

EPA Inventory of Commercial and Inherently Governmental Activities

GUIDE TO INVENTORY SUBMISSION
APRIL 2009

This guidance provides instructions for Environmental Protection Agency (EPA) Program and Regional offices (hereinafter referred to as Offices) to use in compiling their “2009 Inventory of Commercial and Inherently Governmental Activities” (commonly referred to as the FAIR Act Inventory, or simply the Inventory). When all data are combined, the full FAIR Act Inventory will serve as the database for responding to various reporting requirements, including, the FAIR Act and the Annual Report to Congress. The 2009 Inventory will identify full-time equivalents performing functions that are either (1) inherently governmental or (2) commercial, as defined by the FAIR Act of 1998.

The 2009 FAIR Act Inventory shall be completed using the instructions for each data field as provided in this guidance. There are five (5) *Exhibits* for additional guidance and clarification on specific fields within the database and the inventory process. For the 2009 Inventory, EPA will use the Lotus Notes Version 8 data collection tool (system) to simplify the data collection process. The procedure inputs are guided by the use of drop down menus containing pre-determined data identifiers (e.g., city and state, position title, job series, function codes, and justifications). Also an instruction manual is provided for further assistance. If you need additional assistance, please contact **Melanie Gooden at 202-564-3043**.

When the Competitive Sourcing Staff (CSS) compiles the information submitted by Offices into the final Inventory, the total FTE will match the total in the 2009 President’s Budget. For 2009, each office must reconcile their FTEs reported in the Inventory with the 2009 President’s Budget. Offices must provide a separate written explanation if the FTEs listed on their inventory submission (both commercial (all reason codes) and inherently governmental) do not match the FTE levels in the 2009 President’s Budget. As with the 2008 Inventory, CSS will provide the FTE in the 2009 President’s Budget for each office. Also, the Competitive Sourcing Staff will look at consistency in the application of Function, Status, and Reason codes (explained below) across the Agency.

FUNCTION (ACTIVITY) CODES -

Function codes serve to categorize similar or related services, tasks, and functions into groupings that describe the general nature of work taking place within the Agency. A 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. Function codes also allow OMB and the public to see how EPA is using its people.

Offices are encouraged to code a position by the function predominantly performed. However, recognizing that we often have multiple responsibilities, up to four function codes may be assigned to a single position. *OMB requires a 25% minimum of time for each function performed.* Any function code designated as commercial suitable for competition (CB) with less than 25% of time requires modification by the Competitive Sourcing Staff.

A list of available function codes and definitions is available at <http://intranet.epa.gov/OARM/cs>. Each function codes' definition is a specific terminology and description germane to EPA¹. If a function code is not shown on the drop down menu, it **cannot** be used. If an Office believes that none of the function codes applies, the FAIR Coordinator should contact the CSS for approval to use another. Offices are strongly encouraged to use the function codes available on the drop down menu. No function code can be created or used if it is not on the OMB-approved list located at <http://www.whitehouse.gov/omb/procurement/fair/2004functioncodes.html>.

STATUS CODES –

Status codes identify functions, activities, services, and tasks as either Commercial (C) or Inherently Governmental (I). Definitions of both C and I are included in Exhibit 3. Status codes reflect an assessment of whether the work is Inherently Governmental (IG), meeting the criteria set forth in the definition found in OMB Circular A-76 and the Agency's guidance. If not, the position/activity is coded commercial by default. A function code in and of itself is neither inherently governmental (I) nor commercial (C) (see discussion below under Status Codes), but it does contribute toward an accurate assessment of whether performed is "I" or "C." Accurately describing and categorizing the work by assigning the appropriate function code is a critical first step in assessing "I" or "C" status.

CSS has provided criteria to determine the appropriate status/reason code within the data system. The criteria is based on the FAIR Act, OMB Circular A-76, supplementary guidance issued by OMB in memorandum number M-06-08, review comments received from OMB on Inventory submissions, and Agency guidance. The database will automatically generate the appropriate status/reason code (I or C) based on the chosen justification criteria. The FAIR Act of 1998 and OMB Circular A-76 require written justifications for any positions that are determined to be commercial, but exempt from competition (C/A) in nature. Guidance on written justifications is provided below.

REASON CODES –

Reason codes are only applied to functions with a status code of "C". Reason codes indicate whether a commercial activity has been exempted from consideration for competition by the Agency, has been competed, is being competed, or is suitable for consideration for competition. Reason codes for use in the 2009 Inventory are shown below. Based on the selection of the "Justification Criteria" from the drop down menu (Exhibit 3), the inventory system will apply a reason code to a particular position.

