not be made without either legislative authorization or legislative committee approval. Thus the need for a revolving fund or its utility in practice seems to be primarily a function of state law and politics. Nonetheless, the majority of states favor a revolving fund for prison industries.

Similarly, a number of states have caps on the size of the revolving fund. These laws hark back to the pre-Depression era when industries were attacked for anti-competitive actions. More modern industries programs have built-in checks against any recurrence of this behavior. Little is served by such caps and they are likely to have negative effects on industries capital formation for expansion. They may even induce waste by stimulating unnecessary expenditures to avoid the cap's requirement.

If the industries revolving fund is to serve industries needs, it should be protected from diversion of its moneys to nonindustries activities. Some states permit no diversions while others permit the use of industries moneys to pay for related correctional activities such as vocational training. The specification of industries goals and authorities should have implications for what are legitimate diversions. For example, vocational training that helps prepare inmates for industries work could legitimately be funded by industries. Where training is a primary goal for industries and program expansion will not require all profits to be retained, industries profits could be used to pay for other forms of vocational training.

With increased demands today on prison industries, accumulated profits are often insufficient to pay for capital costs of expansion. Borrowing authority is needed for expansion where neither legislative appropriations nor bond issues are available for this purpose. The decision then to be made is whether state treasury funds may be borrowed or whether industries may look to the private sector. Borrowing from the private sector will require that industries profits not be diverted for other uses.

Other decision issues relating to the integrity of the industries fund include requiring that interest be earned from the fund's money, mandating the use of accepted cost accounting systems, and providing for audit provisions. The imposition of these three requirements does not seem essential where state law in other parts of the codes already provides for them or as a matter of general practice these requirements are already met.

Operational Issues

Operational Authorities: Nature and Location

Specific Operations. Prison industries are typically thought of as being limited to manufacturing operations. This is not always the case, however. Prison industries include both manufacturing and service operations. In many states, industries also operates agriculture programs. In a few states, mining operations may be authorized (see for example, Tennessee Code Annotated Sec.41-408). Industries may also run correctional facility maintenance shops such as laundry or kitchen operations, but only rarely has it been assigned total responsibility for maintenance. Finally, industries may have a few public works programs; but as with maintenance, not complete authority.

Legislation providing for these several different types of operations may authorize them very generally.

Example: Minnesota Statutes Annotated

Sec.241.27. Subdivision 1. Establishment of Minnesota correctional industries... the commissioner of corrections may establish, equip, maintain and operate at any correctional facility under his control such industrial and commercial activities as may be deemed necessary and suitable.

Other states have more explicit statutory language.

Example: New Mexico Statutes Annotated

Sec.565.01. (1) The department may establish industries for the employment of inmates in the state prisons, for manufacturing articles... and shall fix the price of all products and services as near the market price as possible. In this section, "manufacturing" includes reprocessing, repairing, salvaging, servicing and storing; and supplies, materials and equipment may be reconditioned for sale.

Specific types of industries operations may require special legislation that is responsive to either the uniqueness of the operation (e.g., license plate manufacture) or claims of anti-competitive impact on private business.

Example 1: South Carolina Code of Laws

Sec.24-4-110. The State Penitentiary may purchase the machinery and establish a plant for the purpose of manufacturing motor vehicle license plates and metal road signs. The charge for license plates and metal road signs sold to the State Highway Department shall be in line with the prices previously paid private manufacturers and all State motor vehicle license plates, metal road signs and other signs capable of being manufactured by such a plant shall be purchased through the State Penitentiary and manufactured by it. The State Highway Department may prescribe the specifications of plates and signs used by

the Department, the specifications to include colors, quality and quantity.

Sec.24-33-350. The State Department of Corrections may install dry-cleaning facilities at any institution under its supervision; provided, however, that these facilities shall be used only for cleaning State-owned uniforms of security personnel employed by the Department.

Example 2: Oklahoma Statutes Annotated

47 Sec.22.43. G. Thirty-five cents (\$0.35) shall be added to the cost of each license plate, decal or Manufactured Home License Registration Decal and such funds collected shall be deposited in the Department of Corrections Industries Revolving Fund, in the State Treasury, for the purpose of purchasing equipment.

New Industries/Discontinuing Old

The historic political sensitivity over industries competing with private business has led to concern over the degree of discretion granted it in establishing new industries. Occasionally this takes the form of limiting authority to discontinue old operations; this is because the space formerly used for unprofitable or unneeded operations could then be used for new industries.

Legislation may expressly grant the DOC or industries the authority to establish or discontinue industries operations.

Example: Missouri Annotated Statutes

Sec.217.550. (3) New industries may be established and other industries terminated in the discretion of the director of the division of adult institutions with the concurrence of the department director.

Many statutes indirectly limit industries discretion to determine what it will engage in by requiring public hearings and specifying some minimal decision criteria.

Example: California Penal Code

Sec.2807. (h) To establish, expand, diminish, or discontinue industrial, agricultural and service enterprises under its jurisdiction to enable the authority to operate as a self-supporting organization, to provide as much employment for inmates as is feasible, and to provide diversified work activities to minimize the impact on existing private industry in the state.

(i) To hold public hearings pursuant to paragraph (h) above to provide an opportunity for persons or organizations who may be affected to appear and present testimony concerning the plans and activities of the authority. The authority shall assure adequate public notice of such hearings. No new industrial, agricultural, or service enterprise which involves a gross annual production of more than fifty thousand dollars (\$50,000) shall be established

unless and until a hearing concerning the enterprise has been held by the authority. The authority shall take into consideration the effect of a proposed enterprise on California industry and shall not approve the establishment of the enterprise if it would have a comprehensive and substantial adverse impact on a particular California business, enterprise, or industry.

For another example, see Alabama Code Sec.14-7-9 requiring written notice of public hearings to be provided to various trade associations in the state.

In a few states, legislative concurrence is required before new industries may be established.

Example: New Jersey Statutes Annotated

Sec.30:4-98. The State Board shall have power to: (a) assign to each institution the industries, occupations, vocations and labor to be operated or performed by the inmates thereof, but no new industry shall be established in any institution nor shall any existing industry be enlarged materially except by consent of the State House Commission.

Discussion. Decisions about initiation of new industries or termination of old industries are inextricably linked to decision criteria and decisionmaking locus. Other legislation may provide guidance on decision criteria; see, the discussion above for industries goals and objectives and that below for the DOC employment program criteria. For example, the profit goal would suggest termination of industries losing money while reduction of idleness may suggest continuing loss industries since they represent jobs. If the goal of industries is the former, i.e., profit or self-sustaining, then legislation should allow maximum flexibility to DOC or industries to discontinue loss industries. The existence of a policy or advisory board may reduce any desire by the legislators to require their approval of industries selection decisions.

Public hearings on establishing new industries may be in some states an appropriate means for defusing future political problems raised by private sector competitors. In other states, however, industries may prefer a lower profile.

Civilian Employees

A not uncommon problem of prison industries is its inability to quickly hire capable shop supervisors and other staff with special skills. A related consideration is industries ability to compensate at a sufficient salary level to enable them to recruit successfully from the private sector. Such problems are usually thought to be the result of either the state personnel system law's requirements or the failures of the state's office staff responsible for the law's implementation.

Legislation exempting the prison industries staff from the state personnel system exists in a few states. It may be a part of the state personnel law—

Example: Idaho Code

Sec.67-5303. All departments of the state of Idaho and all employees in such departments, except those employees specifically exempt, shall be subject to this act and to the system of personnel administration which it prescribes. Exempt employees shall be:

(p) All employees of the division of correctional industries within the department of correction.

or part of the industries authorizing legislation.

Example: California Penal Code

Sec.2809. Notwithstanding any other provision of law, the authority may recruit and employ such civilian staff as may be necessary to carry out the purposes of this article, and shall establish recruiting, testing, hiring, promotion, disciplinary, and dismissal procedures and practices which will meet the unique personnel needs of the authority. The practices may include incentives based on productivity, profit-sharing plans, or other criteria which will encourage civilian employee involvement in the productivity goals of the authority. The procedures and practices shall apply to all employees working in enterprises under the jurisdiction of the authority. The director of Corrections shall be the appointing authority for all personnel of the authority other than the general manager.

In some other states, the personnel system exemption is less extensive.

Example: Maryland Annotated Code

27 Sec.681J. The general manager of State use industries shall have the authority to determine the personnel needs and requirements of State use industries programs and product and service industries, and shall have the appointing authority to hire all subordinate personnel.

27 Sec.681K. The budget of State use industries shall be included in the budget of the Department of Public Safety and Correctional Services, and shall be subject to normal legislative review and approval. The number of its positions shall be included within the total manpower allocations provided for the Department of Public Safety and Correctional Services. Furthermore, its positions shall be subject to the State's merit system, with the exception of the general manager or any other position determined by the Secretary of Personnel, who shall be appointed by the Secretary of the Department, with the approval of the State use industries advisory committee.

36 Legislation authorizing limited exemptions from the state's merit system may be part of the annual appropriation legislation, rather than permanent.

Example: Oklahoma Laws 1982 Chapter 346

Sec.7. The Department of Corrections is hereby authorized to employ three (3) full-time-equivalent employees, who shall be unclassified and exempt from the rules and procedures of the Merit System of Personnel Administration, except leave regulations, as part of the total, and be funded from the Department of Corrections Industries Revolving Fund only.

Discussion. States having problems recruiting high caliber personnel on a timely basis through the in-state merit system should consider proposing legislation exempting them from the state hiring process. Experience suggests that it is preferable to place legislation exempting industries employees from the state merit system in the state personnel law statutes, rather than as part of the industries enabling legislation. This is because bureaucratically minded officials seem to pay more attention to the laws that establish their authority than to laws exempting other agencies. Why this is so is unclear, but experience in several states suggests the validity of this position.

Health and Safety Laws

The applicability to industries of both Federal and state laws designed to protect the safety and health of workers seems clear. In a few states, legislation provides some explicit recognition of this.

Example: Alaska Statutes

Sec.33.30.440. (a) In administering the correctional industries program, the department shall comply with federal and state health and safety regulations, except for the provision of workers' compensation under AS 23.30.

In a few other states more detailed statutes may be seen requiring reporting of injuries and allowing for rulemaking akin to that by the state safety and health agency for private employers.

Example: California Labor Code

Sec.6413. (a) The Department of Corrections, and every physician or surgeon who attends any injured state prisoner, shall file with the Division of Labor Statistics and Research a complete report of every injury to each state prisoner, not reported pursuant to subdivision (a) of Section 6409 or Section 6409.1, resulting from any labor performed by the prisoner unless disability resulting from such injury does not last through the day or does not require medical service other than ordinary first aid treatment. The Division of Labor Statistics and Research may adopt reasonable rules and regulations prescribing the details and time limits of such report.

(b) Where the injury results in death, a report, in addition to the report required by subdivision (a), shall forthwith be made by the Department of Corrections to the Division of Labor Statistics and Research by telephone or telegraph.

(c) Except as provided in Section 6304.2, nothing in this section or in this code shall be deemed to make a prisoner an employee, for any purpose, of the Department of Corrections.

(d) Notwithstanding the provisions of subdivision (a), no physician or surgeon who attends any injured state prisoner outside of a Department of Corrections institution shall be required to file the report required by subdivision (a), but the Department of Corrections shall file such report.

Sec.6413.2. (a) The Division of Labor Statistics and Research shall, within five working days of their receipt, transmit to the Division of Occupational Safety and Health copies of all reports received by the Division of Labor Statistics and Research pursuant to Section 6413.

(b) With regard to any report required by Section 6413, the Division of Occupational Safety and Health may make recommendations to the Department of Corrections of ways in which the department might improve the safety of the working conditions and work areas of state prisoners, and other safety matters. The Department of Corrections shall not be required to comply with these recommendations.

(c) With regard to any report required by Section 6413, the Division of Occupational Safety and Health may, in any case in which the Department of Corrections has not complied with recommendations made by the division pursuant to subdivision (b), or in any other case in which the division deems the safety of any state prisoner shall require it, conduct hearings and, after these hearings, adopt special orders, rules, or regulations or otherwise proceed as authorized in Chapter 1 of this part as it deems necessary. The Department of Corrections shall comply with any order, rule, or regulation so adopted by the Division of Occupational Safety and Health.

Sec.6314.3. (a) A Correctional Industry Safety Committee shall be established in accordance with Department of Corrections administrative procedures at each facility maintaining a correctional industry, as defined by the Department of Corrections. The Division of Occupational Safety and Health shall promulgate, and the Department of Corrections shall implement, regulations concerning the duties and functions which shall govern the operation of each such committee.

(b) All complaints alleging unsafe or unhealthy working conditions in a correctional industry shall initially be directed to the Correctional Industry Safety Committee of the facility prison. The committee shall attempt to resolve all complaints.

If a complaint is not resolved by the committee within 15 calendar days, the complaint shall be referred by the committee to the division where it shall be reviewed. When the division receives a complaint which, in its determination, constitutes a bona fide allegation of a safety or health violation, the division shall summarily investigate the same as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, as defined in Section 6309, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation.

(c) Except as provided in subdivision (b) and in Section 6313, the inspection or investigation of a facility maintaining a correctional industry, as defined by the Department of Corrections, shall be discretionary with the division.

(d) Notwithstanding Section 6321, the division may give advance notice of an inspection or investigation and may postpone the same if such action is necessary for the maintenance of security at the facility where the inspection or investigation is to be held, or for insuring the safety and health of the division's representative who will be conducting such inspection or investigation.

Discussion. Explicit provision stating the applicability of safety and health laws to industries may not be required but is desirable where there is reason to believe that industries staff may not recognize this fact or when industries staff may need to convince other corrections officials of the applicability of these laws. The California legislation shown here may have been stimulated in part by the inclusion of inmate workers in the state's worker compensation laws.

DOC Coordination With Industries Operations

Industries Selection. Several states have legislation that requires the DOC to focus its activities to be consonant with labor market needs. Presumably industries must adhere to this general requirement.

Example: New York Correction Law

Sec.183.1. It shall be the duty of the commissioner of correctional services to distribute, among the correctional institutions under his jurisdiction, the labor and industries assigned to said institutions, due regard being had to the location and convenience of the prisons, and of the other institutions to be supplied, the machinery now therein and the number of prisoners, in order to secure the best service and distribution of the labor, and to employ the prisoners, so far as practicable, in occupations in which they will be most likely to obtain employment after their discharge from imprisonment.

More detailed requirements, including relations with relevant state agencies, are also seen.

Example: Florida Statutes Annotated

Sec.945.063. (1) The department shall establish guidelines for the operation of correctional work programs, which shall include the following procedures:

(a) The education, work experience, emotional and mental abilities, and physical capabilities of the inmate and the length of sentence imposed on the inmate are to be analyzed before assignment of the inmate into the various processes best suited for training.

(b) When feasible, the department shall attempt to obtain training credit for an inmate seeking apprenticeship status.

(c) The inmate may begin in a general work skills program and progress to a specific work skills training program, depending upon the ability, desire, and work record of the inmate.

(d) Modernization and upgrading of equipment and facilities should include greater automation and improved production techniques to expose inmates to the latest technological procedures to facilitate their adjustment to real work situations.

(2) Evaluations of correctional work programs shall be conducted according to the following guidelines:

(a) Systematic evaluations shall be implemented to determine whether the correctional work programs are related to successful post-release adjustments.

(b) Operations and policies of work programs shall be reevaluated to determine if they are consistent with their primary objectives.

(3) The department shall seek the advice of private labor and management to:

(a) Assist its work programs in the development of statewide policies aimed at innovation and organizational change.

(b) Obtain technical and practical assistance, information and guidance.

Sec.945.01. (1) In adopting or modifying master plans for correctional work programs, and in the administration of the Department of Corrections, it shall be the objective of the department to develop: . . .

(2) Training opportunities that are reasonably broad, but which develop specific work skills.

(3) Programs that motivate inmates to use their abilities. Inmates who do not adjust to these programs shall be reassigned.

Sec.9444.551. (1) The department shall coordinate and develop job training and job placement in cooperation with the Department of Health and Rehabilitation Services, the Division of Vocational Education of the Department of Education, and the Florida State Employment Service of the Department of Labor and Employment Security.

(2) The department shall have the capability of evaluating current job-training programs and performing follow-up investigations and studies to determine the ef-

fectiveness of these programs. Job histories of each offender enrolled in the program shall be maintained, tracing the offender's employment after leaving prison for a period of at least 2 years.

Related Training. Too often in the past industries would compete with other programs for the best inmate workers. At the same time industries productivity suffered from having to provide extensive on-the-job training, rather than employing inmate workers who were familiar with work requirements and had the relevant skills. As a result of these twin problems, legislation is now seen that requires the DOC to provide training for industries and to enable inmate workers to be in programs after the workday, much as the free world operates.

Example: New Mexico Statutes Annotated

Sec.33-8-9. The working hours of all enterprises shall be established in a manner approximate to a standard free enterprise working day with as many work shifts as necessary. The department shall make every effort to minimize the disruption of working hours by adjusting the institutional schedule to avoid conflicting activities. Other program activities shall not be denied to inmates engaged in enterprise programs and shall be available during nonworking hours consistent with available staff.

Classification for Industries. A major concern of industries is its ability to obtain the best inmate workers to maximize productivity. Essential to this is that the classification process used by the DOC include elements permitting work assignment decisions by industries staff. Although legislation is not required to ensure that classification meets industries needs, such laws are not uncommon.

Example: Tennessee Code Annotated

Sec.41-22-118. In order that prisoners may be more profitably employed in prison industries for their own and the welfare of the state, the department of correction is directed to employ personnel and to purchase any necessary equipment and supplies for investigating and recording the essential facts in order to classify such prisoners according to their individual capacities, achievements and aptitudes, their previous education, training and experience and other mental, physical and social characteristics and to establish educational classes supplementing and related to each of the prison industries and services set up in Secs.414-419 — 41-426 and to note the progress of prisoners in such classes and industries.

Other legislation implies that classification for industries is required.

Example: Illinois Revised Statutes

38 Sec.1003-8-3. (a) Work, education and other program assignments shall be made insofar as practicable in ac-

cordance with the social evaluation.

(b) The Director shall establish procedures for making and reviewing program assignments.

Legislation may also limit arbitrary reclassification from an industries assignment.

Example: Illinois Revised Statutes

38 Sec.1003-8-7. (6) A change in work, education or other program assignment shall not be used for disciplinary purposes without prior review and approval under Sec.3-8-3.

Special provision may be made in the industries legislation to ensure that handicapped persons are classified eligible for industries work.

Example: Wisconsin Statutes Annotated

Sec.566.01. (6) Insofar as possible, work performed shall be vocationally instructive to the extent that skills taught and used might be valuable to the inmates after release. The department shall make every effort to provide vocational rehabilitation with the prison industries program for those inmates defined as handicapped persons under S. 47.40.

Discussion. Legislation requiring industries selection to be consistent with labor market needs attempts to maximize the utility of industrial training for the inmate upon his return to society. Yet industries that do prepare inmates for real jobs may do so poorly, unless business-like conditions prevail. Hence, the labor market needs criteria, while useful, may only address one side of the problem.

For industries to succeed, it must have the full support of the DOC. Legislation to require specified types of support may be necessary to redirect the correctional officials' goals to focus on inmate employment.

Legislative action is required where the desire is to establish the relationship between the several types of inmate work assignments from maintenance to inmate employment by private businesses. Both Ohio and Washington have state legislation establishing different classes of inmate work assignments. See also, Colorado laws that structure relationships between inmate work and vocational training opportunities.

Not all areas of DOC-industries interactions are dealt with here. Also important are the compensations accorded industries workers and how this compares to the compensation provided inmates in other programs. This is treated under Inmate Compensation Issues below. See also, *Colorado Revised Statutes* Sec. 17-24-109 (4) requiring the DOC to set aside property at each institution for the use of industries, above.

Industries Policies and Procedures, and Rulemaking: Inmate Workers

As industries has become formalized as an organization within the DOC, it becomes important to document its operating

policies and procedures. Legislation may give prison industries itself, or the DOC for industries, authority for rulemaking.

Example: Illinois Revised Statutes

38 Sec.1003-12-4. The Department shall make rules and regulations governing the hours and conditions of labor for committed persons and shall require a medical examination of all persons to determine their physical capacity to work.

Alternatively, legislation may specify policies and practices. This specification may be very basic.

Example: Nebraska Revised Statutes Annotated

Sec.83-183. (6) No person committed to the department shall be required to engage in excessive labor, and no such person shall be required to perform any work for which he is declared unfit by a physician designated by the Director of Correctional Services.

It may also be controversial:

Example: Alaska Statutes

Sec.33.30.410. (a) The commissioner may establish and administer a correctional industries program that is based on voluntary prisoner participation. Compare Florida law: *Statutes Annotated* Sec.944.49. (1) The department shall require of every able-bodied prisoner imprisoned in any institution as many hours of faithful labor in each day and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the department.

Legislation may also impact on the manner in which inmates are recruited for industries.

Example: Washington Revised Statutes Annotated

Sec.72.09.120. In order to assist inmates in finding work within prison industries, the department shall periodically prepare and distribute a list of prison industries; job opportunities, which shall include job descriptions and the educational and skill requirements for each job.

Such legislative involvement with operational activities, while uncommon may be extensive where it structures industries relationships with other correctional programs.

Example: Ohio Revised Code Annotated

Sec.5145.03. (B) The Director of the Department of Rehabilitation and Correction shall adopt rules to provide for the employment of all prisoners in the custody of the Department, . . . The rules shall provide for the following: (1) the employment of all prisoners in some form of

labor, except those prisoners not able to perform labor because of illness, security requirements, or other reasonable circumstances;

(3) a system of daily and hourly wages, allowances, hours, conditions of employment, and advancement for prisoners employed in penal industries and agriculture;

(5) the categorization of all jobs performed by prisoners into levels and grades within the levels based upon the skills required to perform the job, the security required for the job, the location at which the job is performed, and any other relevant characteristics of the job;

(6) the assignment of a prisoner to perform jobs in penal industries and agriculture located outside the institution to which the prisoner is committed and to perform jobs... in agriculture that is located in an institution under the control of the Department other than the institution that has custody of the prisoner;

(7) the periodic review of each prisoner's performance at his job level and grade and the periodic evaluation of the prisoner's ability to advance to a higher job level or grade;

(9) the transportation of prisoners between institutions... to perform jobs;

(10) the termination of the assignment of a prisoner to a certain job level or grade because of violations of work or security rules;

(11) any rules that are necessary to administer sections 5145.16 and 5145.161 of the Revised Code;

(12) any other rules that are otherwise necessary to provide employment for all prisoners, except prisoners unable to work because of health, security, or other reasonable circumstances.

Sec.5145.161. (3) A prisoner who satisfactorily performs his job for six consecutive months shall be eligible for advancement to the next higher job grade or level at any time after the completion of the six-month period. A prisoner who is eligible for advancement shall not be advanced unless he has developed the job skills necessary for the next job grade or level, did not commit any security violations in his present job, and meets any other requirements of the Department.

(4) A prisoner who advances from one job grade to the next higher job grade within the job level shall receive increased wages and other benefits, and a prisoner who advances from one job level to the next higher job level shall receive increased wages and other benefits, additional job skill training, and some reduction in security oversight.

(5) A prisoner shall not be eligible for a job in private industry or agriculture, unless he advances through at least two job levels or meets other requirements of the Department.

(6) A prisoner who violates the security requirements of any job grade or level shall be reduced to the next lower job grade or level.

Sec.5145.14. Labor or service shall not be performed by a convict within the penitentiary, unless the labor or service is expressly authorized by rules adopted by the Department of Rehabilitation and Correction.

Discussion. Authority to establish formal policies and procedures to guide operations is an important element of industries organizational status. This need not be a direct grant, however; requiring that the DOC issue such rules will ordinarily be sufficient.

The principle that inmates working in industries do so voluntarily is not always accepted, although quite common in practice. Worker productivity considerations are paramount in the acceptance of this principle. Support for this comes from any requirement that industries replicate as far as possible free world working conditions. This latter goal is also relevant to legislation requiring a job posting system and the establishment of progressive systems of work—akin to real world job promotions.

Inmate Compensation Issues

Wages

Most states' industries laws include explicit authority to pay inmates for their work. The criteria to be used for setting the wage scale may be focused solely on the offender's actions.

Example: Montana Code Annotated

Sec.53-1-301. The department may: (12) pay an inmate or resident of an institution, from receipts from the sale of products produced or manufactured or services rendered in a program in which he is working. Payment for the performance of work may be based on the following criteria:

- knowledge and skill;
- attitude toward authority;
- physical effort;
- responsibility for equipment and materials;
- regard for safety of others.

Other states include in the compensation criteria the value of the work performed.

Example: Nebraska Revised Statutes Annotated

Sec.83-183. (2) The Director of Correctional Services shall make rules and regulations governing the hours, conditions of labor, and the rates of compensation of persons committed to the department. In determining the rates of compensation, such regulations may take into consideration the quantity and quality of the work performed by such person, whether or not such work was performed during regular working hours, the skill required for its performance, as well as the economic value of similar work outside of correctional facilities.

Note that Nebraska also pays inmates for "shift" work.

New York law explicitly provides that the wage scale may vary from institution to institution:

Correction Law Sec.187. (3) The department shall prepare graded wage schedules for paid prisoners which schedule shall be based upon classifications according to the value of work performed by each. Such schedules need not be uniform in all institutions.

Maryland's *Annotated Code* requires that the wages paid inmates in industries consider the compensation offered inmates in other programs:

Sec.681F. The Commissioner and the general manager shall establish the rate of compensation for inmate labor in State use industries with consideration to other wage payments and incentives in other programs.

Wisconsin Statutes Annotated provides for incentive pay:

Sec. 56-01. (4) All inmates shall be paid a wage which is based on the productivity of the work the inmates perform. Wages may be established at an hourly rate plus an incentive wage based on productivity and piecework formulas may be created. However, wages shall not be set at a rate such as to cause a deficit on operations.

It is not uncommon for the industries wage laws to provide limits on the amount of moneys an inmate may earn per day or hour.

Example: California Penal Code

Sec.2811. The board shall adopt and maintain a compensation schedule for prisoner employees. Such compensation schedule shall be based on quantity and quality of work performed and shall be required for its performance, but in no event shall such compensation exceed one-half the minimum wage provided in Section 1182 of the *Labor Code*, except as otherwise provided in this code. This compensation shall be credited to the account of the prisoner.

Such compensation shall be paid from the Prison Industries Revolving Fund.

For another example, see *Arizona Revised Statutes* Sec.31-254 limiting wages to no more than 50 cents per hour unless the inmate works for a private industries operation where the minimum wage law applies.

Federal Requirements. Where a state wishes to sell its goods in interstate commerce or to the Federal government, legislation may be enacted to allow compliance in setting the wage scale with applicable Federal law.

Example: Alaska Statutes

Sec.33.30.450. (b) The commissioner may establish a wage for work performed in the production of a product

that is higher than the maximum wage authorized under (a) of this section to comply with federal law or regulation if that compliance is required before the product may be sold to the federal government.

Banking. How are moneys earned by inmates to be handled? The trend today is to bank inmates' moneys in interest-earning accounts.

Example 1: Illinois Revised Statutes

Ch.38 Sec.1003-12-5. All wages shall be deposited in the individual's account under rules and regulations of the Department.

Example 2: North Dakota Century Code Annotated

Sec.12—48-15. 1. The warden of the penitentiary shall keep an account for each inmate. Fifty percent of the earnings of each inmate shall be deposited to the credit of his account until he has accumulated in that account the sum of one hundred dollars from his earnings at the penitentiary, or such portion thereof as he has earned at the time of his release. All moneys in the inmate's account shall be paid to him in full at the time of his release.

2. The inmate may, in writing, authorize the warden or his designee to deposit any of his accumulated earnings from the prison industries, hobby, work release, or any other prison program in an interest-earning account in the Bank of North Dakota for the benefit of the inmate. The account shall be a two signature account requiring the inmate's signature and that of an authorized designated officer or employee of the state penitentiary for withdrawal...

4. The warden, through his staff, is responsible for guiding the inmate in making proper use of his funds to pay his obligations, and, if possible, to provide for his dependent relatives, or to provide himself with medical, surgical, or dental treatment or services not generally provided by the state. The one hundred dollar portion of each inmate's earnings required to be deposited and accumulated by this section shall not be available to the inmate until his release. The remainder of the inmate's earnings, including interest earned, shall be available to the inmate under the supervision and control of the warden and his designees.

Deductions. Increases in wages offered to inmate workers are often accompanied by provisions to counteract political challenges or to complement the real world nature of industries by deductions from wages comparable to those in the free world.

Example: Washington Revised Statutes Annotated

Sec.72.09.110. All inmates working in prison industries shall participate in the cost of corrections. The secretary shall develop a formula which can be used to determine the extent to which the wages of these inmates will be

deducted for this purpose. The amount so deducted shall be placed in the general fund and shall be a reasonable amount which will not unduly discourage the incentive to work. When the secretary finds it appropriate and not unduly destructive of the work incentive, the secretary shall also provide deductions for restitution, savings, and family support.

Some limits on the deduction may be explicitly set.

Example: Ohio Revised Code Annotated

Sec.145.16. (8) Establish an accounting system to administer the earnings of the prisoners, which accounting system may permit up to twenty-five percent of the earnings to be used for reimbursing the state for room and board and for expense of providing employment to the prisoner, shall pay at least twenty-five percent of the earnings to the prisoner's dependents, and shall retain at least twenty-five percent of the earnings in a savings account for the prisoner.

Special provision may be made for damage to correctional agency property.

Example: Nebraska Revised Statutes Annotated

Sec.83.183. (5) The director may authorize the chief executive officer to reimburse the state from a person's wage fund for:

(a) The actual value of state property intentionally or willfully and wantonly destroyed by such person during his commitment; and

(b) The reasonable costs incurred in returning such person to the facility to which he is committed in the event of his escape.

Forfeiture of Earnings. A few states provide that moneys earned by inmates are not totally vested and may be partially forfeited.

Example: Alaska Statutes

Sec.33.30.4.50. (e) If a prisoner escapes, a portion of his earnings, as determined by the commissioner, is to be forfeited. The commissioner shall deposit forfeited earnings in the general fund.

The locus of the funds so forfeited may vary.

Example: Florida Statutes Annotated

Sec.944.49. (4) When any prisoner escapes, the department shall determine what portion of his earnings shall be forfeited, and such forfeiture shall be deposited in the State Treasury in the Inmate Welfare Fund of the department.

Sec.944.50. When any prisoner shall willfully violate the terms of his employment or the rules and regulations of

the department, the department may in its discretion determine what portion of all moneys earned by the prisoner shall be forfeited by said prisoner and such forfeiture shall be redeposited to the Department of Corrections Correctional Work Program Trust Fund.

Garnishment. The specification of authorized deductions may be taken to deny any garnishment by court order of the inmate's earnings. Nonetheless, legislation may be useful in specifying what court ordered garnishments are permitted.

Example: Wisconsin Statutes Annotated

Sec.56.01 (8) The department has the authority to determine how much, if any, of the earnings of any inmate may be spent and for what purposes they may be spent within the confines of the prison. The department may distribute earnings for the support of the inmate's dependents and for other obligations either acknowledged by the inmate in writing or which have been reduced to judgment that may be satisfied according to law.

Wages and Pricing Decisions. A few states require that the wages paid to inmates be included in the determination of the costs of production where cost affects pricing decisions.

Example: Florida Statutes Annotated

Sec.949.49. (3) . . . Whenever any price is fixed on any article, material, supply, or service, to be produced, manufactured, supplied, or performed in connection with the work program of the department, the compensation paid to the prisoners shall be included as an item of cost in the final price.

For another example, see *New Mexico Statutes Annotated* Sec.33-8-6 (1).

Compensation to Other Inmates. Potential inmate perceptions of unfairness about the compensation paid those working in industries is of major concern to corrections. Hence, authority may be sought to permit providing financial compensation to inmates in other programs.

Example: Illinois Revised Statutes

Ch. 38 Sec.1003-12-5. Persons performing a work assignment under paragraph (a) of Section 33-12-2 may receive wages under rules and regulations of the Department. . . . Compensation may be given to persons who participate in other programs of the Department.

Not all states permit such payments.

Example: Arizona Revised Statutes

Sec.31-254 A. No compensation shall be paid to prisoners for attendance at educational training or treatment programs, but compensation may be paid for work training programs.

Iowa Code Annotated provides that employed inmates pay room and board charges into a special fund. Section 216.11 provides in relevant part:

The fund established by this section may be used only to supplement the pay of inmates who perform other institutional work within and about the adult correctional institutions including those who are employed by Iowa state industries. Payments made from such fund shall supplement and not replace all or any part of the pay otherwise received by, and shall be equably distributed among, such inmates. . . . The fund may also be used to supplement other rehabilitation activities within the adult correctional institutions. Determination of the use of the funds is the responsibility of the director of adult corrections who shall first seek the advice of the prison industries advisory board.

Effects of Wage Payments. The payment of wages to inmates is typically characterized as gratuities. As the payment of higher wages increases, gratuities becomes an inaccurate description. The question then becomes whether inmate workers are state employees and what are the consequences of such a change in status. Legislation is needed to clarify this point.

Example: Arizona Revised Statutes

Sec.31-254 G. Nothing in this section is intended to restore, in whole or in part, the civil rights of any prisoner. No prisoner compensated under this section shall be considered as an employee or to be employed by the state or the department of corrections, nor shall any such prisoner come within any of the provisions of the workmen's compensation provided in chapter 6 of title 23, or be entitled to any benefits thereunder whether on behalf of himself or of any other person.

Discussion. Uniformity of inmate wages is required in many states. The principle of uniformity does not, however, prevent wage differences based on a classification system using the differing levels of institutional security (e.g., maximum security facility vs. medium or low security facility). Differential wage scales based on an inmate's classification level do not accord with the principle of equal pay for equal work. Where inmate wages are intended to motivate productivity, differing institutional wage scales may be counterproductive, especially where transfers from facility to facility are not uncommon.

Inmate wages are provided by industries to stimulate and reward inmate worker productivity. The method by which the wage scale is calculated must take into account the extent to which the industries environment seeks to emulate private business conditions, political tolerance for paying inmates, industries profitability, and security concerns about wages affecting inmate perceptions of unfairness. This calculus of concerns determines the maximum wage possible and the extent to which skill levels or productivity figure in the wage scale; it also leads to consideration of what deductions should be made.

Efforts to be business-like in operation suggest a charge for room and board. This requires that wages be high enough to

provide an incentive after such charges are deducted. Political concerns lead to the institution of further deductions for restitution or dependent support. Legal considerations suggest that such charges be made against all inmates able to pay regardless of whether they work in industries or not.

Both legal considerations and a desire to be as business-like as possible lead to the banking of inmate funds in interest-bearing accounts. There are no legal bars to enforced savings by inmates.

Forfeiture of inmate earnings is predicated on the theory that these wages are a gratuity only, rather than being earned. The *Guidelines* discussion in Part IV on court actions impacting industries suggests that this theory may be inappropriately relied upon when the wages reach a critical level. Even where the gratuity theory can be applied, forfeiture must be specifically provided for where it is desired. A legislative delegation of the power to set wages to the head of the DOC or to industries of the power may be found sufficient by the courts to also authorize rulemaking about the forfeiture of earnings.

States may desire to limit garnishment of inmate earnings or to permit inmates to pay prior debts. The business-like operations goal would support such a decision (as would reintegration theory). Indeed it would seem difficult to see any correctional benefit from delaying repayment of debts until release.

Beliefs that inmates in other programs may perceive unfairness in inmate wages from work in industries leads to paying gratuities to these other inmates. Industries may be expected then to pay some or all of these costs out of profits. Since this is not an actual cost of operating industries, such practice should be limited or avoided if possible.

Highly controversial are claims that inmate workers in industries are state employees. Court decisions have rejected such claims except for a few decisions granting workers compensation coverage for unique situations. See discussion of this issue in Part IV.

Good Time

Perhaps more important to inmates than any opportunity to earn money is the provision of good time credits whereby their sentences may be reduced. Two types of good time credits may be earned through industries employment. First is the good time that accrues through the accomplishment of satisfactory employment.

Example: Connecticut General Statutes Annotated

Sec.18-98a. Each person committed to the custody of the commissioner of correction who is employed within the institution to which he was sentenced, or outside as provided by section 18-100 of the general statutes, for a period of seven consecutive days, except for temporary interruption of such period as excused by the commissioner for valid reasons, may have one day deducted from his sentence for such period, in addition to any other earned time, at the discretion of the commissioner of correction.

The good time award may be mandatory.

Example: New Mexico Statutes Annotated

Sec.88-8-14. Every inmate confined in a facility and engaged in an enterprise program shall be awarded, in addition to meritorious deductions pursuant to Section 33-2-34 NMSA 1978, a maximum deduction of twenty days industrial good time per month based on work conduct, performance and responsibilities as determined by his immediate work supervisor, with the approval of the facility superintendent; provided that no inmate engaged in an enterprise program shall receive less than ten days industrial good time per month. Industrial good time shall be calculated on a basis so that any inmate engaged in an enterprise program for less than a month shall receive a proportionate share of the industrial good time authorized pursuant to this section.

