



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 31, 2014

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: 2014 Federal Activities Inventory Reform (FAIR) Act Inventory

FROM: Jennifer Cranford, Manager
Business Analysis and Strategic Sourcing (BASS)

TO: Deputy Assistant Administrators
Deputy Regional Administrators

This memorandum provides guidance to assist Agency FAIR Act Inventory coordinators in the development of individual Program and Regional Office inventories of commercial and inherently governmental activities for the 2014 Agency FAIR Act inventory. The FAIR Act of 1998 requires federal agencies to prepare and submit to the Office of Management and Budget (OMB), by June 30 of each year, an inventory of commercial activities performed by federal employees. OMB Circular A-76 Performance of Commercial Activities requires agencies to submit inventories of their inherently governmental activities to OMB as well.

General Instructions

For the 2014 FAIR Act Inventory submissions, inventory data must be entered into the inventory database with FTE allocations, function codes and justifications to determine the applicable OMB status codes. Justifications may also be provided for activities exempt from competition consideration and assigned the status code of other. The Agency's justifications are based on the definition of an inherently governmental function in Section 3 and the guidelines for identifying an inherently governmental function in Section 5-1(a) of OMB's OFPP Letter 11-01 (*See FAIR Act Inventory Policies, Guidance and Instructions, page 15 located under Guidance and Instructions in the inventory database*). AA-ship and Regional coordinators will designate status codes based on the justifications provided at the office level. Inventory submissions are due **May 30, 2014** to Melanie Gooden, the Agency's FAIR Act Inventory Coordinator.

The Deputy Assistant Administrator (AA) or the Deputy Regional Administrator (RA) are required to make a final determination that a particular activity should be considered as "inherently governmental" based on Section 3 and Section 5-1(a) of OFPP Policy Letter 11-01. Ms. Gooden may request additional information from individual offices to complete the "inherently governmental" and "closely associated to inherently governmental" justifications. Office inventories should be certified by the Assistant Administrators (AAs), Deputy AAs or Regional Administrators (RAs), Deputy RAs or a designee in accordance with the Assistant Administrator for the Office of Administration and Resources Management (OARM) Re-delegation Memorandum, dated March 30, 2004.

This year, inventory data is pre-populated into the inventory database in accordance with OMB's Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, and Agency policy requiring activities performed at grade levels, GS-12 and below to be coded with as commercial. Activities performed at these grade level that are designated other than commercial requires a justification selection from the database drop-down menu. OMB and the Agency require offices to assign up to a maximum of four (4) functions at the individual FTE level, with no less than 0.25 FTE assigned to a function.

As in the past, the offices' primary points of contact (POCs) are responsible for collecting and validating the data and developing office submissions for the Agency's official 2014 inventory in accordance with OMB and EPA policies. Collection of data at the office level for consistency is highly recommended. The Agency's Coordinator is available to work with the POCs to address any questions and to provide any additional guidance. Data entered for the Agency's official inventory must include the automated Validation Report that indicates approval by the Assistant Administrator or Regional Assistant Administrator.

Agency guidance and instructions for completing the 2014 Inventory are on the Home Page of the Inventory database. The link initiating the FAIR Act Inventory database will be available on March 31, 2014. Prior to submitting the official inventory to the OMB on June 30, 2014, the Agency's Coordinator will review office submissions and request additional information and modifications, if needed.

A kick-off conference call will be held on Tuesday, April 1, 2014 at 2:00 p.m. Eastern time. Melanie Gooden, the Agency's Coordinator will discuss the 2014 guidance, instructions, and training. All offices' POCs are encouraged to participate. The Agency's Coordinator will provide the phone number, access code, and time in an Outlook invitation. Please contact Melanie at 919-541-1376 or at gooden.melanie@epa.gov if you need any additional information.

Cc:

John Bashista, OAM

Agency FAIR Act Inventory Contacts

2014 FAIR Act Inventory Guidance and Instructions

According to Agency and OMB Policy Letter 11-01

Introduction

The FAIR Act of 1998 requires federal agencies to prepare and submit to the Office of Management and Budget (OMB), by June 30 of each year, an inventory of commercial and inherently governmental activities performed by federal employees. Program and Regional Offices' inventory data must be entered into the inventory database with organizational information including location and job title, function codes, and justifications to determine the applicable OMB status code. Justifications may also be provided for activities exempt from competition consideration. Office inventories should be certified by the Assistant Administrators (AAs), Deputy AAs or Regional Administrators (RAs), Deputy RAs or a designee by the **due date, May 30, 2014**.

Function (Activity) Codes

Function (Activity) Codes are tasks or services that serve to group similar or related activities and functions into the categories of *Other*, *Closely Associated to Inherently Governmental*, *Critical* and *Inherently Governmental*. These categories describe the general nature of work taking place within the Agency. The primary purpose of function codes is to allow Agency management to evaluate the use of resources compared to the Strategic Plan, and to evaluate workforce planning and mission needs. Also function codes help OMB and the public better understand EPA uses its human resources.

