



U.S. DEPARTMENT OF **ENERGY**

**OFFICE OF PROCUREMENT & ASSISTANCE
MANAGEMENT**

INHERENTLY GOVERNMENTAL AND COMMERCIAL ACTIVITIES (IGCA) INVENTORY GUIDANCE

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Table of Contents

Table of Contents.....	1
Summary.....	2
Guide to Inventory Submission	4
DOE Function Codes	5
Function Code Taxonomy:.....	5
Coding Management Functions:.....	5
Coding Rules for the IGCA Inventory	5
Position Title vs. FTE Function:	5
Fractional FTEs:.....	6
Filled / Vacant Positions:.....	6
Budgeted FTEs:	6
Organizational Structures:	6
Data Analysis:	6
Reason Codes	8
Reason Code Z Definition	8
Reason Code A Definition.....	9
Reason Code A Justification Guide	9
Reason Code B Definition.....	10
Reason Code C Definition	10
Reason Code D Definition	10
Reason Code E Definition.....	11
Reason Code F Definition.....	11
Collection Tool Training	12
Data fields used in the collection tool:	12
Templates	16
Reason Code A Justifications	16
Reason Code Z Justifications	16
FAIR Act Inventory Challenge Data Submission	17
FAIR Act Inventory Appeal Data Submission	17
Challenges & Appeals.....	18
Guide to Submit a Challenge	18
Challenge Decisions	19
Guide to Submit an Appeal	20
Appeals Decisions	20
References.....	21



Summary

DOE has not received OMB's 2009 inventory guidance; however, we expect the guidance will be essentially unchanged from its 2008 version, with a few caveats;

1. Each Department Element will carefully review activities that are classified as commercial (Reason Codes A, B, D, and E) to ensure they do not include inherently governmental functions. Functions will be reclassified as may be necessary in accordance with the results of the review.
2. Departmental Elements are no longer required to submit a Verification memo along with their IGCA Inventory submission.

OMB requires the submission of the IGCA Inventory in a specified electronic format. As a result, an updated version of the collection tool used last year is provided along with this guidance. Instructions and training related to the use of the data collection tool is available in the Collection Tool Training section of this guidance. Please refer to the Table of Contents.

Any questions regarding this guidance and the collection tool should be addressed to John Bashista by e-mail at: john.bashista@hq.doe.gov. Additional references are also available in the References section of this guidance. Please refer to the Table of Contents.

Note: FAIR Act Challenge and Appeal Instructions have been revised. Please make sure to review them before starting to work on a challenge and/or appeal.

Required Submission / Due Dates

Between April 21, 2009 and May 15, 2009,

Please submit a draft version of your Data Collection Tool, and your justifications for positions coded Reason Code A and Z. The Office of Procurement & Assistance Management will review and work with Departmental Elements to make any necessary changes.

By May 15, 2009 each Departmental Element is responsible for:

1. Updating and submitting the Data Collection Tool provided to your organization. The data collection tool must include a narrative explaining any changes between your 2008 and 2009 submissions. The Tool provides a preset space to input the narrative. Instructions are provided with this guidance.
2. Submitting written Reason Code A justifications in accordance with the instructions provided with this guidance.
3. Submitting written Reason Code Z justifications in accordance with the instructions provided with this guidance.

Please submit by e-mail to the Office of Procurement & Assistance Management, addressed to john.bashista@hq.doe.gov.

Templates are provided in the Templates section of this guidance. Please refer to the Table of Contents.

Guide to Inventory Submission

This document provides guidance for submission of the Department of Energy (DOE) Inherently Governmental and Commercial Activities (IGCA) Inventory. This inventory will be used to respond to various reporting requirements including, but not limited to, the Federal Activities Inventory Reform Act of 1998, Public Law 105-270 (FAIR Act) and the inventory of inherently governmental activities required by the Office of Management and Budget (OMB).