A second method for earning good time credits is through exceptional or above average performance in work.

Example: Connecticut General Statutes Annotated

Sec.18-98b. In addition to any commutation or diminution of sentence or any meritorious time service award which may have been granted any inmate committed to the custody of the commissioner of correction for a definite term, or for a term with a minimum sentence imposed, inmates may have not more than one hundred and twenty days deducted from any one continuous term of imprisonment as an outstandingly meritorious performance award in the discretion of the commissioner of correction for exceptional personal achievement, accomplishment and other outstandingly meritorious performance, provided the maximum number of inmates who may receive such an award in any one fiscal year shall not exceed ten percent of the average inmate population of the department of correction who were in the custody of the commissioner of correction for either a definite term, or a term with a minimum sentence during the previous fiscal year; and provided any serious act of misconduct or insubordination or refusal to conform to institution regulations occurring at any time during this confinement shall subject the prisoner, at the discretion of the warden and the commissioner, to the loss of all, or any portion, of any time awarded under this section. When any prisoner is held under more than one conviction, the several terms of imprisonment imposed thereunder shall be construed as one continuous term for purposes of determining eligibility for any outstandingly meritorious performance award authorized by this section.

Specification of the reasons for merit awards vary.

Example: North Dakota Century Code Annotated

Sec.12-4-1-03. In addition to sentence reductions under sections 12-54.1-01 and 12-533.1-02, offenders sentenced to the state penitentiary or state farm may be awarded

lump-sum meritorious conduct sentence reductions for outstanding performance or heroic acts at a rate not to exceed two days per month for those months already served. Such sentence reductions may be made only after written recommendation by a staff member who has witnessed or has knowledge of the performance or act followed by review and recommendations by a classification committee, recommendations by the warden, and approval by the director of institutions. Sec.12-54.1-04. Meritorious conduct sentence reductions may be awarded for any of the following performances or acts:

1. Exceptional quantity and quality of work far beyond normal expectations for the job assignment.
2. Beneficial suggestions resulting in substantial savings to the state.
3. Acts of outstanding heroism.
4. Acts which protect the lives of employees or other inmates or the property of the institution.

Meritorious conduct sentence reductions shall be awarded on a lump-sum basis resulting from separate recommendations and approvals. Such reductions may not be awarded on a continuing days-per-month basis beyond the month in which a reduction award is made. Such sentence reductions may not be granted for any month in which good conduct sentence reductions under sections 12-54.1-01 and 12-54.1-02 were withheld or forfeited.

Forfeiture of Earned Good Time. The need for adequate disciplinary measures for inmate misbehavior leads to authority to withdraw earned good time credits. Legislation may limit the extent to which such credits may be forfeited.

Example: New Mexico Statutes Annotated

Sec.33-8-14. No inmate shall forfeit more than fifty percent of his industrial good time deductions accrued during the previous twelve months. After forfeiture of any portion of an inmate's accrued industrial good time deductions, the remainder shall vest and shall not be subject to further forfeiture. Every inmate engaged in an enterprise program shall receive a quarterly statement of his accrued industrial good time deductions.

Forfeiture of good time as a disciplinary action requires due process procedural actions.

Example: Illinois Revised Statutes

Ch.38 Sec.1003-8-7. (e) In disciplinary cases which may involve the imposition of disciplinary isolation, the loss of good time credit or eligibility to earn good time credit, or a change in work, education, or other program assignment of more than 7 days duration, the Director shall establish disciplinary procedures consistent with the following principles:

- (1) Any person or persons who initiate a disciplinary charge against a person shall not determine the disposi-

tion of the charge. The Director may establish one or more disciplinary boards to hear and determine charges. To the extent possible, a person representing the counseling staff of the institution or facility shall participate in determining the disposition of the disciplinary case.

- (2) Any committed person charged with a violation of Department rules of behavior shall be given notice of the charge including a statement of the misconduct alleged and of the rules this conduct is alleged to violate.

- (3) Any person charged with a violation of rules is entitled to a hearing on that charge at which time he shall have an opportunity to appear before and address the person or persons deciding the charge.

Out-of-State Inmates. Inmates of a state who are serving their sentence in a prison of another state or the Federal government should also be eligible to earn good time credits towards sentence reduction.

Example: New Mexico Statutes Annotated

Sec.33-8-14. The department shall award industrial good time to New Mexico inmates confined in federal and out-of-state corrections facilities on the basis of inmate reports which shall be furnished by such facilities on a periodic basis.

Discussion. The provision of good time credits for work in industries has been common until recently. The advent of determinate sentencing laws, however, resulted in some limiting of this type of compensation.

From industries perspective, good time credits can be a significant motivator of inmate work. Other types of compensation may be needed to substitute for it. This can include better housing, better food, vacation time, and other changes in the prison environment. Industries work can also be an eligibility criteria for other programs such as work in private industry, work release, or furlough. See *Guidelines* discussion on this topic: survey responses and policies and procedures.

Where good time credits are available, the key decisions are to decide the ratio of days worked to credits earned and comparability of earned credits for industries and nonindustries workers. Good time incentives for outstanding work performance may be made available; legislation should explicitly provide that it is distinct from that of the general good time credit earned by satisfactory work in industries. The North Dakota statute providing alternative bases for extra good time represents one plausible variant.

Forfeiture of earned good time (as with earned moneys) must be spelled out, if desired. Limits on forfeiture are common. Procedures for determining forfeiture should provide due process protections. Akin to forfeiture is the loss of the opportunity to earn good time credits. Note that unlike the forfeiture of earned wages legislation, no such specification of the bases for earned good time credits is provided in these statutes.

Inmates sent out of state may be thought to be able to similarly earn good time credits as do those imprisoned within the state. Where the sending out of state is sex related (e.g., no women's

prison), the absence of such a policy may not be acceptable to the court. See discussion of good time provisions in Part IV, court actions affecting industries.

Worker Compensation

As shown above under wage effects, many states deny inmate workers coverage under the state workers compensation law. The trend today is toward some means for providing compensation for inmates where the injury extends beyond the release date. See the discussion of this topic in Part IV.

The simplest method of coverage for inmate workers is their inclusion in the state's worker compensation laws. Some adjustments may need to be made for a transition period from whatever procedure was used before.

Example: Connecticut General Statutes Annotated

Sec.6304.4. A prisoner engaged in correctional industry, as defined by the Department of Corrections, shall not be considered an employee for purposes of the provisions relating to appeal proceedings set forth in Chapter 7 of this part.

Sec.3371. The assigned referee of the appeals board may, if the inmate applicant requests, or if the issues are complex, refer the applicant to a panel of qualified workers' compensation attorneys in the geographical area, from which panel the applicant may choose his attorney for the proceedings. The attorney so chosen, and accepting the case, shall be awarded a reasonable fee set by the referee and paid by the Department of Corrections. This section applies only to proceedings held while the applicant is an inmate of a correctional institution. After release or discharge the applicant's obligation respecting attorney fees is the same as that of any other injured employee claimant before the appeals board.

Sec.3370. (a) Each inmate of a state penal or correctional institution shall be entitled to the workers' compensation benefits provided by this division for injury arising out of, and in the course of, assigned employment and for the death of such inmates if the injury proximately causes death, subject to all of the following conditions:

- (1) Such inmate was not injured as the result of an assault in which the inmate was the initial aggressor, or as the result of the intentional act of the inmate injuring himself.

- (2) Such inmate shall not be entitled to any temporary disability indemnity benefits while incarcerated in a state prison.

- (3) No benefits shall be paid to an inmate while he is incarcerated. The period of benefit payment shall instead commence upon release from incarceration. If an inmate who has been released from incarceration, and has been receiving benefits under this section, is reincarcerated in a state penal or correctional institution, such benefits shall

cease immediately upon the inmate's reincarceration and shall not be paid for the duration of such reincarceration.

(4) In determining temporary and permanent disability indemnity benefits for such inmate, the average weekly earnings shall be taken at not less than the minimum amount set forth in Section 4453.

(5) Where a dispute exists respecting an inmate's rights to the workers' compensation benefits provided herein, the inmate may file an application with the appeals board to resolve the dispute. Such application may be filed at any time during the inmate's incarceration.

(6) After release or discharge from a correctional institution, the former inmate shall have one year in which to file an original application with the appeals board, unless the time of injury is such that it would allow more time under Section 5804 of the Labor Code.

(7) The percentage of disability to total disability shall be determined as for the occupation of a laborer of like age by applying the schedule for the determination of the percentages of permanent disabilities prepared and adopted by the administrative director.

(8) The provisions of this division shall be the exclusive remedy against the state for injuries occurring while engaged in assigned work. Nothing in this division shall affect any right or remedy of an injured inmate for injuries not compensated by this division.

(b) The Department of Corrections shall present to each inmate of a state penal or correctional institution, prior to his first assignment to work at such institution, a printed statement of his rights under this division, and a description of procedures to be followed in filing for benefits under this section. Such a statement shall be approved by the administrative director and be posted in a conspicuous place at each place where an inmate works.

(c) Notwithstanding any other provision of this division, the Department of Corrections shall have medical control over treatment provided an injured inmate while incarcerated in a state prison, except, that in serious cases, the inmate is entitled, upon request, to the services of a consulting physician.

Some provisions may be desired to take statutory account of the prison setting.

Example: Washington Revised Code Annotated

Sec. 70.60.102. From and after July 1, 1973, any inmate employed in institutional industries shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions herein provided.

No inmate as herein described, until released upon an order of parole by the state board of prison terms and paroles, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for tem-

porary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter enacted. Any inmate who is either not paid any wages or paid a gratuity shall not be considered employed under this section.

Sec. 51.32.040. Provided further, that a worker receiving benefits under this title who is subsequently confined in, who subsequently becomes eligible therefor while confined in any institution under conviction and sentence shall have all payments of such compensation canceled during the period of confinement but after discharge from the institution payment of benefits thereafter due shall be paid if such worker would, but for the provisions of this proviso, otherwise be entitled therefor. . . . Provided further, that if such incarcerated worker has during such confinement period, any beneficiaries, they shall be paid directly the monthly benefits which would have been paid to him or her for himself or herself and his or her beneficiaries had he or she not been so confined. Any lump sum benefits to which the worker would otherwise be entitled but for the provisions of these provisos shall be paid on a monthly basis to his or her beneficiaries.

For another example, see the myriad provisions of the *California Labor Code* including those for appeals (Sec. 6304.4) and attorney fees (Sec. 3371).

An alternative procedure is to establish a parallel worker compensation procedure.

Example: Virginia Code

Sec. 52-222.1. If any prisoner at any penal institution, including any industrial school or juvenile detention facility, while in the performance of his work or assigned duties, sustains an injury arising therefrom through no intent of his own so as to incapacitate him permanently or materially to reduce his earning power, he may apply for compensation to the Board of Corrections. The Board may, upon approval by the Governor, award such applicant an amount not to exceed the amount permitted under Sec. 65.1-54 for total incapacity nor that permitted under Sec. 65.1-55 for partial incapacity; such payments to be made upon the discharge or parole of the applicant.

If death should result from such injury within six years, death benefits not to exceed those permitted under Sec. 65.1-65 may be awarded and paid to the dependents of the deceased by the Board, upon the approval of the Governor.

In some states a special claims procedure may be instituted.

Example: Minnesota Statutes Annotated

Sec. 3.738. Subdivision 1. Claims and demands arising out of injury to or death of a patient of a state institution under the control of the commissioner of public welfare or an inmate of a state correctional facility while perform-

ing assigned duties shall be presented to, heard and determined by the legislature.

Subd. 2. Claims arising under this section shall be paid pursuant to legislative appropriation following evaluation of each claim by the appropriate committees of the senate and house of representatives. Compensation will not be paid for pain and suffering.

Subd. 3. The procedure established by this section is exclusive of all other legal, equitable and statutory remedies.

Discussion. The absence of any exclusive injury compensation law permits inmates to sue industries staff and the state under tort law. This can result in unfair awards (too high or low) and result in civilian staff stress.

The several compensation alternatives reflect differing state traditions in handling claims against the state. They also reflect differences in willingness to delegate authority to administrative agencies. Hence provisions for compensating inmates for injuries do not always spell out the details of the law's workings, but may leave such matters as when payments are to be made to agency regulation. The several specifications seen in the Washington law should, however, be considered for inclusion in either legislation or regulation.

Should a parallel system be developed for inmate injuries modeled after worker compensation laws, it should spell out that the limits in the latter law will apply to the special inmate compensation system.

Unemployment Compensation

A few states have experimented with special laws for providing unemployment compensation to inmates upon release. Coverage under the general unemployment compensation law is, however, barred under Federal law.

Example: California Unemployment Compensation Code

Sec. 1480. For unemployment compensation benefits purposes, an individual may use wages, as defined by section 1481, only with respect to the benefit year established by the first new claim for unemployment benefits, including any extended duration benefits or federal-state extended benefits related to that new claim. Notwithstanding any other provision of this division, in no event shall any such individual receive payments of unemployment compensation benefits, extended benefits, separately or in any combination, for more than 26 weeks. No new claims for unemployment compensation benefits or first claims for disability benefits pursuant to this chapter may be filed with an effective date or period of disability commencing on or after October 31, 1983, if such claim uses wages as defined by Section 1481. No provision of this chapter shall apply to any inmate or individual who has a valid claim for unemployment compensation benefits pursuant to other provisions of this part, or who has a valid claim for disability benefits pursuant to part 2.

Sec. 1481. "Wages of inmates" means an amount computed at two dollars and thirty cents (\$2.30) per hour of "employment" as defined by Section 1480, commencing January 1, 1977, regardless of any compensation received by inmates.

Sec. 1482. Subdivision (1) of Section 1281 shall not apply to wages as defined by Section 1481. An individual cannot establish a valid claim or a benefit year during which any benefits are payable for unemployment compensation benefits based on wages for employment, as defined by Section 1481, unless he or she has during his or her base period been paid wages for employment, as defined by Section 1481, of not less than one thousand five hundred dollars (\$1,500).

Sec. 1483. (a) In lieu of the contributions required of employers and workers under this division, the State of California shall pay into the Unemployment Fund in the State Treasury at the times and in the manner provided in subdivision (b) of this section an amount equal to the additional cost in the Unemployment Fund, and an amount equal to the additional cost to the Disability Fund, of the benefits paid with respect to employment of, and payment of wages of inmates to, inmates of any state prison or institution confined under the jurisdiction of the Department of Corrections. Unemployment compensation benefits otherwise payable, irrespective of this chapter, shall be charged to employers' reserve accounts in accordance with other sections of this part and benefits, including extended duration benefits and federal-state extended benefits, shall be the liability of governmental entities or nonprofit organizations pursuant to Section 803, but the additional cost to the Unemployment Fund of the benefits, including extended duration benefits and federal-state extended benefits paid pursuant to this chapter shall be borne solely by the State of California.

(b) In making the payments prescribed by subdivision (a) of this section, there shall be paid or credited to the Unemployment Fund and to the Disability Fund, either in advance or by way of reimbursement, as may be determined by the director, such sums as he or she estimates the Unemployment Fund and the Disability Fund will be entitled to receive from the State of California under this section for each calendar quarter, reduced or increased by any sum by which he or she finds that his or her estimates for any prior calendar quarter were greater or less than the amounts which should have been paid to the respective fund. Such estimates may be made upon the basis of statistical sampling, or other method as may be determined by the director.

(c) The director may require from the Department of Corrections such employment, wage, financial, statistical, or other information and reports, properly verified, as may be deemed necessary by the director to carry out his or her duties under this division, which shall be filed with the director at the time and in the manner prescribed by him or her.

(d) The director may tabulate and publish information obtained pursuant to this chapter in statistical form and may divulge the name of the employing unit.

(e) The Department of Corrections shall keep such work records as may be prescribed by the director for the proper administration of this division.

(f) Notwithstanding any other provision of law, the State of California shall not be liable for that portion of any extended duration benefits or federal-state extended benefits which is reimbursed or reimbursable by the federal government to the State of California.

(g) The Department of Corrections shall provide each inmate, at the time of his or her release on parole or discharge, with written information advising the inmate of benefit rights pursuant to this chapter.

For another example, see *Washington Revised Code Annotated* Sec.72.02.110 providing for a more limited support program.

Discussion. Findings from evaluations of experiments with paying inmates unemployment compensation are ambiguous about their results. Some studies seem to show reduced recidivism, while others show no such effect. Qualifications abound about differential effects on specific types of inmates. Moreover, generalizability from the specific state prison system context does not seem warranted.

The more recent California and Washington state legislative experiments are the most ambitious to date. The California study period is not yet completed, while the results of Washington's experiment are not reported.

Purchasing Law Requirements and Authorities

As a state agency, prison industries is subject to the state's requirements applying to the purchase of goods or services. Typically these requirements include competitive bid procedures that involve considerable expenditure of time. These procedures are intended to prevent fraud or mismanagement in the procurement process.

To the extent that industries is expected to operate as a private business, cumbersome procurement procedures are both a hinderance to such operation and inappropriate. For, in the private sector the profit motive is expected to lead business to seek the lowest price available. While the profit motive is not relevant to most state agencies, leading to a purchase law substitute, often industries has such a goal or its equivalent.

A number of states have provided industries flexibility in procurement outside the state purchasing laws. This may be accomplished through a general exemption.

Example: Washington Revised Code Annotated

Sec.43.19.1932. The department of corrections shall be exempt from the following provisions of this chapter in respect to goods or services purchased or sold to the

operation of institutional industries: RCW 43.19.180, 43.19.190, 43.19.1901....

Typically statutory exemptions from the purchasing law requirements provide that special rules will be established to direct industries' procurement of raw materials and other supplies. Such requirements may be general—

Example: Idaho Code

Sec.20-416. (5) Subject to the provisions of this act pertaining to annual audit and established accounting procedures, the correctional industries betterment account is exempted from powers and duties of the state purchasing agent.

or they may be specific.

Example: Florida Statutes Annotated

Sec.945.21. The department shall promulgate regulations governing the administration of the correctional system and the operation of the department. In addition to specific subjects otherwise provided for herein, regulations of the department may relate to:...

(m) the purchase of raw materials for use by the prison industry programs to manufacture or process products for resale. Such rules shall follow the guidelines established by the Department of General Services and shall include, but not be limited to, competitive bidding procedures for all purchases when the price exceeds \$2,500 unless:

1. The agency head certifies under oath for the record that an emergency exists.
2. The agency head certifies under oath for the record that the raw materials are available only from a single source, or
3. The raw materials are available through a state contract, purchasing agreement, or maximum price agreement.

For another example, see Sec.287.095 (purchasing act exemption). The purchase of raw materials for use by the Department of Corrections in its prison industry programs to manufacture or process products for resale is exempt from the provisions of this part.

More usual is the placement of rulemaking power to guide industries procurement in the purchasing agency.

Example: Michigan Compiled Laws Annotated

Sec.800.330. (3) The governor shall require the director of the department of management and budget to establish suitable methods of purchasing and accounting which shall provide as may be necessary or advisable for:

(i) The purchasing and supply of supplies and materials necessary for the institutional manufacture or production of the correctional industries products.

See also, Sec.17.21 (parallel exemption) in the Purchasing Act.

Where a policy board is responsible for the direction of prison industries, the preparation of rules for industries procurement practices may be given to the board.

Example: California Penal Code

Sec.2807. (g) To establish, notwithstanding any other provision or law, procedures governing the purchase of raw materials, component parts, and any other goods and services which may be needed by the authority or in the operation of any enterprise under its jurisdiction. Such procedures shall contain provisions for appeal to the board from any action taken in connection with them.

Legislation may also permit the policy board some leeway in determining when competitive bid procedures are not needed, even without rulemaking.

Example: Wyoming Statutes Annotated

Sec.7-13-713. All purchases and contracts for materials to be used in the manufacture of articles in said penitentiary, shall be made by advertising for sealed proposals, excepting when, in the judgment of said commission, it is for the best interest of the state to purchase the same in open market.

Similar authority to permit open market purchases when competitive bid procedures would not be cost effective may be given the state purchasing agency.

Example 1: Utah Code Annotated

Sec.63-56-35.5. The policy board may, by rule, exempt a public procurement unit from the source selection and contract award provisions of this part, if it deems that to be in the best economic interest of the state.

Example 2: North Dakota Century Code Annotated

Sec.54-44.4-03. The director of the office of management and budget may delegate to state agencies and institutions the authority to make purchases of items not otherwise exempted by law when the purchases are necessary due to an agency being able to obtain a lower price with equal quality, the perishability of items, or the location of the items. Any delegation of purchasing authority shall be in writing and shall indicate what is to be purchased and the duration of the delegation.

An alternative procedure is to grant industries a limited exemption from purchasing law requirements under specified dollar amounts.

Example: New Mexico Statutes Annotated

Sec.33-8-6. (J) Notwithstanding the provisions of Section 13-11-11 NMSA 1978, to adopt policies and procedures which would permit an enterprise to make a single purchase involving the expenditure of two thousand dollars (\$2,000) or less without bids and at the best obtainable price. Records of such purchases shall be maintained for auditor's inspection and reported at the next scheduled commission meeting. Separate purchases of the same or similar materials or services from the same or different suppliers at the same time or about the same time where each purchase does not exceed two thousand dollars (\$2,000), shall be considered a single purchase involving more than two thousand dollars (\$2,000).

Discussion. The utility of exempting prison industries from the general purchasing law requirements is predicated on several factors. First, that industries can be impeded by competitive bid procedures where quick action is required to make below market cost purchases, e.g., distress sales or other special bid opportunities. Second, the competitive bid process through a state procurement office may result in increased prices where bidders anticipate delays in payment from the state buyer. Third, the public trust can be sufficiently protected from fraud or waste through a combination of special bid procedures, oversight from a policy board, annual audits, and the "bottom line" effects from the profitseeking goal for industries.

Where a purchasing law exemption appears warranted, a decision must be made as to how and by whom rules should be made to guide industries purchasing activities. The trend seen here is to place that authority in the state purchasing agency or in the fiscal accounting agency when industries lacks significant external controls such as a policy board. Where such a board exists, it may be entrusted with the development of purchasing policies.

Marketing

Much of contemporary thinking about prison industries centers on problems (and opportunities) with the sale of its goods and services. One reason for the perception that marketing is central to industries success lies in the seeming correlation between the decline of prison industries and the enactment of laws limiting its market to state agencies and political subunits. Thus the passage of the Hawes-Cooper Act (1929) that permitted states to bar interstate sales of prison-made goods and of the Sumner-Ashurst Act (1940) making the interstate shipment of prison-made goods a federal crime paralleled the past half century's decline in the proportion of inmates in prison industries from nearly half to less than 10 percent. (For a thorough discussion of the economic history of prison industries, see *Assets and Liabilities of Correctional Industries*, Funke, Wayson, and Miller, 1982.)

It is not surprising then that the renewal of interest in prison industries has resulted in over half the states passing legislation to both widen the scope of the state-use market or to permit open market sales of its goods and services.

State-Use Laws

Many of the more industrialized states, however, still retain their Depression era laws that limit prison industries to the "state-use" market of state agencies and political subunits. Typically these laws require state agencies and sometimes political subunits to buy prison industries goods when available. Numerous provisions of the law set out detailed procedures to reinforce this requirement.

Example: West Virginia Code

Sec.28-5B-4. On and after the effective date of this article [June 7, 1939] all offices, departments, institutions and agencies of this State which are supported in whole or in part by this State shall purchase, and all political subdivisions of this State may purchase, from the state commissioner of public institutions all articles or products required by such offices, departments, institutions, agencies or political subdivisions of this State, produced or manufactured by the state commissioner of public institutions by convict labor, as provided for by this article, and no such article or product shall be purchased by any such office, department, institution, or agency, from any other source, unless excepted from the provisions of this section, as hereinafter provided.

All purchases shall be made through the department of purchases, upon requisition by the proper authority of the office, department, institution, agency or political subdivision of this State requiring such articles or products.

Sec.28-5B-5. Exceptions from the operation of the mandatory provisions of section four hereof [Sec.28-5B-4] may be made in any case where, in the opinion of the state commissioner of public institutions, the state director of purchases, and the director of the budget, or a majority of them, who are hereby constituted a board for such purposes, the article or articles or product or products so produced or manufactured does or do not meet the reasonable requirements of or for such offices, departments, institutions, agencies or, in any case, where the requisition made cannot be reasonably complied with on account of an insufficient supply of the articles or products required, or otherwise. No such office, department, institution or agency, shall be allowed to evade the intent and meaning of this section by slight variations from standards adopted by the state commissioner of public institutions, when the articles or products produced or manufactured by the commissioner, in accordance with the commissioner's standards, are reasonably adapted to the actual needs of such office, department, institution or agency.

Sec.28-5B-6. No voucher, certificate, or warrant issued on the state auditor by any such office, department, institution, or agency shall be questioned by him or by the state treasurer on the grounds that this article has not been

complied with by such office, department, institution, or agency, but if intentional violation of this article by any such office, department, institution, or agency continues, after notice from the governor to desist, such shall constitute a malfeasance in office and shall subject the person or persons responsible for this violation to suspension from office.

Sec.28-5B-7. The state commissioner of public institutions shall cause to be prepared, annually, at such times as he may determine, catalogues containing the description of all articles and products manufactured or produced by the commissioner pursuant to the provisions of this article; copies of which catalogue shall be sent by him to all offices, departments, institutions and agencies of this State and made accessible to all political subdivisions of this State referred to in the preceding sections. At least thirty days before the commencement of each fiscal year, the proper official of each such office, department, institution, or agency, when required by the state commissioner of public institutions shall report to the state commissioner of public institutions estimates for such fiscal year of the kind and amount of articles and products reasonably required for such ensuing year, referring in such estimates to the catalogue issued by the state commissioner of public institutions insofar as articles and products indicated are included in this catalogue.

Sec.28-5B-8. The articles or products manufactured or produced by convict labor in accordance with the provisions of this article shall be devoted, first, to fulfilling the requirements of the offices, departments, institutions and agencies of this State which are supported in whole or in part by this State, and, secondly, to supply the political subdivisions of this State with such articles and products.

Sec.28-5B-9. The state commissioner of public institutions shall fix and determine the prices at which all articles or products manufactured or produced shall be furnished, which prices shall be uniform and non-discriminating to all, and shall be as near the usual market price for such as may be practicable.

Similar legislation exists in most other states. Some of the principal variations include: (1) Requiring local political units of the state buy industries goods—

Example: Indiana Statutes Annotated

Sec.11-10-6-4. (a) All state agencies and political subdivisions of the state shall purchase from the department goods produced or manufactured by the department as listed in the department's printed catalog unless the goods or products cannot be furnished.

(b) The department shall furnish the department of administration a schedule of goods available for sale and their prices.

(2) Requiring the state auditor or treasurer to pay state agency bills for goods that may be bought from industries only where a certificate of nonavailability is attached—

Example: Rhode Island General Laws

Sec.13-7-9. No bill for any such articles or materials purchased for the use of state offices, departments or institutions, otherwise than from a public welfare institution, shall be allowed or paid unless it is accompanied by a certificate from the said director showing that a requisition therefor has been made and that such goods cannot be supplied by it, the provisions of any statute, resolution, rule or regulation to the contrary notwithstanding.

or when emergency conditions exist—

Example: Iowa Code Annotated

Sec.216.8 (1) No product appearing in the price lists prepared pursuant to section 216.7 shall be purchased by any department or agency of state government from any other source, except;

(a) When the purchase is made under emergency circumstances, which shall be explained in writing by the public body or officer who made or authorized the purchase if the state director so requests.

(3) Better defining how prevailing market price may be determined or defined—

Example: New Mexico Statutes Annotated

Sec.33-8-6. (D) As used in this subsection, "prevailing market price" means the prevailing price which an equivalent product or service would have if purchased by a state agency or local public body from community sources. The commission shall include data provided by the purchasing division in the price determination process. Compensation paid to inmates shall be included as an item of the cost in fixing prices.

including provision for arbitration—

Example: Illinois Revised Statutes

Ch.38 Sec. 1003-12-9. (c) Any disagreement between the Department and an authorized purchaser which cannot be resolved between the parties shall be submitted to arbitration. A board of 3 arbitrators shall be chosen: one by the Department; one by the purchaser; and one by the other 2 arbitrators. The decision of the arbitrators shall be final. The arbitrators shall receive no compensation but expenses shall be shared by the parties on an equal basis.

Alternative pricing bases may also be established.

Example 1: Virginia Code

Sec.53-62. The Director shall establish charges for such articles and services that will, in his judgment, defray the

administration, operation and maintenance costs and make allowances for depreciation, return on capital and contingencies.

Example 2: Montana Code Annotated

Sec.53-30-133. Within budgetary restrictions, the department shall establish prices that tend to maximize the amount of work available for inmates.

Sec.53-1-301. (4) Prices shall not exceed prices existing in the open market for goods of comparable quality.

(4) Exempting sale of prison industries goods from the bid requirements in the state purchasing act—

Example: Alaska Statutes

Sec.37.05.230. (9) The provisions of this section relative to competitive bids do not apply to the purchase of products or services provided by the correctional industries program established under AS 33.30.400—33.30.490.

(5) Limiting the instances when industries sales may be avoided due to unavailability of sufficient numbers of goods to meet order requirements—

Example: Michigan Compiled Laws Annotated

Sec.800.329. (9) Correctional industries, with the approval of the department of management and budget, may purchase finished goods, materials, or equipment of the same type as ordinarily produced by correctional industries. The industries may then sell the items to those entities for whom production by correctional industries is permitted by this act. The purpose of this section is to provide for the completing of orders when production is not sufficient or for other reasons of economy and good business practice which may make the purchases beneficial to the state.

Compare *Iowa Code Annotated* prohibiting such purchases.

Sec. 216.12. Effective July 1, 1973, and notwithstanding any other provisions of this chapter, goods made available by Iowa State Industries shall be restricted to items, materials, supplies and equipment which are formulated or manufactured by Iowa State Industries and shall not include goods, materials, supplies or equipment which are merely purchased by Iowa State Industries for repacking or resale except with approval of the state director when such repacking for resale items are directly related to product lines.

(6) Providing authority for industries to control the state agency purchasing need reports through granting of rulemaking authority—

Example: Ohio Revised Code Annotated

Sec.5120.23. (A) The department of rehabilitation and correction shall require proper officials of the state and its political subdivisions and of the institutions of the state and its political subdivisions, to report estimates for the ensuing year of the amount of supplies required by them of the kinds that are produced by the state correctional and penal institutions. It may make regulations for the reports and provide the manner in which the estimates shall be made.

(7) Specifying how purchases are to be made—

Example 1: Arizona Revised Statutes

Sec.41-1625. Purchases may be made through the department of administration division of finance upon requisition by the proper authority of the office, department, institution, agency or political subdivision requiring such articles or products.

Example 2: Oklahoma Statutes Annotated

57 Sec.549.1. (B) Purchases made by the above-described state agencies may be made through the proper requisition through the State Board of Public Affairs or by direct order to the prison industries program of the Department of Corrections.

(C) All counties, cities, districts or political subdivisions, or any agency thereof, may purchase the goods or services produced by the prison industries of the Department of Corrections through their properly authorized purchasing authority, or they may place a direct order without competitive bid, with the prison industries of the Oklahoma Department of Corrections.

(8) Providing criminal penalties for willful failure to buy from prison industries through inclusion in an overall criminal penalty for violation of the act—

Example: Arizona Revised Statutes

Sec.41-1630. Any person who violates any provision of this article, is guilty of a class 1 misdemeanor.

(9) providing a means for the development of specifications for prison industries goods—

Example 1: New York Correction Code

Sec.184. All such articles manufactured or prepared in the state correctional institutions and penitentiaries, or by the prisoners, and not required for use therein, shall be of the styles, patterns, designs and qualities fixed by the department of correction, except where the same have been or may be fixed by the office of general services in the executive department.

Example 2: Maryland Annotated Code

Art.27 Sec.681C. (b) (1) The Division and the State Use Industries shall consult with the Department of General Services, contracting agencies, and political subdivisions and establish uniform standards of quantity, quality, style, design, delivery, scheduling, and pricing.

(2) The uniform standards shall be designed to reflect planned and forecasted product lines and production operations of State Use Industries commensurate with the State Use Industries' ability to produce.

(3) Following review of the uniform standards by the Advisory Committee, these standards shall be sent to the appropriate contracting agency for inclusion in the annual goods and service procurement contracts.

For another example, see California Penal Code Sec.2807 (b) requiring state agencies to consult with industries to develop new products and adapt existing products to their needs.

(10) Providing explicit authority for the resale of industries products for salvage purpose.

Example: New Mexico Statutes Annotated

Sec.333-8-12. No product . . . manufactured . . . in whole or in part by inmate labor shall be sold or furnished except to a qualified purchaser, provided that such products may be resold by the user for purposes of salvage.

An alternative to the simple state-use laws requirement for purchases from industries outside of the bid process is to grant a specified preference within the normal bid procedure to industries goods and services.

Example: Minnesota Statutes Annotated

Sec.241.021 . . . [T]he commissioner of administration shall purchase from the state correctional institutions those articles, supplies, and services needed by state departments and agencies, unless the commissioner of corrections certifies that the correctional institutions cannot provide them at a price within five percent of the fair market price for comparable level of quality and within a reasonable delivery time. In determining the fair market price, the commissioner of administration shall use competitive bidding or consider open market bid prices in previous years for similar products and services, plus inflationary increases.

For another example, see Nevada Revised Statutes Sec.333.410.

Broadened State-Use Law. Legislation to broaden the scope of the state-use market to permit limited open market sales within the state is not uncommon. Such legislation may take the form of specifying priorities in sales and authorize state-use sales to other states and the Federal government.

Example 1: Illinois Revised Statutes

Ch. Sec.1003-12-7. (a) The State, its political units, its agencies and public institutions shall purchase from the Department all articles, materials, industry related services, food stuffs, and supplies required by them which are produced or manufactured by persons confined in institutions and facilities of the Department. Not-for-profit corporations chartered in Illinois or other States may purchase such goods and services. Units of the Federal government and units of government in other States may also purchase such goods and services. All entities which contract with the State, its political units, its agencies, its public institutions or not-for-profit corporations chartered in Illinois, may purchase goods or services from the Department which are used in the performance of such contracts. Nothing shall prohibit the Department from bidding on portions of a State contract which are subcontracted by the primary contractor. Others are prohibited from purchasing such goods and services except . . .

(b) Allocation of goods shall be made in the following manner:

(1) first, for needs of the Department;

(2) second, for the State, its agencies and public institutions

(3) third, for those political subdivisions of the State and their agencies in which the producing institution or facility of the Department is located;

(4) fourth, for other political subdivisions of the State and their agencies and public institutions;

(5) fifth, for not-for-profit corporations chartered in Illinois;

(6) sixth, for units of government in other states;

(7) seventh, for units of the Federal government;

(8) eighth, for not-for-profit organizations chartered in other states;

(9) ninth, all other permitted purchasers.

Example 2: Maryland Annotated Code

27 Sec.681D. The sale of products and services of State Use Industries on the open market is prohibited, except:

(3) Sales of State Use Industries goods or services to any person, firm, or corporation for purposes of national defense when not prohibited by the acts of Congress.

For other examples, see *Virginia Code* Sec.57-61 allowing sales to persons receiving state aid; *Texas Civil Statutes* Art. 9007 authorizing contracts with private schools and visually handicapped persons for the sale of Braille textbooks and other instructional aids; *Oklahoma Statutes Annotated* Title 74 Sec.123F authorizing sales to nonprofit charitable agencies for distribution to the needy and Title 57 Sec.549.1 authorizing sales to churches.

Bartering may also be authorized by legislation.

Example: Arkansas Statutes Annotated

Sec. 46-250. The Board of Correction, with the approval of the Governor, is hereby authorized to enter into contracts, compacts, or agreements with the appropriate governing officials of correctional institutions of other states or of the federal government, for the trading or bartering of raw materials, goods, and products produced by and belonging to their respective institutions, in accordance with such terms and conditions as the Board of Correction and the governing officials of correctional institutions of other states of the federal government may deem advantageous and appropriate for their respective institutions and programs. Such agreements may include such matters as the exchange of raw materials for finished products produced in correctional institutions, or for the processing of raw materials into finished products in exchange for a portion of the raw materials processed. Copies of all such agreements, compacts, or contracts entered into with correctional institutions of other states or with the federal government, as authorized in this Act, shall be filed with the State Auditor and the Chief Fiscal Officer of the States, and a complete set of books and records shall be kept with respect to all transactions, deliveries, and obligations.

The Board of Correction may make reasonable rules and regulations governing the Department of Correction in the administration of contracts, compacts, or agreements made under the provisions of this Act.

Criminal Penalties. Enforcement of laws restricting the sale of prison-made goods to the state-use market is typically accomplished through providing criminal penalties for their violation.