Status-Reason Code Designations

According to Agency and OMB Policy Letter 11-01

Status Codes (Policy Letter Codes)

Status Codes are categories that reflect an assessment of whether the work is *Commercial* or *Inherently Governmental* based on the criteria in Section 3 and Section 5-1(a) of OFPP Policy Letter 11-01. The AA-ship/Regional coordinator is responsible for assigning or modifying new or existing status codes based on policy and the justification provided. The official OMB status codes are:

- **Other (OT)** - This status code signifies that a non-mission critical function or activity is *commercial* in nature. These non-mission critical activities directly support the Agency's critical core functions and they are performed by the Federal and private-sector workforces. Functions designated as *Other* are suitable for competition under OMB guidelines. These activities require Agency oversight. *See Figure 1 - Status Sub-codes Applicable to Non-Mission Critical Functions below.*
- **Closely Associated to Inherently Governmental (CL)** - This status code approaches the inherently governmental category because of the nature of work and the risk may hinder a Federal official's performance of an inherently governmental function. These activities are also performed by the Federal and private-sector workforces. Functions designated as *Closely Associate with Inherently Governmental* are also suitable for competition under OMB guidelines. These activities require Agency oversight. *See Figure 1 - Status Sub-codes Applicable to Non-Mission Critical Functions below.*
- **Critical (CT)** – This status code signifies that the nature of work is a core activity defined by the EPA as necessary to the Agency's ability to effectively perform and maintain control of its mission and operations. These core activities are long-term and recurring and include administratively critical functions that are performed by the Federal and private-sector workforces. *See Figure 3 - Status Sub-codes Applicable to Critical Functions below.*
 - **Administratively Critical Functions** are activities in direct support of the Agency's critical functions requiring a minimum staff to continue the work under any and all circumstances, and **Are**

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Not applicable to all FTEs. *Administratively Critical* functions are essential to the daily operations of the Agency. See Figure 2 - Status Sub-codes Applicable to Administratively Critical Functions below.

- **Inherently Governmental (N/A)** – This status codes represents a function that is so intimately related to the public interest as to require performance by only Federal Government employees. See Figure 1 - Status Sub-codes Applicable to Non-Mission Critical Functions below.

Assessing Inherently Governmental Activities

What is Inherently Governmental under Policy Letter 11-01? – "*Inherently governmental function*," as defined in section 5 of the Federal Activities Inventory Reform Act, Public Law 105-270, means a function that is so intimately related to the public interest as to require performance by Federal Government employees.

Gathering information for, or providing advice, opinions, recommendations, or ideas or developing a work product that requires concurrence and the final signature of a higher level of management before internal or external implementation do not constitute a designation of Inherently Governmental. However, OMB designates such activities as Closely Associated with Inherently Governmental. It is the value judgments, discretions, and decisions of upper management that actually binds the Agency to a course of action, and significantly affects the life, liberty, or property of the private communities. Their **FINAL signature** is inherently governmental and their signature authority implements and requires oversight of the new policies, guidelines, and procedures that are internal and/or external to the Agency! For example:

1. A statutory moratorium set forth in Section 733 of the Consolidated Appropriations Act, 2012 (P.L. 112-74) states that beginning or announcing a study or public-private competition regarding the conversion of contract performance of any function performed by Federal employees is **PROHIBITED. This statutory moratorium remains in effect until further notice.** Therefore, future competitions are off the table.
2. **Interpreting and implementing existing policies, rules, and regulations or developing internal policies, rules, and guidelines in accordance with pre-existing policies, rules, and regulations** is Closely Inherently Governmental under OMB guidelines. No Matter What the Function Code is! This **IS NOT** an *Inherently Governmental* function.
3. **Providing advisory support to senior management**, developing documents, policies, guidelines, procedures, and providing recommendations are *Closely Inherently Governmental* under OMB guidelines. It **IS NOT** an *Inherently Governmental* function. Remember, if the final work product requires concurrence and the final signature of another level of management above you before implementation, it is a *Closely Inherently Governmental* function. This is especially true with Grade levels GS-14 and below. **In order to consider the function as Inherently Governmental, the position MUST have the FINAL signature authority to implement the new policy, guidelines, and procedures internal and/or external to the Agency!**
4. **Technical Assistance or Help Desk Services** – Providing technical assistance or Help Desk Services **DOES NOT** constitute a representation of the Agency. It is the interpretation of existing Federal and Agency policies, guidelines, or procedures in order to provide assistance, aid, instructions, and/or guidance to customers. These instructions **DO NOT** commit the Agency to any course of action; therefore, these activities **ARE NOT** Inherently Governmental. Under OMB guidelines, these activities are designated as *Other* or *Closely Associated with Inherently Governmental*.
5. Agency's policy requires a designation of *Other* for all GS-12 and below FTE. Any other status designation requires a justification for change using the Agency's standard criteria codes.

