OFFICE OF MANAGEMENT AND BUDGET

Subject: Implementation of the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270) ("FAIR Act")

Agency: Office of Management and Budget
Executive Office of the President

Action: OMB issues final guidance on the Implementation of the FAIR Act.

Summary: The Office of Management and Budget (OMB) hereby issues guidance to implement the "Federal Activities Inventory Reform Act of 1998".

To facilitate and ensure agency implementation of the "Federal Activities Inventory Reform Act of 1998" (Public Law 105-270) ("FAIR Act"), OMB is revising its existing guidance on the management of commercial activities through revisions to OMB Circular A-76, "Performance of Commercial Activities," and to its Supplemental Handbook. These revisions inform agencies of the FAIR Act's requirements; implement the statutory requirements of the FAIR Act; avoid duplication and confusion by conforming guidance to the FAIR Act, and place the FAIR Act's requirements in the context of the Federal Government's larger reinvention, competition and privatization efforts.

Dates: This guidance is effective upon publication in the *Federal Register*.

For Further Information Contact: Mr. David Childs, Office of Management and Budget, NEOB Room 6002, 725 17th Street, N.W., Washington, D.C. 20503, telephone: (202) 395-6104, FAX: (202) 395-7230

Availability: Copies of the updated versions of OMB Circular A-76, its Revised Supplemental Handbook and this Transmittal Memorandum 20 are available from OMB on the Internet at: **http://www.whitehouse.gov/OMB/circulars/index-procure.html**

Supplementary Information:

I. The Federal Activities Inventory Reform Act.

On October 12, 1998, President Clinton signed into law the "Federal Activities Inventory Reform Act of 1998" ("FAIR Act" or "Act"). The FAIR Act directs Federal agencies to submit each year an inventory of all their activities that are performed by Federal employees but are not inherently Governmental (i.e., are commercial). OMB is to review each agency's Commercial Activities Inventory and consult with the agency regarding its content. Upon the completion of this review and consultation, the agency must transmit a copy of the inventory to Congress and make it available to the public. The FAIR Act establishes an administrative appeals process under which an interested party may challenge the omission or the inclusion of a particular activity on

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the inventory. Finally, the FAIR Act requires agencies to review the activities on the inventory. Each time that the head of an executive agency considers contracting with a private sector source for the performance of such an activity, the head of the executive agency shall use a competitive process. When conducting cost comparisons, agencies must ensure that all costs are considered.

In enacting the FAIR Act, Congress did not displace longstanding Executive Branch policy regarding the performance of commercial activities. The Federal Government seeks to achieve economy and enhance productivity and quality through competition to obtain the best service at least cost to the American taxpayer. This Federal policy regarding the performance of commercial activities has been provided by OMB Circular A-76, "Performance of Commercial Activities." Specific guidance regarding the implementation of this policy is provided by the March 1996 Revised Supplemental Handbook to OMB Circular A-76 and by agency consultation with OMB.

The Act codified some of this guidance in law. In particular, the FAIR Act codified the pre-existing requirement for agencies to inventory their commercial activities, as well as the pre-existing definition of "inherently governmental function."

Each time an agency considers changing from Government employee performance of a commercial activity on the inventory, the FAIR Act requires that a competitive process be used and that cost comparisons "shall ensure that all costs ... are considered and that the costs considered are realistic and fair". Here, too, the Act codifies or defers to pre-existing Executive Branch policy.

II. Implementation of the FAIR Act.

OMB Circulars are a well-established vehicle for directing agencies on the management of their activities. Together, Circular A-76 and its Supplemental Handbook have established the broad principles, individual definitions and specific directives on the management of commercial activities, including the inventory and other items codified by the FAIR Act. OMB wanted to provide the agencies with prompt and clear guidance on how to implement the Act within the short time-frame available. OMB concluded that the best way to provide agencies with clear and prompt guidance on how to implement the FAIR Act was to revise the current circular and handbook so that they conform to the FAIR Act. OMB's goal in drafting these revisions was to ensure that the agencies fully implement the FAIR Act's requirements, and that the agencies do so without confusion, wasted effort or delays caused by uncertainty about the applicability of current guidance.