Example: Texas Civil Statutes

Art. 9007. Sec.1. It shall be unlawful for any person, firm, partnership, association, or corporation to sell or offer for sale within the State of Texas any goods, wares, or merchandise manufactured wholly or in part by convicts or prisoners in penal or reformatory institutions, except convicts or prisoners on parole or probation, and provided further that nothing in this Section shall be construed to forbid or prohibit the sale of such goods produced or manufactured in the prison institutions of this State to the State, or to any political subdivision thereof, or to any public institution owned or managed and controlled by the State or any subdivision thereof.

Sec.2. Any person, firm, partnership, association, or corporation which shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200) for the first offense, and not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) for each subsequent offense.

Most states permit inmates to engage in handicraft or hobby-craft activities such as making leather goods or painting. Sale of these goods through a special sales shop at a correctional facility must be excluded from the operation of laws providing criminal penalties for unauthorized sale of prison-made goods.

Example: Georgia Official Code Annotated

Sec.42-5-60. (f) Any provision of this chapter to the contrary notwithstanding, any inmate of any state or county correctional institution operated under the jurisdiction of the board may sell goods, wares, and merchandise created by such inmate through the pursuit of a hobby or recreational activity. The proceeds from the sales shall be distributed to the particular inmate who created the goods, wares, or merchandise. The board is authorized to promulgate rules and regulations governing the sale of such goods, wares, and merchandise and the distribution of the proceeds from the sales. All goods, wares, and merchandise created by an inmate must be sold within the institution or on the institution grounds during visiting hours or when on off-duty assignments.

Discussion. The myriad variations among the states' industries marketing laws suggests the political sensitivity of this topic, as well as problems in implementation that lead to further experimental variations in these laws. Even the model state-use law from the 1930s shows considerable differences in its adoption among those states that have not since amended their industries laws. This is best illustrated by the waiver provisions to the laws requiring state agencies to buy from prison industries. Enforcement of this requirement lies in part in the requirement that no bills be paid without industries certifying that it cannot fill the order. Yet numerous states permit vouchers to be paid without any industries certificate—thus pulling the legal teeth of the state-use law requirements. (At the same time it must be recognized that providing such certificates requires staff; even a small state might need a full-time person to do this, while large states might need two or three staff assigned to what is essentially an overhead operation.)

The absence of a waiver-certificate requirement or its equivalent results in industries market success being legally insecure and subject to personnel changes in the various state purchasing offices. In states with "clean government" traditions, adherence to legal requirements may be expected even without any checks or likelihood of penalties for noncompliance. In other states, a waiver-certificate system is useful for ensuring that political or personality issues do not harm industries sales potential. Another advantage of the waiver-certificate system is to limit the marketing costs when industries introduces new products for sale to the state-use market. Less effort need be made to make state or local agencies aware that industries can now provide them with the new products.

A second significant variation among state-use law requirements is the inclusion or exclusion of local governmental bodies from the industries purchasing requirement. Again we see both political and implementation issues. Local jurisdictions

may be expected to be vocal critics of any requirement that infringes on their local rule authority or interferes with political patronage concerns. On the other hand, industries will require a larger marketing force to take local government orders and may find it difficult to keep these governments informed of its products in states with numerous local governmental bodies.

Extension of the state-use market to state-supported organizations or persons is also fraught with controversy. Industries marketing capabilities remain a question, of course; but most significant is the motivations for such expansion. In some cases, one may believe that reducing state costs is a primary motivator; this is especially true where recipients of state aid are the new market. At a minimum, industries should be authorized to sell to local jurisdictions and nonprofits, so they can broaden their potential within the state-use market without necessarily competing on the open market. Moreover, if the goal is to maximize industries sales within its limited state-use market, they should also be granted preference in the normal state bid process.

Pricing scheme requirements are common to industries marketing laws. There seems to be little objection to requiring that prices be uniform and nondiscriminatory. Existing practices that provide the DOC with price discounts seem aimed (at best) at reimbursing the agency for security and other costs. It would seem preferable to explicitly account for this cost through direct reimbursements. The appropriate benchmark for industries pricing could look at either retail or wholesale market prices depending on how state purchasing operates. Using past quotes plus inflationary markup seems realistic since it allows for the common add-on by sellers who incur costs in dealing with state agencies that are slow in paying bills (industries typically has such problems).

Industries is often limited by legislation requiring the state finance or other agency to establish the price for industries products. Such practices constraining industries should be eliminated if possible. Again, pricing is an area where advisory board approval may facilitate removal of this function from an external agency.

Open Market Sales

Two types of laws permit prison industries to sell its goods or services on the open market. The first type of law, permitting sale of surplus goods, has already been illustrated above. Cf. Maryland Title 27 Sec. 681D.

Example: Missouri Annotated Statutes

Sec.217.570. Open market sales may be made in case of excess production and at prevailing market prices for goods or services of like quality and kind, if it is considered to be in the best interest of the division.

For another example, see *Arizona Revised Statutes* Sec.41-1629 which prefaces its authority "To prevent loss to the state. . . ." This provision also authorizes export sales of industries goods into countries permitting this entry.

Where only surplus goods are permitted to be sold on the open market, the marking or labeling of industries products as prison-made was a common requirement of the 1930s era state-use laws. While a few states retain such laws, the trend is for their repeal. For examples of such laws see *New Jersey Statutes Annotated* Sec.46:31-1 *et seq.*; *Oregon Revised Statutes* Sec.421.350 *et seq.*

The second type of open market law expressly allows such sales without any limitation relating to surplus products.

Example: Indiana Statutes Annotated

Sec.11-10-6-5. Goods produced in whole or in part by committed persons in this state may be sold on the open market.

The same effect may be accomplished through the simple repeal of laws providing criminal or other penalties for the sale of prison-made goods on the open market. However, other provisions may limit such sales to private persons for their personal use.

Example: Arkansas Statutes Annotated

Sec.46-234. It is hereby declared to be the intent of this article: . . . 3) to effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits therefrom.

Such limits on open market sales other than to private persons may be explicitly provided for.

Example: Connecticut General Statutes Annotated

Sec.53-329. No person, firm or corporation shall possess . . . any goods, wares or merchandise manufactured, produced or mined wholly or in part by convicts or prisoners of this or any other state . . . ; provided nothing in this section shall be construed to forbid the sale of goods . . . to any person, firm or corporation which may purchase such goods for its use or consumption but not for resale, when such purchases have been approved by the commissioner of administrative services . . .

Where the statute is unclear over resale of prison-made goods sold on the open market, buyers may wish explicit authority for this purpose.

Example: Maine Revised Statutes Annotated

34 Sec.555. Notwithstanding the language of this section, the warden may authorize the sale of articles produced at the prison and may authorize any person or business entity purchasing articles from the prison to resell those articles if the person or entity requests in writing that authority from the warden at the time the initial purchase is made.

Conversely, a state may limit open market sales to employers, but not private persons.

Example: Delaware Code Annotated

11 Sec.6532. The products of inmate labor and inmate services may be sold to tax-supported departments and institutions and agencies of the State and its governmental subdivisions, and such other employers as the Department shall determine.

In several instances, authority to sell industries goods and services is conditional on (a) noncompetitive effect:

Example: Alaska Statutes

Sec.33.30.430. (b) The commissioner may sell a product or service of a correctional industries program to a private industry, subject to the approval of the commission established in AS 33.30.470. Before giving its approval, the commission must determine that the product or service has potential for contributing to the economy of the state and will have minimal negative impact on an existing private industry or labor force in the state.

(b) payment of real world wages:

Example: Nebraska Revised Statutes Annotated

Sec.83-151. Goods produced in whole or in part by persons confined to the department in this state may be transported and sold in the same manner as goods produced by free persons, if persons confined to the department are paid at least minimum wage under state law. The minimum wage requirement does not apply to hobby and craft items produced by persons committed to the department on their own time with their own resources.

(c) labor intensive work only:

Example: Louisiana Statutes Annotated

15 Sec.1152. (D) Products of the type which are produced in foreign countries that are labor intensive may be produced and sold on the open market.

(d) not made in state:

Example: Vermont Statutes Annotated

28 Sec.751. The work product of inmate labor also may be sold: . . . (3) to any person or enterprise providing the governor, upon determination that the work product of inmate labor is not otherwise produced within the state, gives express written authorization to the commissioner which shall be revocable at any time.

(e) no adverse effect on state-use market:

Example: New Hampshire Revised Statutes Annotated

Sec.622:26. The Warden of the State Prison may contract for the sale or lease of goods and products which

are produced at the State Prison on the open market at competitive prices, when, in his opinion, such sale or lease . . . does not conflict unduly with the availability of prison manufactured goods to state and public institutions . . . and results in the best utilization of the prison production capacity.

Protecting Local Industry. The several states that condition open market sales of industries goods and services do not necessarily protect free world business and labor from unfair competition from other states' prison industries selling to state agencies. Additional protection may be desired.

Example: Arkansas Statutes Annotated

Sec.14-294.2. In the bidding process for the sale of products for use by the State, bids submitted by private industries located within the State of Arkansas and employing Arkansas taxpayers shall be given priority over bids submitted by out-of-state penal institutions employing convict labor.

Discussion. Permitting industries sales to the open market is the most politically important decision possible. Before modifying legislation to permit open market sales, states must examine whether their state-use market is fully utilized, i.e., they may not need open market. Only a few states permit such sales without any limits or conditions. A review of those states' laws setting such conditions on open market sale suggests two major concerns exist. First is the concern that producing for the open market with its greater potential for profits may lead industries to neglect its state-use market, especially the corrections agency. Second is the fear that industries with its cheap labor will once again unfairly compete with private business and labor. A variant here is the possibility that industries could favor specific businesses with which it contracts to the detriment of other businesses.

The requirement that prices be uniform and be based upon fair market prices when applicable to the open market authority reduces some of the unfair competition potential. But since many states use wholesale prices as the benchmark for market pricing, some potential for unfair competition remains. Rigid adherence to these pricing requirements would, however, deprive industries of flexibility to match temporary sales offers of its competitors. Forcing industries to compete on the basis of superior quality does not seem practical.

Whatever decisions are made for industries marketing authorities, court decisions require that prison industries in other states be accorded no greater restrictions. Although this legal doctrine is today applicable mainly on sales to governmental bodies and agencies, changes in Federal law may once again open the interstate private market to prison-made goods. Experimentation with five states' prison industries already permits their open market sales in interstate commerce (i.e., Percy legislation) and legislation has been proposed to permit more states this conditional authority.

Sales Force

Where industries is under pressure to expand, whether externally or internally created, its ability to market becomes of critical importance. Successful marketing requires an aggressive sales force that does more than simply take telephone orders per a state-use law requirement.

New marketing authorities reinforce the need for new marketing techniques. Potential new buyers must be made aware of industries' ability to provide them with goods and services. Any former reputation for unreliability or poor quality goods and services underscores the need for personal selling by an industries sales force.

Two approaches to modernizing an industries sales force are seen in legislation. First is authority to provide compensation for the sales force outside the civil service system's authorities.

Example: Iowa Code Annotated

Sec.217 A.8. (3) The director may establish a sales bonus system for the sales representatives for prison industry products. If a sales bonus system is established, the system shall not affect the status of the sales representatives under chapter 19A.

Second is the authority to appoint sales agents who are not employees of the industries.

Example 1: Missouri Annotated Statutes

Sec.217.565. (2) The division shall act as a distributing agent for the manufacturing and service enterprises carried on in its institutions, with authority to appoint agents or salesmen.

Example 2: Massachusetts General Laws Annotated

Ch.127 Sec.68. In the correctional institutions of the commonwealth the commissioner . . . may appoint agents who under such regulations as the commissioner shall establish shall sell, subject to the provisions of section sixty-seven, goods and services produced therein. Any such agent may be removed at the pleasure of the officers by whom he was appointed.

Discussion. Legislation for changing either the method for compensating an industries sales force or for using private persons as sales agents is too new to allow for their evaluation. The experience of the Canadian prison industries in contracting with a private company for sales representation is reported to be positive, however. The use of bonuses as a public sector equivalent to the sales commission system used by many private businesses also seems plausible. State constitutional provisions may, however, prohibit its adoption in some states.

Attachment A

Summary Review of State Laws Defining and Establishing Correctional Industries

This review of legislation for prison industries in the 50 states and the District of Columbia was used as the basis for the development of the legislative guidelines materials. It is important to note that the attached statutory summary refers only to legislative authorities or restrictions without reference to ex-

isting policies and practices. Thus, the absence of any implementing action does not negate the underlying laws. In the absence of clear expressions of authority, we chose to stay with a conservative interpretation. Hence any authority potentially derived from ambiguous language is not included. This review incorporated all published legislative reports available as of December 1983.

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Correctional Industries Legislation Review

A. AUTHORIZATION LOCUS (LOC?)

Commissioner/Director/Board of Corrections¹
Industries Office Established
Warden/Superintendent Authority
Industries Board/Corporation

B. PURPOSE SPECIFIED²

Reduce Correctional Costs/Self-Supporting
Training/Work Experience³
Benefit of State
Goal of Rehabilitation/Reintegration
Idleness Prevention⁴

C. AUTHORIZED OPERATIONS

General Grant of Authority
Agriculture Operation
Manufacturing Operation
Service Operation
License Plates/Tags
State Signs
Printing
Facility Maintenance (A = Authorized,
I = authorized under Industries)
Public Works (A = Authorized;
I = under specified Industries)
Other⁵

D. ADVISORY OR OVERSIGHT BOARD ROLE

General Advice⁶
Specific Approval Required⁷
Expansion or Closing of Industries Approval
or Public Hearings⁸

E. MARKETING (R = Required; P = Permitted)

State Agencies Purchasing⁹
County/Local Agencies Purchasing
Federal Government Agencies Purchasing
Nonprofit Agencies Purchasing¹⁰
Open Market Sales¹¹
Surplus to Open Market¹²
Other States' Agencies (Sales to)¹³
Industries or DOC Sets Prices
Open Market Price Requirement¹⁴
Cost Dispute Arbitration
Price List/Catalog¹⁵
Waiver to State Use Requirement¹⁶
Criminal Penalty for State use Violation
Dismissal Penalty for Violations
Out-of-State Inmate Goods Import
Regulated/Barred
State/Local Markets Required to Submit
Estimates of Product Needs Annually¹⁷

STATE																											
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Correctional Industries Legislation Review

STATE

A. AUTHORIZATION LOCUS (LOC)

Commissioner/Director/Board of Corrections¹
Industries Office Established
Warden/Superintendent Authority
Industries Board/Corporation

B. PURPOSE SPECIFIED²

Reduce Correctional Costs/Self-Supporting
Training/Work Experience³
Benefit of State
Goal of Rehabilitation/Reintegration
Idleness Prevention⁴

C. AUTHORIZED OPERATIONS

General Grant of Authority
Agriculture Operation
Manufacturing Operation
Service Operation
License Plates/Tags
State Signs
Printing
Facility Maintenance (A = Authorized;
I = authorized under Industries)
Public Works (A = Authorized;
I = under specified Industries)
Other⁵

D. ADVISORY OR OVERSIGHT BOARD ROLE

General Advice⁶
Specific Approval Required⁷
Expansion or Closing of Industries Approval
or Public Hearings⁸

E. MARKETING (R = Required; P = Permitted)

State Agencies Purchasing⁹
County/Local Agencies Purchasing
Federal Government Agencies Purchasing
Nonprofit Agencies Purchasing¹⁰
Open Market Sales¹¹
Surplus to Open Market¹²
Other States' Agencies (Sales to)¹³
Industries or DOC Sets Prices
Open Market Price Requirement¹⁴
Cost Dispute Arbitration
Price List/Catalog¹⁵
Waiver to State Use Requirement¹⁶
Criminal Penalty for State use Violation
Dismissal Penalty for Violations
Out-of-State Inmate Goods Import
Regulated/Barred
State/Local Markets Required to Submit
Estimates of Product Needs Annually¹⁷

MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
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Introduction

Prison industry programs, operations, and procedures reflect the environment in which they exist. They are shaped by internal needs, legislative requirements, correctional demands, managerial resources, and geographic dispersion, among many factors. Thus, different environments require different managerial approaches.

Several criteria need to be considered in identifying model program elements. The first important aspect of any prison industry operation is its size and scope. This is particularly relevant in developing policies and procedures for the areas of administration and budget, since the question of centralized or decentralized operations becomes critical. For the most part, states have industries operating at multiple institutions and thus have a need for some central authority or coordinating role. In several of the smaller states, prison industries exists only at one or two institutions; in these states, industries directors are located at the facilities. The policies and procedures developed here for administration and budgeting assume a multiple industries operation. Nevertheless, the functions to be performed are still applicable to smaller operations.

The second force shaping the inquiry is the professional norms in the field as evidenced by standards and other literature. The standards address the question of which areas should be covered by written policies as well as the specific content to be included in each of the respective categories (e.g., administrative policy should include areas of responsibility, goals and objectives, etc). A more detailed analysis of the standards themselves is contained in Part IV of this report.

Finally, a third factor which has been taken into account for these guidelines is the consensus in the field that prison industries should be managed as a "business-like" operation. There are certain functions which must be performed by any type of business. These would include at a minimum some of these areas that policies and procedures attempt to address, including admin-

istration, budget, selection of workers, pay scale, safety, scheduling, and supervision procedures. Each of these tasks must be outlined and accomplished if effective management is to occur.

Format

The format for policies and procedures that is followed here is that adopted by the American Correctional Association (ACA), since the ACA format (or variations thereof) is the one most widely used by state corrections. Thus the following headings or categories have been used in the policies and procedures developed herein:

- I. Authority:** auspices for the policy statement. In addition to state statutes and administrative rules which are the most likely authority bases for a policy statement, other auspices may include a court decision requirement or a standards requirement (see Part IV).
- II. Purpose:** why it is needed and what it intends to accomplish.
- III. Applicability:** to whom does the policy pertain and to whom shall copies be distributed.
- IV. Definitions:** any term used in the policy that warrants clear explanation.
- V. Policy:** any governing principle, plan, or course of action.
- VI. Procedures:** the specific actions or methods necessary in order to implement a particular policy.
- VII. Discussion:** any associated commentary which provides the reader with additional background or perspective on the issue being addressed.

19. SD—separate accounts for each plant for audit review ease; IL—extensive reporting requirements include recidivism and postrelease employment; standard accounting procedures to be used in AK, CA, ID, and OH.
20. NE—no printing in competition with outside labor; MA—take into account job market and employment conditions in community.
21. IL and NM—minimize disruption by adjusting institutional schedules to avoid conflicting activities. Other programs shall be available after work hours. See also, note 3.
22. SD—funds to be invested in daily balance interest account by Treasury; NE—Treasurer to invest funds; ID and NM—interest credited to fund.
23. MI—supervisory costs that relate to custody and security to be paid by DOC; ID—industries employees exempt from state civil service.
24. IA—non-inmate workers fund established from pay-back provision.
25. KS—5% of gross profits goes to equipment replacement fund; DC—requires that equipment and other fixed assets be depreciated.
26. Departments may advance funds to pay for purchase of raw materials.
27. CT—no purchase over \$2,000 without approval, OR—prohibition on use for DOC expenses; TN—capital expenditure over \$2,500 requires governor's approval.
28. CA—borrow for specified uses only (from private).
29. UT and NV—authority for administrative exemption exists; RI—law is unclear; NM—limited to less than \$2,000; MI—provides for the establishment of "suitable methods" of purchasing.
30. CA and AK—authorize wages up to one-half minimum wage; WI—set at rate not to cause deficit.
31. IL and IN—include inmates in the unclassified state workers service, which can be interpreted to imply authorization for coverage; MA—does not include prison industries employees; TN—Tort Claims Act Procedure; NM—legislative ratification.
32. DE and KS—when dependents are on public assistance; PA—consent required, up to ¾ of pay; NE—has extensive scheme to provide due process protection to inmates receiving minimum wages from unfair deductions of any type.
33. WA—incentive provided by 15% preference in state bids; MN—inmate corporation barred; TN and LA—have restitution industries; special boards to lure private companies exist in FL and OK; AR and HI—legislation is ambiguous on this issue; SC—authority relates to employment opportunities for physically handicapped, mentally retarded, or aged inmates.

A heading should exist at the top of each page beginning a new policy area. At a minimum, the heading should provide space for the following information:

State _____
Policy Number _____
Page Number _____ of _____
Section or Chapter _____
Subject _____
Approved by _____ (signature)
Effective Date _____
Supersedes _____ (policy #)

The next eight sections of Part III report on the following policies and procedures: administration; budget and accounting; recruitment and training of inmate workers; safety programs; wages and reimbursements; inmate supervision; security and classification; and schedule and inmate work hours. The policies and procedures presented herein have been drawn from the materials of nearly 20 states and should be used as guidelines to be adapted to the particular needs and constraints of a given state industries operation.

General Administration

Goals and Objectives

I. Authority

State legislative code and administrative rule.

II. Purpose

To identify and clearly set forth the goals and objectives of the Correctional Industries program.

III. Applicability

Correctional Industries Director, Industry Coordinators, and all employees directly involved in the Correctional Industries program.

IV. Definitions

None

[Since organizational policies on goals and objectives represent the base for the entire industry operation, they should be carefully worded and well thought out prior to being put into effect. Each of the goal statements described below has its own merit. The key point to remember in developing an effective goal statement is to be consistent and prioritize wherever possible when more than one goal can potentially lead to conflict. Avoid laundry listing of goals and objectives to be accomplished by industries. A look at alternative goal statements from four states illustrates the differing points of emphasis.]

Alternative A represents a simple but clear statement of purpose.

V. Policy (A)

It is the policy of the Department of Corrections that prison industries be established and operated on a basis comparable to private industry within the constraints imposed by the prison institutional environment and the legislative actions affecting its operation. Prison industries can provide work and training for inmates while they are confined in state correctional facilities and reduce the cost of incarceration to the state.

VI. Procedures

The following prison industry objectives are established:

- A. Provide a constructive work program for inmates on a cost paying basis.
- B. Provide inmates with training in developing work skills and work habits as a means of improving employment opportunities after release.
- C. Reduce the cost of maintaining the prison system through the sale of products.

VII. Discussion

To meet one of prison industries' prime objectives of producing products for sale at a profit, it is necessary that they be operated as near as practical to the successful private industries. This will require that the prison's industries be properly organized and staffed with competent personnel to implement business-like plans and programs. There are many restrictions imposed on prison industries such as source and amount of funding, worker training and motivation, and legislative restrictions on administration and sales. However, counteracting these obstacles is the availability of plentiful and inexpensive labor. If the industry programs are well planned and administered, the positive factors can outweigh the negative factors and industries can achieve not only their profit objective but also provide an excellent program for the utilization, training and possible rehabilitation of the inmate workers.

Alternative B also expresses both the training goal as well as the goal that industries shall be self-sustaining. Yet each policy goal is broken out separately. Training of inmates is stressed by providing an environment comparable to that of private industry.

V. Policy (B)

To provide employment for inmates which will encourage them to develop favorable attitudes and useful skills.

VI. Procedures

- A. Correctional Industries will maintain a work force appropriate to the amount of work available and consistent with that in private industry.
- B. Correctional Industries will require inmates to work a normal workday. The pace of production and the number of interruptions will be similar to that found in private industry.
- C. Correctional Industries will employ procedures for the selection, training, evaluation, and discipline of inmate employees similar to those used in private industry. Correctional Industries management and institutional management will cooperate in the development and execution of those procedures.

V. Policy (B2)

To operate the various enterprises so efficiently as to generate profits sufficient for modernization and renovation of the plant as well as research and development of new goods and services.

VI. Procedures

- A. Correctional Industries will employ management, accounting, purchasing, and production procedures patterned after the best of those found in private industries of a similar nature.
- B. Correctional Industries management will insure that each separate factory or service enterprise is self-supporting, generating enough income to meet its own needs and returning a satisfactory net profit to Industries as a whole. Factories or services which cannot maintain a satisfactory level of profitability will be closed and their resources diverted into more profitable ventures.

VII. Discussion

In practice, many industries that are nonprofitable yet only experience a marginal loss are maintained since they represent a large number of jobs and are subsidized by more profitable programs.

Alternative C emphasizes production through replication of a free world environment.

V. Policy (C)

To replicate a free world work environment to the greatest extent possible. All industry operations will develop formal procedures to accomplish this end.

VI. Procedures

- A. Each cost center (industrial shop) will operate within a budget that does not exceed the projected income for that cost center unless prior written approval is received from the Industries Director.
- B. Work positions will be established to maximize the number of assignments within the limits of A above.
 - 1. Second shifts, rather than overtime, will be developed wherever feasible. A written plan will be developed identifying the point at which second shifts will be used instead of overtime. This plan will be approved by the Industries Director.
 - 2. Inmate labor, rather than civilian, will be used wherever possible. Civilian labor will perform production related activities only when training inmates or when licensing or other regulatory conditions require it. Variance must be approved by the Industries Director.

- C. Production time will be maximized during each shift. Scheduling of inmate hours will be no less than 90 percent of the civilian work hours.
- D. Productivity standards will be comparable to the private sector.
- E. Production scheduling will provide delivery within 60 days of receipt of orders, unless otherwise scheduled by the customer. Open orders reports will allow for monitoring.
- F. Quality control procedures will be established in writing by the Industry Coordinators for each cost center.

VII. Discussion

Through replication of a free world work environment, profitability should occur and be a key factor in all decisions. This will afford the inmates an opportunity to work in an environment and with expectations similar to those they will face upon their release, providing them with the work habits that will be required to maintain gainful postrelease employment. It will also provide customers competitively priced, quality goods and services.

Alternative D places primary focus on reducing inmate idleness, while still expressing training and financial support as goals.

V. Policy (D)

To establish and operate productive industrial and agricultural enterprises in the prisons and institutions under the jurisdiction

of the Director of Corrections in such volume and of such kinds as to eliminate unnecessary idleness among the inmates, and to provide diversified work activities which will serve as a means of occupational training and rehabilitation as well as of financial support to the employed inmates.

Administration and Organization

I. Authority

State legislative code and administrative rule.

II. Purpose

To define the responsibilities of the personnel involved in the administration and the operation of the Correctional Industries program at state and institutional levels.

III. Applicability

All central office and institutional level personnel responsible for Correctional Industries programs.

IV. Definitions

Correctional Industries: Any manufacturing, service or farm program operating within an adult facility and receiving all or some of its operating revenue from the Revolving Fund.

Equipment: Any apparatus required to convert raw material to finished goods or services or to provide control of such processes.

Industries Director: The head of Correctional Industries or his designee.

Industry Central Office: The central administrative office of Correctional Industries, including the Industries Director, the production manager, and support, e.g., sales, marketing, fiscal, and planning staff.

Industry Coordinator: The individual with primary responsibilities for the management of all manufacturing or service operations within a single adult facility.

Inmate Worker: Any inmate assigned to Correctional Industries and being paid from the Revolving Fund.

Job descriptions: The written responsibilities and duties of civilian or inmate personnel assigned to Correctional Industries.

Physical Plant: The building(s) housing Correctional Industries operations, and equipment necessary to provide utilities to such building(s).

Shop Supervisor: The individual with direct responsibility for a specific cost center within the facility.

Warden or Superintendent: The chief administrative officer of the correctional facility in which the industry is located.

V. Policy

To establish a centralized Correctional Industries program that is responsible for the overall fiscal and industrial management of all prison industries at all of the state's correctional institutions.

VI. Procedures

A. Overview.

1. The overall responsibility for the administration of the Correctional Industries fiscal and industrial management shall be by the Director of Industries. The Director shall develop operational standards; establish goals; coordinate all industrial programs; develop recommendations and implement approved programs for improvements to existing industries and addition of new industries; administer the inmate incentive program; administer the centralized revolving fund for all Correctional Industries; and be responsible for the pricing, marketing and sales efforts of the Correctional Industries programs.
2. The Director shall be provided with a staff of personnel at the Department of Corrections, as approved and funded by the legislature and will be supported by other functions within the Department of Corrections administrative section as required to accomplish the administrative, planning, and financial functions listed above.
3. The Warden/Superintendent of the institutions where the industry is located will be organizationally responsible for the personnel employed. This is for the purpose of maintaining the necessary day-to-day control of the overall operation of the institution. However, the industries personnel and manner of operation shall functionally report, and be responsible, to the Director as required to achieve the objectives for which the Correctional Industries program has been established. For matters of industry personnel hiring, placement, dismissal, pay, etc., within the institution, it is expected that the Director of Industries will retain final approval authority.

B. Industries Central Office Functions

1. Operations Branch

- a. Provides general supervision over all institutional industries operations. Responsibilities in-

clude production, quality control, specification control, equipment requirements, product assignment, inmate and employee safety, inventory levels, staffing, and management performance evaluation. Performance of duties is accomplished by reviewing activity reports and institution requests and by routine institution visits.

- b. Is responsible for the proprietary and budgetary accounting for the Prison Industries Revolving Fund and the development of income statements, capital statements, balance sheets, and cash flow statements. In addition, it is responsible for the administration of the inventory control system at each institution including the physical inventories, inventory evaluation of raw materials, work in progress, finished goods inventories, as well as equipment inventories and the maintenance of records and depreciation schedules.

- c. Provides liaison between the division staff and administrative staff for personnel matters which include delegated testing, position transactions, recruitment, development of affirmative action, safety plans, and training. Provides in-house support services to the other branches in the division including typing, copying, supply and equipment procurement, space management, and travel.

2. Production Services Branch develops and maintains trade contracts to stimulate interest from prospective vendors. It consists of:

- a. New Products Development Section which deals with new industries development, product design/specification testing, materials selection methods, equipment selection, tolerance setting and tool development.
- b. Procurement Liaison which assures timely acquisition of materials and services essential to the efficient operation of the program. Is also responsible for working with the institutions on their procurement problems, helping develop contracts and state price schedules wherever advantageous, and combining purchases to the benefit of correctional industries.

3. The Marketing Branch consists of:

- a. Field Sales Section which engages in direct customer contact to learn, stimulate, and satisfy customer needs. Generates new ac-

counts, educates customers on products, provides direct customer services, and acts as principal communicator to the customer. Interacts with customer planners on new projects, makes recommendations on product application, assists in product selection, guides purchase specification preparation, and closes the sale. Reports to Central Office on market trends, competitor activity, prices, and other market intelligence. Suggests additions, deletions, and modifications to product line.

- b. Customer Services Section which prepares quotations and proposals, makes written and telephone responses to customer inquiries, and obtains cost and delivery information from the factories. Processes customer orders and provides order followup through final delivery. Supports field sales section with information services and refers complaints for resolution. Monitors bid results and solicits sales through telephone contact. Collects sales activity data (by customer and sales representative) for sales planning and performance analysis.

- c. Market Research and Analysis Section collects, reduces, and analyzes market data for product performance, identification of sales opportunities, sales forecasts, sales performance and promotion evaluation, market trends and pricing decisions, return on investment, facilities expansion and inventory justification, management control decisions, and Correctional Industries strategy and policy decisionmaking.

C. Institutional Level Functions

1. The Industries Coordinator at each institution is responsible for administration of Correctional Industries day-to-day operations in accordance with the policies of the Correctional Industry Board and/or the Department of Corrections. To this end, he will provide for

- a. Assistance to the Industries Director and staff in the study of proposed new enterprises and furnishing data, plans or specifications required for this purpose.

- b. The establishment and maintenance of procurement controls designed to assure effective and timely delivery of necessary raw materials, commercial items, and equipment of a quality standard which will assure a high grade finished product.

- c. The establishment and maintenance of production controls designed to assure delivery of quality products at a minimum cost.
 - d. The establishment and maintenance of inventory, accounting, and cost control records as required by the policies established by the Director.
 - e. The establishment and maintenance of controls to assure a minimum expenditure of Correctional Industry funds, in accordance with good and accepted management practices.
 - f. Information to the Warden or Superintendent on matters affecting industries.
 - g. Reports to the Director on events and problems in the Correctional Industries program, or any changes in plans, deviations from established standards, or commitment of the Correctional Industries.
 - h. The establishment and functioning of a training program capable of developing staff personnel within their present position as well as for promotional positions.
2. All industry operations will be operated consistently with the Department's Administrative Regulations, Administrative Directives, and institutional policy and procedures. It will be the responsibility of the Warden or Superintendent to provide the necessary supervision to assure compliance.

VII. Discussion

Prison industries are responsible for developing and implementing programs that assure that all operational aspects of the industries are operated in a business-like manner. In order for the Department to develop a well-managed business, it is necessary to:

- A. Develop an organizational structure that will meet the needs of the industry.
- B. Be staffed with personnel competent in fulfilling the duties defined in the organizational structure.
- C. Develop marketing studies for product sale and profit potential.
- D. Develop capital expenditure programs based on expected availability of funding.

- E. Develop production planning that is compatible with market needs, productive capacity of equipment, and the capabilities of the work force.
- F. Develop procedures and reports for the systematic accounting of the operations activities.
- G. Develop programs for the marketing and sale of products.
- H. Develop programs that will assure the industries are operated on an efficient and effective basis in the raw materials procurement, plant operations and sale and distribution of the products.
- I. Insure that institutional level functions are consistent with those carried out by the Central Office.

Organizational Chart

I. Authority

State legislative code and administrative rule.

II. Purpose

To provide a current organizational chart which delineates the structure of authority, responsibility, and accountability of the Correctional Industries program, within the correctional facility and the agency.

III. Applicability

Correctional Industries Director, Industry Coordinators, and all other employees directly involved in the Correctional Industries program.

IV. Definitions

None

V. Policy

The organizational chart depicting line relationships within the correctional facility and agency places staff in units to promote efficiency and establish a clear chain of command.

VI. Procedure

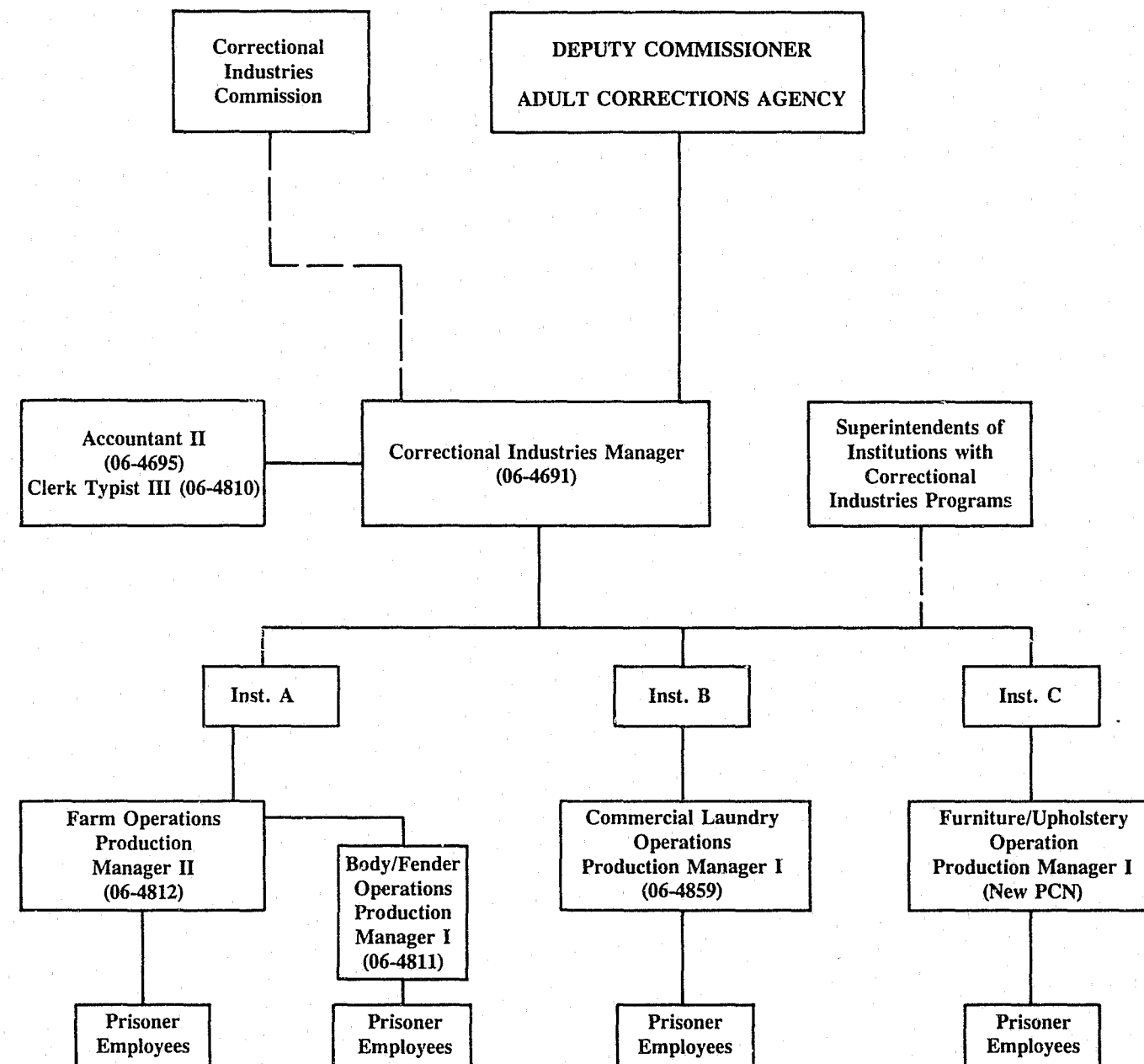
The Correctional Industries Director shall review the organization at the outset of each fiscal year and make any recommendations for changes to the Deputy Commissioner; an updated chart of the organizational structure will be displayed.