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According to Agency and OMB Policy Letter 11-01

Agency Status Sub-codes

Status Sub-codes are criterion used by the AA-ship, Regional, and Agency coordinators to determine the most applicable Status and Reason Code for each activity.

Figure 1 - Status Sub-codes Applicable to Non-Mission Critical Functions

(These non-mission critical activities are in direct support of the Agency's core functions.)

***IMPORTANT NOTE:** *Agency Policy requires that all grade levels, GS-12 and below are coded OT. A justification is required for those functions defined as I or CL under OMB OFPP Policy Letter 11-01.*

- **Function categories highlighted in Dark Blue are non-mission critical support functions and the following Criteria Codes are applicable.**
 - ✚ OT-01 (Other) - This FTE performs a COMMERCIAL Function *BUT it is exempt from competition consideration.*
 - ✚ OT-02 (Other) - This FTE performs a COMMERCIAL Function *BUT it is suitable for competition consideration.*
 - ✚ OT-03 (Other) - This FTE performs a COMMERCIAL Function *BUT there is an Office Re-organization Pending HR Approval.*
 - ✚ OT-04 (Other) - This FTE performs a COMMERCIAL Function *BUT Statutory Regulations and/or Agency Policies Prohibit Performance by the Private Sector.*
 - ✚ CL-01 (Closely Associated to IG) - This FTE performs a NON-MISSION CRITICAL Function that generally isn't considered IG, but approaches the IG category because of the nature of work and the risk may hinder a Federal official's performance of an IG function *BUT It is Exempt from Competition Consideration. A justification is required for this rationale for all positions below the GS-12 level.*
 - ✚ CL-02 (Closely Associated to IG) - This FTE performs a NON-MISSION CRITICAL Function that generally isn't considered IG, but approaches the IG category because of the nature of work and the risk may hinder a Federal official's performance of an IG function *BUT It is Suitable for Competition Consideration. A justification is required for this rationale for all positions below the GS-12 level.*
 - ✚ CL-03 (Closely Associated to IG) - This FTE performs a NON-MISSION CRITICAL Function that generally isn't considered IG, but approaches the IG category because of the nature of work and the risk may hinder a Federal official's performance of an IG *BUT there is an Office Re-organization Pending HR Approval. A justification is required for this rationale for all positions below the GS-12 level.*
 - ✚ CL-04 (Closely Associated to IG) - This FTE performs a NON-MISSION CRITICAL Function that generally isn't considered IG, but approaches the IG category because of the nature of work and the risk may hinder a Federal official's performance of an IG function *BUT Statutory Regulations and/or Agency Policies Prohibit Performance by the Private Sector. A justification is required for this rationale for all positions below the GS-12 level.*
 - ✚ IG (Inherently Governmental) - In accordance with the FAIR Act Public Law 105-270, this FTE performs an activity that's so intimately related to the public interest as to mandate performance by federal employees. *A justification is required for this rationale for all positions below the GS-12 level.*

Product Service Codes are identified in Blue text within brackets next to the function code equivalent. This field is locked in the database and does not require modification or input.

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Figure 2 - Status Sub-codes Applicable to Administratively Critical Functions

(These administratively critical activities are in direct support of the Agency's critical functions, but **not** applicable to all performing these functions.)

***IMPORTANT NOTE:** Agency Policy requires that all grade levels, GS-12 and below are coded OT. A justification is required for those functions defined as I or CL under OMB OFPP Policy Letter 11-01.

- **Function categories highlighted in Green are the administratively critical functions and the following Criteria Codes are applicable. Administratively Critical Functions – Code ACT-01, ACT-02, ACT-03, ACT-04 and ACT-05 ONLY!**
 - ✦ ACT-01 (Administratively Critical Function) - This FTE performs an Administratively Critical Function that is essential to the Agency's core activities AND it is *Inherently Governmental*.
 - ✦ ACT-02 (Administratively Critical Function) - This FTE performs an Administratively Critical Function that is essential to the Agency's core activities AND it is *Commercial (C) or Closely Associated with Inherently Governmental (CL) BUT it is Exempt from Competition Consideration*.
 - ✦ ACT-03 (Administratively Critical Function) - This FTE performs an Administratively Critical Function that is essential to the Agency's core activities AND it is *Commercial (C) or Closely Associated with Inherently Governmental (CL) BUT it is Suitable for Competition Consideration*.
 - ✦ ACT-04 (Administratively Critical Function) - This FTE performs an Administratively Critical Function that is essential to the Agency's core activities *BUT it is Pending HR Approval for an Organizational Reorganization*.
 - ✦ ACT-05 (Administratively Critical Function) - This FTE performs an Administratively Critical Function that is essential to the Agency's core activities *BUT Statutory Regulations and/or Agency Policies Prohibit Performance by the Private Sector*.