Accordingly, on March 1, 1999, OMB requested agency and public comments on proposed revisions to the Handbook to implement the FAIR Act (64 FR 10031). The proposed revisions would inform agencies of the FAIR Act requirements and, to avoid confusion, conform the Handbook's provisions so that they cross-reference and parallel relevant FAIR Act provisions.

To implement the FAIR Act's inventory requirement, OMB proposed to make conforming changes to the Handbook's pre-existing inventory requirement. The changes incorporated the

statutory due date of June 30th for agency submissions to OMB and added, to the inventory's description of each activity, two new data elements required by the FAIR Act.

In addition, OMB proposed provisions to the Handbook to address the FAIR Act's other requirements. These provisions:

(1) reiterated the requirements for OMB to review the commercial activity inventories and to consult with the agencies regarding them; for the agencies, after OMB's review-and-consultation is completed, to send the inventories to Congress and to make them available to the public; and for the agencies to hear and decide administrative "challenges" in which interested parties challenge an agency's decision to include an activity in (or exclude an activity from) the inventory; and

(2) incorporated the FAIR Act's requirement that agencies "review" the activities on the inventory; that an agency, each time it considers contracting with a private sector source for the performance of an activity listed on the inventory, use a competitive process to select the source (unless otherwise provided "in a law other than this Act, an Executive order, regulations, or any Executive Branch circular"); and that, when comparing costs, "all costs...are considered and...are realistic and fair."

OMB proposed that agencies rely on and implement the existing guidance with respect to the cost-comparison competition requirements of the FAIR Act. These procedures are well-established and direct agencies to create a competitive process that compares costs completely, accurately, and fairly.

OMB received 82 responses to its request for comments: 10 Federal agencies, 61 industry or trade groups, and 8 employee organizations responded, in addition to 4 letters from members of Congress. A discussion of the significant comments, and OMB's responses to those comments, is provided in the Appendix to this notice.

After considering all comments received on the proposed guidance, OMB is issuing final guidance to the agencies for implementing the FAIR Act. The guidance consists of changes to the A-76 Circular, itself, as well as its Supplemental Handbook.

In order to implement the FAIR Act, OMB is making several changes to the guidance as proposed on March 1:

OMB has revised Circular A-76, itself, in addition to the Supplemental Handbook, to conform to the requirements of the FAIR Act;

To ensure that agencies comply with the FAIR Act's requirement for review on an inventory within a reasonable time, OMB will now require annual reports that will, among other things, discuss the implementation, status, and results of the FAIR Act process;

OMB has clarified that agencies should, as appropriate, permit employee involvement in the development of the inventory;

OMB is revising agency reporting requirements so that reporting is clearer on activities that have

been converted from contract performance to in-house performance or retained in-house as a result of a cost-comparison.

With the issuance of these revisions, agencies have been provided guidance for implementing the FAIR Act. OMB will continue, as it has in the past, to consult with individual agencies and provide informal guidance as necessary.

III. Executive Branch Management of Commercial Activities Generally

Implementing the FAIR Act is only a part of the Government's reinvention and management responsibilities. Improving the quality, and reducing the cost, of commercial activities is an integral part of managing the Nation's resources. The agencies and OMB have an ongoing responsibility to ensure that these activities are performed in a manner that is cost-effective and in the best interest of the taxpayer. Developing an inventory of each agency's commercial activities is a necessary first step in pursuing this objective, one that has now been codified by the FAIR Act. Once these inventories are developed, they will then be reviewed, by the agencies and OMB, to identify ways to improve the performance of the Federal Government's commercial activities.