¹ The Fair Coordinators Workgroup met throughout FY04 to refine the list of function codes most applicable to the Agency and then to define those that did apply in the context of EPA missions, functions, services, and tasks. In the past, function code definitions were provided by OMB and emanated from DOD. This made it difficult to make reasoned judgments about the applicability of specific function codes in given situations. By defining function codes using terminologies and descriptions more germane to EPA, we can more readily categorize the services that we perform and in the end make more defensible assessments about our services in terms of their inherently governmental or commercial nature.

REASON CODES FOR COMMERCIAL ACTIVITIES INVENTORY	
Reason Code	Definition
A	The Commercial 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	The Commercial Activity is suitable for a Cost Comparison or Competition.
C	The Commercial Activity is the subject of an in-progress Cost Comparison or Competition.
D	The Commercial Activity is performed by a Most Efficient Organization (MEO) resulting from a Cost Comparison decision made within the past five years.
E	The Commercial Activity is pending an agency approved restructuring decision (e.g., closure, realignment).
F	Performance of the commercial activity by government personnel is required due to a statutory prohibition against private sector performance.

JUSTIFICATIONS –

In accordance with the FAIR Act and OMB Circular A-76, functions determined to be commercial but exempt from consideration from competition will require written justifications for approval by the CSO. For these commercial activities coded “Exempt from Competition”, the Deputy Assistant Administrator/Deputy Regional Administrator has made a determination that a particular commercial activity should be excluded from being considered for competition, because it represents too great a risk to the Agency or because of overriding strategic workforce planning needs. A written justification is required to support that determination.

Please note that the Agency will require written justifications for all positions at the GS-13 level performing inherently governmental (IG) support activities and the GS-12 and below level performing liaison activities. Please refer to Exhibit 1 for a definition of IG support activities and liaison activities. Other non-IG support activities at the GS-13 level do not require a written justification. For these commercial activities to change, the Deputy Assistant Administrator/Deputy Regional Administrator has made a determination that a particular activity should be considered as inherently governmental based on the supplemental guidance provided

in Exhibits 1- 3 of this document. A written justification is required to support that determination prior to modifying the data collection system.

Written justifications should be short, to the point, and submitted in the format provided in Exhibit 4. No more than **100 words** should be necessary to justify all exemptions from one Office. All justifications must be submitted to CSS, along with the overall Office inventory submission. CSS will review your submissions and may seek additional information or entries prior to submission to the Agency's CSO for approval.

The CSS will compile and submit the Agency's overall inventory and justifications to the Agency's CSO for approval prior to submission to OMB. Exhibits 5 and 6 includes guidance and format to help ensure the justifications can withstand scrutiny by OMB, Agency employees and unions, and the private sector, all of whom may challenge the characterizations of the activities performed by our employees in the inventory and the supporting justifications.

AGENCY STRATEGIC PLAN –

We have included entries linking the functions, services, and tasks that are being performed throughout the Agency to the Annual Strategic Plan (ASP). All entries must relate to goals and objectives as described in the ASP. This will not be part of the Agency's inventory submission to OMB, but rather used for internal Agency purposes. As indicated in the cover memo to this guidance, our intent in collecting this information is to help provide the Agency with a clearer picture of the activities performed by our workforce; to capture the alignment of Agency resources with its mission; and to enable management to make more strategic decisions on potential functional areas for Competitive Sourcing activities.

Definitions – Inherently Governmental / Commercial Activity¹

- I. **Inherently Governmental.** An inherently governmental activity is “so intimately related to the public interest as to mandate performance by government personnel,” and that “these positions require the exercise of substantial discretion in applying government authority and/or in making decisions for the government.” These positions have the authority to bind the government to a course of action; to determine budget, priorities and policy; to significantly affect the life, liberty, or property of private citizens; or to exert ultimate control over the acquisition, use, or disposal of government property. The OMB A-76 Circular further clarifies that “not every exercise of discretion is evidence that an activity is inherently governmental”. In order to be considered inherently governmental, the discretion cannot already be “limited or guided by existing policies, procedures...and other guidance that (1) identify specified ranges of acceptable decisions or conduct and (2) subject the discretionary authority to final approval...by agency officials”.

Inherently Governmental function may be supported by a contractor (or federal employee), where the contractor (or federal employee) does not have authority to decide the course of action, but is tasked to develop options or implement a course of action with agency oversight.

Unless an employee has authority as defined above, they do NOT meet the definition of inherently governmental.

For an IG function to be captured in the FAIR Inventory, the function must constitute at least 25% of the FTE’s duties.

A. Examples of Inherently Governmental Functions (FAR 7.503(c))

1. Determination of agency policy, such as determining the content and application of regulations.
2. Determination of priorities for budget requests.
3. Direction and control of federal employees.
4. Approval of position descriptions and performance standards.