Figure 3 - Status Sub-codes Applicable to Critical Functions

(These core activities are necessary to the Agency's ability to effectively perform & maintain control of its mission & operations.)

- **Function categories highlighted in Red are critical functions and the following Criteria Codes are applicable. Critical Functions – Code CT-01, CT-02, CT-03, CT-04 and CT-05 ONLY!**
 - ✦ CT-01 (Critical Function) - This FTE performs a CRITICAL Function that is essential to the Agency's core activities AND it is *Inherently Governmental*.
 - ✦ CT-02 (Critical Function) - This FTE performs a CRITICAL Function that is essential to the Agency's core activities AND it is *Commercial (C) or Closely Associated with Inherently Governmental (CL) BUT it is Exempt from Competition Consideration*.
 - ✦ CT-03 (Critical Function) - This FTE performs a CRITICAL Function that is essential to the Agency's core activities AND it is *Commercial (C) or Closely Associated with Inherently Governmental (CL) BUT it is Suitable for Competition Consideration*.
 - ✦ CT-04 (Critical Function) - This FTE performs a CRITICAL Function that is essential to the Agency's core activities *BUT it is Pending HR Approval for an Organizational Reorganization*.
 - ✦ CT-05 (Critical Function) - This FTE performs a CRITICAL Function that is essential to the Agency's core activities *BUT Statutory Regulations and/or Agency Policies Prohibit Performance by the Private Sector*.

Product Service Codes are identified in Blue text within brackets next to the function code equivalent. This field is locked in the database and does not require modification or input.

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Reason Codes

Reason codes indicate whether a function or activity has been exempted from consideration for competition by the Agency, has been competed, is being competed, or is suitable for consideration for competition. The Table below lists the Reason codes for use in the 2014 Inventory.

Reason Codes	
Reason Codes	Definition
A	This function or activity is not appropriate for private sector performance pursuant to a written determination. The Agency has exempted this function from competition resulting in no competition.
B	This function or activity is suitable for competition consideration.
E	This function or activity is pending an agency approved restructuring/ decision (e.g., re-organization, realignment).
F	Performance of this function or activity by government personnel is required due to a statutory and/or prohibition against private sector performance.
I	This function or activity is so intimately related to the public interest as to require performance by only Federal Government employees

Product Service Codes

Product Service Codes (PSCs) are federal supply codes used to describe contracted services, products, and research and development purchased by the Federal government. This field is locked in the database and **does not** require modification or input.

Although this field is locked in the database, it is pre-populated based on the function code. The Agency developed a FAIR function code and Service Contracts Inventory product service code crosswalk in preparation of the OMB integration of the workforce and service contract inventories. The crosswalk between the two inventories will facilitate OMB's and the Agency's efforts to ensure the most effective use of federal employees and contractors to perform a given activity.

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Status Sub-codes

Status Sub-codes are criterion used by the AA-ship/Regional/Agency Coordinators to determine the most applicable Status and Reason Code for an activity.

Criteria Code	Criteria Text	Status Category	OMB Status Code	Reason Code
ACT-01	Admin Critical Function/IG - This FTE performs an ADMINISTRATIVELY CRITICAL Function that is essential to the daily operations of the Agency AND It is Inherently Governmental.	Inherently Governmental (I)	N/A	I - Inherently Governmental
ACT-02	Admin Critical Function/Other - This FTE performs an ADMINISTRATIVELY CRITICAL Function that is essential to the daily operations of the Agency AND It is Commercial (C) or Closely Associated with Inherently Governmental (CL) BUT It is Exempt from Competition Consideration.	Critical (CT)	CT	A - Exempt from Competition Consideration
ACT-03	Admin Critical Function/Other - This FTE performs an ADMINISTRATIVELY CRITICAL Function that is essential to the daily operations of the Agency AND It is Commercial (C) or Closely Associated with Inherently Governmental (CL) BUT It is Suitable for Competition Consideration.	Critical (CT)	CT	B - Suitable for Competition Consideration
ACT-04	Admin Critical Function/Other - This FTE performs an ADMINISTRATIVELY CRITICAL Function that is essential to the daily operations of the Agency BUT It is Pending HR Approval for an Organizational Reorganization.	Critical (CT)	CT	E – Pending HR Approval of Official Re-organization
ACT-05	Admin Critical Function/Other - This FTE performs an ADMINISTRATIVELY CRITICAL Function that is essential to the daily operations of the Agency BUT Statutory Regulations and/or Agency Policies Prohibit Performance by the Private Sector.	Critical (CT)	CT	F - Statutory Regulations and/or Agency Policies Prohibit Performance by the Private Sector
CL-01	Closely Associated to IG - This FTE performs a NON-MISSION CRITICAL Function that generally isn't considered IG, but approaches the IG category because of the nature of work and the risk may hinder a Federal official's performance of an IG function BUT It is Exempt from Competition Consideration.	Closely Associated with Inherently Governmental (CL)	CL	A - Exempt from Competition Consideration
CL-02	Closely Associated to IG - This FTE performs a NON-MISSION CRITICAL Function that generally isn't considered IG, but approaches the IG category because of the nature of work and the risk may hinder a Federal official's performance of an IG function BUT It is Suitable for Competition Consideration.	Closely Associated with Inherently Governmental (CL)	CL	B - Suitable for Competition Consideration
CL-03	Closely Associated to IG - This FTE performs a NON-MISSION CRITICAL Function that generally isn't considered IG, but approaches the IG category because of the nature of work and the risk may hinder a Federal official's performance of an IG function BUT It is Pending HR Approval for an Organizational Reorganization.	Closely Associated with Inherently Governmental (CL)	CL	E – Pending HR Approval of Official Re-organization