It is important to note that the following headquarter offices are responsible for collecting, reviewing and submitting for inclusion in the Department's complete IGCA inventory, all headquarters and subordinate field office inventory data:

National Nuclear Security Administration (NNSA)
Environmental Management (EM)
Science (SC)
Fossil Energy (FE)

OMB requires the submission of the IGCA Inventory in a specified electronic format. As a result, an Excel based data collection tool will be provided to each Departmental Element and constituent organizations. Instructions and training related to the use of the data collection tool is available in the Collection Tool Training section of this guidance. Additionally, Departmental Elements must submit a narrative description addressing any changes to the inventory – specifically any movement of FTEs from commercial reason codes to inherently governmental. The narrative should explain, in detail, the organizational changes that have occurred since the previous IGCA Inventory was submitted, and a justification for the change. The strategy / philosophy for coding FTEs in particular Reason Codes and Function Codes should also be included. The narrative must be incorporated into the Collection Tool – the Tool provides a preset space to input the narrative.

Furthermore, Departmental Elements must provide Reason Code A and Z justifications. The justifications should reflect an appropriate and consistent application of criteria. They should contain enough information to enable a reasonable lay person to validate the function and reason code designations. The key elements of a complete justification are the following: a thorough definition of the function performed, including required skills and responsibilities, and a clear explanation of why the function should be categorized as reason code A or Z. Justifications could be grouped by Function Code and Position Title. Please review the definitions for Reason Code A and Z provided with this guidance.

Any FTE that has been coded as being included in any on-going Competitive Sourcing Initiative study, conducted under OMB Circular A-76, will remain coded as “under study,” commercial Reason Code C, until such time as the study is completed, or the Competitive Sourcing Executive Steering Group (ESG) has formally decided to remove the FTE(s) from a study.

DOE Function Codes

Function Code Taxonomy: Function Codes provide the coding structure for offices to account for all departmental activities performed in direct support of missions. Each function code includes an alphanumeric code, title, and definition describing the type of work performed. Function Code definitions are intended to be comprehensive and mutually exclusive. Additionally, each definition identifies meaningful exclusions. Many groupings of Function Codes include at least one miscellaneous “other” function that has an alphanumeric code ending in “99” (e.g., “H999 – Other Health Services”). These miscellaneous functions are used to code work that is not identified by other function codes on the list. (Provided with this guidance – please refer to the table of contents). The use of the miscellaneous codes is discouraged and should be utilized only as the last choice.

Coding Management Functions: Management functions performed at the headquarters level involve work that is significantly different than that performed at operations offices. OMB has developed separate codes and titles for each. Management Headquarters type work is defined as “overseeing, directing, and controlling subordinate organizations or units through: developing and issuing policies and providing policy guidance; reviewing and evaluating program performance; allocating and distributing resources; or conducting mid- and long-range planning, programming, and budgeting.” However, “Management Headquarters” functions do not include “all direct support (e.g., professional, technical, administrative, or logistical support) that is provided directly to a major DOE headquarters office and is essential to its operation.” Direct support is included as part of a “Management Headquarters” function only when the support is an inherent part of, and inextricably tied to, management headquarters type work as defined above. If the support is performed separately, it is coded with the support function code that most closely describes the type of support provided.

There are services and operations that have management elements (e.g., supervision, oversight, and control). Services and operations are sometimes performed by private sector contractors. In such cases, the administration and oversight of the contract (to include quality assurance and technical review of the services provided) are considered to be an inherent part of the management function.

Note: Coding is based on the type of work activity performed (e.g., personnel operations) and not based on where the work activity is performed (e.g., headquarters or field office).

Coding Rules for the IGCA Inventory

Position Title vs. FTE Function:

FTEs are grouped by function code to indicate the type of work activity performed. In some cases, this may not correspond to what position series and titles an FTE represents.

EXAMPLE: Although accountants are typically found in accounting functions and engineers in engineering functions, in some cases, a budget analyst may be working in an accounting function or a geologist in an engineering function. As a general rule the function code selected for these FTEs should be based on the type of activity (i.e., accounting function) and not type of position (i.e., budget analyst) associated

with the FTE. In this case the budget analyst would be coded as an accounting function and geologist as engineering function.