B. Examples of Functions Not Considered Inherently Governmental (FAR 7.503(d))

1. Budget preparation, including workload modeling, fact finding, efficiency studies, and should cost analyses.
2. Reorganization and planning activities.
3. Analyses, feasibility studies, and strategy options to develop agency policy.
4. Development of regulations.
5. Technical evaluation of contractor proposals.
6. Support in preparing responses to FOIA requests.

¹ Source of definitions – OMB Circular A-76, Attachment A

7. Access to CBI or sensitive information.
8. Providing information on agency policies or regulations, such as attending conference on behalf of the agency, conducting community relations, or conducting training courses.
9. Serving as arbitrators or providing alternative methods of dispute resolution.
10. Inspection services.
11. Legal advice and interpretations of regulations and statutes.

C. Inherently Governmental Support Activities

An Inherently Government (IG) activity, as defined in OMB Circular A-76, generally involves substantial discretion in applying government authority or making decisions to bind the government to take or not to take some action by contract, policy, regulation, authorization, or order. The decision making is not already limited or guided by existing policies, procedures, or direction, and is not subject to final approval or regular oversight by agency officials.

Many positions provide support activities to the senior Agency officials who enter into binding commitments such as administrative orders, consent decrees, or settlement agreements. In most instances, the positions themselves do not have the authority to enter into such binding commitments.

Positions performing these support activities operate with a high level of independence, substantial discretion, and minimal supervision. The support activities are highly complex and multi-disciplinary, involving access to CBI, enforcement sensitive information, and other sensitive information. The positions perform the background work, research, investigation, interviews, and interaction with other governmental entities and the public which result in the binding Government action.

The positions draft the binding Government action document for the review and signature of the senior Agency official. The senior Agency official places major reliance and deference on the support activities which these positions perform. In some instances, there may be an intermediate management review prior to review and signature by the senior Agency official. The intermediate reviewer must place the same level and degree of reliance and deference on the support activities as the senior Agency official.

Generally factors such as the complexity of the work, access to CBI or enforcement sensitive information, and interaction with the public or other governmental entities are not indicators of IG, absent authority to enter into binding commitments. Many of the support activities are listed as examples in FAR 7.503(d) of functions not considered IG, such as analyses, feasibility studies, and strategy options; providing information on agency policies or regulations; inspection services; and legal advice and interpretation of regulations. The FAR does caution that these activities may approach IG because of the nature of the function and the manner in which the function is performed, as with the IG support activities described above.

Positions performing IG support activities as described above may be coded as IG, with the appropriate justification. Generally these activities are not expected to be performed below the grade13 level.

D. Governmental Liaison Activities

Governmental liaison activities may involve interactions with State and local governments, tribal entities, or private associations or stakeholders directly affected by Agency actions. The liaison activities may involve a single entity, such as a state, or multiple entities participating in an interagency workgroup or council.

The purpose of the activities may be to ensure the consistent interpretation and application of regulations and laws, to make policy recommendations, to discuss a strategic or long term approach with respect to the Agency's relationship with outside stakeholders, or to seek input or prioritize Agency actions.

Generally these activities are commercial in nature, given that the following functions are not considered IG under FAR 7.503(d):

- Development of regulations.
- Providing information on agency policies or regulations, such as attending conferences on behalf of the agency, conducting community relations, or conducting training courses.
- Legal advice and interpretation of regulations and statutes.

Significant policy considerations apply for the performance of these activities only by Agency employees in order to ensure public trust and avoid confusion. These considerations would support coding these activities as commercial-not-suitable for competition. In addition, the following are instances where liaison activities could be considered IG:

- (1) The position has the authority to enter into a binding Government commitment as part of the liaison activities, such as a charter or memorandum of understanding.
- (2) The activities could significantly affect or alter the future relationship, operation, or understanding between the Agency and the outside entity or entities, if performed independently with minimal supervision, if there are no established precedents, and without approval from a senior Agency official.

Positions performing IG liaison activities as described above may be coded as IG, with the appropriate justification. Generally these activities are not expected to be performed below the grade13 level.

II. Commercial Activities. A commercial activity is a recurring service that could be performed by the private sector and is resourced, performed, and controlled by the agency through performance by government personnel, a contract, or a fee-for-service agreement. A commercial activity is not so intimately related to the public interest as to mandate performance by government personnel. Commercial activities may be found within, or throughout, organizations that perform inherently governmental activities or classified work.

A. Considerations for Not Contracting-Out Functions that are Commercial

1. Sensitive or vulnerable area, e.g. legal services or contract management.
2. Retention of core capabilities in order to manage contractors effectively.
3. An Agency's preference for what works most efficiently, e.g. interacting with the public or other governmental entities.
4. Need for retention of institutional knowledge and succession planning.
5. Appearance issues regarding contractor performance, e.g. significant involvement in developing a controversial regulation or need for Agency independence with respect to any course of action.
6. Critical nature and importance of the function for performing the Agency's mission.

