



291 FW 1 *Federal Activities Inventory Reform (FAIR) Act*

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1.1 What is the purpose of this chapter? The purpose of this chapter is to establish our policy for complying with the Federal Activities Inventory and Reform (FAIR) Act ([P.L. 105-270](#)) and the Office of Management and Budget (OMB) [Circular No. A-76](#).

1.2 What is the FAIR Act inventory?

A. OMB requires that we complete the FAIR Act inventory. The inventory:

- (1) Is a list categorizing all work our employees perform as commercial or inherently governmental.
- (2) Does not include employee names, series, grades, steps, or other personal identifiers.

B. We send this list to the Department of the Interior (Department). The Department consolidates the lists from all the bureaus and sends the consolidated inventory to the Office of Management and Budget (OMB).

1.3 What is the difference between inherently governmental and commercial activities?

A. Inherently Governmental activities are activities so intimately related to the public interest that Government employees must perform them. Inherently governmental activities involve:

- (1) Binding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- (2) Determining, protecting, and advancing economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- (3) Significantly affecting the life, liberty, or property of private persons; or
- (4) Exerting ultimate control over the acquisition, use, or disposition of Government property, including establishing policies or procedures for collecting, controlling or disbursing appropriated and other Federal funds.

B. Commercial activities are recurring services that a contractor could perform. You can find most commercial activities in the yellow pages. When doing the FAIR Act inventory, we categorize commercial activities into several different areas that have different codes called "reason codes" (see [section 1.7](#)).

1.4 What are the objectives of the FAIR Act inventory? The inventory:

A. Provides some of the information we need to make decisions about contracting, workforce

planning, and competitive sourcing (see [291 FW 2](#)), and

B. Gives the Department, OMB, and the public information they need about the make-up of the Service.

1.5 Who is responsible for the FAIR Act inventory?

A. The Director:

(1) Reviews and is responsible for approving the annual FAIR Act inventory, and

(2) Sends the inventory to the Department.

B. The Assistant Director – Budget, Planning and Human Capital:

(1) Ensures:

(a) There are policy and procedures in place for preparing the inventory, and

(b) Information about the inventory is available for all employees who want to know what it means.

(2) Is responsible for the development and review of the inventory,

(3) As the Service's Competitive Sourcing Official (CSO), justifies, in writing, designations of Service personnel performing inherently governmental and Reason Code A activities (see [sections 1.6 and 1.7](#) for more information), and

(4) Is responsible for investigating and resolving challenges from employees on FAIR Act designations.

C. Assistant Directors (AD) and Regional Directors (RD):

(1) Ensure the managers in their areas of responsibility provide the information necessary to complete the FAIR Act inventory on time each year, and

(2) Review the final draft inventory for their area of responsibility and provide comments before the Director reviews it.

D. The Chief, Division of Policy and Directives Management (PDM):

(1) Develops policy on the inventory and keeps it up-to-date,

(2) Provides information about the inventory to employees, and

(3) Manages the inventory. These activities include, but are not limited to:

(a) Maintaining a database of positions that managers update annually;

(b) Providing guidance to managers about how to update the database and categorize activities;

- (c) Establishing procedures, setting milestones, and tracking updates to the inventory;
- (d) Compiling the inventory and reviewing it for quality; and
- (e) Preparing the inventory for the Director's review.

E. Managers/supervisors:

- (1) Update the inventory database, as necessary. ADs and RDs determine who updates the database in their area of responsibility, and
- (2) Help employees to understand what the inventory means and how it affects them.

1.6 How does the Service perform the annual inventory?

A. Early each fiscal year, PDM revises its inventory guidance by incorporating lessons learned and Departmental and OMB guidance. See [Exhibit 1](#) for an example of guidance from the 2007 inventory.

B. After the guidance is complete, PDM:

- (1) Works with the Division of Human Resources to do a preliminary update of the database for the fiscal year.
- (2) Sets milestones and sends out a plan and the guidance to the Regions and the program offices in Headquarters for them to review and update the database.