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Criteria Code	Criteria Text	Status Category	OMB Status Code	Reason Code
CL-04	Closely Associated to IG - This FTE performs a NON-MISSION CRITICAL Function that generally isn't considered IG, but approaches the IG category because of the nature of work and the risk may hinder a Federal official's performance of an IG function BUT Statutory Regulations and/or Agency Policies Prohibit Performance by the Private Sector.	Closely Associated with Inherently Governmental (CL)	CL	F - Statutory Regulations and/or Agency Policies Prohibit Performance by the Private Sector
CT-01	Critical Function/IG - This FTE performs a CRITICAL Function that is essential to the Agency's core activities AND It is Inherently Governmental.	Inherently Governmental (I)	N/A	I - Inherently Governmental
CT-02	Critical Function/Other - This FTE performs a CRITICAL Function that is essential to the Agency's core activities AND It is Commercial (C) or Closely Associated with Inherently Governmental (CL) BUT It is Exempt from Competition Consideration.	Critical (CT)	CT	A - Exempt from Competition Consideration
CT-03	Critical Function/Other - This FTE performs a CRITICAL Function that is essential to the Agency's core activities AND It is Commercial (C) or Closely Associated with Inherently Governmental (CL) BUT It is Suitable for Competition Consideration.	Critical (CT)	CT	B - Suitable for Competition Consideration
CT-04	Critical Function/Other - This FTE performs a CRITICAL Function that is essential to the Agency's core activities BUT It is Pending HR Approval for an Organizational Reorganization.	Critical (CT)	CT	E – Pending HR Approval of Official Re-organization
CT-05	Critical Function/Other - This FTE performs a CRITICAL Function that is essential to the Agency's core activities BUT Statutory Regulations and/or Agency Policies Prohibit Performance by the Private Sector.	Critical (CT)	CT	F - Statutory Regulations and/or Agency Policies Prohibit Performance by the Private Sector
I-01	Inherently Governmental - In accordance with the FAIR Act Public Law 105-270, this FTE performs an activity that's so intimately related to the public interest as to mandate performance by federal employees.	Inherently Governmental (I)	N/A	I - Inherently Governmental
OT-01	Other Functions/Other - This FTE perform a COMMERCIAL Function BUT It is Exempt from Competition Consideration.	Other-Commercial (OT)	OT	A - Exempt from Competition Consideration
OT-02	Other Functions/Other - This FTE perform a COMMERCIAL Function BUT It is Suitable for Competition Consideration.	Other-Commercial (OT)	OT	B - Suitable for Competition Consideration
OT-03	Other Functions/Other - This FTE perform a COMMERCIAL Function BUT It is Pending HR Approval for an Organizational Reorganization.	Other-Commercial (OT)	OT	E – Pending HR Approval of Official Re-organization
OT-04	Other Functions/Other - This FTE perform a COMMERCIAL Function BUT Statutory Regulations and/or Agency Policies Prohibit Performance by the Private Sector.	Other-Commercial (OT)	OT	F - Statutory Regulations and/or Agency Policies Prohibit Performance by the Private Sector

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Reason Codes

Reason codes indicate whether a function or activity has been exempted from consideration for competition by the Agency, has been competed, is being competed, or is suitable for consideration for competition. The Table below lists the Reason codes for use in the 2014 Inventory.

Reason Codes	
Reason Codes	Definition
A	This function or activity is not appropriate for private sector performance pursuant to a written determination. The Agency has exempted this function from competition resulting in no competition.
B	This function or activity is suitable for competition consideration.
E	This function or activity is pending an agency approved restructuring/ decision (e.g., re-organization, realignment).
F	Performance of this function or activity by government personnel is required due to a statutory and/or prohibition against private sector performance.
I	This function or activity is so intimately related to the public interest as to require performance by only Federal Government employees

Product Service Codes

Product Service Codes (PSCs) are federal supply codes used to describe contracted services, products, and research and development purchased by the Federal government. This field is locked in the database and **does not** require modification or input.