EXHIBIT 2

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

The coding of Contracting Officer's Technical Representative (COTR) functions and Assistance Agreement functions have been handled in an inconsistent manner, therefore the following guidance is provided to assist offices in preparing their 2005 Inventory submissions:

Contracting Officer's Technical Representative (COTR) functions are a commercial activity that EPA has determined is too great a risk to consider for competition. On May 25, 2005, the Office of Management and Budget (OMB) guidance identified COTR functions as commercial. In applying that guidance to EPA, the Agency notes that it is highly reliant on contractor support to meet mission requirements. Additionally, EPA has struggled historically with contract administration as a material and agency level deficiency. These deficiencies led the Agency to bring contracted work back in-house to avoid actual or perceived personal services. Although, the deficiencies were cleared in fiscal year 2000, EPA continues to monitor contract administration, particularly as it relates to the relationship between EPA and its contractors, to avoid future problems. Therefore, after careful consideration the Agency has determined to exempt these functions from competition. FTE performing COTR functions should be coded as commercial, but exempt from competition in the inventory. The Competitive Sourcing Staff (CSS) will provide the written justification required by OMB Circular A-76 for these exemptions.

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 eligibility, allowability, allocability, and reasonableness.
Prepare competitive announcement for review and approval by the Project Officer.	Determine eligibility and compliance with all requirements. Approve competitive announcement.
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, AEnvironmental 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>Commercial, Exempt for competition (represents substantial risk to the Agency based on past Inspector General findings).</u>	Approve and sign the funding recommendation package.
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.

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 is in compliance with agreement conditions. Recommend whether grantee submittal 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, and check revised applications to insure that identified administrative and programmatic deficiencies have been addressed.	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.	Acceptance of 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 all deliverables have been received.	Determine readiness for closeout.
Prepare documentation in IGMS for no-cost time extension and grant closeout.	Approve extensions or closeout.

ASSISTANCE AGREEMENTS

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.
Perform and document cost review in the pre-award phase.	Determine eligibility, allowability, allocability, and reasonableness.
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 is in compliance with agreement conditions. Recommend whether grantee submittal 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	
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.

Justification Criteria and Format for Inherently Governmental and Commercial/Exempt

Number	Criteria Code	Justification Criteria
1	CA-01	Subjecting this FTE to competition creates a substantial risk to the Agency's ability to meet its mission.
2	CA-02	This FTE must be retained within the Agency to maintain a sufficient number of FTE to perform independent, day-to-day oversight of core Agency functions.
3	CA-03	This FTE must be retained in-house in order to maintain a sufficient number of trained and experienced FTE with historical knowledge to ensure continued performance of a core function.
4	CA-04	This FTE must be retained in-house in order to maintain a sufficient number of specialized FTE with expertise of Agency systems and procedures.
5	CA-05	This FTE must be retained in-house in order to maintain a sufficient number of FTE to provide policy recommendations to the Agency's inherently governmental decision makers.
6	CA-06	This FTE must be retained in-house to meet strategic workforce planning needs of providing suitable candidates for career growth in mission critical areas of the agency.
7	CA-07	This FTE is currently filled by an individual with disabilities hired using Schedule A authority.
8	CA-08	This FTE is filled by a student intern as part of a formalized program for federal recruitment.
9	CA-09	Agency regulations and/or policy require this activity to be performed by a government employee.
10	CB-01	This FTE is commercial and suitable for competition. <i>(None of the criteria above is applicable; therefore it is suitable for consideration for competition).</i>
11	CC-01	This FTE is CURRENTLY being competed under a public-private competition.
12	CD-01	This FTE has PREVIOUSLY been competed under a public-private competition.
13	I-01	Statutory restrictions require this activity to be performed by a government employee.
14	I-02	This FTE is the final approval authority for establishing policy, strategy, program measures, and/or setting office priorities.
15	I-03	This FTE is the final approval authority for materials/products that will be used to represent the Agency to the public.
16	I-04	This FTE certifies invoices for payment (Funds Certifying Official).
17	I-05	This FTE is a warranted Contracting Officer or Grants Approval Officer.
18	I-06	This FTE represents the Agency in hearings, negotiations, or grievances and commits the Agency to a course of action for or against individuals or businesses in carrying out the mission or management of the Agency.
19	I-07	This FTE makes final determinations regarding the disposition of Agency assets or the use of Agency budgetary authority.
20	I-08	This FTE is accountable for Agency compliance with Government regulations or policy and/or represents the Agency in court hearings, negotiations, and litigations.
21	I-09	This FTE applies financial and enforcement discretion that may significantly affect the life, liberty, or property of private persons.
22	I-10	This FTE exerts ultimate control over the acquisition, use, or disposition of Agency property.
23	I-11	This FTE makes final determinations regarding eligibility, allowability, allocability, and/or reasonableness of activity.
24	I-12	Makes final determination regarding eligibility and compliance with all requirements, policy and/or guidance.
25	I-13	Approves and signs funding recommendations.
26	I-14	Obligates the Agency to a course of action.
27	I-15	This FTE performs IG support activities with a high level of independence substantial discretion which results in a binding Govt Action, such as a settlement agreement or a consent order, entered into by a more senior Agency official who places major reliance and deference on the IG support activities.
28	I-16	This FTE performs liaison activities and has the authority to enter into a binding Government commitment while performing the activities, or the activities could significantly affect or alter the relationship between the Agency and an outside entity, if performed independently, and without established precedents or higher level approval.