Attachment: Current Chart

CONTINUED

1 OF 2

Correctional Industries Organizational Chart



Planning

I. Authority

State legislative code and administrative rule.

II. Purpose

- A. To assure that existing industries continue to fulfill their intended objectives.
- B. To identify those industries that can best be added to the industrial programs.
- C. To assure that well implemented industry plans are available for the evaluation of the legislature or other approval authority for taking action on developed recommendations.
- D. To assure that industry programs are properly funded and staffed.
- E. To provide the best type of industry for each institution considering the personnel availability, the needs and restrictions of the institutions, the contribution of the industry's profitability, and the capacity for providing meaningful work for the inmates.

III. Applicability

Industries Director, Planning Staff, and Industries Coordinators

IV. Definitions

None

V. Policy

It is the policy of the Department of Corrections to develop long-range plans that will assure that Correctional Industries programs are properly developed to best fulfill their role in the Department.

VI. Procedure

- A. The Director of Industries will develop a 5-year plan for the operation of Correctional Industries.
- B. The plan will consist of the following most current projections for each industry or operation for the first 2 years:
 1. The implementation of new programs or products
 2. The number of inmates to be employed
 3. The staffing requirements
 4. Capital expenditure forecasts
 5. Expenditure and revenue forecasts.

C. The plan for the last 3 years will project the implementation of new programs or products and the number of inmates to be employed.

D. The plan will be reviewed by the Industries Advisory Committee for consistency and compatibility with other Department of Corrections plans.

E. After all reviews and any required alterations to the plan have been completed and approved by the Director, the plan will become the basis upon which the industry program will be operated until it is subsequently revised.

F. The plan will be updated each year by the end of the fiscal year for the succeeding 5 fiscal years.

G. Any exception to the guidelines in this operations memo requires written approval from the Director.

VII. Discussion

Long-range planning for the prison industries program is essential if the industries program is to be utilized to its fullest advantage within the Department of Corrections. If outdated industries and programs are not eliminated and replaced with new ones, the industries will become outdated, nonprofitable, and unproductive. New industries must be added as the potential for their contribution dictates. This will assure that the industries fulfill their objective of providing a source of revenue and thereby save taxpayer dollars as well as provide meaningful employment and its attendant beneficial implications to the inmates.

Industries Advisory Boards

I. Authority

State legislative code and administrative rule.

II. Purpose

To assess industries activities and formulate recommendations which will improve the ability of the Correctional Industries program to accomplish its objectives.

III. Applicability

Director of Corrections, Director of Industries

IV. Definitions

None

V. Policy

It is the policy of the Department of Corrections that a Correctional Industries Advisory Board be created, composed of both corrections and noncorrections representatives; the board will meet regularly to assist Industries carry out its specified goals.

VI. Procedures

A. The Director of Corrections will appoint an Advisory Board on Correctional Industries to include, at a minimum, the Deputy Director of Institutions, the Director of Administration, and the Director of Correctional Industries, as well as three representatives from private industry. The Director of Corrections will serve as chair of this board.

B. The Advisory Board will meet at least quarterly. The chairperson of the board will solicit items for the agenda for each quarterly meeting 1 month prior to the meeting date. From this input, an agenda will be issued 2 weeks prior to the meeting date.

C. The board will perform the following functions at each meeting:

1. Review the latest financial statement of Correctional Industries for the purpose of defining any action that may be required to better accomplish Department of Corrections and Correctional Industries objectives.
2. Review Department of Corrections consumer complaints and their resolutions for the purpose of promoting better understanding of the system's operations and limitations. The board will develop suggestions for any improvements that might reduce future problems.
3. Review any proposed price increase to Departmental consumers. The board will recommend approval or disapproval of price increases to the Director of Industries.

D. A primary responsibility of the Advisory Board is to inform Industries on how it can better meet its stated objectives in concert with those of the Department of Corrections; the board will make recommendations on how this may be accomplished.

E. The board will also examine the diversification of industries products, assess proposals to implement or phaseout existing industries, and make recommendations to the Director of Industries for approval.

F. Each year between May and July 1 the board will submit an annual report to the Director of Corrections for use in program and policy planning, budget

development, and consideration of possible substantive law recommendations by the Legislature.

VII. Discussion

Not all states have industry advisory boards, nor are they required to by their industries law. See also *Legislative Guidelines* (Part II) for a discussion of pros and cons on Industries Advisory Boards.

Personnel: Recruitment

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish a departmental policy for recruitment of industries staff.

III. Applicability

Industries Coordinators and industries personnel at institutions having Correctional Industries programs.

IV. Definitions

None

V. Policy

It is the policy of the Department of Corrections to recruit and hire the best qualified personnel for Correctional Industries to ensure an effective program and maximize the training benefits to inmates.

VI. Procedures

A. The primary criteria to be used as a basis for hiring industries personnel is their technical knowledge in the specific area of employment.

B. A secondary consideration is their knowledge of, and ability to carry out, institutional security requirements.

C. Consistent with the Department of Corrections affirmative action program, if there are two candidates for a position and both are equally qualified in the technical area, preference will be given to those trained as correctional officers over applicants from private industry.

D. Equal Employment Opportunity principles will be adhered to in recruitment and hiring of industries personnel.

VII. Discussion

Two common problems often emerge from having to follow state personnel requirements, i.e., length of the process and the inability to hire qualified industries personnel. Thus states may want to explore seeking an exemption from their civil service system for hiring purposes. For further discussion of this question, see the *Legislative Guidelines*.

Personnel: Training

I. Authority

State legislative code and administrative rule.

II. Purpose

To maintain well-trained staff by developing a policy to support continuous in-service training.

III. Applicability

All central office staff and institutional personnel employed in Correctional Industries

IV. Definitions

None

V. Policy

The Department of Corrections will encourage ongoing training for all industrial staff by assisting with departmental resources and other financial support.

VI. Procedures

- A. Training priorities shall be set by the Director of Industries. They shall include, but not be limited to, 1. Management skills 2. Supervisory skills 3. Technical skills.
- B. Resources of the Department of Personnel, the Department of Corrections School District, and other state agencies shall be utilized whenever possible in securing the necessary training.
- C. Civilian staff should be encouraged to seek training and education on their own time and such initiative should be included in annual reviews and promotional considerations.
- D. All requests for reimbursement for training and education shall be made before such training begins and shall include a description of the probable benefits to Correctional Industries resulting from the training.

Personnel: Job Descriptions

I. Authority

State legislative code and administrative rule.

II. Purpose

To identify the need for the personnel to manage the Correctional Industries program and establish the required job descriptions.

III. Applicability

Correctional Industries Director, Industry Coordinators, Shop Supervisors, and to all other employees involved in the Correctional Industries program.

IV. Definitions

None

V. Policy

To establish and develop all personnel job descriptions, in accordance with the state personnel regulations, which will prescribe all duties and responsibilities associated with the Correctional Industries program.

VI. Procedures

- A. Written job descriptions will be developed for each civilian position in Correctional Industries. These descriptions will be developed consistently with Department of Personnel job specifications and applicable contract provisions. Where such specifications are no longer appropriate, the Director will be notified along with recommendations for necessary changes in such specifications.
- B. All job descriptions will include the following:
 - 1. Civilian and inmate positions under the supervision of the position in question.
 - 2. Specific areas of responsibility such as sales, quality control, production, etc. Such areas of responsibility will specify the aspects for which the employee will be held accountable (e.g., quality control inspection of the final assembly of desks).
 - 3. The areas of responsibility identified will be consistent with the objectives set as part of the employee performance review process. (Performance reviews shall be conducted in accordance with Department of Personnel policy and procedures and shall be the responsibility of the Industries Coordinator at each facility.)

- 4. The Industries Director will be responsible for maintaining consistency between like positions at different facilities.

Attach sample job description.

Delegation of Responsibility

I. Authority

State legislative code and administrative rule.

II. Purpose

To delegate management decisions so that they occur at the level facing the decisions in question.

III. Applicability

Industries Director, central office staff, Industrial Coordinators, and all industries personnel employed at the facility level.

IV. Definitions

None

V. Policy

It will be the policy of Correctional Industries to delegate responsibility, and the necessary authority and accountability to meet that responsibility to the level generally faced with the decisions in question.

VI. Procedures

- A. The Industries Director shall delegate specific areas of responsibility, authority, and accountability to each Industries Coordinator in writing.
- B. Each Coordinator shall delegate specific areas of responsibility, authority, and accountability to each subordinate in writing.
- C. Delegation shall continue, in writing, throughout the system, to inmates where appropriate.
- D. Documentation will be maintained in the form of written descriptions of functional areas of responsibility for each unique position description within Correctional Industries, whether civilian or inmate. Such descriptions will include performance standards.

Budget and Accounting

Areas of Responsibility

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish proper methods of accounting and budgeting in accordance with guidelines and procedures found in the statutory authority.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Industries Coordinators, and all others involved in the financial aspects of Correctional Industries.

IV. Definitions

None

V. Policy

It is the policy of the Department of Corrections to establish responsibility for fiscal management of Correctional Industries. Such responsibility shall be vested in the Industries Fiscal Officer.

VI. Procedures

In order to carry out the mandates for fiscal management of Correctional Industries, the Industries Fiscal Officer shall:

- A. Assure compliance with all state and Department of Corrections fiscal policies and standards, including implementation of policy changes and audit findings.
- B. Maintain an auditable system and serve as liaison with auditing personnel.
- C. Direct all shops and industries subunits in compilation and maintenance of financial records.
- D. Respond to all requests regarding Correctional Industries' fiscal procedures, accounts, and budgets.
- E. Coordinate annual budget requests for Correctional Industries.

VII. Discussion

Comprehensive and accurate budget reporting systems are essential to a well-managed industries effort. Proper accounting and budget procedures provide uniformity in costing, pricing, reporting, and management.

Cost Accounting System

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish a cost accounting system for Correctional Industries that is based on accepted accounting principles.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Industries Coordinators, and all others involved in the financial aspects of Correctional Industries.

IV. Definitions

None

V. Policy

Correctional Industries will establish and use an accepted cost accounting system. Such system will:

- A. Aid in the creation and execution of plans and budgets
- B. Establish methods of control
- C. Create data for costing and pricing
- D. Determine costs and profits by industries subunit and overall industries operation.

V. Procedures

- A. The Industries Fiscal Officer or accountant shall prepare the chart of accounts, establish reporting periods and requirements, and determine the method of cost accounting for each industry subunit.
- B. Methods of cost accounting are:
 1. Job Order Costing (for easily identifiable production units, designate)
 - a. Each job will have an assigned job order number.
 - b. All materials and labor utilized will be noted on the job order.
 - c. Overhead, either as a percentage of direct labor or other predetermined rates, will be included on the job order to arrive at a total cost of operations.
 - d. Job order cost sheets will also list time spent on specific tasks.
 - e. Specific task time figures will be used for comparison of actual time versus standard time in order to analyze progress in training and/or control of labor costs.
 - f. An analysis of actual costs and times, compared to standard costs and times, will allow management to monitor the efficiency of the operating units and provide the necessary in-

formation for manufacturing, pricing, and marketing decisions.

2. Process Costing (when costs cannot be assigned to units of manufacture, e.g. agriculture)
 - a. All costs will be gathered from various forms such as:
 - i. Time sheets
 - ii. Tractor log
 - iii. Fuel expense
 - iv. Repairs
 - v. Overhead, etc.
 - b. Expenses, which can be identified as belonging to a specific product, will be charged to those products, while other nonallocated expense items will be assigned to the full range of products on a prorated basis. The following are examples of charges that will be prorated:
 - i. Depreciation on heavy equipment
 - ii. Depreciation on other equipment
 - iii. Repairs
 - iv. Utilities.
 - c. When production is complete, the total aggregate weight or number of units will be divided by total unallocated expense to arrive at a cost per pound or unit.

Budgets

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish a policy to develop budgets which appropriately reflect the operations and capital improvement needs of Correctional Industries.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Industrial Coordinators, and all others involved in the financial aspects of Correctional Industries.

IV. Definitions

Finance and Administration: The department that establishes policy and procedure for financial control of state government.

Operations Budget (Continuation): A financial (fiscal) plan for continuing the current operation.

Improvement Budget: A financial plan for increasing or expanding current operations.

Capital Budget: A financial plan requiring funds which cannot be generated internally.

Cost Centers: Operations within the Division which generate revenue and expenditures and to which revenues and expenditures are matched in accordance with generally accepted accounting principles.

V. Policy

The Division of Correctional Industries, through the Industries Fiscal Officer, shall prepare budgets which accurately reflect the anticipated level of business in accordance with guidelines established by the Department of Finance and Administration and following generally accepted accounting principles.

VI. Procedures

- A. Operations, improvement, and capital budgets shall be prepared from available historical data and projections and in accordance with the guidelines set forth by the Department of Finance and Administration and the Department of Corrections, Division of Administrative Services.
- B. Revenues and expenses shall be projected by cost centers.
- C. Improvement budgets shall be justified by documentation demonstrating need.
- D. Capital budgets shall be justified by documentation demonstrating investment, payback, number of inmates to be employed, etc. Capital items must be scheduled in advance on a 5-year capital budget.

Financial Reports

I. Authority

State legislative code and administrative rule.

II. Purpose

To ensure fiscal accountability through the requirement of financial reports to be compiled on a regular basis.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Industrial Coordinators, and all others involved in the financial aspects of Correctional Industries.

IV. Definitions

Cost Centers: Operations within the Division which generate revenue and expenditures and to which revenues and expenditures are matched in accordance with generally accepted accounting principles.

Cost Centers: Operations within the Division which generate revenue and expenditures and to which revenues and expenditures are matched in accordance with generally accepted accounting principles.

V. Policy

In order to provide management with the most current fiscal information on the financial status of the Correctional Industries program, it will be necessary to issue a monthly statement of account balances, income statement, balance sheet, and other official reports, which will offer insight into the program's operation.

VI. Procedures

- A. Cost centers submit monthly statements (on the 5th working day of the following month) to the industries accounting office.
- B. Accounting prepares the monthly statement 10 working days after receipt of cost center statements.
- C. Reports are disbursed to the Industries Director, Shop Supervisors, Industries Fiscal Officer, and other relevant personnel (specify).

Pricing

I. Authority

State legislative code and administrative rule.

II. Purpose

To develop formal methods for pricing goods and services generated by Correctional Industries.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Sales Division, Industries Coordinators, and all others involved in the financial aspects of Correctional Industries.

IV. Definitions

Total Costs include:

1. Direct material costs
2. Direct labor costs (staff and inmate)
3. Indirect charges
 - a. Indirect materials (waste, rejects)
 - b. Industries overhead (power, water, depreciation, and consumable items) and other factor costs not directly attributable to a single project.
 - c. Administrative overhead (bookkeeping, central office costs, payroll processing, fringe

benefit administration, and other administrative charges not directly attributable to industries).

V. Policy

All industries goods and services (specify exceptions) shall be priced so as to reflect the total costs of production, including an appropriate margin for profit (to be specified).

VI. Procedures

- A. Indirect charges shall be expressed as a percentage of direct costs (labor and/or materials). Such percentage shall be adjusted to reflect current conditions at least annually. Too frequent variation will result in unnecessary price fluctuation.
- B. Factory overhead charges may be expressed on a shop or industry basis.
- C. Cost accounting and production personnel shall be responsible for the timely and accurate compilation of data and examination of variances.
- D. Shops/individual operations shall maintain records sufficient to enable full-cost pricing.
- E. In calculating costs, a proper allocation for waste and scrap should be included in the price according to the past experience for a particular industry. If past records or experience is not available, a factor (e.g. 5 percent) of raw material cost should be used until a history of spoilage rate can be developed.
- F. If prison industry transportation is used to deliver goods, the cost of delivery should be based on the comparable commercial rate. If other means of delivery are used, the costs will be based on actual charges to the Correctional Industries.
- G. Costs will be reviewed on an annual basis at a minimum, and prices adjusted as required. If in the interim a price fluctuation for purchased materials occurs that would affect the overall price of the product by more than a set amount (e.g. 5 percent), a new base cost will be computed. Seasonal products like those from agricultural and canning plant operations will be priced at the time of harvest or as soon thereafter as accurate pricing figures can be established.
- H. The industries coordinator (or the plant shop supervisor in those institutions that do not have a coordinator) will be responsible for accumulating the cost information for developing the base costs. These costs are to be documented by each cost item and the

method of cost allocation should be documented in a manner that is easily understandable.

- I. The Industries Coordinators will send their cost calculations to the Director of Industries for review and any necessary adjustments.
- J. The Director of Industries will supply the Department of Corrections accounting section and state budget office with current copies of the price list of all Correctional Industries goods.
- K. The Industries coordinators for each institution will be responsible for itemizing all goods supplied and assuring that invoices are prepared and sent to the central accounting department.

Receipts

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish a policy for handling cash receipts.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Industrial Coordinators, and all others involved in the financial aspects of Correctional Industries.

IV. Definitions

None

V. Policy

All cash, checks, money orders, or other negotiable instruments shall be deposited in a State interest-bearing bank account within 48 hours of receipt in accordance with regulations and procedures promulgated by the Comptroller of the Treasury.

VI. Procedures

- A. A deposit certificate shall be prepared by the fiscal section of each location in accordance with the guidelines of the Comptroller of the Treasury.
- B. Each fiscal manager shall see that appropriate credit is given to the respective accounts code for each deposit certificate. If discrepancies are found, a written report shall be submitted to the Chief Fiscal Officer.

- C. Cash or negotiable items shall never be kept in an unsecure location. If negotiable items are received after banking hours, the unit manager shall be responsible for depositing the items in the industries safe. As soon as banking hours permit, a deposit shall be made.

Accounts Receivable

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish procedures for credit, billing, and the monitoring of accounts receivable.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Industrial Coordinators, and all others involved in the financial aspects of Correctional Industries.

IV. Definitions

None

V. Policy

Recognizing that short-term credit is an essential component of customer relations, the Division of Industries nevertheless will attempt to maintain accounts receivable at a (net) 30-day basis.

VI. Procedures

- A. The Director of Industries shall cause billings to the customer to be made within 15 working days of delivery of goods or services.
- B. Rules and regulations established by the Department of Finance and Administration, Department of General Services, and Comptroller of the Treasury shall apply in preparation and submission of billing documents, including appropriate backup documentation and controls.
- C. An aged analysis of accounts receivable shall be prepared by the 10th working day after the month's end. All accounts which fall into the 30-60 day column shall be contacted by the Industries Coordinator. All accounts which fall in the 60-90 day column shall be contacted by the Chief Fiscal Officer. All accounts in the 90 day and over column shall be notified that their delinquent account will be referred to the state's Attorney General for collection.

- D. Sales and Marketing shall inform all customers of the credit terms upon opening a new account.

- E. Credit terms shall be published in the catalog.

- F. On accounts where there is a dispute in billing due to quality, quantity, price, damage, etc., there shall be a notice of the dispute attached to the customer's file indicating the problem. Accounts delinquent due to disputes shall not be moved to the next aging category until resolution of the dispute.

- G. Special credit terms may be arranged with the approval of the Industries Director.

Accounts Payable

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish fiscal procedures for handling industries accounts payable.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Industrial Coordinators, and all others involved in the financial aspects of Correctional Industries.

IV. Definitions

None

V. Policy

The Division of Industries shall process for payment all invoices from vendors of goods and services within 15 working days from date of receipt of invoice unless circumstances, through no fault of the State, preclude payment within this time.

VI. Procedures

- A. The Director of Industries shall cause all invoices to be processed for payment within 15 working days of receipt of invoice from a vendor.
- B. If an invoice is not processed for payment within 15 working days due to, but not limited to,
 - 1. Dispute with vendor over price, quality, quantity, specifications, etc.
 - 2. Nonreceipt of goods by receiving locations
 - 3. Insufficient documentation of shipment by vendor
 - 4. Late arrival of invoice from vendor, the Director shall provide adequate documentation.

Documentation, for audit purposes, shall include the reason(s) why the invoice was not processed for payment within 15 working days.

- C. Discounts shall be taken on all invoices processed for payment when applicable. On disputed invoices where the dispute is ruled in the favor of the State, discounts shall be taken regardless of time elapsed.
- D. On invoices processed for payment on which the discount period has elapsed, through no fault of the vendor, a letter of justification shall be attached to the voucher explaining why the discount was lost and a copy filed for audit purposes.
- E. Preparation of voucher registers and appropriate documentation shall be in accordance with rules and regulations promulgated by the Department of Finance and Administration, Comptroller of the Treasury, and generally accepted accounting and auditing procedures.
- F. A reasonable attempt shall be made to secure invoicing and payment of invoices at the close of each accounting period. These attempts shall be documented and become a part of the record. Under no circumstances shall invoices be held over to improve the financial position at the close of an accounting period.
- G. A list of accounts payable, to include vendor name, date invoice received, amount, and explanation for nonprocessing shall be prepared on a monthly basis and forwarded to the Industries Director for review. A copy shall be kept on file as part of the record for audit purposes.

Depreciation of Fixed Assets

I. Authority

State legislative code and administrative rule.

II. Purpose

To assign responsibility for the depreciation of industries fixed assets as required by statute.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Industries Coordinators, and all others involved in the financial aspects of Correctional Industries.

IV. Definitions

Depreciation: Decline in value of fixed assets other than land due to wear and tear, technical obsolescence, or other causes.

Fixed Assets: Land, buildings, plant, machinery, equipment, furniture, fixtures, and so on, that are acquired for long-term use in a business. Inventories, notes receivable, and accounts receivable that are not expected to be converted into cash within a year should also be recorded as fixed assets.

V. Policy

Industries management shall be responsible for inventory and depreciation of industries' fixed assets, in accordance with Department of Corrections and State policy. Such assets shall be capitalized and depreciated in accordance with acceptable IRS and State regulations. An allowance for depreciation shall be included in industries' factory overhead.

VI. Procedures

- A. At a minimum, an annual inventory shall be taken of all fixed assets, which shall be compared to a list published by the Department of General Services, Surplus Property Utilization Division. Discrepancies shall be noted and a written report shall be submitted in accordance with appropriate guidelines.
- B. The Industries Director shall appoint a property control officer, who shall be responsible for reconciliation of a monthly additions, corrections, and deletions report in accordance with appropriate regulations.
- C. Upon discovering that a fixed asset is missing, the Industries Director shall initiate a thorough investigation. The Director shall report the asset as missing to the State Comptroller.
- D. Depreciation shall follow IRS guidelines for fixed assets. A fully depreciated asset should be carried on the books until retirement.
- E. Trade-in losses or gains shall be reflected in the general accounts and in the cost of the replacement asset.

Inventory Procedures

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish procedures for the periodic inventory of raw materials and finished goods.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Industries Coordinators, and all others involved in the financial aspects of Correctional Industries.

IV. Definitions

Raw Materials: A rule of thumb suggests that all items purchased for fabrication of a product are categorized as raw materials. All raw materials stored on or off the premises will be included. Materials owned by third parties will not be listed here. They will be reported on separate schedules; example: upholstery materials supplied by customers.

Work in Process: Subject to the approval of the Production Manager, production schedules should be adjusted to minimize work in process on the end of the fiscal year. The value of unfinished units should be determined by the percentage of completion applied to the finished goods value.

Finished Goods: The value of the finished product reflects the manufacturing cost: raw material and direct labor plus direct (facility) overhead. No central office overhead or profit markup is added at this point. The finished goods count will include finished units of partially completed orders. Fully completed orders remaining on the premises, invoiced or not, will also be listed. Finished goods located off the premises will be included in the total but separate schedule by location will also be required.

Obsolete and Damaged Materials: These items should be priced at a realistic salvage value. Careful recordkeeping on cost estimates is necessary for audit purposes, quality control, and factory overhead calculation.

V. Policy

Accurate inventory procedures are essential to appropriate financial accounting for Correctional Industries. A comprehensive annual inventory shall be carried out and a running inventory maintained and reflected in appropriate accounting documents.

VI. Procedures

- A. There are four major inventory categories:
 - 1. Raw materials
 - 2. Work in process
 - 3. Finished goods
 - 4. Obsolete and damaged items
- B. In the week preceding the actual count, sufficient time should be reserved to achieve an orderly arrangement of all materials. Aisles should be clear, items should be binned, boxed, shelved, etc. to facilitate an accurate count. All production will cease until the Industry Coordinator is assured that no items were

omitted and there were no duplicate counts in the respective shops.

Use of Revolving Fund

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish procedures for the use of excess revenues in the industries revolving fund generated by the sale of industries products.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Industries Coordinators, Industries Advisory Board, and all others involved in the fiscal aspects of Correctional Industries.

IV. Definitions

Capital Projects: Projects typically for expansion, new construction, or major renovation of industries plant or facilities not included in the regular operating budget.

V. Policy

Positive balances of industries' revenues over expenditures which do not revert to the general fund may be used to finance industry capital projects or to provide operating moneys.

VI. Procedures

- A. Industries personnel shall research the proposed use of funds for presentation to the Industries Director.
- B. The Director of Industries shall contact the fiscal officer to ascertain that funds exist to cover the proposed expenditure.
- C. The proposal shall then be presented to the Commissioner of Corrections or to the Industries Board for approval.

Interagency Transfers

I. Authority

State legislative code or administrative rule.

II. Purpose

To establish a policy for the transfer of interagency funds or products.

III. Applicability

Superintendents, Correctional Industries Director, Industries Fiscal Officer, Industries Coordinators, and all others involved with the fiscal aspects of Correctional Industries.

IV. Definitions

None

V. Policy

When funds are owed or transferred between Correctional Industries and other Department of Corrections entities, such as institutions, fiscal accountability and appropriate documentation must be maintained. This policy applies to fund transfers as well as in-kind or barter transfers. In the case of the latter, fair market value of each good or service shall be duly documented.

VI. Procedures

- A. The Superintendent shall notify the Industries Fiscal Officer of charges relating to the industries operation and supply the necessary documentation to justify the request.
- B. The Industries Fiscal Officer shall review the request and determine if the charges are correct and, if so, shall complete the appropriate vouchers and submit to the fiscal division for processing.
- C. Copies of the completed vouchers will be sent to the originating institution for retention in their filing system.
- D. Payments for products and/or services delivered by the Correctional Industries program to an institution will be transferred from the institution's budget through voucher to the Correctional Industries Fund.

VII. Discussion

A reimbursal services agreement must be established prior to the use of a voucher to initiate the financial transaction.

Inmate Payroll

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish consistent procedures for the handling of inmate payroll.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Industries Coordinators, and all others involved with the financial aspects of Correctional Industries.

IV. Definitions

None

V. Policy

Procedures shall be established to assure accurate recording of wages due inmates and the timely and regular disbursement of same.

VI. Procedures (an example for monthly payroll)

- A. All payroll reports will be submitted to the industries business office prior to the close of business on the last day of the month.
- B. All payroll submission will be paid within 15 working days after the end of the month.
- C. Exception list will be submitted to the business office not later than the 6th working day of the month.
- D. Authorization for any additional pay other than the standard 5- or 7-day working period will be submitted to the business office on designated forms. Upon approval by the business office, the amounts will be posted to the inmate account within 3 working days after receipt.
- E. All personnel adjustments will be made by the 20th working day of the month.
- F. All inmate inquiries concerning inmate pay shall be made via the shop supervisors to the business office.

Purchasing

I. Authority

State legislative code and administrative rule.

II. Purpose

To ensure that statewide procedures and regulations for purchasing are followed by Correctional Industries.

III. Applicability

Correctional Industries Director, Industries Fiscal Officer, Industries Coordinators, and all others involved with the financial aspects of Correctional Industries.

IV. Definitions

None

V. Policy

Correctional Industries officials shall abide by and follow State or Departmental purchasing and procurement regulations. Emergency purchases shall similarly follow such regulations.

VI. Procedures

- A. The Director of Industries shall make available a copy of the *Purchasing Procedures Manual* for each operating and administrative site which has the authority to purchase and procure goods and services. They shall be responsible for updating the manual as changes, deletions, and additions are made by the Purchasing Division.
- B. No purchases shall be made of goods and services without checking availability of goods or services on statewide contract. If exceptions are made for any reason whatsoever, appropriate justification will be made in accordance with the *Purchasing Procedures Manual*.
- C. The Director of Industries shall be responsible for obtaining and maintaining, in an up-to-date format and in sufficient numbers, copies of the *Statewide Contracts Catalog* for all work sites requiring a catalog.
- D. Emergency Purchase Order (EPs) shall be used only in cases of extreme emergency at the discretion of the Industries Coordinator. All emergency purchases shall be conducted in accordance with procedures outlined in *Purchasing Procedures Manual*.
- E. All other transactions for purchases and procurement shall be conducted in accordance with the applicable procedures outlined in the *Purchasing Procedures Manual*.

Recruitment and Training of Inmate Workers

Recruitment and Training

I. Authority

State legislative code and administrative rule.

II. Purpose

To develop a consistent policy to be followed in recruiting and training inmate workers for positions available in Correctional

Industries programs.

III. Applicability

Industries Coordinators, Shop Supervisors, and inmate employees.

IV. Definitions

None

V. Policy

It is the policy of the Department that Correctional Industries shall be responsible for recruitment and training of inmate workers in accordance with the following procedures.

VI. Procedures

A. Recruitment

1. Recruitment for entry level positions will be done by posting such vacancies in areas accessible to those eligible to apply (see Classification Policies on worker eligibility pools). Such postings shall minimally include the job descriptions, hours and location of work, and any unique criteria not included in the job description (e.g. time left to serve).
2. With certain exceptions, i.e., lead workers and highly skilled positions, promotional opportunities will similarly be offered and filled through job posting as described above.
3. Special efforts will be made and documented, in the filling of all vacant positions to conform to affirmative action requirements.
4. Where practical, wait-lists shall be developed in conjunction with the Institutional Assignment Committee.
5. Written records shall be maintained of all vacancies, the method used to fill them, and the length of time they remained vacant. Summary information will be provided to the Central Office on an annual basis in accordance with the fiscal year.

B. Training

1. The Shop Supervisor is responsible for the training of all inmates. Training may be done by lead workers only under the supervision of civilian supervisors.
2. All training shall include emphasis on the safe operation of equipment.
3. Safety training will be documented using the forms the institution prescribes.
4. The amount of training provided to inmates should be based on the position requirements.
5. All training requirements should be reviewed and approved by each Industries Coordinator.

Hiring Inmate Workers

I. Authority

State legislative code and administrative rule.

II. Purpose

To ensure that all institutions with a Correctional Industries program have written procedures outlining the methods of hiring and firing inmate workers.

III. Applicability

Industries Coordinators, Shop Supervisors and inmate employees.

IV. Definitions

Seniority: The length of continuous uninterrupted employment on the same industries assignment or factory, not transferable between assignments or factories.

V. Policy

It is the policy of the Department that Correctional Industries shall have hire/fire authority for inmate employees, and that decisions governing said authority shall be made in accordance with Administrative Regulations relating to assignment and discipline, and with appropriate Department policies and procedures.

VI. Procedures

A. Hiring Procedures

1. Each correctional facility providing correctional industries employment opportunities will identify, through the classification process, which inmates are eligible to participate in the Correctional Industries program.
2. Inmates, who have been properly classified, may interview for employment opportunities with the Shop Supervisor in charge of a correctional industry. Vacant positions will be advertised and/or posted in an appropriate location available to the eligible inmate population.
3. Inmates interviewing for an available position must complete and submit an inmate employment application to a Shop Supervisor, prior to a possible employment interview.
4. The selection of successful candidates will be made according to job skills, experience, abilities, duration of sentence and previous industries employment, i.e., seniority.
5. The Shop Supervisor shall be responsible for hiring each inmate employee. The Industries Coordinator shall be informed of the hiring.

6. All procedures will support decisions based on job descriptions and other written criteria. Written records will be maintained on all applicants regarding position applied for, race, decision, and reason for decision. A summary report of this information will be submitted annually to the Central Office in conjunction with the fiscal year.

B. Firing of Inmate Employees

1. The Shop Supervisor shall have responsibility for firing inmate employees. The Industries Coordinator shall be informed of the firing.
2. Such decisions shall be made in accordance with Administrative Regulations governing discipline and with appropriate departmental policies and procedures.

Inmate Worker Job Descriptions

I. Authority

State legislative code and administrative rule.

II. Purpose

To require job descriptions for all inmate positions in Correctional Industries programs.

III. Applicability

Industries Coordinators, Shop Supervisors, and inmate employees.

IV. Definitions

None

V. Policy

It will be the policy of Correctional Industries that, within the limits established through Administrative Regulations and Directives and the security and safety needs of individual institutions, inmates will be treated as production workers. Job descriptions will be developed in a fashion encouraging the maximum allowable level of individual responsibility to be assumed by inmates.

VI. Procedures

- A. Job descriptions will be prepared for all unique job classifications. These descriptions shall include at least:
 1. Educational requirements where such requirements can be supported as essential for

- satisfactory performance
 2. Experience where such requirements can be supported as essential for satisfactory performance
 3. Examples of activities performed in the specific job classification
 4. Standard levels of performance for the job classification
 5. Standard levels of quality control for the job classification
 6. Responsibilities and authority included in the job classification
 7. Pay ranges for the position
- B. Job descriptions will be submitted in writing to the Industries Director for approval and shall be maintained by each Industries Coordinator.
 - C. All job descriptions shall be reviewed at least annually and resubmitted for approval.

Inmate Performance Evaluation Criteria

I. Authority

State legislative code and administrative rule.

II. Purpose

To specify the criteria to be used in evaluating the performance of each inmate employed by the Correctional Industries program.

III. Applicability

Industries Coordinators, Shop Supervisors, and inmate employees.

IV. Definitions

Performance Evaluation: A written evaluation of a inmate's progress in areas of job performance, work habits, and interpersonal relationships (i.e., how an employee reacts to co-workers, supervisors, and other staff that the employee comes in contact with on a regular basis) in connection with the employee's job assignments.

V. Policy

The Correctional Industries program requires that all Shop Supervisors complete regular performance evaluations for all inmate employees under their direct supervision. This evaluation must include relevant information that explains the individual's performance in terms of meeting the criteria of the assigned job.

VI. Procedures

A. Performance Criteria

1. All performance criteria for inmate jobs will be maintained in writing. Criteria shall be consistent with the nature of the job and programming within the institution. Criteria shall be specific and objective unless a written exception is obtained. Subjective criteria shall be as detailed and explicit as possible and only with prior approval of the Industries Coordinator.
2. All criteria must address:
 - a. Clear delineation of the education, skills, and experience required to perform the job
 - b. A listing of all criteria mutually agreed upon with the host institution (e.g. to qualify for industry, an inmate must complete one full segment of vocational or educational training)
 - c. Those criteria established for all positions (e.g. must have at least 1 year to serve).
3. All criteria shall be maintained by the Industries Coordinator, a copy provided to the Assignment Committee, and they shall be reviewed annually and updated as necessary.

B. Performance Evaluations

1. Work program supervisors shall prepare a performance evaluation of each inmate at the end of the probationary period and every 6 months thereafter.
2. A special performance evaluation shall be prepared on inmates being recommended for promotion, demotion, or removal.
3. A copy of each performance evaluation shall be forwarded to the Industries Coordinator and to the master record file of the inmate.

Orientation

I. Authority

State legislative code and administrative rule.

II. Purpose

To provide the inmate worker a document of expectations, responsibilities, procedures, and general information that he/she may refer to during employment.

III. Applicability

Correctional Industries Coordinators, Shop Supervisors, and inmate employees.