Although this field is locked in the database, it is pre-populated based on the function code. The Agency developed a FAIR function code and Service Contracts Inventory product service code crosswalk in preparation of the OMB integration of the workforce and service contract inventories. The crosswalk between the two inventories will facilitate OMB's and the Agency's efforts to ensure the most effective use of federal employees and contractors to perform a given activity.

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According to Agency and OMB Policy Letter 11-01

May 19, 2008

MEMORANDUM

SUBJECT: Guidance for the 2008 Federal Activities Inventory Reform (FAIR) Act Inventory

FROM: Susan B. Hazen, Principal Deputy Assistant Administrator /s/
Office of Administration and Resources Management

TO: Deputy Assistant Administrators
Deputy Regional Administrators

As you know, we have been trying to bring consistency and reliability to our FAIR Act Inventory process. This memorandum provides guidance to enhance the consistency and quality of the Inventory for 2008. The guidance is based on the recommendations of the workgroup comprised of Regional and Headquarters representatives which the Competitive Sourcing Staff (CSS) convened to develop uniform standards for coding Agency positions as either commercial or inherently governmental. The guidance also reflects the agreements reached at a meeting of the Deputy Assistant Administrators (DAAs) and the Deputy Regional Administrators (DRAs) on May 15, 2008.

The workgroup unanimously agreed that the grade-level threshold requiring the designation of an activity as commercial should be raised from the current GS-08 level to a new threshold of GS-11 and below. The workgroup concluded that positions at GS-11 and below typically do not qualify as inherently governmental, because they do not involve exercising sovereign government authority, or establishing procedures and processes related to the oversight of monetary transactions or entitlements. Although the workgroup was unable to reach consensus for coding positions at the GS-12 level, previous Agency Inventories reveal significant variances at this grade level that also require standardization.

In order to address this variance, the DAAs and the DRAs agreed at a joint meeting on May 15, 2008, that positions at the grade GS-12 level should be coded as commercial. Positions at or below the GS-12 level that are designated as Inherently Governmental must be supported by a written justification signed by the inventory approving official. The justification may cover categories of jobs, as well as functions. They may also be justified individually as needed.

Attached are the criteria for consideration in determining an activity as inherently governmental. As a reminder, the main elements for consideration are as follows:

- Category of activity being performed;
- At least 25% of the time spent on the activity is inherently governmental;
- Level and extent of supervisory controls;
- Level and extent of existing guidance and operating procedures; and
- Final deciding or determining official.

During the process of consolidating and finalizing the Agency's inventory for submission to OMB, activities classified as inherently governmental will be subject to close scrutiny to verify that they meet the criteria set forth in the Attachment. In addition, the CSS will begin to conduct audits during each fiscal year to ensure consistent FAIR Act Inventory classifications across the Agency.

The deadline for submittal of each office's inventory is June 13, 2008. Please be assured that the CSS is available to assist your FAIR Act Inventory coordinators in developing their inventories in accordance with this guidance. If you have any questions or need assistance in preparing your inventory, please contact Melanie Gooden, FAIR Act Inventory Coordinator, at 202-564-3043 or at gooden.melanie@epa.gov.

Attachment I: Inherently Governmental Status Code Definitions and Criteria

cc: ARAs
Workgroup Members
Denise Benjamin-Sirmons

2014 FAIR Act Inventory Guidance and Instructions

According to Agency and OMB Policy Letter 11-01

E-MAIL on May 3, 2012

Subject: Fair Inventory
From: Denise Benjamin-Sirmons, Deputy Director
Office of Grants and Debarment
To: Regional and Headquarter Offices

Based on our review of OMB's guidance on Performance of Inherently Governmental and Critical Functions, Office of Federal Procurement Policy (OFFP), Policy Letter 11-01 (<http://www.gpo.gov/fdsys/pkg/FR-2011-09-12/pdf/2011-23165.pdf>), we plan on making two primary changes to the converted status category and function codes. We will also provide the required justification for these changes in accordance with the inventory instructions the Business Analysis and Strategic Sourcing Manager issued on April 6, 2012.

OFFP's Policy Letter 11-01, includes more detailed definitions and illustrative examples of what constitutes an "inherently governmental" and "closely associated" function. The definitions and examples together suggest that the journeyman Specialist position should be coded as closely associated because "the nature of the function and the risk that performance may impinge on Federal officials' performance of an inherently governmental function." In addition, one of OFFP's examples of a "closely associated function is contract management, including assisting in the evaluation of contractor performance; providing support for assessing contractor claims; and preparing termination settlement documents. Those functions are clearly analogous to our Specialists' grants administration activities.

They essentially consist of the following:

- Inherently governmental (I)
- Closely associated with inherently governmental (CL)
- Critical Function; and
- Other (OT).