With the exception of numbers 10 through 12, the criteria set forth above explain why FTE are being withheld from consideration from competition by the Agency. FTE are withheld from competition because they are either inherently governmental or the Competitive Sourcing Official, or functions that are exempted from competition. These written justifications must be made available to OMB and the public upon request. OMB requires that justifications for functions determined commercial but exempted by the Agency from competition be submitted in conjunction with the annual FAIR Inventory submissions.

The criteria above establish the basis for the rationale to exclude FTE from competition but the strategic thinking can only be provided at the Office level. How did you determine what a “sufficient number” of FTE is? What is the “substantial risk” to the Agency? When explaining the rationale, please consider approximately what percentage of a function is currently provided by contractors, what are the risk of outsourcing too much of the function, what percentage would hinder the Agency’s ability to fulfill its’ core mission and when would this occur. If these positions are being reserved for career progression, explain how it fits in the EPA’s Human Capital plan. Do not simply define the activities that are associated with a function.

I. Inherently Governmental (IG) Justification Format

<i>Office of ABC (ABC)</i>							
Org	Activity	Activity Title	Job Title	Grade	Justification Code	Total FTEs	Justification
ABC	B000	Personnel Administrative Support	Secretary Staff Assistant Clerk-typist	GS-13 GS-12 GS-05	I-01	1.50	These FTEs make final determinations regarding eligibility, allowability, allocability, and/or reasonableness of activity. Makes final determination regarding eligibility and compliance with all requirements, policy and/or guidance

II. Commercial-Exempt (CA) Justification Format

<i>Office of ABC (ABC)</i>					
Org	Activity	Activity Title	Justification Code	Total FTEs	Justification
ABC	B000	Personnel Administrative Support	CA-01	1.50	This FTE includes various administrative tasks which are commercial but exempt from competition when they are not severable from otherwise exempt functions that they support, and when the functions are of a personal services nature and thus cannot be provided by contract.

FY 2009 President's Budget FTE Ceiling by RPIO

<i>Agency Total</i>	<i>17,217.0</i>
<i>Headquarters</i>	
Office of Air and Radiation	1,234.4
Office of Water	644.8
Office of Prevention, Pesticides and Toxic Substances	1,170.2
Office of Solid Waste and Emergency Response	612.5
Office of Enforcement and Compliance Assurance	922.2
Office of Research and Development	1,858.3
Office of Administration and Resources Management	852.4
Office of Environmental Information	414.6
Office of the Chief Financial Officer	366.6
Office of International Activities	63.6
Office of the Administrator and Staff	528.6
Office of the General Counsel	197.3
Office of the Inspector General	331.8
<i>Headquarters Total</i>	<i>9,182.1</i>
<i>Regions</i>	
Region 1, Boston	661.3
Region 2, New York	874.8
Region 3, Philadelphia	867.3
Region 4, Atlanta	1,041.2
Region 5, Chicago	1,206.2
Region 6, Dallas	851.3
Region 7, Kansas City	544.5
Region 8, Denver	595.7
Region 9, San Francisco	806.2
Region 10, Seattle	592.7
<i>Regional Total</i>	<i>8,041.2</i>

FREQUENTLY ASKED QUESTIONS

INVENTORY PROCESS

1. What is the effective date used as the "snapshot" in time during the inventory process?

Answer: The snapshot date is generally May 31 of each year. However, if unanticipated events occur, contact your FAIR coordinator for guidance. EPA is required to submit its' official inventory to OMB on June 30 of each year.

2. Who is the point of contact responsible for developing the FAIR Act Inventory submission within each office?

Answer: The point of contact assigned by the AA/RA will provide guidelines for consolidating all information and answering any questions regarding your inventory submission.

3. How are reorganizations in the HR approval cycle handled during the inventory process?

Answer: When HR approves the reorganization prior to June 30 and the new organizational codes are available in the inventory database, you may update the staffing information accordingly. If HR has not approved the re-organization prior to June 30, you should update the staffing information, as they exist **today**. Remember the inventory is a snap shot in time. You may capture the new organization next year.