NOTE: The definitions for the acquisition functions in the list provided with this guidance are not intended to reflect or align with the Department's definition for the "Acquisition Work Force" as addressed in DOE Order 361.1. The Department's definition for the "Acquisition Work Force" is based on organizations and occupational series. As explained above, DOE functions are based on the type of work performed regardless of its organization and are not based on (or necessarily relate to) occupational series / occupational specialties.

Fractional FTEs:

OMB allows for the reporting of fractional FTE; however, agencies shall not report fractions smaller than one-quarter unless a request for a waiver is granted by OMB. Part-time or seasonal employees should be accurately reported as fractional FTE. Splitting FTE into multiple function codes should only be done in cases where a single FTE performs two or three completely separate functions. For instance, nearly all positions have an administrative component; however, it is unnecessary to separate this from the rest of the position duties. An FTE should be assigned a single function code based on the predominant type of work performed.

Filled / Vacant Positions:

FTEs ought to be reported whether the FTE is filled, vacant, on a non-reimbursable detail, or on extended leave. The IGCA inventory accounts for the type of work activity authorized to be performed — FTE authorizations — regardless of whether the position associated with the FTE is burdened or not (filled or vacant). FTEs are reported regardless of whether the incumbent of the position associated with the FTE is borrowed or diverted to perform other work; is on temporary or extended detail, leave, or training; or has full or part-time collateral duties.

Budgeted FTEs:

The number of FTEs reported in each agency's inventory should reflect the number of budgeted FTEs the agency is assigned. Therefore, all budgeted FTEs should be included in agency inventories regardless of personnel status (i.e. Civil Service, Political Appointees, and Foreign Service).

Organizational Structures:

The IGCA inventory is based on current processes, procedures, organizational structures, equipment, and workloads. Offices may not omit or add FTEs or code FTEs based on presumed improvements to organizational structures, equipment, technologies, work arrangements, processes, or procedures, except to the extent that doing so permits the office to report the FTE level (including vacancies) as set forth in the current fiscal year Budget.

Data Analysis:

The definition for each function code describes the type of work performed. The functional definition does not reflect:

1. whether the function is inherently governmental or commercial in nature;
2. whether the function is subject to, or exempt from, competition;
3. how functions or activities are packaged for competitive sourcing; or,
4. how FAIR Act challenges and appeals are handled.

It is important to keep in mind that the inventory information will be reviewed by parties internal and external to DOE. Those parties may not be aware of the fact that management and organizational arrangements, geographic dispersion, span-of-control, and management relationships differ greatly among DOE offices. Also, they may not be aware of the degree to which DOE offices rely on inter / intergovernmental support and private sector services. In order to assess the type of activity or to question inherently governmental and commercial designations of FTEs, parties may make DOE-wide comparisons of functions, functional groups, functional categories, or organizational levels. By documenting the rationale behind your coding decisions, any questions resulting from the review and analysis of your inventory should be easier to answer.

Reason Codes

A	The Commercial Activity is not appropriate for private sector performance pursuant to a written determination by the CSO.
B	The Commercial Activity is suitable for a streamlined or standard competition.
D	The Commercial Activity is performed by government personnel as the result of a standard or streamlined competition (or a cost comparison, streamlined cost comparison, or direct conversion) within the past five years.
D1	Graphics FTEs representing the implemented MEO resulting from the 2002-2003 Competitive Sourcing Studies.
D2	Financial Services FTEs representing the implemented MEO resulting from the 2002-2003 Competitive Sourcing Studies.
D3	NNSA Logistics FTEs representing the implemented MEO resulting from the 2002-2003 Competitive Sourcing Studies.
D4	Human Resources Training FTEs representing the implemented MEO resulting from the 2002-2003 Competitive Sourcing Studies.
D5	Albany Research Center Logistics FTEs representing the implemented MEO resulting from the 2002-2003 Competitive Sourcing Studies.
D6	Information Technology FTEs representing the implemented MEO resulting from the 2002-2003 Competitive Sourcing Studies.
D7	New Brunswick Laboratory FTE representing the implemented MEO resulting from the 2005 Competitive Sourcing Studies.
D8	Legacy management FTE representing the implemented High Performing Organization (HPO) via memo transmitted in February 2007 from OMB.
D9	Radiological and Environmental Sciences Laboratory FTE representing the implemented MEO resulting from the 2006 Competitive Sourcing Studies.
E	The Commercial Activity is pending an agency approved restructuring decision (e.g. closure, realignment).
F	The Commercial Activity is performed by government personnel due to a statutory prohibition against private sector performance.
Z	Inherently Governmental pursuant to a written determination by CSO.