IV. Definitions

State Industry Evaluation Report

Inmate's Name _____ D.O.C. No. _____
Evaluation Period _____ Factory _____
Pay Period _____ Job Assignment _____

1. Attendance <input type="checkbox"/> 0 Absent more than 3 days <input type="checkbox"/> 2 Absent 2-3 days <input type="checkbox"/> 4 Absent 1 day <input type="checkbox"/> 6 No absence	5. Care of Working Area <input type="checkbox"/> 1 Needs reminding <input type="checkbox"/> 2 Fair <input type="checkbox"/> 3 Avg.-sustains acceptable level <input type="checkbox"/> 5 Maintains area neat & clean
2. Observance of Safety Rules <input type="checkbox"/> 1 Observes rules when watched <input type="checkbox"/> 2 Observes rules most of time <input type="checkbox"/> 4 Observes rules at all times <input type="checkbox"/> 5 Helps promote safety	6. Care of Equipment, Materials and/or Stock <input type="checkbox"/> 1 Marginal <input type="checkbox"/> 2 Fair <input type="checkbox"/> 3 Careful, minimal losses—upper 50% <input type="checkbox"/> 5 No losses, keeps in proper condition
3. Initiative & Skill Development <input type="checkbox"/> 1 Marginal <input type="checkbox"/> 3 Fair <input type="checkbox"/> 5 Good, upper 50% <input type="checkbox"/> 7 Seeks resp.-self starter	7. Quantity of Work <input type="checkbox"/> 2 Marginal <input type="checkbox"/> 4 Fair <input type="checkbox"/> 6 Good, upper 50% <input type="checkbox"/> 8 Exceptional, top 20%
4. Quality of Work <input type="checkbox"/> 1 Marginal <input type="checkbox"/> 3 Fair <input type="checkbox"/> 5 Good, upper 50% <input type="checkbox"/> 8 Very low errors—top 20%	8. Attitude Toward Peers & Supervisor <input type="checkbox"/> 1 Marginal cooperation <input type="checkbox"/> 3 Generally cooperative <input type="checkbox"/> 4 Usually cooperative <input type="checkbox"/> 6 Full coop.-promotes harmony

Earned Time Credits _____ Days Total Points _____
Comments (Progress, Strengths, Improvement Needs, Recommendations) _____

Signature of Person Preparing Evaluation Signature of Person Reviewing Evaluation

Copies: 1st & 2nd—Inst. Records
3rd—Director of Industry
4th—Industrial Coordinator
5th—Supervisor
6th—Inmate

Receipt of Orientation Information

I have been provided the opportunity to examine the orientation material and understand the content of the following information:

<u>Policies and Procedures</u> Compensation Plan Wage Disbursal Plan Hiring and Discharging of Prisoner Employees Prisoner Resignation/Transfer Safety and Sanitation Shop Operations Incentive Programs Hours of Scheduled Work Non-Discrimination Prisoner Staffing Training Programs	(Check) _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____
<u>Equipment Safety and Operating Instructions</u> Type of Equipment: _____ _____ _____ _____ _____ _____	_____ _____ _____ _____ _____ _____
<u>Other Information:</u> _____ _____ _____ _____ _____	_____ _____ _____ _____ _____
<u>Issuing Authority:</u> Production Manager Industry Operation	Signed: Prisoner Employee Date

handbook shall include work hours, job responsibilities, supervisory relationship, termination and transfers, criteria for implementation of inmate performance sentence credits, grievance procedures, procedures for obtaining letters of recommendation, and other information deemed necessary by the Industries Director or designee.

V. Policy

Upon initial hiring, all inmates must be provided orientation material regarding employment conditions and descriptions of other operational aspects of the correctional industries operations.

VI. Procedures

A. Orientation Materials

1. Orientation materials explaining the Correctional Industries program will be included in the Inmate Handbook and must be posted in an area available to the general inmate population. This orientation material must include:

- a. The purpose and objectives of the Correctional Industries program
- b. Jobs available
- c. Compensation plan
- d. Instructions for application.

B. Employment Information

1. Inmate employees, hired for the correctional industries positions, must receive orientation material prior to employment.
2. This orientation material will include:
 - a. Safety and operating instructions for equipment
 - b. Hours of work
 - c. Payment plan
 - d. Special policies and procedures affecting the inmate employee
 - e. Fringe benefits (where applicable) such as sick leave, vacation time, etc.

C. Written Acknowledgment of Orientation

1. The Shop Supervisor, supervising the inmate employee, shall obtain from the employee a written acknowledgment of receipt of the orientation material.
2. One copy of the acknowledgment shall be dated and maintained at the industries operation location and one copy shall be sent to the records section of the institution for placement in the inmate's file.

Safety Programs

I. Authority

- 84 State legislative code and administrative rule.

II. Purpose

To establish policies and procedures for the safety and protection of civilian and inmate workers in Correctional Industries.

III. Applicability

Director of Industries and his/her subordinates, Warden or Superintendents, Industries Coordinators

IV. Definitions

None

V. Policy

The state Correctional Industries will comply with all Federal and state occupational safety and health laws to establish a work environment conducive to the prevention of accident, injury, or illness. All employees are required to cooperate in implementing the Health and Safety Program and in complying with its reporting requirements.

VI. Procedures

A. Safety Committee/Coordinator

1. A Safety Coordinator will be responsible for monitoring industries compliance with all health and safety requirements and for coordinating with other state agencies with jurisdiction over health and safety matters.
2. An industries safety committee shall be consist of the Safety Coordinator and two industries professional and supervisory staff chosen on a rotating basis to allow full participation of all staff. The committee will undertake a safety inspection of all shops on a monthly basis. The inspection shall determine whether safe working conditions exist, safe working habits are demonstrated, and safe work procedures are used, as well as ensuring that health and sanitation conditions do not present any danger. The Coordinator will present a written report of its inspection to the Industries Director within 1 week of completion. Copies of the report will be provided to the Industries Coordinators. Any major health or safety hazards will be reported immediately so that corrective action can be taken or the area secured. Oral briefings on the written report will be conducted by the Safety Coordinator with the Shop Supervisor to clarify the written report after it has been submitted. Records will be maintained of committee reports and of corrective actions taken.
3. At least annually the local fire chief and/or fire inspector will be invited to make an inspection with the Committee.

4. Each institution will appoint two or more inmate workers and at least one supervisory staff to join the Safety Committee when it inspects shops in that institution. The Industries Coordinator for the institution shall be responsible for the selection of inspection committee members.

B. Written Procedures

1. Safety and health rules will be distributed to all staff and posted in each work area. These rules will mandate the appropriate use of safety equipment and clothing for all work staff.
2. Written procedures will include, but not be limited to, the following:
 - a. control of equipment
 - b. control of environment
 - c. control of hazardous materials
3. Each operating unit's handling and disposal of chemicals, waste material, and other potential pollutants of air, soil, or water shall conform to Environmental Protection Agency standards.
4. Emergency numbers, location of fire extinguishers, first aid equipment, safety routes, and emergency procedures shall be posted in each work area. All personnel shall be made aware of procedures to be followed in case of accident or injury.
5. A complete review of all safety procedures will occur on an annual basis. The purpose of this review will be to:
 - a. Identify any necessary changes in procedures required by reclassification of materials or wastes.
 - b. Provide an updated plan for the implementation of modernizing equipment and reducing health and safety hazards.
 - c. Identify alternative materials to those identified as hazards.
 - d. Provide results of this review to the Industries Coordinator and the Warden or his designee.
6. The reporting of safety problems will occur on an as needed basis. However on at least a monthly basis, a written report will be submitted to the Industries Coordinator including at least the following:
 - a. A summary of all job-related injuries during the previous month. An injury will be considered reportable if it results in examination by the medical unit.
 - b. Reconciliation of perpetual inventory of hazardous materials.
 - c. Summary of discipline due to safety related matters.

C. Complaints

1. Every Correctional Industries worker has the right of complaint regarding perceived hazards in the

work area.

2. Initial complaints should be on an informal basis to the immediate work supervisor. If such complaint does not result in satisfactory resolution of the basis for the complaint, the worker may file a formal written complaint. This complaint shall promptly be directed to the Correctional Industries Safety Committee through regular supervisory channels.

D. Penalties

1. Supervisors will be responsible for enforcement of safety rules.
2. Any violations of safety rules will be reported immediately.
3. Inmate workers and/or staff violating any safety rule will be subject to disciplinary report, reprimand and/or termination.
4. Any industries employee who knowingly allows an inmate worker to violate a health or safety rule or who fails to take disciplinary action against an inmate worker observed violating a health or safety rule, will be subject to disciplinary action.

VII. Discussion

A major management responsibility for industries leadership is the establishment of policies and procedures directed at eliminating needless injury or disease to its workforce. Safety and health standards established for free world businesses are the starting point for industries health and safety measures. However, the frequent inexperience of its inmate workforce with productive work may necessitate even more stringent precautions.

Prison industries must adhere to Federal and state laws regulating employment conditions affecting worker safety and health, including OSHA. In a few states, legislation establishes health and safety requirements that are specific to prison industries. Consideration should be given to the use of local public officials in reviewing safety and health measures. State law may also require the appropriate state official(s) to independently ensure industries' compliance with health and safety laws.

Cost considerations should not excuse industries' mandate to follow the requirements of these laws. Moreover, failure to follow these laws may subject industries management to personal liability for injuries suffered by inmates or staff that are directly related to such lapses.

The key element of any health and safety program is in the establishment of a central entity with responsibility and authority for establishing a health and safety program, monitoring its effectiveness, and being able to remedy its shortcomings. The combination of Safety Coordinator and Safety Committee illustrated above should therefore have the full support of industries and corrections leadership to be effective.

The use of institutional disciplinary action procedures for in- 85

mates violating health and safety requirements should supplement, not be in lieu of, industries action.

Wages and Reimbursements

Inmate Wages and Other Compensation

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish policies and procedures for paying inmate wages that will be effective incentives and rewards for productive work in prison industries.

III. Applicability

Industries Director, Shop Supervisors, Industries Fiscal Officer, staff involved with the financial aspects of Correctional Industries, and inmate employees.

IV. Definitions

MTM Studies: Motion, time, and methods analysis for the determination of productivity standards.

Performance Pay: A plan for inmate wages that provides both incentives and base pay.

V. Policy

It is the policy of the Department of Corrections to establish written procedures that will ensure uniform standards for the compensation of inmates. Incentives and rewards for productive work shall be provided in a fair and equitable manner to motivate inmate work and promote productivity. Compensation shall take into account individual performance factors such as skill, hours worked or worker responsibilities, and team productivity. The overall level of inmate wages will be determined by the amount required to attract an appropriate quality of worker without overburdening the financial stability of the industries program. To the extent practical, the inmate compensation scheme shall emulate those used in most private businesses of like activity. Specific standards will be established for productivity measurement.

VI. Procedures

A. Full-time/Part-time Workers

All inmates working in prison industries shall be compensated by either an hourly wage scale or by performance pay that may also incorporate an hourly rate, depending on the wage plan followed (either C or C1 below). Part-time workers will be paid on a per hour basis. Full-time workers will be paid per-

formance pay. A full-time work assignment shall ordinarily mean work for no less than 35 hours per week (5-day work week; work day of 7 hours). Assignment, to part-time work is for work in industries not exceeding 20 hours per week.

B. Part-time Workers: Pay Calculation

Hourly pay rates shall have three categories reflecting differences in skill levels. These are (1) apprentice/unskilled, (2) semi-skilled, and (3) skilled. Within each category a step increment may be earned every 6 months. Promotions from one category level to another will be to a step level with the new category that is paid at the same rate as if the individual was given a step raise within the former category. Part-time workers will be assigned as needed without regard to pay category. Supervisor evaluations may vary the earned hourly rate applicable to each category for each worker within a range of 115 percent to 85 percent of the base rate.

C. Full-time Worker: Pay Calculation

- Performance pay shall be composed of a base pay for hours worked plus incentive pay for group productivity. The base pay rates shall have five categories reflecting skill levels and responsibilities. These are:
 - probationary workers (category 1)
 - unskilled and untrained workers performing general labor work or as a trainee for semi-skilled work (category 2)
 - semi-skilled worker assigned to equipment or a job function not of a complex nature, in which an acceptable level of proficiency can be attained within 3 months (category 3)
 - skilled workers having considerable training in work that requires a high degree of judgment (category 4)
 - skilled workers with responsibilities for supervising or training other inmate workers (category 5).

Workers responsible for quality control review will be assigned to categories 4 or 5.

- The performance pay incentive component shall be based upon the value of an industries shop production minus the rated production value for the shop's assigned work force. The MTM method or similar technique will be used to establish production standards wherever possible. All full-time workers assigned to a shop, including clerical or janitorial workers, will share in its incentive pay pool. Distribution of the incentive pay pool to individual workers will take into account their relative base pay rates, attendance, and supervisor's ratings.

- Workers in nonproductive areas such as central warehouse or central office clerk will have their incentive pay calculated on the basis of total production for the fiscal period. An alternative option is to pay nonproduction workers at the hourly rate.

- Approximate distribution of pay categories within a single shop shall be as follows:

Category 1	10%
Category 2	20%
Category 3	30%
Category 4	30%
Category 5	10%

Supervisors will be responsible for assessing the pay categories distribution and application to individual inmates.

C1. Performance Pay (alternative)

- Performance pay will be paid solely on the basis of production. No base pay will be provided, except for probationary workers who are not eligible for incentive pay. The production standards will be developed in such a manner that a Base Production Level must be met before incentive compensation is earned. Compensation for production will be paid based on a percentage of the total amount of production.
- Production standards will be developed in such a manner that the pay will generally fall within the general pay guidelines for work performance.
- The inmates in each industry will be paid as a group. (Group incentive rather than individual incentive.) The method of calculating the total group's pay and how it is apportioned to each individual should take into account hours worked, category level, and supervisor's evaluation.
- Each inmate worker will be evaluated by his supervisor per the procedures outlined above. This evaluation will be utilized in determining individual pay as described herein.
 - Each standard product will be assigned a time value. Where no value has been assigned for a special or custom product, the Shop Supervisor will assign a time value based on similar products. This value will be periodically reviewed for increasing or decreasing, based on such factors as changes in equipment, production process, materials, etc., which affect the labor content required to produce the product.
 - The total units placed in finished goods each day will be multiplied by their assigned time value and recorded on a daily production report. All products must be quality inspected and passed before being credited to the day's production. Any customer returned goods due

to worker controllable quality defects will be deducted from the production value at twice their assigned value.

- Each industries job should have a class level, based upon degree of difficulty. This class level multiplied by the time value of the product times the wage scale base establishes the dollar value of what the productivity pays the inmate.
 - An alternative approach for calculating wage pools is to use a dollar value as the base rather than the time value shown herein.
- If an employee is on an incentive pay job and he is unable to produce 100 percent due to no fault of his own, he will be paid at the regular hourly rate rather than the incentive rate.

D. Assignment Principles Affecting Wages

- All inmates will be assigned to Grade 1 or probationary status for a minimum period of 1 month. In order to qualify for advancement to a higher grade, it will be necessary to receive a satisfactory performance rating on the first and subsequent evaluations.
- If the first evaluation of an inmate on probationary status results in a poor rating, the inmate will be counseled on how to improve. If improvement is not evident by the end of the next evaluation period, the inmate may be terminated from the program.
- In exceptional circumstances, it may be appropriate to bypass the probationary status for a newly assigned inmate due to special skills or past performance in other industry positions. In this event, the supervisor will recommend and gain approval of the Industries Coordinator before taking action.
- There shall be no minimum time requirement for advancement in grades except from the probationary grade. Advancement shall be based on an inmate's performance and job skills.
- Inmates will be assigned pay grades on the basis of aptitude, attitude, job skills and seniority in making assignments. All other things being equal, seniority will be the determining factor for advancement in grade.
- After initial assignment to a new grade or position, the inmate will be given reasonable instructions and assistance to learn the job. If it becomes obvious that the inmate is incapable of properly performing the work (e.g., performs inefficiently or continues to make excessive scrap), he will be removed from the job and reassigned to his previous grade.
- In the event an inmate receives two consecutive inadequate evaluations after promotion to a higher grade, a reduction to a lower grade is required.

E. Time Records

1. All industrial operations will record hours worked by the use of time clocks. The inmates will clock in and out any time they return or leave the work area, including lunch periods.
2. Supervisors will be responsible for insuring that the time clocks and cards are secure from tampering or abuse. Any inmate that abuses the time clock or cards, or punches another inmate's card, will receive a disciplinary write-up. If found guilty, dismissal from the work force will be recommended.
3. In all operations where a time clock is not available or practical, it is the immediate supervisor's responsibility to maintain accurate records of inmate hours worked.
4. Supervisors will be responsible for assuring that all work time is properly recorded for payroll purposes. Inmates shall not be involved in the computation of time or pay.

VII. Discussion

Inmate compensation schemes are integral to correctional industries operation. Typically the authority to pay wages is derived from legislation explicitly providing the corrections agency discretion to do so. Only infrequently does such legislation require that specific criteria be used in establishing the wage system. The agency's discretionary power is then the sole basis for the establishment of wage scale policies and procedures.

Most of the key elements of the model policies and procedures for inmate wage systems are noncontroversial. Decisions may, nonetheless, be required for determinations of:

- need/desire for uniformity across different prisons' security levels
- type of incentive pay system desired (if any) and method used to determine production standards basis for incentive pay
- degree to which worker evaluations affect pay determinations separate from other decisions, e.g., fire or warning
- fringe benefits to be offered, e.g., paid sick or annual leave
- availability of injury pay provisions and relationship to any workers compensation equivalent for inmates
- availability of bonus payments distinct from incentive pay.

Other issues to be considered in adopting a pay plan appropriate for an industries program include whether incentive pay should be in lieu of the hourly rate or in addition to a base hourly rate. The level of the base hourly rate varies considerably from one state to the next and, therefore, may affect decisions regarding incentive pay. In calculating incentive pay, it is possible to use individual, group and, factorywide incentives as the base.

Different philosophies about the role of prison industries or even corrections goals may result in differing decisions. Key considerations here are the degree to which any private sector emulation objective has implications for the wage system versus the ability of corrections management to permit private sector-like operations.

Fringe Benefits

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish policies and procedures for the provision of fringe benefits to inmates employed in prison industries.

III. Applicability

Industries Director, Shop Supervisors, Industries Fiscal Officer, staff involved with the financial aspects of Correctional Industries, and inmate employees.

IV. Definitions

None

V. Policy

It is the policy of the Department of Corrections to provide fringe benefits to inmates employed full-time in the industries program.

VI. Procedures

The following fringe benefits will be provided.

1. *Vacation Pay.* Annual leave may be earned by full-time workers on the basis of hours worked on a ratio of 1 to 20. Unused annual leave may be paid out at the termination of employment at the inmate's last wage rate.
2. *Holiday Pay.* Full-time workers are eligible to be paid for nonwork days due to national or state holidays. Employees required to work on holidays will be paid one and one-half the current base pay plus holiday pay in addition to any earned incentive pay.
3. *Sick Leave Pay.* Sick leave may be earned by full-time inmate workers on a 1 to 20 ratio for hours worked. Unused sick leave at the termination of employment will not be compensated. Earned sick leave may be transferred to new employment following transfer to a different institution where the new employment occurs within 6 months of transfer.

Medical verification will be required before sick pay can be credited to the inmate claiming it.

4. *Injury Pay.* If a full-time inmate worker is injured during the regular established working hours and the injury is not the result of gross negligence or misconduct, the employee will receive regular pay for those days absent due to the injury for a period of up to 6 months. Injury pay will not be taken from the group incentive pay pool. Part-time workers injury pay shall be calculated on the basis of highest past earnings for part-time work for a similar period of time.
5. *Other Nonwork Pay.* Nonwork days due to inventory or other causes shall not be compensated. Nor shall inmates be paid for work while absent from the work area due to meeting visitors, counseling sessions, attending administrative hearings, etc. However, inmates may apply earned annual leave to noncompensated periods.

Wage Disbursements

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish an equitable system for the disbursal of inmates wages.

III. Applicability

Industries Director, Shop Supervisors, Industries Fiscal Officer, staff involved with the financial aspects of Correctional Industries, and inmate employees.

IV. Definitions

None

V. Policy

Where applicable, inmates who are employed in Correctional Industries will have their wages disbursed for various needs, in the amounts determined by the Director of Corrections or the Industries Advisory Board.

VI. Procedures

- A. Twenty percent of net earned wages less any applicable taxes shall be placed in the inmate's savings account. This money shall not be withdrawn until the inmate is paroled, released, or dies.
- B. The remainder of the earnings will be disbursed with the following priority:

1. 15 percent for payment on institutional per diem
2. 15 percent for dependent support
3. 15 percent to compensate the state for damages resulting from criminal conduct resulting in their imprisonment
4. 15 percent for civil judgment resulting from the criminal conduct resulting in their imprisonment
5. 25 percent for purchase of clothing and commissary items for the inmate's personal use
6. 15 percent for paying restitution or fines ordered by the sentencing court

C. If disbursements made from any priority are below the authorized maximum percentage, the unused portion may be added to the next lower priority or to any lower priority in descending order.

VII. Discussion

The notion of wage disbursements is based on the premise that inmates are paid a reasonable wage for their work performed, i.e., at least minimum wage. Traditional compensation for prison industries labor, however, is intended as gratuities rather than wages, and thus does not provide a sufficient base from which to make deductions. Some states only deduct earnings from inmates in shops that pay prevailing wages. In order for states to implement a wage disbursement policy as described, inmate wages will have to be raised to a level high enough to allow for deductions.

See also Part IV discussion on "Impact of Court Actions on Prison Industries."

Supervision of Inmates

I. Authority

State legislative code and administrative rule.

II. Purpose

To ensure that inmates employed in correctional industries receive adequate supervision to effectively carry out the production activities of each industrial program.

III. Applicability

Wardens, Industries Coordinators, and Shop Supervisors.

IV. Definitions

None

V. Policy

It is the policy of the Department that inmates working in Correctional Industries be supervised by industries staff at all times. 89

Security staff need not supervise production activities unless otherwise deemed necessary by the Warden or Superintendent of the institution for security reasons, i.e., maximum security institutions.

VI. Procedures

A. Inmate personnel shall be supervised by Correctional Industries staff while involved in production activities.

B. Correctional officers may be provided as needed to supervise non-production activities such as inmate movement, showers, searches for contraband, etc.

1. Where deemed necessary, maximum security institutions will provide at least one correctional officer per industrial shop.
2. Where mass inmate movement coincides with industry personnel work schedules, such movement will be supervised by industry personnel.

VII. Discussion

Factors to consider when developing policies for inmate supervision are the number of inmates, the type of shop or activity, and the security level of the inmates involved. Correctional officers are generally not needed to supervise industry inmates with the possible exception of those in maximum security facilities. At least 1 trained staff person, however, should be available at all times for every 10 to 12 inmates. Under no circumstances should inmates be responsible for supervising other inmates in nonproduction activities. Inmate workers may be given, however, "lead" worker responsibilities for training new workers on a one-to-one basis.

Security and Related Institutional Policies and Procedures

Security

I. Authority

State legislative code and administrative rule.

II. Purpose

To ensure that each institution has written procedures stating the Warden is responsible to provide security for Correctional Industries and to outline the duties of those persons providing for security in industry areas.

III. Applicability

90 Wardens, Assistant Wardens, Industries Coordinators, Shop Supervisors.

IV. Definitions

None

V. Policy

It is the policy of the Department that the security within areas used by Correctional Industries is the responsibility of the Warden or Superintendent of the facility in which the industry is located.

VI. Procedures

A. Written procedures will specify that the Chief of Security is responsible for providing security to Correctional Industries, supplying correctional officers as needed to supervise non-production activities such as inmate movement, showers, etc.

B. Security arrangements, specifically post descriptions, shall be approved by the Warden in consultation with the Industry Coordinator and Shop Supervisors.

C. See also policy on Inmate Supervision.

Classification for Inmate Work Assignment

I. Authority

State legislative code and administrative rule.

II. Purpose

To insure that each institution having a Correctional Industries program has a written procedure for the administrative classification, demotion, suspension, and removal of all inmate workers.

III. Applicability

Industries Coordinators, Shop Supervisors, and inmate employees.

IV. Definitions

Job Assignment: A job assignment is an assignment of duties within a work program. The assignment may be specific or general in the duties to be performed.

V. Policy

It is the policy of the Department that the classification committee should be responsible for making available labor pools for inmate work assignments. Moreover, no inmate shall be assigned or removed from a work assignment for punitive purposes, and that such assignment or removal shall not be related to discipline for rule infractions except insofar as such infractions are job related and manifest inability on the part of the inmate to function in the job or at the job's location.

VI. Procedures

A. Classification

1. Classification for work assignment shall be made by a committee at the institution to which the inmate has been assigned (i.e., parent institution) by the reception center classification committee.
2. An inmate who wishes to appeal his work assignment classification may do so by using the appeal procedures outlined in the Administrative Code for use in other classification appeals.
3. The procedures outlined herein for the making of job assignments and removals shall not allow for deference to the wishes of job supervisors or fellow inmates, nor shall such decisions be based solely upon the self-initiative of inmates.
4. The classification committee is responsible for institutional placement and custody level of the inmate.
 - a. Assignment availability for any inmate is that within the institution level to which he has been assigned and within the custody level status applied to him.
 - b. Job needs shall not override the security and safety interests of the State.

B. Labor Pools and Waiting Lists

1. Those classified and awaiting placement on assignments are placed in labor pools or on waiting lists maintained by the classification director. This provides an immediate source of workers for assignment and an orderly, equitable method of placement. Further, it is an incentive for inmates to maintain acceptable behavior if unassigned, or if already assigned, to continue to perform responsibly while waiting for an opening in an assignment to which they aspire. Irresponsible behavior or performance may be cause for reclassification and subsequent removal from a pool or waiting list.
2. All inmates should be drawn from pools/lists with selection based on need, disciplinary record in institution, and desire to work. Those with special skills may be placed directly on assignment or at the top of a waiting list or pool.
3. The classification director should maintain a single industries pool of all who have been classified for work in industries. Industries maintains its own waiting list, made up of those referred to it by the classification director/labor pool. This list should contain no more names than are normally hired during a 60-day period. It is the responsibility of industries to ask for additional names when its list needs replenishing.
4. See also policies on Recruitment and Hiring of Inmate Workers.

C. Demotions to a lower grade shall be based on inability to perform the assigned duties due to lack of skill development, unwillingness to work at a prescribed level, uncooperative attitude, or other negative characteristics.

1. Demotions shall be recommended by the supervisor of the institutional work program to the Industries Coordinator.
2. The Industries Coordinator shall review the recommendation and approve or disapprove within 5 working days.
3. The supervisor may make a demotion assignment while awaiting actions required in paragraph 2 of this rule. If the recommendation is reversed by the Industries Coordinator, the inmate shall be reassigned to the original job grade.

D. Suspensions and Removals

1. Discipline and dismissal of unsatisfactory inmate employees should follow the pattern customarily practiced in private industry. Progressive counseling and appropriate discipline (documented) should be practiced with inmates who have poor attitudes and attendance records. Where production is inadequate, or quality of work unacceptable, realistic assistance and training must be given before reclassification is sought. Accident-prone inmates may also be referred for reclassification. Progressive counseling is not required for some major misconducts. Such misconduct as stealing from the assignment, making weapons, fighting, threats to supervision, and gross insubordination are cause for dismissal from the assignment.
2. It is not necessary that a misconduct report be written for every minor rule violation before referral for reclassification is made, although documentation is required.
3. Inmates removed from industries for cause should not be reassigned to the industries pool for at least 12 months.

VII. Discussion

An alternative approach to that given here of classification for work assignment is that of the unit management concept. In unit management, program assignment is matched with housing assignment under a unit management team. One type of functional unit created by this merger of assignment and housing is the work/training unit. On the one hand, such an approach may offer more efficient utilization of resources, i.e., one entire unit devoted to industries as its prime *modus operandus* around which other complementary programs can be coordinated. Other advantages may include a more stable workforce. Yet conversely, issues may arise as to control over the inmate workforce within the institution, as well as redefining industries

functional link with industries central office. Experimentation with the unit management approach has been limited; to our knowledge no state has implemented this concept with respect to prison industries. For additional information, see Levinson and Gerard, "Functional Units: A Different Conceptual Approach," *Federal Probation*, December 1973, pp. 8-16, and Smith and Fenton, "Unit Management in a Penitentiary: A Practical Experience," *Federal Probation*, September 1978, pp. 40-46.

Schedule and Inmate Work Hours

I. Authority

State legislative code and administrative rule.

II. Purpose

To establish and provide a normal work day for inmate workers in Correctional Industries program, similar to that experienced in private industry as well as consistent with proper penal administration.

III. Applicability

Correctional Industries Director, Industries Coordinators, Shop Supervisors, and inmate employees directly involved with the Correctional Industries program.

IV. Definitions

Normal Work Day: A work day that should be no less than 7 hours which includes two coffee breaks. A lunch break is uncompensated and is therefore not calculated in as work time.

VI. Procedures

- A. Written procedures shall exist for all industrial shops, stating the length of the work day and scheduling of actual hours and breaks, as follows:
 1. Length of the work day shall be established by the Industry Coordinator with the approval of the Warden or Superintendent.
 2. Both hours and lunch breaks should be similar to civilian working hours and lunch hours.

V. Policy

It is the policy of the Department that the Warden or Superintendent of each institution with a Correctional Industries program shall have final authority on determining appropriate work hours for inmates employed in these industries; that such hours shall maximize the availability of inmate employees for production purposes and minimize interruptions to production; and that where workloads are sufficient, second shifts shall be utilized rather than overtime.

B. Scheduling

1. In conjunction with the Warden, a schedule shall be established, consistent with proper penal administration, which allows a normal work day for prisoners employed in the Correctional Industries program.
2. Shop Supervisors shall develop and post in the industries operation area the work day schedule for that operation.
3. Whenever necessary, programs and other activities shall be scheduled in the evening to minimize interruptions to inmates employed in industries.

C. Absences from Work

1. Paid absences from work shall be established by industrywide policy. Excused absences should be kept to a minimum, e.g., parole board hearings, and a list of such absences shall be posted in each shop area.
2. Inmates may be excused from work for such reasons as predetermined above, with the prior approval of the Shop Supervisor.
3. Other absences will be considered leave without pay and unexcused absences may result in termination or suspension of employment.

VII. Discussion

Factors to be considered in scheduling and inmate work hours are of two types. First, the nonwork needs of inmates, i.e., counseling, visits, etc. Efforts should be made to schedule as many of these activities during evening hours to minimize disruptions to industries programs. Second, industries can benefit from educational and vocational programs by using them as a prerequisite to industries work assignments. Efforts should be made to create formal linkages with these programs through testing and other means. For example, prior to hiring for industries, inmate must meet minimal educational requirements.

Part IV. Court Actions and Standards Impacting Prison Industries

Section 1: Court Actions

Introduction

The past decade has seen major changes occurring in corrections. The increased acceptance of deterrence/isolation in place of rehabilitation or reintegration theory has resulted in unprecedentedly high prison populations. At the same time, court decisions have significantly limited the discretion of corrections officials to unilaterally deal with their charges. New initiatives are needed for corrections to respond to these new pressures.

The search for new correctional initiatives has led policymakers to re-examine the ability of prison industries to function as a major program activity. A number of factors, including inmate idleness from overcrowding, increased costs of incarceration, and the perceived significance of employment on recidivism, have merged into the view that revitalization and expansion of prison industries are central to corrections success. Federal government efforts to support industries revitalization have fueled this movement, with some success. The potential for further expansion of prison industries, however, far exceeds that achieved to date.

One reason for the limited revitalization of industries is the lack of analysis of any significant barriers to its expansion. Such analysis is indispensable to systematic efforts to overcome these barriers. It is the purpose here to analyze one specific barrier to increased prison industries activities: legal impediments presented by judicial decisions impacting on prison industries operations. Analysis of court decisions can lead to recommendations for both remedial legislation and operational actions by industries managers to forestall court action. Of course, not every state will find every recommendation relevant to its particular situation. Nevertheless, a collective review and synthesis of the multitude of court actions impacting on prison industries is critical information for both industries managers and other correctional policymakers.

The court decisions reviewed here are of two types: those that affect prison industries operations directly by limiting industries managers, discretion, and those that have an indirect

effect through their impact on other aspects of corrections with which industries interacts. This analysis attempts to organize the case materials to be of maximum utility to the practitioner by distinguishing between overall organizational issues affecting industries, those central to industries operation, and issues related to marketing. Inmate compensation is also treated separately here, due to the extensive number of cases on this issue. Prior to the discussion of these cases, a summary of relevant legal principles is provided.

Legal Framework and Relevant Principles

Whatever their mode, court actions* are, of course, based on legal principles. These may come from federal or state constitutions or statutes or even from the common law that derives from past court decisions that supplement statutory law. An understanding of some of these basic concepts involved is helpful to the correctional decisionmaker when reviewing the outcomes of these cases.

The most conspicuous source of law to corrections is the several federal constitutional law principles that have been the basis of much recent litigation against corrections. These legal principles encompass both substantive rights and the procedures used to make decisions. Thus the U.S. Supreme Court decisions in *Wolff v. McDonald* (1974) and subsequent cases require specific minimum procedures to be afforded inmates whenever corrections seeks to take from the inmate any substantive right. For example, discipline of inmates may require some sort of hearing before it may be imposed. At the hearing the inmate must be allowed to introduce evidence or otherwise respond to allegations of misbehavior. The substantive rights that are subject to due process procedural protections include both rights guaranteed by the Federal Constitution and those granted by state law.

*As used here, court rulings include consent orders agreed to by the litigating parties as a means of ending litigation. They have the same force of law upon the signers as a court order that follows a ruling on the disputed facts and applicable legal principles. Consent orders are of little precedential value to other courts, but they can be used as an indicator of litigation's expected outcome.

Substantive constitutional rights under the Federal Constitution include the right to be free of cruel and unusual punishment (Eighth Amendment), the right to equal treatment (Fourteenth Amendment), religious freedom, freedom of speech (First Amendment), and other guarantees not all of which are ordinarily applicable to the specific context of prison industries. The courts use three tests for the Eighth Amendment guarantee of freedom from cruel and unusual punishment: grossly disproportionate punishment, punishment without a rational relationship to the attainment of specified articulated penological purposes, and systematic indifference to pain that might be alleviated by correctional agency actions such as provision of medical treatment. These tests apply to acts committed while a person is undergoing punishment, even if not themselves having a punishment purpose. At the same time, courts have ruled that neutral acts, such as the failure to provide rehabilitative opportunities, are not cruel and unusual punishment.

A second significant constitutional guarantee is equal protection of the laws, i.e., equal treatment. In the correctional context the principle requires that there be no arbitrary distinctions among inmates. The primary test for arbitrariness is that there is no rational connection between the classification distinctions and some legitimate government goal. However, where the classification uses a "suspect" criteria such as race or sex, the government must prove that there is a significant and legitimate government goal being served and that the classification system in use is the best method for achieving that goal.

U.S. Supreme Court rulings suggest that the First Amendment rights of freedom of religion and speech are given priority in many instances over other governmental objectives. This is true even in the correctional context, so that corrections must make some accommodation with inmates' First Amendment claims. However, if inmate exercise of First Amendment rights would jeopardize the security of the institution or otherwise seriously impair the operations of the facility including industries, no accommodation is required. A balancing test is used in these instances to determine which will prevail.

Of some significance is the doctrine of unconstitutional conditions. This means that individuals cannot be required to give up constitutional guarantees in order to be eligible for other state-given rights. For example, a welfare recipient may not be required to give up his or her right to free speech so as to be eligible for welfare.

As noted above, not all rights of inmates derive from the Constitution. Other rights may be gained by statutory enactment. Determination of whether a specific law does grant inmates rights or merely vests discretion in the corrections agency to allow inmates certain privileges is the responsibility of the courts. Mandatory language such as "shall" generally denotes a specific right. Nonetheless, a court may find that the "shall" of one law is qualified by other statutory provisions that show a legislative intent to provide discretionary authority to the corrections officials.

Yet other types of statutes (in addition to those relating to the inmate workforce) affect industries. Legislation establishing the correctional agency or the industries itself may provide guidelines for the operations of industries. These include laws

relating to the goals of inmate work assignments, the length of the workday, the sale of industries goods and services, purchase of raw materials, the status of industries civilian employees, etc. Legislation may also provide for specific correctional agency actions to support industries, such as the provision of space or the DOC classification/training for industries jobs. Lastly there are those laws that mandate specific procedures be used in setting industries policies. These may be either general, such as the application of a state administrative procedures act, or specific, such as a requirement for public hearings before starting new industries activities.

Methodology

The several cases discussed here were located by two principal means. First, court decision reporter systems were checked for relevant cases. This included both general case reporting systems such as the West "key-note" digests, and more corrections-specific reporters such as that edited by Professor Merrit at the University of Toledo Law School. Case decisions were reviewed for inclusion here using three criteria. First, they directly involved legal issues arising from industries operation. Second, they involved legal issues arising from the interaction of industries with the correctional agency. Third, the decisions involved issues analogous to the prior two points.

Analysis of the court decisions examined first whether the relevant language was in the court order itself or an integral part of the reasoning making up the decision (i.e., the case "holding"). Alternatively, the analysis determined that the opinion language was dictum: that is, not binding on the court in deciding future cases. In this regard the reader should recognize that although courts are generally bound to follow their decisions in prior cases, no such rule applies to that part of prior decisions called dictum. In the main, however, dictum in a court's opinion does provide significant insight to how the court is predisposed to decide the issue. Conversely, however, courts only infrequently give hints that they are likely to overrule the holdings of prior cases.

A research methodology that focuses on the past actions of courts cannot, therefore, result in an infallible predictor of future court actions. For one reason, different state courts may provide distinctly different answers to the same legal question. Second, many significant legal issues have either not been raised in court proceedings or not been reported in published opinions. Nonetheless, the report that follows does recount those legal principles affecting industries that are generally accepted. The recommendations following each analysis suggest possible actions that industries managers can take to protect industries from legal challenge.