4. How do you handle a Division functioning under a new organizational structure, while awaiting the approval of their request for an official reorganization?

Answer: Although, the Division is functioning under a new organizational structure, while awaiting the approval of their request, you should include all functions currently performed by the staff in the inventory.

5. Usually staff analysts do not have formal delegated authority, but they do exercise independent judgment, have a great deal of influence, and provide some direct support to management. Are they inherently governmental?

Answer: Doing analysis and providing advice to those who are responsible for making decisions is not necessarily inherently governmental. You must consider the nature of functions versus how we have chosen to execute them. Ask yourselves if it's inherent in the nature of staff analyst functions that they have the authority described or have we chosen to delegate responsibilities such that they appear to have the authorities described? If the latter, the inherently governmental aspects are lessen and those appointed over them would likely have that authority. Authority to make decisions for the Agency does not reside in every position. Some analyze and advise and others decide what to do with that analysis and advice.

6. Why is CSS asking for more information in a shorter timeframe?

Answer: The Agency is trying very hard to initiate a consistent method of collecting data for the FAIR Act inventory. In the past, each AA-ship developed their own method for collecting data, which led to a great number of inconsistencies. The new analysis method helps the Agency accurately capture activities performed at EPA and the additional information aids CSS in developing a strategic tool for analyzing EPA's activities. This is not to say that any activity listed as commercial in nature will be competed, but it will provide for a better justification of the Agency's methodology. Our goal, this year, is to achieve consistency and accuracy in reporting our inventory to OMB.

7. The HR consolidation has really changed human resources, resulting in the elimination and consolidation functions or STEPs filling positions. How should we capture these changes in the inventory?

Answer: If functions eliminated or consolidated, you should identify the new functions for each employee in the inventory including individuals participating in the Student Temporary Employment Program (STEP).

FTE

1. What is the President's Budget?

Answer: A document submitted annually (due by the first Monday in February) by the President to Congress. It sets forth the Administration's recommendations for the Federal budget and FTE ceiling for the upcoming fiscal year.

2. What is the president budget FTE ceiling?

Answer: It is the FTE allocation assigned to each program office by OCFO based on the President's Budget. This FTE allocation is reconciled at the AA/RA level for each office's inventory submission.

3. If the President's Budget states an FTE allocation of 1,170.2 and we currently have 1201.08, how should you handle the variance?

Answer: OMB requires Agencies to provide written justifications explaining +/- 5% of the FTE allocation within the President's Budget.

You should ensure that your total number does not exceed the number provided in the President's Budget by more than or less than 5%. If it does, you must provide a written justification for submission to OMB.

4. What does it mean if an FTE allocated for a position is less than one?

Answer: Generally, a fraction of an FTE indicates a part-time employee. Remember you must account for 100% of the time a full-time or part-time employee spends performing working.

5. If there are more FTEs on board than indicated in the President's Budget FTE ceiling, how should we distinguish between those FTE that are above the ceiling and those that are not?

Answer: You do not have to distinguish which FTEs are over ceiling. Each AA/RA Fair Act Coordinator is required to reconcile their FTEs against the ceiling provided in the President's

Budget. If the FTE level is over or under five (5%) percent, the AA/RA must provide a written justification with their inventory submission to the CSS Staff. These justifications are included in the Agency's official inventory submission to OMB.

6. How do you handle FTEs excluded from the President's Budget, but included in the Enacted Budget?

Answer: You should provide a written justification to your office's FAIR Act Coordinator stating why your FTE ceiling do not reconcile to the inventory FTE control numbers.

7. Who generates the control numbers included in the FAIR Act Inventory guidance?

Answer: The Office of the Chief Financial Officer (OCFO) provides control numbers based on the President's Budget. The CSS staff includes those control numbers in the FAIR Act inventory guidance.

DATABASE

1. I have gone into the database and tried to edit a record and I get a security alert message. Can you tell me the way around this problem to edit the record?

Answer: The very first time you edit a record in the system, you may receive the *Security Trust* Pop-up screen. Simply, select, *Start Trusting the Signer to Execute this Action*, and then modify the document.

2. What should you do if a job title, office code, series, grade, location or any other pertinent information is missing from the drop-down menu?

Answer: If a selection option is not available, provide the needed information to your AA/RA FAIR Act coordinator. The coordinator will forward the information to the CSS Staff to make available in the system.

3. How do we handle eliminating a position classified as C/B or C/A in the inventory database?

Answer: Provide a written justification via e-mail to the Competitive Sourcing Staff (CSS) justifying the need to eliminate the position. CSS will response within 24 hours. Once approved, CSS will delete the record.

4. What is the minimum available level of FTE?

Answer: It is 25%, using the decimal format.

5. What is the maximum number of functions one can assign to each position?

Answer: There are four (4) functions per position.