Equally important, however, is how the agencies manage these activities *after* they are identified. In order better to manage commercial activities, OMB revised the Supplemental Handbook in 1996. The Revised Supplemental Handbook seeks the most cost-effective means of obtaining commercial support services and provided new administrative flexibility in the Government's "make or buy" decision process. The revision modified and, in some cases, eliminated cost comparison requirements for recurring commercial activities and the establishment of new or expanded interservice support agreements; reduced reporting and other administrative burdens; provided for enhanced employee participation; eased transition requirements to facilitate employee placement; maintained a level playing field for cost comparisons between Federal, interservice support agreement and private sector offers, and improved accountability and oversight to ensure that the most cost effective decision is implemented.

As part of this guidance, OMB is now taking the additional step of requiring agencies to submit annual reports that will discuss the implementation, status, and results of the FAIR Act process. As we develop experience with the FAIR Act and these procedures, we will consider whether additional guidance is needed, either for implementation of the FAIR Act in particular or on management of commercial activities in general.

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Jacob J. Lew
Director

Circular No. A-76 (Revised)
Transmittal Memorandum No. 20
June 14, 1999

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Implementing the Federal Activities Inventory Reform Act Through Conforming Changes to OMB Circular No. A-76 and its March 1996 Revised Supplemental Handbook

This Transmittal Memorandum implements the statutory requirements of the Federal Activities Inventory Reform Act ("The FAIR Act"), Public Law 105-270. As part of its longstanding role in the review and oversight of agency management and the allocation of resources, OMB has established policies regarding the performance of commercial activities by Federal agencies. These policies are outlined in OMB Circular No. A-76 and its Revised Supplemental Handbook. The FAIR Act reinforced these policies and procedures; codified certain requirements with respect to the development by agencies of an annual commercial activities inventory, and added an opportunity for interested parties to challenge the contents of the annual inventory.

The changes to the Circular's Revised Supplemental Handbook (Attachment 1) inform agencies of the FAIR Act's requirements; implement the statutory requirements of the FAIR Act; avoid duplication and confusion by conforming the Supplemental Handbook to the provisions of the FAIR Act; and place the FAIR Act's requirements in the context of the Federal Government's larger reinvention, competition and privatization efforts. As a result of these changes, the Circular is also being updated with conforming changes necessary to reflect the requirements of the FAIR Act (Attachment 2). The previous OMB Circular A-76 was published in the August 16, 1983, *Federal Register* at pages 37110-37116. The March 1996 Revised Supplemental Handbook was issued through Transmittal Memorandum 15, published in the April 1, 1996, *Federal Register* at pages 14338-14346.

Under the FAIR Act, agencies are required to submit their commercial activity inventories to OMB by June 30th of each year, starting this year. ***THE FIRST FAIR ACT INVENTORIES ARE, THEREFORE, DUE IN TWO WEEKS.*** OMB looks forward to working with the agencies during our review of these inventories, and stands ready to assist the agencies as the Executive Branch moves forward in its implementation of the FAIR Act.

Questions regarding the FAIR Act or this guidance may be addressed to Mr. David Childs (phone: (202) 395-6104, Fax: (202) 395-7230).

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Jacob J. Lew
Director

Attachments

Attachment 1

Revisions to the OMB Circular A-76 March 1996 Revised Supplemental Handbook

1. The Introduction to the Supplemental Handbook (p. iii) is revised to reflect the fact that challenges to the activities listed in the Commercial Activities Inventory are permitted under the FAIR Act, by adding to the end of the last sentence on page iii the following:

"...and as set forth in Appendix 2, Paragraph G, consistent with Section 3 of the Federal Activities Inventory Reform Act of 1998 (FAIR Act, P.L. 105-270)."