Court decisions affecting prison industries relate to the following industries areas (see Table 4.1):

- A. Organization
- B. Operations
- C. Inmate Compensation Issues
- D. Marketing and Purchasing

Table 4.1 Court Cases by Industry Area Affected

CASES	INDUSTRIES ORGANIZATION						INDUSTRIES OPERATIONS						INMATE COMPEN-SATION				MARKETING AND PURCHASING	
	1. Program establishment and scope	2. Management structure and elements	3. Correctional resources available	4. Resource allocation within industries	5. Relations with other correctional operations	6. Planning and policy development	1. Civilian workforce	2. Inmate workforce selection	3. Industries workforce turnover	4. Inmate personnel issues	5. Work environment	6. Recordkeeping	1. Wage plans	2. Wage disposition issues	3. Good time incentives	4. Job injury compensator plans	1. Constitutional/technical challenges	2. Sale of industries products
Abrams v. Madison County																		
Anderson v. Redman			3													4		
Associated Industries of Alabama v. Britton																		
Balderas v. Matheson										5							1	
Baldwin v. Smith																		
Barnes v. Government of Virgin Islands	1		3			6									3			
Battle v. Anderson				4				2		5								
Bell v. Wolfish										5								
Blake v. Hall										5								
Buckley v. Warden										5								
Buisse v. Hudkins																3		
Burks v. Teasdale	1																	
Burks v. Walsh	1																	
Byrd v. Vitek	1																	
Canterino v. Wilson				4														
Capps v. Atiyeh	1	2						2										
Cohen v. Ciccone																		
Crowe v. Erickson																4		
Davis v. Balson							1											
Davis v. USA													1					
Delafosse v. Manson																4		
DOC v. McCain Sales													1					
DMH v. Kirchner						6											1	
Douglas v. Ward													2					
Downey v. Bituminous													2					
Estelle v. Gamble																4		
Finney v. Arkansas BOC	1															4		
Finney v. Mabry					5													
Fondern v. DR and C							1	2		4	6							
Foster v. Maynard	1															4		
Frederick v. Men's Reformatory								2										
French v. Hayne					5		1	2								4		
French v. Owens	1	2					1	2	3	5			1					
Fuller v. Oregon														2				
Gardner v. Benton																		
Garza v. Miller	1							2	3									
Gates v. Collier						6												
Glover v. Johnson	1			4						5								
Ham v. State of North Carolina									3									
Harold X. v. Brierly								2										
Harris v. Yaeger																		
Haworth v. State of Hawaii													2					
Hewitt v. Helms									3						4			

Table 4.1 Court Cases by Industry Area Affected (Cont.)

CASES	INDUSTRIES ORGANIZATION						INDUSTRIES OPERATIONS						INMATE COMPEN-SATION				MARKETING AND PURCHASING	
	1. Program establishment and scope	2. Management structure and elements	3. Correctional resources available	4. Resource allocation within industries	5. Relations with other correctional operations	6. Planning and policy development	1. Civilian workforce	2. Inmate workforce selection	3. Industries workforce turnover	4. Inmate personnel issues	5. Work environment	6. Recordkeeping	1. Wage plans	2. Wage disposition issues	3. Good time incentives	4. Job injury compensation plans	1. Constitutional/technical challenges	2. Sale of industries products
Hill v. Hutto				4														
Holman v. Hilton															4			
Holt v. Seaver			3						4									
Hoptowit v. Ray	1																	
In re Sargent													2					
Inmates of Block B v. Marks	1																	
Ivey v. NC Prison Department															4			
Jackson v. Hendrik	1																	
Jefferson v. Southworth		2																
Jefferson City v. Abbott Laboratories																	2	
Johnson v. Duffy													2					
Johnson v. Fauver							2											
Jones v. NC Prisoners Labor Union									4									
Journey v. Vitek							2											
Kenney v. Industrial Commission															4			
Kent v. Prasse															4			
KY Whip & Collar v. IL Central RR																	2	
Kessler v. Corrections Division						6												
King v. Carey													1					
Kopacka v. Dept. of Industry Labor															4			
Laaman v. Helgemoe	1	2			5		2	3										
Lamb v. Hutto								3										
Letezio v. Manson			3															
Levine v. State Dept. of Institutions															2			
Lightfoot v. Walker							1		4 5									
Lunberg v. Corrections Commission						6												
Manville v. Board of Governors of WSU													1					
Marionaux v. CO State Penitentiary									3									
Marin v. Pinto							2											
Martin v. Foti							2											
McAuliffe v. Carlson														2				
McGinnis v. Stevens													1					
McGray v. Sullivan	1																	
Meachum v. Fano									3									
Mercer v. U.S. Medical Center	1																	
Milhouse v. Levi						6												
Montayne v. Haymes									3									

Table 4.1 Court Cases by Industry Area Affected (Cont.)

CASES	INDUSTRIES ORGANIZATION						INDUSTRIES OPERATIONS						INMATE COMPEN-SATION				MARKETING AND PURCHASING	
	1. Program establishment and scope	2. Management structure and elements	3. Correctional resources available	4. Resource allocation within industries	5. Relations with other correctional operations	6. Planning and policy development	1. Civilian workforce	2. Inmate workforce selection	3. Industries workforce turnover	4. Inmate personnel issues	5. Work environment	6. Recordkeeping	1. Wage plans	2. Wage disposition issues	3. Good time incentives	4. Job injury compensation plans	1. Constitutional/technical challenges	2. Sale of industries products
Nadeau v. Helgemoe	1					6							1					
Nelson v. Collins							1											
Newell v. Davis													1					
Newman v. Alabama	1	2	3		5	6	1											
Owen v. Kimmel									3									
Palmigiano v. Garrahy	1									4 5			1					
Parker v. Percy															3			
Parker v. State of Louisiana													1		4			
Parrott v. Ray							2											
Peck v. Hoff							2											
Peterson v. Carlson							2											
Piper v. Perrin															3			
Prisoners Labor Union v. State of MI										4								
Pruitt v. Workers Compensation Board																		
Pugh v. Locke					5		1		3	4						4		
Ramer v. Saxbe						6												
Ramos v. Lamm			3								5							
Raro v. Moran							2											
Ray v. Mabry							2											
Rene v. Federal Prison Industries																		
Rinaldi v. Yaeger													1					
Rowe v. Fauver	1												2			4		
Ruiz v. Estelle			3			6	1	2		4 5 6								
Salah v. PA Labor Relations Board																		
Sampson v. King										4								
Sawyer v. Sigler											5							
Shain v. ID State Penitentiary																4		
Siegler v. Lowrie															4			
Sims v. Parke Davis													2					
Sites v. McKenzie													1					
Souder v. Brennan							2											
State v. Chambers													1					
State v. Murray																		
State v. Towle															2			
State Compensation Insurance Fund v. Workmen's Compensation Appeals Board															2			
Stewart v. Rhodes																4		
Susia v. State																		
Tackett v. LaGrange Penitentiary	1												1		4			

Table 4.1 Court Cases by Industry Area Affected

CASES	INDUSTRIES ORGANIZATION						INDUSTRIES OPERATIONS						INMATE COMPEN-SATION				MARKETING AND PURCHASING	
	1. Program establishment and scope	2. Management structure and elements	3. Correctional resources available	4. Resource allocation within industries	5. Relations with other correctional operations	6. Planning and policy development	1. Civilian workforce	2. Inmate workforce selection	3. Industries workforce turnover	4. Inmate personnel issues	5. Work environment	6. Recordkeeping	1. Wage plans	2. Wage disposition issues	3. Good time incentives	4. Job injury compensation plans	1. Constitutional/technical challenges	2. Sale of industries products
Taylor v. Perini						6	1	2										
Thompson v. Federal Prison Industries														4				
Trantino v. DOC													3					
Turner v. LA State Penitentiary									3					4				
Twyman v. Crisp														4				
United States v. Demko														4				
United States v. Muniz														4				
Watson v. Industrial Commission																		
Watson v. Ray							1			5				3				
Weaver v. Graham																		
Weiss v. Mader			4														1	
Wells v. Heath													1	4				
Wells v. Southern Michigan Prison																	2	
Wentworth v. Solem																		
Williams v. Edwards			3															
Williams v. Lane								2					1					
Wojtizek v. Cuyler								2								4		
Wooten v. USA													1					
Worsley v. Lash																		
Wright v. Jackson								2										
Wright v. Rushin			3															
Youngberg v. Romeo	1																	

Industries Organization

This review shows the following areas of the industries organization to be potentially affected by court litigation:

1. Program Establishment and Scope
2. Management Structure and Elements
3. Correctional Resources Available (funds, space, equipment)
4. Resource Allocation Within Industries
5. Relations With Other Correctional Operations
6. Planning and Policy Development

Program Establishment and Scope

The establishment of a prison industries activity may be mandated either directly through state legislation or indirectly through court orders mandating the corrections agency to provide alternatives to reduce inmate idleness. Work programs are not generally required by the courts since there is no constitutional right to rehabilitation [McGray v. Sullivan (1975); Hop-towitz v. Ray (1982)]. However, extreme deprivation of inmates' constitutional right to be free of cruel and unusual punishment may require a prison system to affirmatively provide rehabilitation programs, including productive work assignments [Finney v. Arkansas Board of Correction (1974); Palmigiano v. Garrahy (1977); Jackson v. Hendrick (1978); Stewart v. Rhodes (1978)]. This is because "Such facilities may extirpate the effects of the (unconstitutional) conditions which . . . prevailed . . . at the time (of) the District Court('s) . . . order" [Newman v. Alabama (1979) referring to recreational facilities]. Where the evidence fails to show that inmate idleness leads to an inability to maintain safety, order, and discipline, no work requirement will be warranted [Byrd v. Vitek (1982); Capps v. Atiyeh (1983)]. Irrefutable evidence will be needed to prove no adverse effect since courts may be expected to infer problems with overcrowding and resultant idleness [see, Burks v. Teasdale (1979)].

A few courts have found that work opportunities are required, not for rehabilitation but to prevent degeneration and mental illness or antisocial behavior. Thus, make work is not a substitute for productive work such as industries provides [Laaman v. Helgemoe (1977)]. This rationale lays the basis for a court order requiring a corrections agency to provide each prisoner "the opportunity to work at a useful job" [Laaman supra at 329; Barnes v. Government of the Virgin Islands (1976)]. A recent U.S. Supreme Court opinion dealing with the rights of involuntarily committed mentally retarded patients may provide additional support in the future for this analysis. Thus, in Youngberg v. Romeo (1982) the Court ruled that the plaintiff had a right to training related to safety and freedom from restraints while in an institution. The Court's focus on prevention of deterioration of self-care skills possessed before institutionalization would seem potentially relevant to the prison setting as well.

Courts will not ordinarily specify that the corrections agency establish an industries program to meet constitutional requirements. Rather it is up to the correctional administrators or the legislature to determine how inmate idleness problems can best

be resolved. Not surprisingly, prison industries is a favored method. [See generally, Newman v. Alabama (1979); Burks v. Walsh (1976)].

But if courts will not directly require an industries program on constitutional grounds, statutory requirements for correctional work programs to employ all inmates do not often result in judicial willingness to order industries expansion. Most courts in their interpretation of language requiring work for all available inmates have found that either the specific language quoted implies discretionary authority [Rowe v. Fauver (1982); Foster v. Maynard (1977)] or that other provisions of the law take away from the mandatory language thus providing discretionary powers to establish and operate industries [Garza v. Miller (1982); Mercer v. U.S. Medical Center for Federal Prisoners (1970)]. In Capps v. Atiyeh (1983) the court accepted testimony that any inmate wanting work could have it, and that the work details were "not padded."

These court decisions cannot be relied upon for the principle that courts will not interpret statutory language to require employment of all available inmates. One reason for this caution is that legislation in other states may be less ambiguous than that in the cases above. Support for this view comes from cases involving other types of statutory requirements. See e.g., Inmates of B Block v. Marks (1981) involving a recreation time requirement.

Further, when interpretation of statutory work availability requirements are joined with Eighth Amendment claims of idleness resulting in unconstitutional conditions of confinement, the court may see the failure to meet statutory requirements as evidence of constitutional violation. [See e.g., Laaman v. Helgemoe (1977); French v. Owens (1982); but see, Capps v. Atiyeh (1983)].

It should be noted that no court decision has been found unilaterally specifying that a particular industries activity should be undertaken. However, courts are not unwilling to recommend such action. See e.g., French v. Owens (1982) requiring the DOC to "give consideration to using the labor of inmates" for construction and rehabilitation of reformatory buildings; Barnes v. Virgin Islands (1976) at 1233 suggesting that "expansion of the agriculture and fishing programs . . ." might help to meet the requirements of its order for increased vocational opportunities.

But if courts have not required that industries undertake specific operations, their orders to the correctional agency may have implications for industries finances. For example, in Nadeau v. Helgemoe (1977) the stipulated consent order provides that idle pay provided other inmates shall also be provided to inmates in protective custody. The funds for these payments may well come from industries' profits should appropriated moneys not be immediately available. In Glover v. Johnson (1981) the court ordered the establishment of a trust fund for women inmates. The fund was to be paid for from the earnings that would have accrued to women inmates had they received work opportunities comparable to those accorded men inmates. The prison industries fund would be the logical source for these funds.

Summary. Courts are not likely to order that there be productive work available to inmates desiring it, unless other problems exist. When unavailability of work has led to unconstitutional prison conditions or where increased work assignments may help to alleviate the results of such conditions, courts are not unwilling to require productive work be available.

Implications. Where there is no centralized prison industries, efforts to comply with court orders may necessitate its establishment. While court orders to expand work opportunities may be met in several ways (e.g., work release, public works), other legal restrictions may result in prison industries expansion being seen as the most practical method.

Management Structure and Elements

In the main, the structure of the industries management or the specific individuals responsible for its management will not be directly questioned by a court [*Newman v. Alabama* (1977)]. Courts have not hesitated, however, to note the inadequacies of correctional manager defendants or to criticize the DOC management structure. For example, in *Laaman v. Helgemoe* (1977) the court specifically stated that the complained of conditions were due to mismanagement, resulting in fragmented authority and broken lines of communication. The court noted the lack of knowledge on the part of senior personnel for the operations of the education department in the mental health unit. The court also criticized the failure of the prisoner grievance process. In *Jefferson v. Southworth* (1978) the court referred to the "lack of management capability found in the Department of Corrections." Similarly, the court in a compliance hearing for *Newman v. Alabama* (1979) criticized both the Board of Corrections and the agency leadership responsible for the failure of the classification system, accepting the recommendation that a replacement was needed for the latter [ibid. at 631]. On the other hand, the court may absolve management by placing blame on "the elected officials of the State" [*French v. Owens* (1982)] or even praise managers for coping with prison overcrowding [*Capps v. Atiyeh* (1983)].

Summary. Courts are not likely to order changes in the management of correctional agencies, including prison industries. They do, however, often publicize in their written opinions that poor management is responsible for unconstitutional prison conditions.

Implications. Once identified in a court opinion as a poor manager, correctional administrators may be fired by their supervisors. Failure to remove or otherwise discipline poor managers can result in personal liability for their supervisors should conditions go unchanged or worsen.

Correctional Resources Available (funds, space, equipment)

Policymakers seeking to remedy unconstitutional prison conditions often look to expansion or renovation of the existing prison industries. The moneys for such changes may be from appropriated funds or bond issues or even from private sources.

100 Rarely can industries itself generate the necessary funds out of

its profits. Where state funds are sought, industries must compete with other correctional agency needs such as acquiring new bed space to reduce overcrowding. The courts' role in this process is limited; courts will rarely, if ever, require that funds be appropriated for specific purposes. Rather, the legislature is warned that if funds are not appropriated, the court will take some undefined action which could include prisoner releases, transfers, or prison closings. See e.g., *Holt v. Seaver* (1970): "If Arkansas is going to operate a penitentiary system, it is going to be a system that is countenanced by the Constitution of the United States." [See also, *Anderson v. Redman* (1977) (release treatment); *Barnes v. Government of Virgin Islands* (1976); but see, *Wright v. Rushin* (1981) directing district court to consider costs of setting remedies; *Ruiz v. Estelle* (1982).] Courts will also be skeptical of claims of inadequate funds in the absence of efforts to determine what can be done within existing resources or planning for increased resources [*Newman v. Alabama* (1979)].

Increased legislative appropriations for corrections may be taken as evidence of good faith efforts by a state to comply with an earlier court decree [*Ramos v. Lamm* (1980)]. Typically these appropriations for remedying court-noted problems include provisions for expanded prison industries. [See e.g., *Williams v. Edwards* (1977).]

The funds necessary for corrections to relieve court-determined unconstitutional prison conditions are not always forthcoming when needed. This can result in competition between industries and other correctional areas over the allocation of existing resources. This is seen most often in the taking of industries areas for inmate bedspace. See e.g., *Anderson v. Redman* (1971) (state proposed to use vocational education building). Court orders or consent decrees that provide for a guaranteed work position for inmates within a specified period are one response to this threat [e.g., *Letzeio v. Manson* (1982)].

Summary. Court rulings do not directly address the need for increased resources for prison industries to meet court-imposed requirements.

Implications. Failure to obtain the necessary resources could result in program closure. In the short run, corrections officials may deprive industries of some needed resources due to competing priorities; in the long run, however, industries generally receives increased resources as a consequence of court-imposed requirements for corrections performance. Industries managers should be prepared to demonstrate how increased resources to these programs can provide cheaper and more effective programs to reduce inmate idleness.

Resource Allocation Within Industries

The allocation of industries resources such as equipment, space, etc. among the several facilities making up the state correctional system is normally a discretionary matter. However, indirect challenges to industries resource allocation may come from a court finding of unconstitutional prison conditions. For example, where one institution among several in a state system fails to meet constitutional standards (due in part to idleness issues), normal resource allocation processes lead to shifting

resources to the affected facility from the nonaffected facilities. Similarly, court requirements that physical improvements in specific operations be made foreclose allocations for other purposes. [See e.g., *Battle v. Anderson* (1978).]

There have been few successful challenges to industries resource allocation decisions based on claims that inmates in one institution are being denied equal protection of the law by having fewer work opportunities available to them than inmates at another facility. However, such claims have been successfully pressed by female inmates in at least two states. In *Glover v. Johnson* (1979) the Federal court found that Michigan had denied equal protection of the law by providing "markedly poorer" education and vocational programs to female than to male inmates. Significant support for the court's conclusion came from the legislative specification of the goals of corrections and the prison industries program for inmate rehabilitation [ibid. at 1080-1081]. The state was unable to show any reasoned analysis had been done to justify the disparities in programming in terms of nonstereotyped differences between women and men inmates [ibid. at 1082, note 5]. The court's final order (1981) provides for the development of apprenticeship programs as well as specifying the establishment of two industries operations, manufacture of license plate tabs and chair cushions. In *Canterino v. Wilson* (1982) the court similarly found unconstitutional disparities in inmate job opportunities between men and women. These disparities were seen in both the percentage of male or female inmates working in industries and in the outside salaries paid to workers in fields for which inmates were being trained [ibid. at 191]. The court also noted that the absence of industries operations resulted in female inmates receiving less average wages than male inmates [ibid. at 197-93]. The court also found that these disparities violated Federal laws providing training and LEAA grants to the state [ibid. at 190-92]. [See also, *State v. Chambers* (1973).]

Where suspect classifications such as sex or race are not present, equal protection based challenges to correctional resource allocation have not been successful. For example, in *Weiss v. Mader* (1981) inmates challenged a scheme to allocate educational funds among different prison facilities. Although there was no significant relationship between the number of inmates in each facility and the funds allocated, the challenge failed when the state showed that its allocation scheme had a rational basis since it included composition of inmate population.

Other direct challenges to industries resource allocation can be seen forthcoming. For example, a case can be made that a challenge from state prisoners held in local jails may have some potential for success. Where a state correctional system has been found to be constitutionally deficient because of overcrowding and that system resorts to delaying transfers from jails to a prison entry, the courts' jurisdiction from the overcrowding litigation may be extended to cover jail conditions. That the court does indeed have jurisdiction is seen from *Glover v. Johnson* (1979) itself, where the court ordered that women prisoners in local jails be transferred to state prison camps, and other cases. In *Hill v. Hutto* (1982) the court ruled that the state prisoners held in local jails were entitled to have the same opportunity as inmates in prisons to earn good time credits, work, earn pay, and attend technical training programs.

Summary. Equal protection challenges to prison industries resource allocation among state facilities have been successfully advanced by female inmates and may be successful when advanced by state prisoners held in local jails as an interim prison overcrowding measure.

Implications. Industries programs for female inmates should be reviewed to ensure that female prisoners receive comparable work and training opportunities and compensation as do male inmates. Correctional officials should be made aware of the need to rationalize the use of local jails for holding state prisoners on a classification basis relating to the prisoners' program needs, rather than on a time priority basis. Industries might also provide technical assistance or broker such assistance to local jails needing aid in developing work programs for state prisoners.

Relations With Other Correctional Operations

Industries is heavily dependent on other correctional activities for its inmate workforce; other correctional areas are often responsible for inmates' selection, workday availability, and turnover. Failure on the part of these other activities seriously impacts on industries productivity.

The correctional activity most touched upon by the courts that impacts industries is classification. Numerous court decisions have required classification implementation or reform. Often these changes are explicitly tied to improvements in work assignment. For example, the Arkansas prison system litigation result is, among others, a new work classification system [*Finney v. Mabry* (1982)]. The court noted that the new system will permit rotation of inmates among the least desirable maintenance work, albeit not constitutionally required. The Alabama system litigation similarly reports work classification to be a major concern [*Pugh v. Locke* (1976)]. The court ruled that "Openings in whatever programs (work) are offered must be assigned on a reasonable and rational basis." (Inmates were said to be able to buy or sell jobs.) A functioning classification system is needed to meet this requirement [ibid. at 330; see also, *Newman v. Alabama* (1979)]. Even where a rudimentary work classification system exists, it may not pass court muster where the applicable statutes emphasize rehabilitation goals, unless it takes into account the prisoners' needs or desires. Thus, courts may require that the correctional classification system include specialized criteria for work assignments or other program participation [*Laaman v. Helgemoe* (1977); see also, *French v. Heyne* (1976)].

Beyond requiring the establishment of a functioning classification system, courts have not imposed any other requirements that have coordination implications. There has been no mention seen in the decisions of coordination between training or educational programs and prison industries. From the courts' perspective these programs may function parallel to industries without any programmatic interaction requirement.

Summary. Courts have found the absence of a functional classification system to be a major cause of unconstitutional prison conditions. Remedial orders often require classification for work assignments, separate from other purposes. Courts have not yet, however, considered requiring coordination between industries and other programs even though such coordination

dination may be needed to maximize industries' ability to provide productive work.

Implications. Industries should provide assistance and advice for the development of classification policies to ensure that work assignments are not solely related to security or custody classification, and to recommend additional criteria to be used in making assignments to industries. The active participation of industries in the classification process is desirable but not required.

Planning and Policy Development

Court imposed requirements upon corrections to remedy unconstitutional prison conditions may have, as discussed above, significant operational implications for industries. Industries immediate response to such orders are of two types: develop plans to deal with any needed changes in scope of operation, resource allocation, etc., or remedy any operational deficits through development of appropriate policies and procedures. Indeed, the absence of industries planning in response to court directives may be seen in later proceedings as evidence of bad faith on the state's part [*Newman v. Alabama* (1979)].

The need for industries planning may be indirect through its involvement with the correctional agency planning process. For example, in *Barnes v. Government of Virgin Islands* (1976) the court order requiring expansion of rehabilitation programs generally was buttressed by statements in the court's opinion that suggested specific industries expansion possibilities.

It is not uncommon for court orders to require specific planning actions on the part of industries. In *Ruiz v. Estelle* (1982) the consent order required development of a work safety and health plan. Not specifically required by the court, but nonetheless necessary, is a mechanism to ensure that inmates are screened to determine their health status prior to work assignment. Since inmates may not be denied access to work or other programs, some matching of job opportunities and health status may be needed; hence an efficient plan to meet the court order will include the involvement of industries.

In *Taylor v. Perini* (1976) the court required (1) the development of written policies and procedures for the assignment, promotion, transfer, and removal of inmates to and from job assignments; (2) a plan to rectify the present effects of past discrimination in job assignments; (3) a written affirmative action program for staff. In *Nadeau v. Helgemoe* (1977) the court ordered that the state "establish and implement rules, practices and procedures" relating to protective custody inmates' care, including work. And in *Gates v. Collier* (1974) the court required the preparation of comprehensive regulations governing inmate misconduct, including refusal to work, absence from work, and willful misuse of equipment.

State law may place procedural requirements on the policymaking process. Specifically, it may require such rulemaking to comport with the state's general law for rulemaking procedures. For example, in *Lundberg v. Corrections Commission* (1975) the Michigan Court of Appeals held that a court could direct the issuance of rules and regulations for the operation of correctional facilities. In *Kessler v. Corrections Divi-*

sion (1976) the court held that the state must issue rules governing pretransfer hearings. [See also, *Ramer v. Saxbe* (1975); *Milhouse v. Levi* (1976).]

The only reported case found dealing with the applicability of a state administrative procedures act (APA) to prison industries is that of *Department of Corrections v. McCain Sales of Florida, Inc.* (1981). In that case the court held that the state APA did not apply to decisions to engage in a metal manufacturing program. The court noted, however, that failure to act under the APA resulted in an increase in the department's burden of proof in defending its actions under other laws.

Summary. Existing court decisions may require state correctional agencies to develop written plans or policies and procedures for all significant aspects of operations, including prison industries.

Implications. Prison industries should seek to develop both an ongoing planning capacity and written policies and procedures for all possibly contentious areas of operations. In the alternative, it should ensure that the correctional agency's central planning staff include industries operations in their work. The mandatory applicability of the state administrative procedures office should be determined from the responsible legal officers. The legal advantages of using the APA procedure even where not required should also be explored.

Industries Operations

The areas of industries operations that may be potentially affected by court litigation include:

1. Civilian Workforce
2. Inmate Workforce Selection
3. Industries Workforce Turnover
4. Inmate Personnel Issues
5. Work Environment
6. Recordkeeping

Civilian Workforce

Prison conditions litigation has often included issues relating to the number of civilian staff, their racial makeup and training. Even where prison industries staff is not directly referenced, the principles from these cases would seem to be relevant to industries.

Court orders and consent decrees often specifically require that corrections employ a sufficient number of security staff to ensure the safety of the inmates and sufficient program staff to meet program level requirements. [See, *French v. Owens* (1982); *Ruiz v. Estelle* (1980); *Finney v. Mabry* (1982); *Newman v. Alabama* (1979).] Other court decrees require that the correctional agency undertake affirmative action employment programs for hiring and upgrading staff to provide a balanced workforce that resembles the inmate population composition [*Finney v. Mabry* (1982) at 1043.4; *Pugh v. Locke* (1976); *Taylor v. Perini* (1976); *Crowe v. Erickson* (1977)].

Civilian staff must also receive training adequate to prepare them for dealing with inmates [*Pugh v. Locke* (1976); *Taylor*

v. Perini (1976)]. Race relations training is an obvious correlate of ordering affirmative action in civilian staff hiring [*Crowe v. Erickson* (1977)]. Other specialized training requirements include health and hygiene training for staff. [See generally, *Lightfoot v. Walker* (1980) (inmate staff training)]. Indeed, preexisting training programs for staff may provide reasons for courts to refrain from requiring staff increases [*Nelson v. Collins* (1978)].

One of the few decisions explicitly applicable to industries is *Watson v. Ray* (1981) which requires industrial safety training for industries staff. That decision is also unique in recognizing that an ongoing training program requires additional staff, so that staff coverage is not reduced by their absence when attending training.

Summary. Court decisions have occasionally required corrections agencies to hire staff, develop affirmative action programs, and conduct staff training. A few court decisions have specifically included prison industries staffing in their orders.

Implications. Industries should ensure that it has sufficient staff to manage its programs and protect inmates from physical abuse. Staff planning should include affirmative action efforts. Staff should be trained in racial relations and industrial safety techniques.

Inmate Workforce Selection

Prison industries have traditionally been a labor intensive operation using low skilled inmate labor. Modern prison industries that seek to be competitive with the private sector place more stress on employing inmates with prior skills or the aptitude to learn new skills. At the same time, prison overcrowding results in pressure on industries to accept more workers than it needs. Thus it is no surprise to learn that inmate worker selection criteria and procedures have been extensively litigated. Institutional reform lawsuits are one source of such grievances, while inmate complaints are another.

Many inmate grievance cases have been brought by inmates or groups of inmates who were classified ineligible for industries work. In response to these complaints, courts have sometimes ruled that comparable work assignments with similar pay or good time credits be provided to inmates in protective security [*Wojtazak v. Cuyler* (1979); *Parrott v. Ray* (1978), or administrative segregation, *Wright v. Jackson* (1979) (if no extraordinary safety or security risk)]. [See also, *Williams v. Lane* (1982); compare *French v. Heyne* (1976); *Foster v. Maynard* (1977) (lack of work justified policy)]. Courts have, however, typically refused redress to individual complaints of an industries assignment denial [*Peck v. Hoff* (1981); *Martin v. Pinto* (1972)] unless there is a showing of denial of due process based on a legal entitlement to industries work [*Peck v. Hoff* (1981); *Gardner v. Benton* (1977)]. As discussed above, state laws establishing industries do not ordinarily require that all available inmates be assigned work in industries [but see, *Raro v. Moran* (1982) (blood plasma donation program)]. Hence, any entitlement to industries work must be based on correctional agency/industries regulations [cf. *Martin v. Foti* (1983); *Johnson v. Fauver* (1983)].

Discrimination in work assignments is sometimes alleged. Racial discrimination in inmate work assignments is forbidden [*Battle v. Anderson* (1978); *Taylor v. Perini* (1976); *Finney v. Mabry* (1971) at 210]. However, discrimination on the basis of handicapped status is not forbidden per se. Federal law requires that recipients of Federal grants not discriminate against the handicapped; reasonable accommodation to their needs is the test of discrimination. This statutory mandate is applicable to prison conditions [*Canterino v. Wilson* (1982); *Sites v. McKenzie* (1978)]. Because each case must be judged on its own merits, no general rule seems applicable here [cf. *Journey v. Vitek* (1982)].

In a few instances courts have set rather specific requirements which inmate work assignment systems must meet. In *Laaman v. Helgemoe* (1977) the court required the corrections agency to "establish reasonable entrance requirements and rational objective criteria for selecting prisoners to participate in work . . . programs" [ibid. at 329]. The court also suggested in its opinion that the existing seniority system for work assignments would not stand examination under this order [ibid. at 301]. Presumably this language does not refer to job tenure decisions. Even more extensive was the order in *Taylor v. Perini* (1976). This order required "precisely worded job-related substantive criteria" for job assignment; defined procedures; and a central authority whose exercise of responsibility shall not "allow for deference to the wishes of job supervisors or fellow inmates . . . or be dependent upon the self-initiative of inmates." In *Parrott v. Ray* (1978) the consent order provides for the preparation of a listing of inmates desiring jobs and for the order in which inmates appear on the list to determine order of job assignment.

Other aspects of inmate workforce control have been litigated. In *French v. Owens* (1982) the court, as part of its order requiring work or program assignments for all inmates within 30 days of reception, authorized inmates receiving disciplinary sanctions or removal for inadequate performance to be idle for up to 30 days. Other cases have dealt with the problem of religious observances interfering with work assignments. In *Ray v. Mabry* (1977) the court held that inmates were deprived of religious freedom where they were assigned to work on a Sunday and are followers of a religion requiring them to spend part of that day in worship. In *Harold X. v. Brierley* (1978) the court reserved judgment in determining whether the state should be required to accommodate an inmate's religion which requires him to attend services on Friday, and thus receive no pay for that day. In *Peterson v. Carlson* (1981) the Federal court held that similar religious claims would not allow for either extra work-free holidays for a major holiday or for prayer time while at work. The court noted that the latter request would present a safety hazard and "seriously disrupt production schedules."

Yet other limitations exist on the right of corrections to require inmates to work. The most obvious required limit is an inmate's medical inability to perform the assigned task [*Ray v. Mabry* (1977); *Ruiz v. Estelle* (1982) (consent decree)]. Other decisions provide for a right to refuse a job assignment as an element of a court order finding that protective custody inmates or similar formerly excluded inmate populations were illegally

denied productive work assignments [e.g., *Parrott v. Ray* (1978).]

Summary. Court decisions often require that correctional agencies not arbitrarily classify inmates as not work eligible without some penological purpose. Maintenance of institutional security and safety is an accepted basis for such criteria, but courts may require some showing of a direct relationship between expanded work opportunities and increased dangers to the institutional population. Other court decisions link worker availability issues to prison overcrowding ills. Where this occurs, even greater judicial intervention may result.

Implications. Prison classification schemes are often established by the correctional agency without consideration of industries needs, much less the prospect of court review. Industries administrators should review the agency classification scheme to highlight needs for change. This examination should include both potential changes that would raise the skill level of the inmate workforce upon assignment and expand the numbers of inmates to whom industries would be available. Any proposed plan of action from this examination should highlight how improvements in productivity resulting from a better workforce could assist in funding expansion of industries to serve more inmates. Immediate expansion efforts may, however, require sources of funding other than industries profits.

Inmate Workforce Turnover

A major industries problem area is that of inmate workforce turnover. This is because industries is often constrained in its decisions to retain or fire inmate workers. Both of these decisions may be preempted by correctional classification requirements and administrative convenience. Court decisions may, however, place procedural due process requirements on these decisions or even require changes in decisionmaking criteria.

Inmate reclassification or transfer to another facility that may result in inmate worker reassignment to a nonindustries program does not require procedural due process. This is true even in those instances where there is a disciplinary reason for the action [cf. *Meachum v. Fano*; *Montanye v. Haymes* (1976)]. If, however, state law or regulations provide a right to remain at a particular facility or classification or there is a basis for a justifiable expectation under correctional practices that no status changes would be made without misconduct, then due process hearings are required [ibid.; *Twyman v. Crisp* (1978) (reclassification to maximum security)]. Published policy statements or regulations may provide the basis for "expectations" that transfers or reclassification will not summarily occur [*Lamb v. Hutto* (1979)]; nor may inmates' status be changed in retaliation for exercise of constitutional rights [*Buise v. Hudkins* (1978) (jailhouse lawyer)]. Transfer to administrative segregation pending an investigation needs only an informal, nonadvisory review [*Hewitt v. Helms* (1983)]. Court opinions also imply that any forfeiture of earned wages or good time credits accompanying the transfer or reclassification may trigger the right to a due process hearing [*Gardner v. Benton* (1977)].

One of the few reclassification cases involving industries operations was *Marionaux v. Colorado State Penitentiary* (1979). There the court ruled that the failure to comply with a prison manual provision for hearings following inmate work stoppage nullified transfer to solitary confinement. One inference from the language of the court order is that its approval would be required for any inmate reclassification resulting in loss of work assignments [ibid. at 1250].

A few cases involving right to work issues in the general context of unconstitutional prison conditions have also limited the ability of industries to dismiss workers. In *Laaman v. Helgemoe* (1977) the court required that an inmate must be provided due process hearings before an inmate may be removed from a job. However, this is qualified so that removals resulting from a threat to institutional security may be done at once if there is a hearing within 5 days of the removal. A transfer between jobs was specifically exempted from the order's coverage. [See also, *French v. Owens* (1982) (no inmate may be without a job for more than 30 days); *Pugh v. Locke* (1976).]

Finally, notice should be taken of Federal law incentives to state correctional systems to develop inmate grievance procedures. Where a grievance procedure is available, a Federal court must allow the grievance procedure to first try to resolve inmate grievances before the court can proceed with constitutional challenges by inmates to prison officials' decisions. [See generally, *Owen v. Kimmel* (1982).] A prison grievance system must, however, be in compliance with Federal standards for this deferral to occur. Either the Attorney General certifies compliance or the court itself must make this determination. It is unclear whether or not the standards require industries firing decisions to be included within the jurisdiction of any inmate grievance system.

Summary. Court rulings may limit correctional agency decisions that preempt industries desires to keep specific inmate workers. While due process hearings may be required before inmates may be transferred from industries work assignments, this is only the case where the underlying state law creates entitlements to such hearings. A similar limit was found for the ability of industries to dismiss unsatisfactory inmate workers in a few cases.

Implications. Prudence suggests that inmates be provided some hearing prior to any dismissal for cause related to the work productivity. Such procedures are, of course, common in the free world labor market. [See also discussions infra for record-keeping requirements and "business-like" operations.] If industries desires to be excluded from any existing inmate grievance system, an explicit exemption should be sought.

Inmate Personnel Issues

Duties. Courts have had little concern with inmate work duties with one exception. That exception is that inmates may not supervise other inmates. For example, in *Pugh v. Locke* (1976) the court order stated "At no time shall prisoners be used to guard other prisoners, nor shall prisoners be placed in positions of authority over other inmates." In *Ruiz v. Estelle* (1982) the district court consent decree contained a similar provision. [See also, *Holt v. Seaver* (1970); *Finney v. Mabry* (1982).]

Summary. Inmates may not be given broad supervisory authority over other inmates.