6. What should be the total of percentage of time spent performing tasks?

Answer: The total time spent performing tasks should be one hundred (100%) percent.

7. Should the user enter data into the column “first year on inventory” for the inherently governmental functions or should the user complete the column “first year on inventory” for all functions regardless of the designation of commercial and/or inherently governmental?

Answer: This column applies **only** to functions coded as commercial. The FAIR Act requires an annual inventory of full-time equivalent positions (FTEs) performing functions determined to be commercial in nature and inherently governmental. The system will automatically designate the appropriate year when you change an existing activity from inherently governmental to commercial or you enter a new commercial activity for the very first time. Otherwise, no change is required in the system.

8. How do we identify inventory function areas that support numerous strategic goals?

Answer: The system will include a maximum of four strategic goals per activity. Please work with your AA/RA Fair Coordinator to determine which goals to add to the system.

9. Will the CSS Staff modify the database to meet the changing requirements of the users?

Answer: Several modifications exist to make your jobs easier:

- The database is “pre-populated” with the prior year’s submission data to ease data entry requirements. However, you must ensure the validity of the existing data.
- You may now save records without opening each one, using the Quick-Save mechanism.
- You may now enter only the organizational information, job title and location and save the record. This will allow you to go back and enter the function/status code information or have someone else provide it.
- You are now only required to enter the FTE once and designate up to four (4) function codes. Each function code accounts for no less than 25% of time and should total 100% of the time.
- You may now enter a Strategic Goal for each function code.

10. If an office has five positions that have the exact same title, grade, functions, FTE allocation, etc... Can we input the number five (5) FTEs in the FTE field rather than making five (5) separate entries?

Answer: You may enter one record for multiple FTEs having the exact same title, grade, functions, status codes, reason codes, and FTE allocation or you may enter an individual record for each individual within an organization. Please consult your AA-ship/Region FAIR Act Coordinator regarding office policy for entering data into the inventory database.

11. If a new full-time employee assigned to an existing position serves in the position for 60% of the time this year, should you change the FTE to .6 or keep the one (1) FTE?

Answer: Since the employee is working full-time, you should enter an FTE of one (1) in the FTE field.

FUNCTION CODES AND STATUS CODES

1. Is there a specific code for purchase cardholders? Are purchase card activities such as evaluating the expenditure of funds and reviewing receipts inherently governmental or commercial in nature?

Answer: There is not a specific function code designated for purchase cardholders. In the case of purchase cardholders' activities, you must first consider the time spent performing the function. Very few purchase cardholders spend **25%** of their time performing activities associated with purchasing items for an office. For example, the Agency may give a contractor authority to acquire supplies and/or services on its behalf within specified limitations and conditions, as it deems appropriate. An employee's use of a government credit card for the purchase of office supplies or temporary duty travel does not generally meet the funds obligation criteria. Therefore, the function may be considered commercial in nature. If the position is one of a purchase officer, authorized to commit and obligate funds on behalf of the Agency, those functions may be considered inherently governmental. For further clarification, please refer to the IG justification guidance.

2. How do we handle identifying the status codes for PHS officers?

Answer: These positions are generally commissioned officers; therefore, you should consider applying a commercial code of C/A or C/B.

3. Are there functions that have been determined "specifically exempt by the Agency?"

Answer: No, there is not a list of function codes, specifically exempted by the Agency.

4. Are all secretaries inherently governmental?

Answer: Not all secretaries are inherently governmental in nature. Please remember you must closely review their functions and the office for which they support in order to make a determination.

5. Where can additional definitions of function codes be located?

Answer: The Agency made a significant effort in previous years to reduce the number of functions codes and redefine them to meet EPA's unique needs. Additional function codes are not available at this time. If you have any questions, regarding the definitions of codes, please contact your FAIR Coordinator.

6. Is the "IG" (Inherently Governmental) status code applicable to grades, GS-09 and below, and functions currently coded commercial but exempt (C/A) or is a written justification signed by the DAA/DRA required BEFORE submitting the inventory?

Answer: It is Agency policy that all positions, GS-09 and below are commercial in nature. A written justification signed by the DAA/DRA and approved by the CSS Staff is required before a change can occur in the inventory.

7. Are Branch Chiefs and Section Supervisors coded 100% in the Y Category or are their functions captured in the Y Category and other appropriate functional categories as well?

Answer: It is at the discretion of the AA/RA program office to determine which functional categories are applicable for the positions of Branch Chiefs and Section Supervisors.

8. How do we enter information in the justification field when you would like to provide a justification for positions, GS-09 and below, you believe should not be coded commercial? The system automatically populates this field when you select an IG or C justification criteria.