There are also new function codes for grants management. We're now permitted to assign up to 4 functions for a single FTE level, with a minimum of 0.25 FTE assigned to each function.

First, we will re-code the Grants Specialist positions (GS-7-12) to "Closely Associated" (CL) rather than the converted code of "Other" (OT). In the past, OGD classified the Branch Chiefs, Team Leaders and Senior Specialists (GS-15, 14 and 13 positions) as inherently governmental. OGD previously classified the GS-7-12 Specialists as commercial, in part because they lacked authority to bind the government or exert ultimate control over government resources. The second change we will make is to better delineate our Specialists functions. Currently, they are assigned the L200 function sub code. We'll revise that to reflect the L101, and L200A – C sub codes to cover their pre-award as well as post-award work.

The re-coded Grants Management Specialists, 1109-GS-7-12 FTE from CA/CB to "closely associated with inherently governmental" functions (CL) is consistent with the Office of Federal Procurement Policy, Policy Letter 11-01. The Policy Letter explains that a function may be considered closely associated with inherently governmental functions "because of the nature of the function and the risk that performance may impinge on Federal officials' performance of an inherently governmental function." The Policy Letter further provides as an illustrative example of a "close associated" function, contract management activities. As reflected by the designated function sub codes, the journeyman GS-7-12 Grants Management Specialists perform analogous grants management functions.

I understand that many of you may categorize your grants management positions differently based on your particular structure and organization. I am sharing our approach as a resource to help guide your own assessments of your respective offices. If you have any questions, please feel free to give me a call. If you prefer to have a quick GMO call for us to discuss further together, I'm happy to schedule one. Just let me know. I also shared this email and attachment with Melanie before sending to you all. She is also available to provide further clarification if necessary¹. Thanks all.

¹ Additional references are located at <http://intranet.epa.gov/OGD/policy/policy.htm>

2014 FAIR Act Inventory Guidance and Instructions

According to Agency and OMB Policy Letter 11-01

Contracting Officer's Technical Representative (COTR) and Assistance Agreement Functions

The Table entitled Assistance Agreements provided below is an Office guide in coding activities associated with Assistance Agreements.

ASSISTANCE AGREEMENTS	
ASSISTANCE AGREEMENTS ACTIVITIES - PROJECT OFFICERS	
Major Activity 1: Pre-Award	
<i>Commercial Sub-Activities</i>	<i>Inherently Governmental Sub-Activities</i>
Perform assessment of recipient's technical capabilities required by the Policy on Assessing Capabilities for Non-Profit Applicants for Managing Assistance Awards.	Determine adequacy of capabilities.
Perform preliminary review of grant application packages for program related items such as statutory/regulatory compliance, program guidance or solicitation criteria; checking whether activities are in agreement with statutory authority, delegation of authority and program results code.	Determine compliance.
Perform and document cost review in the pre-award phase.	Determine eligible, allowable, allocated, and reasonable cost.
Receive, review and prepare initial analysis of proposals/applications for program related items such as statutory/regulatory compliance, program guidance or solicitation criteria; checking whether activities are in agreement with statutory authority, delegation of authority and program results code.	Determine eligibility and compliance. Determine applicant's adherence to EPA Order 5700.7, Environmental Results Under EPA Assistance Agreements.
Major Activity 2: Award/Amendment/Post-Award	
<i>Commercial Sub-Activities</i>	<i>Inherently Governmental Sub-Activities</i>
Prepare the funding recommendation form in the Integrated Grants Management System. <u>Closely Associated to Inherently Governmental (CL) - represents substantial risk to the Agency based on past Inspector General findings.</u>	Approve and sign the funding recommendation package.
Major Activity 2: Award/Amendment/Post-Award	
<i>Commercial Sub-Activities</i>	<i>Inherently Governmental Sub-Activities</i>
Perform both pre- and post-award advanced monitoring reviews, including on-site reviews, grants outputs and milestone tracking.	Determine if findings from reviews indicate acceptable performance and make final determination on recommendation to correct deficiencies.
Prepare the commitment notice, assigning accounting information for the award.	Determine funding source.