C. RDs and ADs:

- (1) Assign managers to update the database throughout their Region/office,
- (2) Develop interim due dates,
- (3) Write preliminary justifications for positions newly identified as inherently governmental or commercial Reason Code A (see [section 1.7](#) below).
- (4) Notify PDM when their Region/office has finished updating the inventory database.

D. After the Regions/offices are finished updating the database, PDM:

- (1) Reviews the updated information in the database for consistency,
- (2) Asks the Regions and program offices for clarifications and any necessary justifications,
- (3) Prepares the draft final inventory and accompanying justifications, and
- (4) Sends the draft final inventory and justifications to the Directorate for review, and
- (5) Sends the final inventory to the Director.

1.7 How does the Service categorize commercial activities? One of the most important aspects of the inventory is assigning "reason codes" to activities. OMB defined reason codes

that we must use to categorize activities.

A. These codes identify the commercial activities that:

- (1) Are in an ongoing or planned competitive sourcing study,
- (2) Should or should not be included in a study, or
- (3) Were studied in the last 5 years.

B. Table 1-1 shows the OMB definitions for the commercial reason codes.

Table 1 1: Reason Codes for Commercial Activities	
Reason Code	Definition
A	Not appropriate for private sector performance. Our Competitive Sourcing Official (CSO) must provide a written justification to OMB for all activities that are "Reason Code A."
B	Suitable for competition.
C	In an ongoing competition.
D	Government employees are performing this activity as a result of a competition or cost comparison that was held in the last 5 years.
E	Is the subject of a pending restructuring decision (e.g., closing facility, reorganization)
F	A law(s) prohibits anyone other than Government employees from performing the activity.

1.8 What happens to those activities that are appropriate for competition (Reason Code B)?

A. All Reason Code B commercial activities are subject to competitive sourcing (see [291 FW 2](#)). However, this does not mean that we will compete all Reason Code B activities. Competitions must make good sense for the Service, both economically and strategically, for us to hold a competition.

B. We developed a "Green Plan" for competitive sourcing that is a long-range competition plan showing when we plan to study commercial Reason Code B activities.

(1) PDM updates this plan annually to show changes to the previous plan, such as planned competition announcements, delays in studies, beginning preliminary planning activities, etc.

(2) We send the updated plan to the Department. The Department combines it with the Green Plans of the other bureaus and sends it to OMB for approval.

(3) Employees may access the Green Plan on the Competitive Sourcing Intranet site.

1.9 Where can employees find the annual inventory when it is final?

A. OMB publishes a notice of availability in the Federal Register.

B. The Department:

(1) Publishes the inventory on their competitive sourcing Website so the public can access it, and

(2) Makes it available to Congress.

C. PDM puts the inventory on the Competitive Sourcing Intranet site so that employees may have easy access.

1.10 May employees challenge the FAIR Act inventory? Yes.

A. The FAIR Act allows "interested parties" to challenge our judgment about what we include on the inventory **within 30 working days** after the Department publishes the inventory. Interested parties include current employees and their representatives and contractors who are actual or prospective bidders to perform a function. Inventory challenges are limited to:

(1) The categorization of a function code as commercial or inherently governmental, or

(2) The application of a reason code to an activity.

B. To challenge the inventory interested parties must submit the challenge in writing to the Chief, Division of Policy and Directives Management (PDM).

C. The Chief, PDM, works with the CSO to respond to the challenge within 28 working days. The CSO decides whether or not the challenge requires us to change the inventory. If the CSO does not agree with the inventory challenge, the response must include:

(1) An explanation of the interested party's right to file an appeal, and

(2) Information about how and where to file an appeal.

D. The interested party has 10 working days to send a written appeal of the decision to inventory appeal authorities.

E. The inventory appeal authorities must issue a decision in writing to the interested party within 10 working days of receiving the appeal. The appeal decision must include a rationale.

F. If the inventory challenge process results in a change to our inventory, PDM must :

(1) Send a copy of the change to the Department, OMB, and Congress,

(2) Make the change available to the public, and

(3) Publish a notice of availability in the Federal Register.

For information on this chapter, contact [Krista Holloway](#), in the Division of Policy and Directives Management.

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