Implications. The use of an inmate as a foreman or in other supervisory positions over inmate work crews should be avoided. However, other status relationships may be permitted where they are limited in numbers and scope, and they do not replace civilian supervisors. For example, an experienced inmate may work one-on-one with another new inmate worker for on-the-job training (OJT) with limited authority to effectuate the purposes of the OJT program. Here again, private business-like operations can provide a model for such uses of inmate status differentials resulting in limited exercises of authority.

Training. In the main, courts have not acted to limit industries' discretion in training its inmate workforce. Where, however, the absence of training can adversely affect other inmates' health or safety, training has been required. For example, in *Lightfoot v. Walker* (1980) the court order noted that inmates dispensing food trays needed training in caloric intakes from different meals, and workers in food services needed training in food handling techniques and hygiene. [See also, *Palmigiano v. Garrahy* (1977) (food service inmates have no training)]. One inference from these cases is that were courts to hear complaints that the lack of training creates a significant safety hazard for inmate workers, such training would be required or other alternative safety measures taken.

Summary. Poor health conditions resulting from inadequate training of inmate workers in maintenance work assignments have led to court orders to resolve these problems.

Implications. Where industries is responsible for maintenance work assignments, it should ensure that inmates are trained to meet applicable health and safety code requirements. Industries managers should continue existing efforts to protect inmate workers' safety and where necessary develop new safety standards.

Inmate Worker Status. Most state statutes provide that inmates are not considered to be state employees. The intent of these provisions is twofold: to limit possible state liability to third parties under an agency theory of tort liability; and to preclude the application of laws applicable to state employees. Examples of the latter which have been extensively litigated are laws authorizing state employees to form unions. The U.S. Supreme Court ruled in *Jones v. North Carolina Prisoners Labor Union* (1977) that state laws or regulations prohibiting prison unions are not unconstitutional. As a result of this decision, prisoner challenges to any such bar to their union proposals must rest on state law. No court decision has been found that upheld a prisoner contention of a right to unionize under a state public employees union law. [cf. *Prisoners Labor Union at Marquette v. State of Michigan* (1975); *Salah v. Pennsylvania Labor Relations Board* (1978).]

Summary. Court decisions have upheld in all cases to date correctional agency bars to inmate unions.

Implications. Industries in states where inmate laborers are statutorily included as unclassified workforce of the state should ensure that state public employee laws specifically exclude inmate workers. Even where legislative history will show no intent to include inmate workers, explicit statutory language is

preferred so as to dismiss any inmate lawsuit without the need to present evidence to show the legislative intent. This principle should also be applied to other state personnel laws governing various elements of state employee compensation rights such as health insurance, vacation time, etc.

Work Environment

Court decisions may place a variety of safety and other requirements on the work environment. An inadequate work environment may be so dangerous as to contribute to a finding of cruel and unusual punishment [cf. *Palmigiano v. Garrahy* (1977) at 963; *Balderas v. Matheson* (1979)]. State law may require industries' conformity to the state health code [*Blake v. Hall* (1979)] as well as require fire safety precautions [*Lightfoot v. Walker* (1980); *French v. Owens* (1982)].

The most significant law affecting industries work environment is, of course, the Federal Occupational Safety and Health Act which is applicable to the prison setting [*French v. Owens* (1982)]. The applicability of state health or safety laws is a question of state law interpretation [*Watson v. Ray*; *Ruiz v. Estelle* (1982)]. Courts have, however, also looked to several nonstatutory standards. In *Battle v. Anderson* (1978) the court referenced standards from the American Public Health Association's Life Safety Code and the American Correctional Association's Standards for Accreditation, parts of which had been adopted by various state agencies. Standards developed by professional associations do not, however, by themselves set constitutionally minimal standards [*Bell v. Wolfish* (1979); *Sampson v. King* (1982)]. A variety of environmental defects can be encompassed under these laws including, as in *Ramos v. Lamm* (1981), inadequate lighting and noise pollution.

The specific types of relief ordered by a court vary. In *Ramos v. Lamm* (1982) the court required the agency to appoint staff to be responsible for the maintenance of minimal health and sanitation standards through daily inspection per a checklist of all areas of the facility. In *Balderas v. Matheson* (1979) the consent order included the agency's agreement to use the expertise of the state's health, fire, agriculture, and industrial commissions to evaluate the prison operations. In *Gates v. Collier* (1975) the court made provision for a review of proposed improvement to the facility by the state pollution authority. In *Ruiz v. Estelle* (1982) the consent order included an agreement by the agency to develop a work safety and health plan with the assistance of personnel from the U.S. Bureau of Prisons.

Summary. Federal and state laws regulating the work environment apply to prison industries. Failure to meet these requirements may contribute to a court finding of unconstitutional prison conditions.

Implications. Efforts to meet applicable health and safety standards should include appointment of a staff person to review the work environment, make recommendations for improvements, and monitor progress. If necessary, outside consultants should be engaged for this task.

Recordkeeping

The implementation of many of the changes required by various court orders will require yet other operational actions to support the new industries operations. In several instances, industries recordkeeping requirements have also been the subject of a court order. In *Ruiz v. Estelle* (1982) the consent decree contained provisions requiring adequate recordkeeping relative to work safety and hygiene. Presumably, improved recordkeeping will be required to meet the provisions of the second consent decree for the selection of support service inmates based on a review of inmate files for the court-imposed job selection criteria. In *Finney v. Mabry* (1982) the court opinion noted that it "will require that recordkeeping practices be established" [ibid. at 1031]. It did not specify, however, which recordkeeping practices were required as part of its compliance check.

Summary. Courts will require improvements in industries recordkeeping when that is required to monitor compliance with other orders or to implement these other orders.

Implications. Industries managers should implement needed recordkeeping policies and practices to support other existing recommendations of this report.

Inmate Compensation

In many ways inmate compensation lies at the heart of prison industries. Industries labor intensive operations require a motivated labor force; otherwise, productivity and quality control will decline. Inmate compensation schemes serve as the primary motivation for the inmate workers. These schemes include the following elements:

1. Wage Plans
2. Wage Disposition Issues
3. Good Time Incentives
4. Compensation Plans for Injuries on the Job.

Wage Plans

Courts have consistently held that inmates have no inherent constitutional right to wages for work done. These decisions are based on the provisions of the Thirteenth Amendment to the U.S. Constitution prohibiting slavery which excepts penal labor [*Newell v. Davis* (1979)]. This conclusion remains valid even when inmates perform work voluntarily rather than simply being assigned to work [*McGinnis v. Stevens* (1975) (good time incentive for work)].

To date, claims that inmates are entitled to wages under Federal or state minimum wage laws have also failed. These decisions are based on the courts' conclusion that the legislators did not intend to include inmates under the laws' ambit [*McGinnis v. Stevens* (1975)]. Specific provision in the establishment laws for prison industries to provide inmate wages in industries discretion will reinforce the inference of a legislative intent to exclude inmates from the minimum wage law [*Manville v. Board of Governors of Wayne State University* (1978)]. Nor will the fact that inmates perform work for another state agency

change the conclusion that inmates are not covered by the minimum wage law [*Manville v. Board of Governors of Wayne State University* (1978)].

Efforts by inmates to sue outside employers (under minimum wage laws) for work done by the inmates have similarly failed because no employer-employee relationship existed. [See for example, *Sims v. Parke Davis and Co.* (1971) (company did not have right to unilaterally hire, fire, and control inmates); see also, *Worsley v. Lash* (1976)] and Opinions of Wage-Hour Administrator (1975)].

Under some circumstances, however, it is conceivable that a court might find the minimum wage law applicable. This view derives from court decisions applying the Federal minimum wage law to hospital inmate workers [*Souder v. Brennan* (1973); *Davis v. Balson* (1978) (right to treatment basis)] and juvenile camp inmates [*King v. Carey* (1975)]. Two circumstances might act to trigger minimum wage law applicability. These are first, the paying of wages to inmates at a level high enough to require state or Federal income tax law payments, i.e., above the minimum requirement of the Internal Revenue Service. For if the payments to inmates are gratuities, no tax is required to be paid; hence the payment of taxes would imply that the payments are wages. The payment of wages further suggests an employer-employee relationship exists so that the minimum wage law applies. A second potential factor in the applicability of the minimum wage law is any profit-seeking goal for industries established by the relevant laws governing industries. A profit goal for industries might suggest to a court that inmate work was insufficiently related to the purpose of imprisonment so that the Thirteenth Amendment exception allowing penal servitude is no longer applicable. Similar concerns might be raised by the use of inmates for public works or other activities beneficial to the state, but not to the correctional system itself.

In either case, the state may be said to be engaged in a "proprietary function," that is a nontraditional governmental activity that is intended to produce a pecuniary profit for the state [*Wells v. Southern Michigan Prison* (1978)]. Similarly, in *Susla v. State* (1976) the court cited language: "When the state steps into an industrial or commercial enterprise, it is subject to the same laws that govern and control individuals." Although these decisions were in the context of inmate tort claims for injuries while working for industries, their underlying rationales seem potentially applicable to wage claims, particularly where the tax payments argument may also exist.

Some support for these possible extensions of prior court rulings may come from those few court decisions requiring inmate compensation in the context of unconstitutional prison litigation. For example, the court order in *French v. Owens* (1982) included a provision that: should inmates be used to construct or rehabilitate buildings (as the court suggested) at the reformatory, inmates should be compensated "at wages which are reasonable under all circumstances." In *Palmigiano v. Garrahy* (1977) the court required that inmates be compensated for all work performed.

Where wages are paid inmates for their work, a second issue that can arise is claim of denial of equal protection from differing wage payments. In *Newell v. Davis* (1977) the court approved the provision of incentive pay to inmates in productive

work although inmates working in the hospital facility received a lower wage. Another court disapproved the denial of pay to inmates in the hospital for mental illness where inmates hospitalized for physical ailments were paid [*Delafosse v. Manson* (1974)]. Court decisions requiring correctional systems to provide inmates in protective custody work comparable to that given inmates in the general population also require that they be paid comparable wages [*Parrott v. Ray* (1978); *Nadeau v. Helgemo* (1977) (idle pay included); *Wojtitzak v. Cuyler* (1979) (work or idle pay)]. Work stoppages due to administrative negligence resulting in plant shutdown do not create any right to wages for the idleness period [*Rene v. Federal Prison Industries* (1982)].

Summary. Industries is not required in most circumstances to pay inmates for their work. However, court decisions in unconstitutional prison conditions cases may require that inmates be paid some amount, while other cases suggest that truly competitive prison industries could be required to pay the minimum wage to inmate workers. Court decisions may also require industries to develop wage plans that do not discriminate against any class of inmates.

Implications. Industries should review its wage plan to ensure that all classes of inmates eligible to work and being paid receive comparable treatment, given differences in skill levels, productivity, assignments, etc. While in theory minimum wage laws might be applicable to industries under some conditions, this is not likely to be true in most instances. Assuming that industries strives to be maximally efficient given those constraints within which it operates, there are few steps that can be taken to avoid any potential application. One step that can be taken is to ensure that the industries legislation explicitly authorizes the industries authority to pay inmate workers at a rate to be set at the discretion of the authority.

Wage Disposition Issues

Where inmates are paid for their work, the disposition of their wages may be problematic. The correctional authority may be fearful of permitting inmates direct access to their moneys because of potential threats to institutional security. Others may believe that inmate savings for use on release should be required. Practical and policy problems arise in authorizing family support or outside creditor payments. Policy concerns exist for the penological value versus social utility of providing deductions for room and board charges or victim restitution payments.

Inmate Savings. Banking of wages has only rarely been the subject of litigation. A mandatory savings deduction up to \$10 per inmate was upheld in *Harris v. Yeager* (1968) on the basis that state law gave the agency total discretion to determine the level of wages to be paid and, hence, its format as well. However, a constitutional challenge to the corrections policy of holding inmate funds rather than permitting inmates to open interest-paying bank accounts was successful in *Douglas v. Ward* (1977). In that case the court ordered the agency to rewrite its policy directive to allow such banking, although it could place some controls consistent with legitimate administrative needs. Damages were also awarded for lost interest due to the policy.

Third Party Payments. Payments to creditors or restitution orders are not prohibited per se by constitutional requirements. They do, however, require due process in their implementation since they are a deprivation of property [cf. *Siegler v. Lowrie* (1969)]. State statutes may, however, prohibit deductions from inmate wages for third party payments [*State v. Murray* (1980)]. Deductions to pay the state for trial expenses may not be imposed solely upon prison inmates where it could be imposed upon all convicted persons [*Rinaldi v. Yeager* (1966) (trial transcript costs)].

Forfeiture. Forfeiture of earnings for disciplinary violations may be allowed for both past and future earnings depending upon the relevant state law provisions. The question is whether the relevant statutes vest the inmate's earnings or not [*Siegler v. Lowrie* (1969); *State v. Murray* (1980)]. Due process must however be provided before wages may be forfeited as a disciplinary measure [*Johnson v. Duffy* (1978)].

Correctional Agency Charges. Room and board charges as a deduction from inmate wages provoke considerable legislative interest. For example, the Percy Amendment, 18 U.S.C. 1761 (c), authorizing interstate shipment of prisoner made goods under certain conditions, permits states applying for this authority to charge inmates for room and board. The idea of charging room and board to inmates is not new; indeed, such charges were once customary practice in English workhouses. Nor does it seem conceptually distinct from charging for constitutionally required defense services, approved by the U.S. Supreme Court in *Fuller v. Oregon* (1974). Charges for custodial care of mentally ill patients have been upheld against mental patients [*In re Sargent* (1976)] or their relatives [*Levine v. State Department of Institutions and Agencies* (1978); but see, *Department of Mental Health v. Kirchner* (1964)].

Although substantive due process is not violated by room and board charges against inmates, procedural due process may be violated. Hence such charges must first be statutorily authorized [*State v. Towle* (1977) (lodging and administrative costs relating to work release disallowed)]. Appropriate rulemaking procedures should also be followed in establishing the claims of inmates to be charged room and board. Defining the relevant class is critical to ensuring that equal protection of the law is not violated by imposing charges on some inmates but not others similarly situated. In *McAuliffe v. Carson* (1974) the court found a denial of equal protection in charging hospital expenses to male prisoners transferred from jails to mental hospitals where such charges were not imposed on prison inmates or female jail inmates, nor to male inmates of jail sent to other types of hospitals.

Summary. Legislative authorization is normally required for any deduction from inmate wages and may also be required where the DOC seeks to control the locus of inmate banking of their wages. Even where authorized, wage deductions will require procedural due process if they are to be applied to inmate creditors or to be forfeited as a disciplinary measure. Deductions from wages for room and board charges may violate constitutional guarantees of equal protection of the law, unless the class of inmates to be charged is carefully drawn.

Implications. Industries directors should establish agency regulations or written policy authorizing any deductions from inmate wages. Rules or policies adopted under a state administrative procedure act are favored by courts over regulations or policies unilaterally adopted. Any class of inmates on whom room and board charges will be imposed should include inmates not working in industries who have sufficient resources to pay such charges. [cf. authorizing legislation in states such as Florida or Michigan.] In the absence of any written regulations or policy, deductions should be made only pursuant to a court order or written waiver by the inmate. Waivers involving payments to the state, however, should not be depended upon since courts may find them to be involuntary.

Good Time Incentives

Statutes often provide for the granting of extra "good time" for inmates working in industries. This good time will be added to any other good time given for sentence reduction. Extra good time may be given on the basis of days worked, including maintenance work, or for meritorious performance in work, or for both.

Good time incentives are typically in addition to any wages that inmates may receive and may be thought by many inmates to be more desirable than wages. A few state compensation schemes may require inmates to choose between good time or wages in determining whether they will take an industries or a maintenance job. In *Baldwin v. Smith* (1971) the courts upheld a challenge to such a state inmate compensation scheme by an inmate who had chosen to receive wages for his work rather than accept a position providing "work-time" credit to reduce his sentence. The appeals court noted, however, that "if indigent prisoners were forced to accept longer terms in order to continue to maintain a minimum standard of prison living..." the state compensation scheme might then violate equal protection guarantees [ibid. at 1045]. [See also, *Buckley v. Warden* (1980), upholding the state's refusal to grant extra good time for working 7 days a week to an inmate classified to work only 5 days a week, but temporarily assigned to the kitchen work crew for 14 weeks.]

The rules governing good time credits that may be earned by inmates may not be changed to the disadvantage of inmates already serving time. In *Weaver v. Graham* (1981) the U.S. Supreme Court held that legislation repealing an automatic "gain time" for good conduct was unconstitutional as an ex post facto law. The fact that extra good time could now be earned under the new statutes was not a saving factor since the extra good time grant is discretionary. Presumably, sentencing judges took into account at the time of sentencing the automatic good time then available; so that although the new law would take effect on a future date, it changed the effect of prior legal decisions by judges. This rationale would seemingly apply to changes in corrections agency rules and regulations providing for automatic granting of good time for good behavior. It would not apply, however, if the good time credits were only for meritorious work or otherwise discretionary, based upon individualized judgments. [See also, *Piper v. Perrin* (1983).]

Where distinctions are made between good time credits for work in industries and for general obedience to rules, a state may deny eligibility for industries credits to carefully defined classes of inmates. In *Parker v. Percy* (1981) a Wisconsin law denying industries credit eligibility to persons serving life terms was challenged. The state court held that the distinction between prisoners serving sentences for heinous crimes and those for other crimes justified the difference in their gaining parole eligibility. This difference justified the state in limiting incentives to life term holders for obedience to prison officials, the purpose of the good time law. [See also, *Trantino v. Department of Corrections* (1979).]

Corrections administrators will rarely be overruled by a court in providing differing levels of good time for differing work assignments. For example, see *Ham v. State of North Carolina* (1973) where the court upheld different good time allowances for farm labor and kitchen labor. The previous discussion of constitutional requirements for wage forfeiture is similarly applicable to good time credits given for industries work.

Summary. Courts have approved inmate compensation schemes that provide differing good time credits for differing jobs, alone or in concert with differing wage levels. Court dicta (i.e., language not necessary for the decision) suggest that requiring an inmate to choose between wages and good time might not be upheld where inmates must spend their moneys for room or board (i.e., constitutional prison conditions independently exist).

Implications. So long as the good time credit schema is not litigated in the context of unconstitutional prison conditions, administrators will be given a large degree of discretion in the establishment of the good time credit criteria. This does not mean, of course, that the good time credit plan can be totally arbitrary or capricious. Thus, industries should as a precautionary method maintain records about the process development and criteria used in developing the good time credit element of its inmate compensation plan. Industries should also urge the relevant correctional administrators to review any requirements imposed by the agency for inmate election between good time credits only and wage only jobs.

Inmate Injury Compensation

Inmates often possess low levels of experience working with machinery, making accident prevention a major task. Thus accidents to inmate workers in industries are not uncommon. Many inmates may be successfully treated for accidents while in custody. Other inmates may continue to suffer from work-related injuries after release. A few inmates may even die from work-related injuries. In all these cases questions arise as to whether the inmates should be compensated, to what degree and by what process?

In the free world, work-related injuries are compensated either through court proceedings in tort or through statutorily created workers' compensation plans that substitute for any court actions. Different standards for recovery apply to these two procedures. In tort cases the standard for compensation eligibility is the "fault" theory of negligence. Associated with this theory

are a variety of legal doctrines used to determine when fault exists, including that for contributory negligence of the employee precluding recovery, comparative negligence that reduces recovery according to the employee's proportionate fault, and assumption of risk wherein the employee is presumed to have voluntarily accepted the possibility of injury, hence precluding recovery. In worker's compensation proceedings there is no need to prove fault. Inquiry is limited to whether the injury is work-related and the extent of injury. Only self-inflicted injuries are excluded from receiving damage awards. Another difference lies in the amount of recovery potentially available. In tort cases a judge and jury may grant damage awards as large as they find reasonable. Worker compensation laws, however, generally award damages on the basis of statutory formula that is much more restrictive than most jury awards.

Only a few states and the Federal government provide for a worker compensation-like procedure to compensate for inmate worker injuries. The majority of states provide compensation only through tort actions against the state or through individual damage suits against the responsible industries supervisors. Tort actions against the state are usually taken under the authority of a state Tort Claims Act law that controls all tort actions against the state. In a few states special provisions exist for inmate work injury claims to be heard by a special hearing body using tort claims principles.

The failure of any consensus of how best to hear inmate injury damage claims has resulted in a spate of litigation. Included are claims that worker compensation laws apply to inmates; questions about the applicability of tort claims act remedies to inmate workers in profitseeking industries including challenges to the applicability of common law rules of negligence to the inmate worker context; and problems relating to the continued applicability of compensation to injured inmates not able to continue work.

Worker Compensation Law Applicability. Most courts hearing claims that worker's compensation laws should apply to inmate workers have ruled that they do not apply. The rationale for these decisions vary. Some courts base their decision on the involuntary nature of prison work precluding the necessary contract for hire existing [*Downey v. Bituminous Casualty Corporation* (1977); *Frederick v. Men's Reformatory* (1973)]. [See also, Opinion of Utah Attorney General No. 79-90.] Other courts also point to the absence of wages as negating any inference of a contract for hire [*Watson v. Industrial Commission of Arizona* (1966)]. Gratuities paid to inmates for work do not meet the wage requirement, according to one court, where there is a work requirement and the law authorizing these payments also excludes inmates for worker's compensation, [*Keeney v. Industrial Commission* (1975)]. Other courts have similarly ruled that gratuities are not legal consideration sufficient to establish that a contract exists [*Tackett v. Lagrange Penitentiary* (1975); *Abrams v. Madison County Highway Department* (1973)].

In theory a different conclusion might be reached where inmates may refuse employment and compensation such as good time awards are granted, but court acceptance of such arguments

are not extensive. Only in California have such opinions been found [e.g., *Pruitt v. Workmen's Compensation Appeals Board* (1968); *State Compensation Insurance Fund v. Workmen's Compensation Appeals Board* (1970)].

Worthy of some comment is the virtual absence in the reported cases of any discussion of potential equal protection or other constitutional challenges to state worker's compensation programs that include state employees but exclude inmates. What discussion there is of this issue is typically conclusionary dictum with no reasoned explanation [e.g., *Kent v. Prasse* (1967)]. Potential equal protection challenges may be strengthened where a state allows some inmates worker's compensation coverage, as in Arizona where inmates working for private employers are covered but not those in state-run industries [*Watson v. Industrial Commission* (1966)].

If a state establishes a worker's compensation program, inmate claims must be accorded procedural due process. This includes the right to a hearing and counsel to assist at the hearing and to present evidence to challenge a prison doctor's report [*Davis v. United States* (1976)]. The question that is then posed is, when are injuries work-related? Courts do not always agree in answering this question. In *Wooten v. United States* (1971) the court held that injury in an elevator while leaving the work area to go to lunch was work-related since the inmate had not left the work premises. In *Kopacka v. Department of Industry Labor and Human Relations* (1970) the court held that the special statute providing for worker's compensation did not incorporate court rulings interpreting the general worker's compensation laws, so that an inmate injured while lining up to go to lunch from work was not covered.

Some state courts have ruled that where the worker's compensation remedy is not adequate, it does not bar tort actions. In *Ivey v. North Carolina Prison Department* (1960) the worker compensation law provided only death benefits for injury resulting in death to an inmate. The inmate's estate was allowed to sue under the state's tort claims act. But in *United States v. Demko* (1966) the U.S. Supreme Court held that the compensation program was comprehensive enough to constitutionally justify abolishment of an inmate's tort claim. The Court found the inmate program to be comparable to most state worker's compensation plans for noninmates.

Tort Claims Issues. The often unavailability of worker compensation statutes as a remedy for inmate injury claims results in tort claims as the primary method of redress for their work-related injuries.

While earlier cases seem to say that a state is not required to provide any compensation for inmate injuries [e.g., *Shain v. Idaho State Penitentiary* (1955)], this is no longer the case. The *Ivey* and *Demko* decisions (discussed above) together imply a constitutional right of an inmate to be compensated for injuries that last beyond release from prison. Having the same effect are the decisions in *Wells v. Southern Michigan Prison* (1978) and *Susla v. State* (1976) holding that a state cannot claim the defense of sovereign immunity to bar inmate tort claims from work-related injuries where the prison industries was engaged in proprietary functions. Another argument in favor of a constitutional right of inmates to sue for compensation of work-

related injuries derives from the Supreme Court decision in *Estelle v. Gamble* (1976) holding that purposive denial of needed medical services constitutes cruel and unusual punishment forbidden by the Eighth Amendment. Injuries that last beyond the term of imprisonment would seem to fall under this case's principle that looks to resultant harm from purposive failure to act.

Where a state has waived its sovereign immunity by establishing a statutory tort claims act procedure, states violate equal protection guarantees of the U.S. Constitution by denying inmates' access to the courts under the act [cf. *United States v. Muniz* (1963)]. Even a statute limiting an inmate's right to sue the state until release from confinement may be struck down as a denial of equal protection and due process [see, *Holman v. Hilton* (1982)].

In states where tort recovery is the only method available to inmates, common law negligence principles will be applied to these actions. Thus, in states that continue to follow the doctrine of contributory negligence, carelessness by an inmate may block his/her recovery for damages, despite any negligence on the state's part [cf. *Parker v. State of Louisiana* (1978)]. In states that have adopted the doctrine of comparative negligence, an inmate's recovery will be reduced in proportion to the degree that negligence by the inmate caused the injury. Some courts have ruled that the state has a greater duty to warn inmates of potential dangers from their own negligence than it would to other employees [*Haworth v. State* (1979)]. Nor may a state that requires inmates to perform work claim that an inmate assumed the risk of an accident where the inmate is aware of the danger [ibid.]. However, an inmate who ignores instructions and thereby exposes himself to danger is the proximate cause of any subsequent accident in the absence of any showing of the state's failure to supervise [*Haworth v. State* (1979)].

A state may be liable for injury due to negligence of both its employees and that of other inmates [*Turner v. Louisiana State Penitentiary* (1976)]. This ruling may not be followed in states that retain the court doctrine of the fellow servant rule where injury caused by a co-worker bars recovery from the employer. It is possible that courts will continue to apply this rule in the inmate worker context [cf. *Fondern v. Department of Rehabilitation and Corrections* (1977) at 903]. However, the doctrine assumes free choice on the part of the worker to a particular job and would seem therefore inapplicable where work is not voluntary.

The trend in the court decisions is to place greater demands on the state employer's safety precautions for inmate workers than that required of other employers, so to compensate for the relative inexperience of inmate workers. But where the inmate worker is in fact experienced, the courts will take this into account [*Parker v. State* (1978)].

Compensation While Unable to Work. What explicit discussion there is of any requirement to continue paying compensation to inmates while they are recovering from work-related injuries is limited to that of good time credits. A claim for good time credits may be based on agency regulations authorizing a compensatory award during incarceration [*Thompson v. Federal Prison Industries* (1974)] or on constitutional grounds. In the latter instance, the inmate must show that the inmate was

totally disabled from performing work or has sought other work from prison authorities that provides good time credits [*Cohen v. Ciccone* (1970)]. A state's provision of good time to inmates injured while working may not require it to provide similar credits to inmates otherwise injured or medically unfit for work [*Rowe v. Fauver* (1982)]. Yet other cases involving physically unfit inmates' eligibility for good time reinforce the view that inmates injured while working must be afforded good time credits [e.g., *Sawyer v. Sigler* (1970)].

A similar conclusion suggests itself for wages to injured inmates. That is, the cases cited here in conjunction with those relating to denial of work eligibility [supra] suggest that some courts may require continued payment of some wages to inmates unable to work due to work-related injuries.

Summary. States must provide some mechanism for paying compensation for inmates injured while working in prison industries. No particular format is required, either for inclusion of inmates in state worker compensation laws or through court process. Where court process is available, the trend is to lower the legal barriers limiting inmate recovery. Court decisions on the need for continued wage and good time compensation while recovering from injuries are sparse but suggestive that this may be required.

Implications. Industries managers should examine the effects of their existing systems for providing compensation for inmates injured while working. Should these plans appear to be inadequate in some areas, they may wish to examine other systems in nearby states.

Marketing and Purchasing

The prison industries operation most commented upon is, of course, the marketing of its goods and services. The necessary interactions with the external environment that marketing requires is one reason for its greater visibility. In contrast, marketing's operational counterpart, purchase of raw materials, is little noted, although of equal import to industries.

Constitutional/Technical Challenges

As significant as marketing and purchasing of raw materials may be, there are few reported cases on these topics. One reason may be that statutory requirements carefully limit industries discretion. Where the statutory requirements are followed, the principal legal issue requiring court determination is the constitutionality of the statutes themselves. For example, in *Associated Industries of Alabama v. Britton* (1979) the court upheld the constitutionality of the state Prison-Made Goods Act which authorized industries sales to state agencies without a bid requirement.

Occasionally industries marketing or purchasing actions have been based on more technical statutory arguments. For example, in *Department of Corrections v. McCain Sales of Florida* (1981) the plaintiff argued that the Department of Corrections had failed to comply with the state Administrative Procedures Act before deciding to begin a metal sign manufacture shop. The court held that the existence of a program did not imply

a statement of policy to which the APA applied. Federal court decisions applying the Federal APA were distinguished on the basis of "small definitional differences." Another challenge to the purchases of industries equipment by a taxpayer claiming unauthorized use of tax funds was rejected in *Wells v. Heath* (1981). There the court held that the appropriations language authorizing expenditure for "maintenance and general operation" included expenses for equipment. Similarly rejected was the argument that state law required all purchases be made solely out of revenues derived from the industry since the appropriation implementing the authorization law implicitly repealed this requirement.

Summary. Challenges based on state law to industries' actions in developing new product lines or in selling to state agencies have not been successful.

Implications. Industries managers should strive to comply with state law procedural requirements. Ambiguities in state law as to state administrative procedures act scope should be resolved by referral to the state attorney general's office.

Sales of Industries Products

As a creature of state laws, prison industries may sell its goods and services in the manner prescribed by law. Yet other laws, especially Federal laws, may place other restrictions on their role.

In *Wentworth v. Solem* (1977) the Federal court held that Federal law restricting the sale of prison made goods in interstate commerce [18 U.S.C. Sec. 1761-62] could not be enforced by private lawsuits brought by inmates. These statutes provide criminal penalties for their violation without expressly providing for a private right of action. This decision does not mean, however, that a private business or organized labor body might not be able to bring suit, since they are among the classes of persons whom the criminal law was meant to protect [cf. *Kentucky Whip and Collar Company v. Illinois Central Railroad Co.* (1937)].

It is also possible that Federal economic regulation laws may be applicable to prison industries although there are no decisions on this point. Potentially applicable are the Sherman Antitrust Act (forbidding monopolistic behavior), the Clayton Act, and the Robinson-Patman Act (forbidding price discrimination where the effect is to lessen competition or to injure a competitor). Although these several laws exempt states from their coverage, this exemption applies only to traditional activities. It does not apply to "proprietary activities" of the states. In *Jefferson City Pharmaceutical Association v. Abbott Laboratories* (1983) the U.S. Supreme Court specifically ruled that the state exemption does not apply where the state "has chosen to compete in the private retail market." That case involved the state operation of pharmacies which sold drugs to the general public.

This decision also suggests that a business-like basis of the state activity also brings it within the ambit of these Federal regulatory laws. Thus, the court in a footnote rejected as "economic fiction" the contention of the dissent that states may never be in competition with private parties. Although limited

to the facts of the instant case, the opinion suggests an inference that the state use market may not be separated from the private sector market on a noncompetition basis. The case does not, however, deal with a state sovereignty argument. This argument says a state may require purchase from its own industries programs by state agencies and local governments since the purchase requirements serve a state purpose in keeping inmates at work. This reasoning would comport with the Court's distinction in *Jefferson City* between purchase for resale to the private sector and purchase for use in traditional governmental functions.

State parallels to these federal laws are quite common among prison industries laws themselves. Thus, many states direct prison industries to operate in a manner not harmful to competition [cf. *Maryland Annotated Code Title 27 Sec. 681 B (3)*]. Other laws require that prices on industries products be uniform to all buyers [e.g., *Arizona Revised Statutes Sec. 41-1627*]. Cases interpreting these laws were not found, however.

Summary. Both Federal and many state laws prohibit prison industries from acting in an anticompetitive manner. Failure to heed these statutes in the pricing of industries products may result in court intervention. Procedural barriers limit persons other than competitors from bringing actions against industries' marketing practices.

Implications. Industries might request advice from its state attorney general on problems from the possible application of Federal antitrust laws. Adherence to a policy of nondiscounted pricing and open market prices for private sector sales should minimize these problems.

Afterword

This review of court decisions affecting state prison industries has sought to be as inclusive as it could be. Nonetheless, limitations inherent in the judicial process and in the court reporting systems restrict the scope of available reports. Thus, it is likely that we were unable to discover unreported cases or consent decrees that had secondary impact on prison industries.

A second gap in this analysis lies in the absence of any reported decisions interpreting many aspects of the laws establishing prison industries. One apparent reason for this is the nondiscretionary nature of these laws. Their simple commands may be thought to leave little room for argument over their meaning. Our experience, however, suggests that this is not always the case. For example, a statute explicitly exempting the industries managers from the state personnel system does not on its face exempt industries from personnel ceilings imposed by an office equivalent to the Federal Office of Management and Budget. Differences between the industries managers and the state agency responsible for imposing personnel ceilings are not resolved in court, however legalistic the argument may be. Rather, solutions are found either through negotiation, recourse to a higher political authority (e.g., the governor) for decision, or through referral of the dispute to the state attorney general. To date, such interagency disputes have not been overly numerous. As policymakers' interest in prison industries continues to increase and more demands are made of it, these disputes will become more common.

The implications of potential interagency conflicts are several. First, industries need to make better known to other governmental actors the significance of differences in its operations from traditional governmental activities. Second, to the extent possible industries managers should seek to have direct access to legislators when new industries legislation is proposed. Such access is the only means by which new legislation will be both specific and extensive enough to forestall potentially limiting statutory interpretations.

Third, insofar as we conclude that many legal problems facing industries are not resolvable through either court action or better legislature drafting, nonlegalistic actions are required of industries managers. Informational tools need to be developed that will do more than make people aware of industries products and services. They should also inform as to how industries operates and what it needs to efficiently employ inmates or to expand its activities to accommodate increasing populations.

Similarly, industries managers need to direct more attention to the development of personal relations with numerous external, governmental, and private sector actors. Existing industries advisory boards can be one mechanism for this; informal boards can be developed to supplement statutory boards or to serve in their absence.

Summary. Challenges to industries that are legalistic in nature may not be solved through legal processes. Instead more personalized avenues of redress may be needed. These in turn may require the development of informational packages to persuade others.

Section 2: Standards Impacting Prison Industries

Introduction

Like other areas of corrections, prison industries is increasingly being held accountable for its activities. The recent trend for requiring prison industries to be more business-like in its operations may be seen as a means of enforcing accountability within the DOC. As we have seen in the preceding section, one means by which corrections programs are being held accountable is through the growing number of court suits. Another means of holding industries accountable has been through the development of professional standards. Many of these standards go beyond the scope of statutory requirements of most states in that they address operational rather than establishment issues.

Seven sets of standards will be discussed, varying considerably in levels of comprehensiveness, specificity, and emphasis. Some of the standards sets deal specifically with prison industries, while others impact on prison industries operations because of the requirements they place on other institutional operations.

One of the earliest sets of standards written expressly for prison industries is the Correctional Industries Association (CIA) *Manual of Standards for Self-Evaluation of Correctional Industry Programs* (revised 1971). The CIA standards are fairly

comprehensive and deal with specific management functions as well as overall program scope. Another of the early relevant works on standards is that of the National Advisory Commission (NAC) *Standards on Corrections* (1973) which contains two specific references to prison labor and industries. While the NAC standards are not as industries-specific as some of the other standards that follow, they are far-reaching in thrust considering that they were adopted over a decade ago.

In 1979 the National Conference of Commissioners on Uniform State Laws adopted the *Model Sentencing and Corrections Act* (MCSA) which is derived in part from the standards recommended by the Advisory Commission. While the MCSA is not a standards document as such, it is examined here since one section is devoted to the employment and training of confined persons and is comparable to the other standards groupings in many respects.

A fourth set of standards to be examined is the American Correctional Association (ACA) *Standards for Adult Correctional Institutions* (ACI), 2nd edition (1981). Originally published in 1977, these standards make direct reference to industries work programs. Another set of standards that is very similar to the ACI standards is the Department of Justice (DOJ) *Standards for Prisons and Jails* (1980). Since the DOJ standards vary little in content from the ACI standards, they are mentioned and discussed only briefly herein. One of the more comprehensive sets of standards for prison industries is that published in 1981 by the American Correctional Association, *Standards for Correctional Industries* (SCI). These standards cover six areas: administration, fiscal management, safety and security, personnel practices, shop practices, and marketing.

The final group of standards to be discussed is the American Bar Association (ABA) standards on *The Legal Status of Prisoners* (1982) which focus primarily on the rights of inmates working in industries programs, including wages and worker's compensation issues. The ABA standards are similar to the NAC standards in orientation with their offender focus and may be considered to be "aspirational" in nature rather than the explication of legal principles of other ABA criminal justice standards.