Reason Code Z Definition

Definition: Inherently Governmental Function pursuant to a written determination by the Competitive Sourcing Official (CSO).

The term “inherently governmental function” means a function that is so intimately related to the public interest as to require performance by Federal Government employees. The term includes activities that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary

transactions and entitlements. An inherently governmental function involves, among other things, the interpretation, and execution of the laws of the United States.¹

The Federal Activities Inventory Reform Act of 1998 and CIRCULAR NO. A-76 provides detailed information on coding functions as Inherently Governmental. These could be accessed through the [Competitive Sourcing](#) website under [Operating Guidelines](#).

Reason Code A Definition

Definition: Commercial Activity not appropriate for private sector performance pursuant to a written determination by the Competitive Sourcing Official (CSO).

OMB Circular A-76 authorizes an agency's CSO to exempt a commercial function performed by government personnel from competition on the basis that the activity is not appropriate for private sector performance. The Circular requires agencies to prepare justifications to support the designation of commercial reason code A functions. The OMB FAIR Act guidance requires agencies to submit these justifications along with their annual inventory. Below is a guide to help agencies structure their reason code A justifications so that agencies may achieve incremental improvements with each inventory submission.²

Reason Code A Justification Guide ²

Justifications should reflect an appropriate and consistent application of criteria. They should contain enough information to enable a reasonable lay person to validate the function and reason code designations. The key elements of a complete justification are the following: a thorough definition of the function performed, including required skills and responsibilities, and a clear explanation of why it is necessary for the commercial function to be categorized as unsuitable for competition.

Risk to the Agency. Many agencies seek to exempt certain functions from competition on the grounds that the function is "core to the agency's mission." As a general matter, a function should be considered core to an agency's operation only if -- and only to the extent that -- loss of in-house performance of the function would result in substantial risk to the agency's ability to accomplish its unique mission. Consider the following examples:

1. Project managers and designated contracting officer representatives (commonly referred to as CORs or COTRs) may be considered core functions. An agency is likely to find that its operations would be at substantial risk if there were no in-house employees to perform these functions. However, these functions should be considered core only to the extent required to avoid substantial risk -- i.e., not every FTE in these categories is necessarily core since it would not put an agency's

¹ Federal Activities Inventory Reform Act of 1998 / Public Law 105-270 - OCT. 19, 1998

² OMB Guidance for use of Commercial Reason Code A Justifications

mission at risk to have a portion of these functions performed by contractors, so long as a sufficient number of FTE remained in house to perform the necessary oversight.

2. Repairing computers and routing telephone calls are not core functions. Although these functions provide essential support to daily agency operations, they do not accomplish the unique mission of any agency and the potential conversion of the entire function to contract performance would not, in the ordinary course, expose the agency to substantial risk.

When evaluating functions, the FTE should be categorized based on the work they are actually performing, not on the title assigned or the certification acquired. For example, an FTE who has taken COR training, but does not perform that function as part of their regular duties, cannot be considered a COR for purposes of assigning status or reason code on the inventory.²

Please reference the OMB Guidance for use of Commercial Reason Code A Justifications for examples:

<http://www.whitehouse.gov/omb/memoranda/fy2005/m05-12.pdf>

Reason Code B Definition

Definition: The commercial activity is suitable for a streamlined or standard competition.

Reason Code B should be applied to any FTE performing a function or activity that could be subjected to public-private OMB Circular A-76 competition.

Reason Code C Definition

Definition: The Commercial Activity is the subject of an in-progress streamlined or standard competition.

FTEs identified with Reason Code C are those that were included in announced DOE functional area competitive sourcing studies, and exclude those FTEs the Competitive Sourcing Executive Steering Group (ESG) has released from study (FTE excluded from study by the ESG shall be identified in the appropriate Reason Code).