2. Part I, Chapter 1, paragraphs A, B.1 and F, of the Supplemental Handbook (pp. 3,5) are revised to reflect the requirements of the FAIR Act. As revised, paragraphs A, B.1 and F read as follows:

"**A. General**

This Part sets forth the principles and procedures for managing the Government's acquisition of recurring commercial support activities, implementing the "Federal Activities Inventory Reform Act of 1998" ("The FAIR Act"), P.L. 105-270, and Circular A-76. Exhibit 1 summarizes the conditions that permit conversion to or from in-house, contract or Inter-Service Support Agreement (ISSA) performance. The requirements of the FAIR Act apply to the following executive agencies: (1) an executive department named in 5 USC 101, (2) a military department named in 5 USC 102, and (3) an independent establishment as defined in 5 USC 104. The requirements of the FAIR Act do not apply to: (1) the General Accounting Office, (2) a Government corporation or a Government controlled corporation as defined in 5 USC 103, (3) a non-appropriated funds instrumentality if all of its employees are referred to in 5 USC 2105(c), or (4) Depot-level maintenance and repair of the Department of Defense as defined in 10 USC 2460."

"**B. Inherently Governmental Activities**

1. Inherently Governmental activities are not subject to the FAIR Act, Circular A-76 or this Supplemental Handbook. As a matter of policy, an inherently Governmental activity is one that is so intimately related to the exercise of the public interest as to mandate performance by Federal employees. The Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, dated September 23, 1992 (*Federal Register*, September 30, 1992, page 45096), provides guidance on the identification of inherently Governmental activities (see Appendix 5). This guidance conforms to the definition provided at Section 5, paragraph 2, of the FAIR Act."

"**F. Commercial Activities Inventory**

As required by the FAIR Act, Circular A-76 and this Supplemental Handbook, each agency will maintain a detailed inventory of all in-house commercial activities performed by its Government employees. This inventory, as described at Appendix 2 of this Supplement, and any supplemental information requested by OMB, will be submitted not later than June 30 of each year. Agencies should, as appropriate, permit employee involvement in the development of this Commercial Activities Inventory."

3. Part II, Chapter 1, Paragraph A.1 of the Supplemental Handbook (p. 17) is revised by adding a reference to the FAIR Act. As revised, Paragraph A.1 reads as follows:

"1. Part II provides generic and streamlined cost comparison guidance to comply with the provisions of the FAIR Act and Circular A-76. This includes guidance for developing in-house costs based upon the Government's Most Efficient Organization (MEO) and other adjustments to the contract and inter-service support agreement (ISSA) price. It also sets out the principles for development of cost-based performance standards or other measures that are comparable to those used by commercial sources. Appendices 6 and 7 provide sector-specific cost comparison guidance."

4. The title of Appendix 2 of the Supplemental Handbook (p. 38) and the corresponding entry in the Table of Contents are revised from "OMB Circular No. A-76 Inventory" to "Commercial Activities Inventory." Portions of this inventory are now required by the FAIR Act, as a matter or law.

5. Paragraph A of Appendix 2 of the Supplemental Handbook (p. 38) is revised in several ways. The introductory sentences now refer to the FAIR Act's requirements for a Commercial Activities Inventory and incorporate its due date (June 30th) for submission to OMB of each agency's inventory. Two data elements are added to the inventory's description of an activity. These additional data elements (g and h, below) correspond to the new data elements required under Section 2(a)(1) and (3) of the FAIR Act. In addition, the existing data element for "Location / organization unit" is being separated into two elements ("Location" and "Organization Unit"). Finally, a concluding sentence is added to clarify that agencies have the flexibility to automate and structure the inventory so long as all the listed data elements are included. As revised, Paragraph A reads as follows:

"**A. Annual Inventory Submission**

In accordance with the FAIR Act, Circular A-76 and this Handbook, each agency must submit to OMB, by June 30 of each year, a detailed Commercial Activities Inventory of all commercial activities performed by in-house employees, including, at a minimum, the following:

a. Organization unit.
b. State(s).
c. Location(s).
d. FTE.
e. Activity function code.
f. Reason code.

g. Year the activity first appeared on FAIR Act Commercial Activities Inventory (initial value will be 1999).
h. Name of a Federal employee responsible for the activity or contact person from whom additional information about the activity may be obtained.
i. Year of cost comparison or conversion (if applicable).
j. CIV/FTE savings (if applicable).
k. Estimated annualized Cost Comparison dollar savings (if applicable).
l. Date of completed Post-MEO Performance Review (if applicable).