Standards and Accreditation

A corollary to the development of standards has been the movement toward accreditation of corrections agencies, that is, a process by which facilities and/or programs are certified by corrections professionals as meeting a required percentage of applicable standards. The standards discussed below that are relevant to the accreditation process are ACA *Standards for Adult Correctional Institutions* (ACI), of which standards for work programs are a part. In order to become accredited, an agency or facility must comply with 100 percent of those standards designated as "mandatory", 90 percent of the "essential" standards and 80 percent of the "important" standards. (Note: The CIA standards also differentiate among standards with distinctions for essential, important, desirable, and optional standards categories.) As a means of assisting agencies meet the standards, a corresponding discussion accompanies each

standard, providing a guide on suggested procedures to follow in order to achieve compliance with that particular standard. While accreditation does not yet exist for prison industry programs per se, many inmate work programs are part of the growing number of correctional facilities across the nation which are now accredited. While striving for accreditation is one method of improving the overall operation of prison industries, an awareness of all the various standards impacting industries cannot be underestimated as a way to insure a strong, well-managed program.

Standards and the Courts

Court cases for the most part make little reference to the standards. As discussed in the section on work environment above, cases where standards were specifically mentioned have been limited. These cases dealt primarily with health and safety standards, e.g., OSHA, and in one particular case the ACA *Standards for Adult Correctional Institutions* (ACI). Prison industry standards per se have not been mentioned, however, since they are relatively recent. Thus standards have not played a major role in the court cases that have arisen.

From a legal standpoint, standards compliance does not insure keeping an agency or program out of court, yet there may be more subtle advantages to be gained from efforts to comply with standards. That is, complying with the standards may restrict the occurrence of frivolous suits being brought against an agency or program. Moreover, efforts to meet standards may serve as a mitigating factor in cases which are taken to court. Such implicit motivations to pursuing the standards are in addition to professional reasons to do so. We turn now to a description of the various groups of standards relevant to prison industries.

Discussion of the Standards

It is the intent of the *Guidelines* not only to present the recommendations of several standards' sources, but also to distill a kind of conventional wisdom from these standards. Thus each group of standards is discussed first as to its individual content, followed by a comparative analysis.

Correctional Industries Association Standards (CIA, 1971)

The CIA standards represent a mix of both comprehensive procedures and vague guidelines. In some areas the standards elaborate in much detail, while in other areas they simply touch upon a given area in outline form. Five major areas are established by the CIA standards: objectives, planning, organizational policy, program areas, and management areas. The categories of program and management are broken down into fairly comprehensive detail, distinguishing among those standards that are essential, important, and desirable. The area of planning, on the other hand, is only described in outline form, leaving the language unclear as to the exact intent of the standards, e.g., sound procedures are used in classifying inmates for work

assignments. The CIA standards do go beyond most of the other standards groupings with respect to areas covered, however. They provide a useful benchmark from which to examine a prison industries operation.

In the area of program objectives, the CIA standards state that a sound program will incorporate most of the items listed. Six specific objectives are then laid out: training as a program goal, adequate supervision, provision for some wages paid, qualified staff, marketing force with a profit orientation, and a job placement component.

In planning for the development of new industries programs, several factors which should be considered in making decisions are outlined. These include an overall balance of programs within the institution, the presence of a well represented planning committee, consideration of the market as well as the needs of inmates, i.e., training. Finally, resource needs in terms of equipment, space, and staffing must also be considered.

Organizational Policy. The CIA standards on organizational policy cover a range of miscellaneous areas, including administration, operation, industry staff, and inmate employees. Under administration, reference is made to providing direction and support, following good business practices (e.g., accounting, production, and quality control areas), job descriptions for both staff and inmates, interface with other DOC programs, and the establishment of an advisory committee. The operations subheading stresses the training value of industries and suggests further that prison industries should be similar to those in the private sector with up-to-date equipment. Selection criteria are outlined within the industry staff subheading. Moreover, this section states that staff salaries should be at the highest possible level. The inmate employee category of standards states that regular evaluations should occur and that inmates should be evaluated on explicit job requirements. Job descriptions are again emphasized for both staff and inmate positions. Staff descriptions should be keyed to the "Dictionary of Occupational Titles."

The last two major categories of standards for program and management areas go into greater detail than the earlier sections and differentiate among those standards that are essential from the important, desirable, and optional standards.

Program Areas. Five areas are covered under the program standards: classification, industrial training of inmates, inmate motivation, safety, and tool control. Classification has one essential standard, which provides that industries and other institutional program representatives should participate in classification decisions. The standards on industrial training of inmates stress the importance of training as an industries goal. Financial remuneration for work performed is treated as an optional standard, while good time and other rewards and incentives are designated as desirable standards. In the subheadings of safety and tool control, essential standards state that a safety program should be established and that industries supervisors participate in an overall institutional plan for tool control.

Management Areas. The fifth and final category of the CIA standards deals with management and outlines subheadings for industrial management, industries staff, marketing, quality control, and packaging and transportation. Essential standards under

the subheading of industrial management state that management support should be provided to operating units; and if more than one institution has industries, such support may be systemwide. Moreover, sufficient contracts should exist for continuous year-round work. Within the industrial staff subheading, job descriptions are again emphasized.

Essential standards under the marketing subheading state that there should be a competent marketing force to inform customers of industries products, provide customer consultation, handle customer relations, and follow-up on complaints. Moreover, acceptance of work orders consistent with industries capabilities to meet them is also essential. Under the subheading of product quality control, the essential standards state that procurement has established specifications and inspection criteria and that production control has specified checkpoints. Finally, the subheadings of packaging and transportation require that packaging be designed to hold up under shipping by commercial or contract carriers or by industries trucking. Thus, the CIA standards strongly emphasize both management and operations as well as the importance of industries staff and the training value of industries for inmates.

National Advisory Commission Standards (NAC, 1973)

The focus of the NAC standards is on the role of prison industries with respect to training of offenders. Since these standards were part of a larger effort to develop correctional standards and goals, the areas covered are quite limited. The thrust of the standards is on comparability to the private sector; and as a result, they were the first standards to suggest payment of prevailing market wages to inmates and changing the legislation to allow sales on the open market.

Model Sentencing and Corrections Act Standards (MSCA, 1979)

There are 16 legislative standards espoused by the MSCA dealing with offender employment and training issues. On a broad level, the MSCA addresses the establishment of goals and objectives, statutory authorization for employment, administration, and fiscal management of enterprises. Beyond these baseline considerations there are two primary areas of focus: First, provisions for the involvement of private enterprise; second, the operating requirements for the employment of inmate personnel. Four standards discuss various aspects of private sector involvement, including employment on or off premises, leasing of facilities to private enterprise, and inmates employed by private enterprise. Six standards address inmate personnel and related issues. Included here are employment and classification criteria, work required, wages and reimbursements, disposition of wages, funds of confined persons, and financial assistance upon release. Finally, there are several other standards regarding conflict of interest and interstate commerce. The former area relates to private sector employment of inmates and requires disclosure of any financial interest by corrections personnel in a private enterprise employing inmates. The latter area calls for

the elimination of market restrictions on transport of prison-made goods.

ACA Standards for Adult Correctional Institutions (ACI, 1977)

Like the NAC standards, the ACI standards represent one aspect of a larger group of standards for corrections institutions. The ACI standards outline one subset of standards dealing specifically with inmate work programs. Work programs are defined to include agricultural and maintenance jobs. The only mandatory standard is that which requires safety inspections and meeting of relevant state and local codes' requirements. Essential standards state that all inmates are provided either a work or program assignment in the institution. The purpose of this standard, according to the accompanying discussion, is to ensure that idleness does not exist. In addition, essential standards state that inmates are paid for work performed and an incentive plan exists for inmates who work. A related essential standard states that work releasees are paid the prevailing wages. Finally, an essential standard states that handicapped inmates are provided employment opportunities.

Important standards include the following: training for job skills is stated as a goal of industrial programs; inmates are given the opportunity to work in a variety of areas, including public works. Other important standards state that a full workday is provided; industries staff communicate with business and labor; provisions are made for work release; and when private industries operate at the institution, they should pay prevailing wages.

In addition to those standards explicitly referencing inmate work programs, there are several other related standards in the areas of security, safety, sanitation, and hygiene that are applicable to industries operations. For example, standard 4197 provides for the control of all tools used within the institution. Standard 4262 requires that protective clothing be worn when inmates are performing special work. Standard 4175 provides for the control of toxic substances.

Other standards that are directly relevant include training for industries managers (4090) which outlines 40 hours annually as necessary for all staff having regular contact with inmates. Standard 4334 states that inmates must participate in work assignments. Standard 4439 states that relevant vocational training be provided that takes into account employment opportunities within the community. Standard 4022 ensures that employment is one of the minimum program requirements that an institution must provide, and standard 4332 states that institutions for women must provide equal access to those employment opportunities that are available in the men's facilities. Finally, areas such as fiscal management, while written for the institution as a whole, could easily be applied to industries.

Department of Justice Standards (DOJ, 1980)

Another relevant set of correctional standards is the DOJ *Standards for Prisons and Jails*. Like the ACI standards above, the DOJ standards are generic to adult institutions, both long-term

as well as detention facilities. The section of these standards on work programs closely corresponds to that in the ACI standards. Parts of the discussion which accompanies ACI standards have been integrated into the actual text of the DOJ standards. There are two significant differences, however. First, the DOJ standards do not include two standards contained in the ACI which state that inmates working in the community or employed by private industry at the institution are paid at the prevailing rate. The second difference from the ACI standards is that the DOJ includes two standards applicable to local detention facilities only. These standards state first, detention facilities operate according to a written inmate work assignment plan that provides for inmate employment subject to the number of work opportunities available and the maintenance of facility security; and second, written policies and procedures provide that pretrial detainees are not required to work except to do personal housekeeping.

Since the primary focus of detention standards is on work programs for short-term sentenced misdemeanants (such as maintenance operations and community service jobs), they may not seem relevant to prison industries as such. There is a growing movement afoot, however, to establish industries in short-term local detention facilities. Thus standards on inmate work programs will become relevant to administrators of these facilities in the near future.

ACA Standards for Correctional Industries (SCI, 1981)

Standards for Correctional Industries (SCI) represents the most recent comprehensive effort to establish standards for prison industry programs. The format for this set of standards follows closely that of the *Standards for Adult Correctional Institutions*. There are 57 standards in all with the major categories consisting of general administration (17 standards); fiscal management (10); safety, security, and working conditions (16); inmate personnel practices (16); shop practices (9); and marketing (6). The emphasis of these standards is clearly on the presence of written policies and procedures (with 32 specific references) to document that a given standard is being followed. There are also several references to statutory authorization necessary in the section on administration. Other noteworthy points include the clear existence of an advisory board for prison industries with three standards addressing this particular issue. In addition, safety is heavily stressed in these standards.

The SCI standards for administration encompass the following areas: enabling legislation; statutory authorization for sufficient markets and capital spending; clearly stated objectives; provision for the creation of new industries and worker's compensation; an organizational chart depicting lines of authority; and industries attending DOC staff meetings. In addition, job descriptions and training for industries personnel are treated in the administration standards. Finally, provision for an advisory board, membership and schedule, as well as a mechanism for relating to business and labor are addressed.

In the area of fiscal management, the following specifics are covered by the standards: cost accounting systems for each

operating unit; annual sales and expense projections developed; audit provisions; monthly reporting requirements; monitoring of accounts receivable; pricing; annual review of loss industries; ongoing inventory management; procurement of raw materials.

Safety standards are quite comprehensive. They include weekly inspections; establishment and enforcement of rules; training for staff/inmates; committees to meet monthly; accident record system; waste disposal; compliance with fire codes, routine fire inspections, fire prevention regulations, and evacuation plan. The subheadings of security and working conditions include use of tools; search for contraband; private industry in institution following security regulations; weekly sanitation inspections; sanitary facilities.

Standards on inmate personnel practices state that inmate stations have job descriptions; numbers assigned meet work needs, i.e., no featherbedding; apprentice training programs are available in appropriate industries; job vacancies are posted and available to those qualified; linkages exist between industries and vocational education (and academic) programs; normal workday with callouts minimized; inmate pay based on work performed; pay plan specified and distributed, including bonuses; standards set for use of good time; incentives for industries assignments; EEO for inmates; equality of work assignments in coed facilities; orientation materials provided; and periodic performance evaluations are conducted.

The standards on shop practices include quality control; productivity standards for each work station; control over work orders; product specifications for items produced in industries; equipment inventory; maintenance of equipment; accountability for tools, materials, and products. Two standards deal with agricultural programs: farm products are inspected and distribution is prompt to the kitchen.

Finally, marketing standards delineate six areas: marketing formalized and within organization, formal process for handling customer orders, timely processing of orders to ensure prompt delivery, procedure for customer complaints, advertising, market research established.

American Bar Association Standards (ABA, 1982)

The ABA *Report to the House of Delegates* (1982) stresses several areas to be accomplished by prison industries, including meaningful industries programs, cooperation with business and labor, training provisions, nongratuious wages, policies for distributing wages for reimbursement, and profit going toward improvement of industries.

ABA *Standards on the Legal Status of Prisoners* elaborates on these topics specifying seven standards, mostly dealing with various schemes for inmate compensation. Standard 23-4 (see Part IV: Prisoner Employment and Institutional Programs) addresses inmate participation in housekeeping and maintenance programs. It states that while inmates should not be paid for cleaning their own personal space, they should be paid for work assignments essential to overall upkeep at the institution, including prison industries. A related standard deals with the availability of rehabilitation programs (23-4.6), stating that inmates may be compelled to accept work within the institutional

operations apparatus, as well as industries assignments. The third of these standards deals with the availability of remunerative employment for inmates (23-4.2). This standard states that industries should seek cooperation from business and labor to develop meaningful work opportunities. It goes on to suggest that statutes restricting goods produced or market and transportation of those goods should be repealed. Work release programs should also be made available according to this standard. A fourth standard deals with wages and hours of employment (23-4.3), explaining that inmate labor should be covered under minimum wage laws, number of hours should be similar to that in the community, prevailing fringe benefits provided, and inmates should be required to pay reimbursements.

The fifth of these standards outlines what is to be included in inmate reimbursement payments (23-4.4), i.e., costs to the jurisdiction for housing them, withholding costs associated with employment (such as transportation), family support, or restitution. Another standard has to do expressly with inmate compensation (23-6.12), stating legislation should extend to inmates' insurance coverage for any job-related injury, as well as access to regular tort claims. Finally, the last of these standards deals with conditions of employment (23-4.5), stating essentially that inmates work in a safe environment and are entitled to compensation in the event of injury.

Standards Analysis

These are three broad categorical areas in which the standards can be characterized (see Table 4.2). The first of these involves the overall authorization, scope, and organization of prison industries. The second major area is that of management; this includes marketing, fiscal management, and industries personnel management. The third major area is program operations

which includes inmate staffing, production, safety, and interface with other programs.

Authorization and Scope

One prominent issue emerges in nearly all of the standards discussed, i.e., provision should be made for private sector involvement. While there appears to be consensus on this issue in one respect, a closer look suggests wide variation on the issue. The question of private involvement varies according to the type and extent of that involvement from technical assistance or private representation on an advisory board to contracting for inmate or private representation on an advisory board to contracting for inmate labor, or even to privately operated industries. This issue offers a good illustration of the differences among professional groups as to the accepted norm. Nonetheless, the point made here is that consensus does exist; at a minimum the private sector should be involved in prison industries.

Goals and Objectives. The area of goals and objectives is another area where at first glance it would appear that most standards are in agreement. Yet the problem here is not consensus across standards but within them. Most sets of standards state that prison industries should provide both sufficient employment to reduce idleness and the opportunity for training as an explicit goal. Yet the same standards call for a realistic work environment which may well represent an inherent conflict with the training and reduction of idleness goals. While these goals are not theoretically at odds, given the reality of limited resources they are often conflicting with one another. Thus maximization of one may lead to submergence of the other in practice. This type of issue cannot be resolved by the standards.

Table 4.2
Standards Cross-Reference

AUTHORIZATION AND SCOPE	CIA	MSCA	ACI	DOJ	SCI	ABA
A. Authorization and Scope						
1. Program created		X			X	
2. Sufficient markets available	X				X	X
3. Capital expenditure authorized		X			X	
4. Private industry involved		X	X	X	X	X
5. Planning capacity	X				X	
6. Operating requirements	X	X			X	
B. Organization						
1. Advisory board created	X				X	
2. Decision structure	X				X	
3. Management generally	X	X				
C. Goals						
1. Training skills (relevant work experience)	X	X	X	X		X
2. Develop good work habits	X		X			
3. Job placement	X	X				
4. Reduce idleness		X	X			X
5. Realistic work environment	X		X	X	X	X

Table 4.2
Standards Cross-Reference (continued)

GENERAL MANAGEMENT AREAS	CIA	MSCA	ACI	DOJ	SCI	ABA
A. Marketing	X	X			X	
1. Formalized	X				X	
2. Order handling	X				X	
3. Customer complaints	X				X	
4. Advertising	X				X	
5. Research	X				X	
6. Public relations	X				X	
B. Fiscal Management		X	X		X	
1. Cost accounting					X	
2. Annual projection					X	
3. Audit					X	
4. Regular financial reports					X	
5. Monitoring A/R					X	
6. Pricing		X			X	
7. Self-supporting					X	
8. Inventory					X	
9. Procurement					X	
C. Industries Personnel	X			X	X	
1. Job description	X					
2. Selection criteria specified	X					
3. Qualified staff	X					
4. Salaries at highest	X	X			X	
5. Training			X			
OPERATIONS/PROGRAMS						
A. Inmate Personnel					X	
1. Sufficient employment opportunities	X	X	X	X		X
2. Job descriptions	X				X	
3. Apprentice programs available	X				X	
4. Vacancies posted	X	X	X	X	X	X
5. Inmates paid					X	
6. Pay plan distributed	X				X	
7. Use of good time	X		X		X	
8. Incentives		X				X
9. Disposition of wages			X	X	X	
10. EEO	X				X	
11. Orientation provided	X				X	
12. Performance evaluation						
13. Participation in work assignment		X	X			X
B. Production	X				X	
1. Quality control	X				X	
2. Agriculture inspection and distribution					X	
3. Productivity standards					X	
4. Control over orders					X	
5. Product specifications	X				X	
6. Equipment inventory					X	
7. Account for tools, materials, etc.	X					
8. Packaging and transportation	X					
9. Rejected items						

Table 4.2
Standards Cross-Reference (continued)

C. Safety and Security	X		X	X	X
1. Inspections		X		X	
2. Rules	X			X	
3. Training				X	
4. Committees	X			X	
5. Record system				X	
6. Waste disposal		X		X	
7. Fire standards				X	
8. Sanitation conditions				X	
9. Compensation for injury	X				X
10. Tools security	X	X		X	
11. Contraband				X	
12. Private industry follow regulations		X		X	
D. Interface With Other Programs	X		X	X	
1. Schedule (minimize callouts)		X			

a ripple effect on all other areas of industries operations. Consequently, this translates into continuous tradeoffs in decision-making by the industries practitioners.

Yet the multiple goals advocated by the various groups of professional standards may suggest that a delicate balance must be achieved and that one goal should not be optimized to the detriment of another. As is stressed throughout the *Guidelines* report, the question of goals is a critical one since it potentially has

General Management

Only the CIA and SCI standards address the management areas in detail; the NAC standards are limited to discussion of broad issues involving authorization and scope, while the ABA focuses on issues relating to the inmate workforce. Personnel issues are discussed in both the ACI and DOJ (fiscal issues only in the former), though in terms generic to corrections as a whole, not specific to prison industries. The MSCA standards are also limited to discussions of management at a more general level, e.g., records and accounts follow good business-like practices (4-809a3).

The CIA standards place less emphasis on the fiscal management component than do the SCI standards, whereas the latter group makes little mention of industries personnel. Marketing issues are addressed in detail by both the CIA and SCI standards, which is no surprise since they are the only sets of standards drafted specifically for prison industries. While each of the standards groupings varies in its respective emphasis, any organization, in order to be effective, must have effective marketing, fiscal, and personnel management. These three areas of responsibility are critical to the functioning of prison industries. The last decade has witnessed an increasing shift in each of these directions: fiscal management through free venture programs; personnel management through efforts to recruit from private industry; and most recently, marketing with attention being given to improved quality of goods as well as advertising and related public relations efforts.

Program Operations

Nearly all of the standards state that sufficient employment opportunities should exist for inmates. Furthermore, all of the standards agree that inmates are to be paid for work performed; the standards vary, however, as to whether inmate wages should be above token on the one hand, to minimum wage and even prevailing wage on the other extreme. Only two sets of standards call for inmate reimbursement, or chargebacks, from their wages earned, for housing, restitution, etc. (MSCA and ABA). Another area where there is some agreement deals with inmate participation in work assignments; three sets of standards support the premise that inmates may be compelled to accept work assignments.

While most of the standards address safety requirements, production issues such as quality control are only discussed in the CIA and SCI standards. The scheduling of industries work hours so they interface with other correctional programs is addressed by all but one group of standards. Such standards attempt to minimize callouts which adversely affect the continuity of production.

Summary

In conclusion, it appears that these standards impacting prison industries warrant the close attention of industries directors and corrections alike. The question of which set of standards one should adhere to is not as important as ensuring that efforts are made to follow the basic principles to which all of the standards prescribe. Thus the points of consensus that emerge from prison industry standards include involving the private sector, paying inmates for their work, and performing key management functions such as fiscal, personnel, and marketing in a business-like manner so that someone may be held accountable. Moreover, the standards advocate that sufficient employment opportunities be made available for inmates and that industries programs should operate within a safe environment. Further, that industries interface with other institutional programs to minimize disruptions and achieve maximum utility for both inmate and institution alike.

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Other Materials: State Policies and Procedures

Alaska
California
Connecticut
Delaware
Florida
Illinois
Iowa
Michigan
Missouri
Nebraska
Ohio
Oklahoma
Oregon
Tennessee
Virginia
Washington

Appendix A

50-State Survey of Prison Industries

A. BACKGROUND

1. State _____ Date _____
2. Contact Person _____
3. Title _____
4. Telephone Number _____ / _____
5. How many major institutions have industries in your state? _____
6. Which ones do not? _____
7. Do you have any shops other than at major institutions? _____
If so, where? _____
8. Do any of the same shops exist in more than one institution? _____
If so, which ones? _____
9. What is the total number of shops you have? _____
10. Is there any kind of joint venture existing between institutions whereby a product made at one institution is shipped to another to be used for producing something else? _____
11. What shops exist at the women's institution? (If none, why not?) _____

B. ORGANIZATIONAL STRUCTURE

1. What is the formal status of prison industries in your state, i.e., division established by statute or department rule? _____
2. To whom do you report? _____
3. Do you attend DOC executive staff meetings? _____
4. Do you administer agricultural programs? _____
5. Is there any inmate labor performed in or out of the institutions that is *not* under your authority?, e.g.
_____ institutional maintenance
_____ work release
_____ public works
_____ other (explain) _____
6. Are there industries coordinators/managers located at the institutions? _____
7. Do industries coordinators/shop supervisors report to the Warden, directly to you or to both regarding operations issues? _____
8. What is the nature of industries participation in the classification decisions for work assignment? _____
9. Are there regional DOC offices for prison industries in your state? _____
10. Are the following functions centralized or carried out at the institutional level?
_____ a. planning
_____ b. fiscal management
_____ c. quality control
_____ d. ordering/customer relations
_____ e. pricing
_____ f. purchasing of raw materials

C. PERSONNEL (as of 6/1/83)

1. How many central office staff are there for prison industries? (Include regional offices)
_____ a. professional
_____ b. marketing and sales (non-clerical)
_____ c. clerical
_____ d. inmates
2. How many of these staff do you employ on a contract basis? _____
3. How many engineers do you employ? _____
4. Do you have a safety coordinator? _____
5. How many civilian staff do you have in the state (employed at institutions)?
_____ a. manufacturing and service industries
_____ b. agriculture
6. Are they trained as correctional officers? _____
7. Are the prison industries staff recruited predominantly from private industry or from the institutional staff? _____
If institutional, custody or other? _____
8. What was the turnover rate among prison industry staff at the facilities for the last year? (Estimate if necessary) _____
9. How many security staff are assigned regularly to supervise inmates in prison industries? _____
10. Do you have any shared personnel, i.e., staff, who split their time between industries and institutional operations?
If so, how many? _____
11. Does prison industries reimburse the DOC for security staff coverage? _____

D. INMATE DATA (Estimate if necessary)

1. Number of inmates employed as of 6/1/83 _____
_____ a. high over the last 12 month period
_____ b. low for the last 12 months
2. Number of inmates employed by industry area
_____ a. manufacturing
_____ b. service
_____ c. agriculture
3. What is the ratio of inmates to institutional staff working in prison industries? _____
4. At what percent of production capacity are you operating today? _____
5. If you were operating under conditions analogous to the private sector, would you be employing more or fewer inmates than you are currently, assuming production levels remain the same? _____
6. Number of inmates employed at other labor
_____ a. institutional maintenance
_____ b. work release
_____ c. public works
_____ d. vocational training
7. What kind of cooperation/interface exists between prison industries and vocational training for inmates? Explain.

8. What about interface with other institutional programs, e.g., education? Elaborate.

9. What are the average earnings for an inmate per day? _____
10. Are fringe benefits also provided for inmates (e.g., paid holidays)? _____
11. Are inmates covered under a worker's compensation program? _____
If yes, is the program authority by statute? _____
12. Is there any problem with worker's compensation? _____
Any changes you would like to see made? _____

13. Are there written job descriptions for each inmate position available in prison industries? _____
14. Does the inmate wage structure include any bonus and/or incentive pay tied to performance? _____
15. What extra good time allowances (if any) are given to inmates in industries? _____
16. How does this compare to good time for inmates in institutional maintenance or other labor? _____
17. What other types of incentives do you have to motivate inmates to work? _____
18. Are inmates called out from their work assignment on temporary bases for reasons such as visits, counseling, or other administrative purposes? (Often, seldom, never) _____
19. What about lockdowns or inmate work stoppages? Are these ever a problem? _____
20. How many injuries occurred last year which resulted in a loss of productive time? _____
 - a. inmate _____
 - b. staff _____

E. FISCAL/BUDGET INFORMATION

1. Is there a separate prison industries budget? _____
2. What is the total operating budget for the upcoming fiscal year (1984)? _____
3. Is any legislative appropriation included in that budget? _____
If so, how much? _____
4. Is there any legislative appropriation for capital (plant, major equipment) expenditures? (FY 1984) _____
If so, how much? _____
5. What was the total expenditure for capital outlay last year (re: PI)? _____
6. For which capital projects was this money expended? _____
7. What were your total gross sales for last year? _____
 - a. manufacturing/service industry _____
 - b. agriculture _____
8. What percent of your sales is to the DOC? _____
9. What was your profit or loss for last year? Qualify. _____
 - a. manufacturing/service industry _____
 - b. agriculture _____
10. What was your net worth (current assets) at the end of the last fiscal year? (include plant and equipment) _____
11. How many shops make a profit? _____
Which ones? _____
12. How many shops operate at a loss? _____
Which ones? _____
13. Is there any add-on income received from goods or services over and above the selling price of each unit produced? (e.g., OK) _____
14. Are inmates who work at non-industries jobs, i.e., maintenance, paid from the industries revolving fund? _____
15. What industries' costs are absorbed by DOC or vice versa, e.g., maintenance, utilities, transportation, etc. (Describe) _____
16. Are there any monies which are deposited into your industries fund which are not generated by PI activities, e.g., public works or private industry work release? _____
17. Does prison industries regularly loan or transfer money from its revolving fund to the DOC or back to the state treasury? _____

18. What is your current cash on hand? _____
Accounts receivable? _____
19. How often is a complete audit of industries undertaken? _____

F. PRODUCTS/MARKETING

1. Who sets the prices for prison industries' products? _____
2. What methods are used to set prices? _____
3. Do the prices established for each product vary for DOC institutional use? _____
4. Is there a pre-established discount or is price negotiated ad hoc? _____
5. What quality control measures do you have? _____
6. Are the state purchasing and finance agencies cooperative in enforcing the state use law? _____
7. How often is a complete inventory taken of equipment and raw materials? _____
8. What kind of inventory levels do you maintain for finished goods? _____
9. Is shortage of space a problem in keeping an appropriate inventory level? _____
10. Do you have any ongoing relationship with organized labor or private business? _____
11. Would you like to increase private sector involvement with prison industries? _____
How? _____
12. Are any of your industries operating at maximum production capacity? _____
13. To what extent has production in specific shops or program expansion been limited due to potential business or labor complaints? (Specify) _____
14. Do you have any production or marketing relations with other states? _____
15. What percent of the state use market do you capture for goods you produce? _____

G. LEGAL/POLICY

1. Has there been any updates/revisions in your industries legislation in the last 3 years? _____
What areas? _____
2. Are there any particular areas in the legislation that you see as hampering your industries efforts (e.g., purchasing, marketing, wages)? _____

3. Are there any court decisions that have impacted on prison industries operations (systemwide or at a particular facility)?

4. Have you or any other industries personnel been sued in an individual capacity? (By whom?)

6. Are there any applicable standards (national, state or local) with which you must comply or use as a benchmark for your industry operations?

Which ones? _____

7. Are there written policies and procedures for prison industries?

8. If so, do they exist for each of the following areas?
- _____ a. administration (including status with DOC)
 - _____ b. budget and accounting
 - _____ c. recruitment and training of workers
 - _____ d. safety
 - _____ e. inmate pay
 - _____ f. inmate supervision
 - _____ g. security and related institutional policies and procedures (classification, etc.)
 - _____ h. scheduling and interface with other programs

H. FUTURE OF INDUSTRIES

1. Which industries have been phased out over the past three years? Why?

2. Are there any industries currently operating in your state that you plan to phase out in the near future? Why?

3. Are there any non-profitable industries that should be discontinued but are maintained for other reasons? Which ones? Why?

4. Are there any plans to start up new prison industries programs?

5. Is more emphasis being placed on developing service-type industries?

6. What are the greatest problems facing prison industries in your state today?

I. DOCUMENTS AVAILABLE

Which of the following documents are prepared and available?

- _____ 1. Annual report for prison industries or DOC report containing information on prison industries
- _____ 2. Long-term plan for prison industries
- _____ 3. Organizational chart depicting industries relation to DOC
- _____ 4. Breakdown of staff by industries shop
- _____ 5. Summary price list of products available/advertising sample
- _____ 6. Number of goods produced or services rendered by each prison industries shop
- _____ 7. Summary expenditure statement for last fiscal year
- _____ 8. Written policies and procedures for those areas mentioned above (Question G8)
- _____ 9. Any other relevant studies or reports on prison industries

Can you please send us copies of these documents?

Thank you very much for your time and cooperation.

Appendix B

State Industries Programs

The basis for the attached list of state industries programs are those reported in the *1983 Correctional Industries Association Directory*. The list has been modified to include information collected through the 50 state industry survey to reflect both new industries which have recently been started as well as those programs which have been phased out. No attempt was made in the survey, however, to systematically verify each program listed in the *CIA Directory*. The survey does demonstrate that a number of states are in the process of discontinuing outmoded industries and to an even greater extent have plans for starting new industries.

Alabama

Auto Validation Decals	Metal Products
Data Entry	Printing
Furniture	Tag Plant
Garment Manufacturing	

Alaska

Body Fender	Farm
-------------	------

Arizona

Bedding	Meat Processing
Dairy	Metal Products
Data Processing	Printing
Farming	Sign Shop
Furniture	Swine Herd
Garment Manufacturing	Tag Plant

Arkansas

Engraving	Printing
Furniture	School Bus Repair
Garment Manufacturing	Solar Energy
Mattress and Pillow	

California

Acoustic Screens	Metal Products
Auto Validation Decals	Office Supplies
Beef Herd	Optical Lab
Dairy	Printing
Desk Accessories	Shoe Factory
Farming	Sign Shop
Furniture—Wood and Metal	Tag Plant
Garment Manufacturing	Textile Products
Janitorial	Upholstery of Furniture
Mattress and Pillow	Wood Products

Colorado

Auto Renovation	Garment Manufacturing
Auto Repair	Graphics
Auto Validation Decals	Meat Processing
Beef Herd	Metal Products
Construction	Printing
Dairy	Sign Shop
Farming	Swine Herd

Feed Lot
Forestry/Sawmill
Furniture

Connecticut

Auto Validation Decals
Booklet Printing
Data Processing
Dental Prosthetics
Engraving
Farming
Forestry Products
Furniture
Furniture Refinishing
Garment Manufacturing
Laundry

Delaware

Farming
Furniture
Metal Products
Printing

Florida

Aquaculture
Refinishing Auto Renovation
Bar Soap
Beef Production
Book Bindery
Brick Plant
Broom Factory
Canning Plant
Concrete Products
Corrugated Box
Custom Wood Products
Dairy
Dental Lab
Feed Mill
Field Crops
Fire Tools
Forestry Products
Furniture (Office)
Furniture (Wood)

Georgia

Auto Validation Decals
Concrete Products
Furniture and Seating
Garment Manufacturing
Janitorial Products
Mattress, Pillow, Textiles

Hawaii

Printing

Idaho

Auto Refinishing

Tag Plant
Upholstery

Microfilming
Optical Lab
Printing
Purchasing
Sales and Customer Service
Sign Shop
Tag Plant
Typewriter Repair
Upholstery of Furniture
Vehicle Maintenance
Warehousing Mattress and Pill

Swine Herd
Upholstery of Furniture
Warehousing
Wood

Furniture
Garment Production
Hay Production
Janitorial Products
Key Punch
Mattress Factory
Meat Processing
Metal Products Factory
Optical Lab
Plant Nursery
Poultry and Eggs
Shoe Factory
Sod Farm
Swine Production
Tag Plant
Tire Recapping
Validation Decals
Vegetable Farm

Metal Products
Printing
Refinishing and Reupholstery
Signs and Decals
Tag Plant
Warehousing and Distribution

Tag Plant

Metal Products
Record Conversion
Sign Shop

Illinois

Auto Renovation
Brush and Mop Manufacturing
Cigarette Manufacturing
Drapery
Ethanol Production
Farming
Forestry Products
Furniture

Indiana

Bar Soap
Beef Herd
Brick Plant
Brush and Mop
Concrete Products
Dairy
Farming
Forestry Products
Furniture

Iowa

Auto Validation Decals
Dry Cleaning
Furniture
Furniture Upholstery
Garment Manufacturing
Janitorial Products
Labor Services

Kansas

Bar Soap
Farming
Furniture Refinishing
Garment Manufacturing
Janitorial Products

Kentucky

Clothing Plant
Data Processing
Furniture Plant
Graphic Arts
License Tags

Louisiana

Dry Cleaning
Garment Manufacturing
Janitorial Products and Bar Soap
Mattress and Pillow

Upholstery of Furniture
Wood Products

Furniture Refinishing
Janitorial Products
Laundry
Mattress and Pillows
Records Conversion
Sign Shop
Tire Recapping

Garment Manufacturing
Mattress and Pillow
Metal Products
Name Plates
Orchards
Printing
Sign Shop
Tag Plant
Wood Products

Laundry
Mattress and Pillow
Metal Products
Printing
Sign Shop
Tag Plant
Tire Recapping

Mattress
Paint Manufacturing
Sign Shop
Upholstery of Furniture
Warehousing

Metal Fabrication
Print Shop
Soap Plant
Tire Recapping

Meat Processing
Plastic Sign Shop
Silk Screen Shop
Tag and Metal Fabrication

Maine

License Plates
Print

Maryland

Brush and Carton
Graphics and Printing
Janitorial and Moving
Mattress
Meat Cutting
Metal Work

Massachusetts

Auto Validation Decals
Brush and Mop Manufacture
Construction
Flag
Foundry
Furniture Refinishing
Furniture Wood and Fibersin
Garment Manufacturing
Mattress and Pillow
Metal Products

Michigan

Auto Validation Decals
Bulk Textiles
Corrugated Box Factory
Decals
Furniture Upholstery
Furniture (Wood and Steel)

Garment Manufacturing
Graphics
Laundry

Minnesota

Assembly Sub-Contracts
Auto Renovation
Auto Validation Decals
Bus and Auto Reconditioning
Data Processing
Furniture
Furniture Upholstery
Garment

Missouri

Auto Validation Decals
Bar Soap
Chemical Products
Dry Cleaning
Furniture
Furniture Upholstery

Upholstery
Wood Products

Modular Welding
Paint
Sewing
Tag and Sign
Upholstery
Woodworking and Refinishing

Microfilming
Optical
Printing
Renovation Construction
Safety Vests
Sign Shop
Silk Screening
Tag Plant
3-Ring Binders
Upholstery

Machine Shop
Mattress and Pillow
Metal Products
Mops
Shoe Factory
Sign Shop (Wood, Metal, Plastic)
Tag Plant
Textile Products
Warehousing

Mattress and Pillow
Metal Products
Microfilm
Office Products
Printing
Telephone Reconditioning
Vinyl

Mattress and Pillow
Metal Products
Printing
Shoe Factory
Sign Shop
Tag Plant

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