Reason Code D Definition

Definition: The Commercial Activity is performed by government personnel as the result of a standard or streamlined competition (or a cost comparison, streamlined cost comparison or direct conversion).

Reason Code E Definition

Definition: The Commercial Activity is pending an agency approved restructuring decision (e.g., closure, realignment).

DOE offices shall use Reason Code E for all FTEs performing activities in a function that has been deferred from a streamlined or standard competition pending the results of an approved force restructuring decision. This code is limited to restructuring initiatives such as approved site closures, or functional realignment or consolidation actions that have been approved in writing.

Reason Code F Definition

Definition: The Commercial Activity performed by government personnel due to a statutory prohibition against private sector performance.

Any use of Reason Code F will be supported in the narrative description submitted to the Office of Competitive Sourcing/A-76 at the time of submission of the inventory data collection tool.

Collection Tool Training

The IGCA Collection Tool is an Excel based tool that allows program offices to collect and validate their inventory. The tool automatically filters and summarizes data so that program offices could submit detailed inventory reports. Please click on the link below to access the PowerPoint training available at our website:

[Collection Tool Training](#)

Data fields used in the collection tool:

There are a total of 17 data fields in the collection tool. Every line of data (row) must have every data field completed. The tool has drop-down lists for almost every data field – just click on the cell and select your option. If no drop-down list is available please input the corresponding data. Below is a list of the data fields and a description for each.

Agency and Bureau Code = Please refer to the list below.

019-05	National Nuclear Security Administration
019-10	Environmental and Other Defense Activities
019-20	Energy Programs
019-50	Power Marketing Administration
019-60	Departmental Administration

Organization Code = Identifies the Organization Code the FTE belongs to. Sub-organization codes are also included in this data field.

Organization	Code
Albuquerque (EM)	AL
Albuquerque NNSA	AL NNSA
BPA	BPA
CBFO (EM)	CBFO
Chicago (EM)	CHI
CHO	CHI
Civilian Radioactive Waste Management	RW
Congressional & Intergovernmental Affairs	CI
Consolidated Business Center (EM)	CBC
Economic Impact And Diversity	ED
EE	EE
Energy information Administration	EIA
Environmental Management	EM
Fossil Energy	FE
General Counsel	GC
Golden Field Office	GOLDEN
Health, Safety and Security	HS
Hearings And Appeals	HG
Idaho	ID
Idaho (EM)	ID

Inspector General	IG
Intelligence & Counterintelligence	IN
Livermore	LL NNSA
National Nuclear Security Administration	NETL
Naval Petroleum Reserves, Co, WY	NPR-CO/WY
Naval Reactors	NR NNSA
NETL	NETL
Nevada (EM)	NV
Nevada NNSA	NV NNSA
Nuclear Energy	NE
Oak Ridge	OR
Oak Ridge (EM)	OR
Oak Ridge Y-12 Office	Y-12 NNSA
Oakland Operations Office (EM)	Oakland
Office of Electricity Delivery and Energy Reliability	OE
Office of Human Capital Management	HC
Office of Legacy Management	LM
Office of Management	MA
Office of Policy and International Affairs	PI
Office of River Protection (EM)	ORP
Office of the Chief Financial Officer	CF
Office of the Chief Information Officer	IM
Office Of The Secretary	S
Oak Ridge Office	OR
Oak Ridge Office	PW
Oak Ridge Office	SSO
Oak Ridge Office	TJSO
Pittsburgh Naval Reactors	PNR NNSA
Ports-Pad Project Office (EM)	AL
Ports-Pad Project Office (EM)	CBC
Public Affairs	PA
Richland (EM)	RL
Savannah River (EM)	SR
Savannah River NNSA	SR NNSA
Schenectady Naval Reactors	SNR NNSA
Science – HQ	OSTI
Science	SC
Southeastern Power Administration	SEPA
Southwestern Power Administration	SWPA
Strategic Petroleum Reserves Project Office	SPRO
Western Area Power Administration	WAPA

Departmental Element Code = Identifies the Departmental Element the organization belongs to (if applicable). Please refer to the list below.