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ASSISTANCE AGREEMENTS	
ASSISTANCE AGREEMENTS ACTIVITIES - PROJECT OFFICERS	
Major Activity 3: Monitoring and Compliance	
<i>Commercial Sub-Activities</i>	<i>Inherently Governmental Sub-Activities</i>
Monitor compliance in accordance with post-award monitoring procedures, including on-site reviews, grant output and milestone tracking. Document findings and recommend whether the recipient complies with agreement conditions. Recommend whether grantee submittals of interim and final performance reports are in accordance with 40CFR S30.51 and 30.71.	Determine if findings from reviews indicate acceptable performance and make final determination on recommendation to correct deficiencies.
Compile programmatic findings and comments from Project Officer and convey those, along with any administrative comments, to applicants. Identified and address administrative and programmatic deficiencies by checking revised applications.	Determine if findings from reviews indicate acceptable performance and make final determination on recommendations to correct deficiencies.
Receive and input into IGMS MBE/WBE reports and follow-up on delinquent reports.	
Review high-risk recipient's payment requests and supporting documentation.	Approve payment.
Review reports to evaluate whether they adequately address progress in achieving agreed-upon outputs and outcomes.	Accept grantee performance. Make determinations regarding recommendations to correct grantee deficiencies.
Major Activity 4: Closeout	
<i>Commercial Sub-Activities</i>	<i>Inherently Governmental Sub-Activities</i>
Assess whether project is technically ready for closeout including whether receipt of all deliverables has occurred.	Determine readiness for closeout.
ASSISTANCE AGREEMENT ACTIVITIES - GRANTS SPECIALIST	
Major Activity 1: Pre-Award	
<i>Commercial Sub-Activities</i>	<i>Inherently Governmental Sub-Activities</i>
Perform assessment of recipient's administrative capabilities required by the Policy on Assessing Capabilities for Non-Profit Applicants for Managing Assistance Awards.	Determine adequacy of capabilities.

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ASSISTANCE AGREEMENTS	
ASSISTANCE AGREEMENT ACTIVITIES - GRANTS SPECIALIST	
Perform and document cost review in the pre-award phase.	Determine eligible, allowable, allocated, and reasonable cost.
Major Activity 2: Award/Amendment/Post-Award	
<i>Commercial Sub-Activities</i>	<i>Inherently Governmental Sub-Activities</i>
	Approve and sign the funding recommendation package.
Perform both pre- and post-award Advanced Monitoring Reviews to include on-site reviews, grant outputs and milestone tracking.	Determine if findings from reviews indicate acceptable performance and make final determination on recommendation to correct deficiencies.
Prepare documentation in IGMS for no-cost time extension and closeout.	Approve extension and/or closeout.
Major Activity 3: Monitoring and Compliance	
<i>Commercial Sub-Activities</i>	<i>Inherently Governmental Sub-Activities</i>
Monitor compliance in accordance with post-award monitoring procedures, including on-site reviews, grant output and milestone tracking. Document findings and recommend whether the recipient complies with agreement conditions. Recommend whether grantee submittals of interim and final performance reports are in accordance with 40CFR S30.51 and 30.71.	Determine if findings from reviews indicate acceptable performance and make final determination on recommendation to correct deficiencies.
Receive and input into IGMS MBE/WBE reports and follow-up on delinquent reports.	
Major Activity 4: Closeout	
<i>Commercial Sub-Activities</i>	<i>Inherently Governmental Sub-Activities</i>
Perform closeout for final approval by Grants Specialist, including preparing warning letters, collecting Final Statistics Reports (FSRs), following up on missing items and preparing closeout letters.	Approve closeout.
Major Activity 5: Training	
<i>Commercial Sub-Activities</i>	<i>Inherently Governmental Sub-Activities</i>
Provide routine non-specialized training, excluding areas regarding policy issues and training for Project Officers.	Provide routine non-specialized training, excluding areas regarding policy issues and training for Project Officers.

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According to Agency and OMB Policy Letter 11-01

Other Useful Agency References

Budget and Finance

- OCFO – Annual Planning and Budget, <http://intranet.epa.gov/fmdvally/budget/index.htm>

Grants

- OGD – Policy, <http://intranet.epa.gov/ogd/policy/policy.htm>

Contracts

- OAM – Guidance Documents, <http://oamintra.epa.gov/?q=node/416>

State and Local Reviews

- OAR - State Implementation Plan Status and Information, <http://www.epa.gov/airquality/urbanair/sipstatus/process.html>
- OECA – Compliance Monitoring, <http://www.epa.gov/compliance/monitoring/programs/index.html>
- Office of Water - Water Quality Standards Handbook - Chapter 6: Procedures for Review and Revision of Water Quality Standards (40 CFR 131 - Subpart C) <http://water.epa.gov/scitech/swguidance/standards/handbook/chapter06.cfm>
- EPA – Resources for State and Local Government - <http://www.epa.gov/epahome/statelocal.htm>

Permits

- OAR – Air Permits, <http://www.epa.gov/air/oaqps/permjmp.html>
- OSWER - RCRA Hazardous Waste, <http://www.epa.gov/wastes/inforesources/data/form8700/forms.htm>
- OSWER - Permits and Permitting, <http://www.epa.gov/wastes/hazard/tsd/permit/>
- OW - NPDES General Permit Inventory <http://cfpub.epa.gov/npdes/permitissuance/genpermits.cfm>
- OW - Water Quality and Technology-Based Permitting, http://cfpub.epa.gov/npdes/generalissues/watertechnology.cfm?program_id=45