Answer: You must provide a written justification addressing the IG criteria in the inventory guidance for each individual position. You must submit your justification to AA/RA FAIR Act coordinator for the DAA/DRA approval prior to making changes in the inventory database. Once you receive DAA/DRA approval, you may change the existing commercial activity to inherently governmental. The system will prompt you to enter your justification. Once you complete your entry, the system forwards the justification to the CSS staff for approval. The record remains in a pending status until the CSS staff provides a response. You may locate The CSS staff's response and rationale for approval or disapproval in the *Comments box* of each record. Once you receive the CSS response, you may modify the document. Please remember, commercial-exempt (CA) means the Agency chooses to protect and not compete those FTEs.

SPECIAL CATEGORY OF POSITIONS

1. How do you account for interns?

Answer: OARM-OHR accounts for these FTEs and their salaries. You **should not** include these FTE in the inventory. These FTEs do not count against a program office FTE ceiling allocation.

2. How do you account for FTE in the Student Career Experience Program (SCEP) and the Student Temporary Employment Program (STEP)?

Answer: Each office accounts for these FTEs and their salaries within their FTE ceiling and budget allocations. SCEPs and STEPs should be included in the inventory.

3. How do you account for Summer Hires?

Answer: Each office accounts for these FTEs and their salaries within their FTE ceiling and budget allocations. Summer hires should be included in the inventory.

4. a) How do we handle Inter- Personnel Agreement (IPAs) that might not be returning for several years, but have return rights?

Answer: The office with the return rights retains the position in the Inventory with the functions that the individual would be doing if they were in the office.

- b) How do we handle a position filled by someone else and there is no other vacancy within the office at the time the Inventory is completed?

Answer: If the individual is performing task in your office you must include them in the inventory. It would be up to the FAIR coordinator to determine how to best reconcile the FTE.

The FAIR coordinate must reconcile all FTE to the ceiling provided in the President's Budget. Any variance below or over 5% must be justified in writing for submission to OMB.

5. How do we handle Public Health Services (PHS) officers?

Answer: If you are paying for a PHS, but the individual is not included in your FTE ceiling, **do not** include them in your inventory. The inventory accounts for FTE allocations only.

6. Since PHS officers have a different pay schedule, how do we handle that in the Inventory?

Answer: You should select a salary step from the Commission Officers' CC pay schedule provided in the drop down menu or convert them to the GS pay schedule.

7. Which grading system is most applicable for the position of "Expert, ED-0819-00-00"?

Answer: The grade structure for this position is the SL/ST - Senior Level Scientific and Professional pay schedule.

8. Do we account for FTEs filled by Active Duty personnel?

Answer: Yes, the position and duties still exist and should be included in the inventory.

9. How do we handle Consultants?

Answer: If the consultant is part of your FTE allocation totals, then the consultant becomes a governmental FTE. Again, choose the most appropriate function code to describe their work. The focus should not be on the job title but the function performed.

10. How should we handle the FTE funded by the Economic Stimulus Package?

Answer: You should handle these FTEs in the same way you would handle any other FTE. You should identify the appropriate function codes that relate to the work performed and provide the appropriate inherently governmental or commercial justification criteria.

VACANCIES AND DETAILED POSITIONS

1. How much flexibility do programs have with listing its active vacancies?

Answer: Active vacancies should be included in the inventory, identifying the major functions performed by the position. These FTEs are a part of the FTE ceiling allocation.

2. What job title should one use to designate a vacancy?

Answer: The job title of *Vacancy* is available for use in the inventory system. Remember, in order to designate a vacancy use the following job titles usually apply: unallocated duties, unclassified duties, or unclassified position. These duties and positions are included in the inventory.

3. How do you capture vacant positions in the inventory, when you do not anticipate filling them?

Answer: Consult your FAIR coordinator regarding any vacancies. It is up to the FAIR coordinator to reconcile all FTEs to the President's Budget ceiling allocations.

4. A person detailed from one division to the other with the receiving office paying for their salary, which office should account for this position?

Answer: The receiving office should account for the individual. The office from which the person detailed should show the position as a vacancy and include the major functions performed by the position.

5. How do you handle detailed positions during the inventory process? Do you consider them as vacancies until the FTE returns to its' original position?

Answer: No, these types of detailed positions are not vacancies. They are existing positions with designated functions. You should capture these FTEs in your office inventory. It does not matter who is performing the functions, the positions are included in your organization's FTE ceiling.

6. How should we handle a position detailed to another Division and/or Headquarters that we are not paying for (the receiving office is paying for) and the functions are distributed to other people)?

Answer: The office of record should account for this position (FTE). Although other positions are performing the functions and your organization is not paying the salary, the office of record should account for the position (FTE).

7. If there is a recruitment action for a vacancy at a lower grade level than the current position, what grade level should you enter into the database?

Answer: Until the office fills the position at the lower grade level, you should list the position as a vacancy with the grade of the former employee.