Departmental Element	Code
Bonneville Power Administration	BPA
Civilian Radioactive Waste Management	RW
Congressional & Intergovernmental Affairs	CI
Economic Impact And Diversity	ED

Energy Efficiency and Renewable Energy	EE
Energy Information Administration	EIA
Environmental Management	EM
Fossil Energy	FE
General Counsel	GC
Health, Safety and Security	HS
Hearings And Appeals	HG
Inspector General	IG
Intelligence & Counterintelligence	IN
Nuclear Energy	NE
Office of Electricity Delivery and Energy Reliability	OE
Office of Human Capital Management	HC
Office of Legacy Management	LM
Office of Management	MA
Office of Policy and International Affairs	PI
Office of the Chief Financial Officer	CF
Office of the Chief Information Officer	IM
Public Affairs	PA
Science	SC
National Nuclear Security Agency	NNSA
Southeastern Power Administration	SEPA
Western Area Power Administration	WAPA
Southwestern Power Administration	SWPA
Office of the Secretary	S

Facility = Identifies the actual physical location where the FTE is located.

First Year on Inventory = Identifies the first year the FTE was reported.

State = Identifies the state where the FTE is located.

City = Identifies the city where the FTE is located.

Country = Identifies the country where the FTE is located.

Function Code = Identifies the Function Code the FTE represents. Please review the coding rules for the IGCA Inventory. Please refer to the table of contents.

Position Title = Identifies the current position title of the FTE. This may not correspond to the Function Code.

Pay Plan = Identifies the current pay plan of the FTE. This may not correspond to the Function Code.

Position Series = Identifies the current position series of the FTE. This may not correspond to the Function Code.

Position Grade = Identifies the current position grade of the FTE.

FTE = Identifies the number of FTEs reported for that specific Function Code. Grouping of FTEs is allowed as long as they share identical data fields (example: Function Code, Position Title, Plan, and Series).

Status = Identifies if the FTE is Inherently Governmental (I) or Commercial (C).

Reason Code = Identifies which reason code corresponds to that Function Code entry. Please refer to the Guide to Inventory Submission for instructions on how to code an FTE / Function Code.

Explanation = Identifies an explanation for a change between the previous and current year. The list below describes the available explanations:

Reason Code Change	If during this fiscal year the function has been classified with a different reason code please select this option. This could be the result of a reorganization or management decision.
Function Code Change	If during this fiscal year the function has been classified with a different function code please select this option. This could be the result of a reorganization or management decision.
No Change	If there has been no change please select this option.
More FTEs	If the function includes more FTEs please select this option.
Less FTEs	If the function includes less FTEs please select this option.
New Entry	If the function is new to your organization please select this option. Keep in mind that you must include the current year in the 'First year on Inventory' column. A new entry could be derived from a reorganization and/or A76 program. If the new entry belonged to a different organization on the previous fiscal year, please coordinate with the respective organization so that the FTE is not accounted for twice.
Non-existing	If the function no longer exists within your organization please use this option. If the function was eliminated due to a reorganization and/or A76 program please select this option. If the function was inherited by a different organization please coordinate with the respective organization so that the FTE is not accounted for twice.
Other	If the change is not described by any of the above options please use this option.

Challenges & Appeals

The Federal Activities Inventory Reform Act of 1998 (FAIR Act), Public Law 105-270, allows for interested parties to challenge the classification of an FTE in the FAIR Act Inventory. To be considered valid, a challenge must meet all of the requirements in the Guide to Submit a Challenge section below. Challenges that do not meet all of these requirements will be rejected. Challengers are encouraged to read and become familiar with the FAIR Act and the Office of Management and Budget (OMB) Circular A-76, Revised, "Performance of Commercial Activities."

Guide to Submit a Challenge

1. The challenge must be in writing. Attempts to make a challenge verbally via the telephone, verbally, by voice mail and by electronic mail are not acceptable and will be rejected.
2. The challenge must be sent by United States mail, express delivery or similar service, or facsimile transmission to:

U.S. Department of Energy
Office of the Executive Secretariat
1000 Independence Avenue, S.W.
Washington, DC 20585
Attn: FAIR Act Inventory Challenge

Facsimile transmission telephone number: 202-586-4403

Challenges sent or delivered to other offices or locations will be rejected.

3. The challenge must be submitted within **30** working days after the date that the OMB notice, stating that the DOE inventory is available to the public, appeared in the *Federal Register*. That date is the date that the inventory actually becomes available to "interested parties" through this website.
 4. The person or organization making the challenge must be an interested party. Interested parties are defined in the FAIR Act as:
 - (1) A private sector source that (A) is an actual or prospective offeror for any contract or other form of agreement to perform the activity; and (B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.
 - (2) A representative of any business or professional association that includes within its membership private sector sources referred to in (1) above.
 - (3) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.
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- (4) The head of any labor organization referred to in section 7103(a) (4) of Title 5, United States Code that includes within its membership officers or employees of an organization referred to in (3) above.

5. The challenger must explain why the challenger qualifies as an "interested party" in the challenge letter.

6. The challenge must identify the activity being challenged as specifically as possible, that is, it must give sufficient description of the activity being challenged so the Departmental element can identify it. The challenger shall specify the agency, agency component, agency organization, functions, and locations and may reference other identifying information from the inventory. The challenger must provide this information in a list format. A template to provide the data is provided with this guidance. The list should be an attachment to the Challenge letter.

7. The challenge must state whether the challenger is challenging (a) the classification of an activity as inherently governmental or commercial, or (b) the application of the OMB commercial activity reason codes. Function codes shall not be subject to the inventory challenge process. Attempts to challenge other items on the DOE IGCA Inventory or other decisions related to the inventory will be rejected.

8. The challenge must state the reason or reasons for the challenge, that is, it must explain the reasons why the challenger believes that DOE should change its decision to describe the activity as inherently governmental or commercial and/or why DOE should change its decision as to the application of an OMB commercial activity reason code associated with the activity.

9. The challenge must include the name of the challenger and the address to which the decision on the challenge should be sent.

Challenge Decisions

1. A decision on a challenge will be made within **28** working days from the date that the DOE Office of the Executive Secretariat receives the challenge.

2. The decision will be in writing and shall:

- a. Validate the commercial or inherently governmental categorization or reason code designation of the activity being challenged.
- b. State whether the challenge is rejected on procedural grounds, affirmed or denied.
- c. Explain the rationale for the decision.
- d. Provide an explanation of the challenger's appeal rights, if the challenge is rejected or denied.

3. Decisions will be transmitted to challengers by United States mail.

Guide to Submit an Appeal

1. The specific procedures for submitting an appeal to a decision on a challenge that is rejected or denied will be provided to the challenger in the decision letter.
2. Appeals must be in writing and transmitted by United States mail, express mail delivery or other similar service, or facsimile transmission to:

U.S. Department of Energy
Office of the Executive Secretariat
1000 Independence Avenue, S.W.
Washington, DC 20585
Attn: FAIR Act Inventory Appeal

Facsimile transmission telephone number: 202-586-4403

3. Appeals must be submitted to the designated office within **10** working days after the challenger received the decision denying or rejecting the challenge.
4. The appeal must identify the activity being appealed as specifically as possible, that is, it must give sufficient description of the activity being appealed so the Departmental element can identify it. The appellant shall specify the agency, agency component, agency organization, functions, and locations and may reference other identifying information from the inventory. The appellant must provide this information in a list format. A template to provide the data is provided with this guidance. The list should be an attachment to the Appeal letter.

Appeals Decisions

Decisions on appeals will be in writing and will state the determination and the rationale.

References

References are available through our website, under the operating guidelines link.

http://management.energy.gov/policy_guidance/competitive_sourcing.htm

You could also use the links below:

The FAIR Act

<http://www.whitehouse.gov/omb/procurement/fairact.html>

Office of Management and Budget, Circular No. A-76

http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.html

OMB Guidance

<http://www.whitehouse.gov/omb/procurement/fair-index.html>

OMB Guidance for use of Commercial Reason Code A Justifications

<http://www.whitehouse.gov/omb/memoranda/fy2005/m05-12.pdf>