Agencies have the discretion to automate and to structure the initial submission of the detailed inventory as they believe most appropriate, so long as the inventory includes each of these data elements. Agencies must transmit an electronic version of the inventory to OMB as well as two paper copies. The electronic version should be in a commonly used software format (commercial off-the-shelf spreadsheet, database or word processing format). OMB anticipates issuing additional guidance on the structure and format of future inventory submissions, based on the experience gained from the first annual review and consultation process."

6. To reflect the FAIR Act's requirement that information on full time employees (or its equivalent) be included, paragraph C of Appendix 2 of the Supplemental Handbook (p. 38) has been revised as follows:

"**C. FTE**

Enter the number of authorized full-time employees or FTE (as applicable) in the commercial activity function or functions as of the date of the inventory. Employees performing inherently Governmental activities are not reported in the Commercial Activities Inventory."

7. Paragraph E "A-76 Reason Codes" of Appendix 2 of the Supplemental Handbook (p. 38) is retitled "Reason Codes." The phrase "agency A-76 inventories" is changed to "Commercial Activities Inventory" and "Reason code E" is revised and a new reason code "I" is added as follows:

"E Indicates that the function is retained in-house as a result of a cost comparison."

" I Indicates the function is being performed in-house as a result of a cost comparison resulting from a decision to convert from contract to in-house performance."

8. Appendix 2 of the Supplemental Handbook (p. 38) is further revised by adding three new paragraphs. New paragraph "G" describes the review and publication of the detailed agency Commercial Activities Inventory and the challenge-and-appeals process pertaining to its content, as required by the FAIR Act. The new paragraph "H" includes the FAIR Act's requirements that agencies review the commercial activities in their inventories and use a competitive process or established cost comparison procedures each time an agency considers contracting with a private-sector source for the performance of an activity on the inventory. New paragraph "I" alerts agencies to the requirement for an annual Report on Agency Management of Commercial Activities. The new paragraphs read as follows:

"**G. Inventory Review and Publication; Challenges and Appeals.**

1. Review and Publication: In accordance with Section 2 of the FAIR Act, OMB will review the agency's Commercial Activities Inventory and consult with the agency regarding its content. After this review is completed, OMB will publish a notice in the *Federal Register* stating that the inventory is are available to the public. Once the notice is published, the agency will transmit a copy of the detailed Commercial Activities Inventory to Congress and make the materials available to the public through its Washington, D.C. or headquarters offices.

2. Challenges and Appeals: Under Section 3 of the FAIR Act, an agency's decision to include or exclude a particular activity from the Commercial Activities Inventory is subject to administrative challenge and, then, possible appeal by an "interested party." Section 3(b) of the FAIR Act defines "interested party" as:

a. 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.

b. A representative of any business or professional association that includes within its membership private sector sources referred to in a. above.

c. An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

d. 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 c. above.

3. An interested party may submit to an executive agency an initial challenge to the inclusion or exclusion of an activity within 30 calendar days after publication of OMB's *Federal Register* notice stating that the inventory is available. The challenge must set forth the activity being challenged with as much specificity as possible, and the reasons for the interested party's belief that the particular activity should be reclassified as inherently Governmental (and therefore be deleted from the inventory) or as commercial (and therefore be added to the inventory) in accordance with OFPP Policy Letter 92-1 on inherently Governmental functions (see Appendix 5) or as established by precedent (such as when other agencies have contracted for the activity or undergone competitions for this or similar activities).

4. The agency head may delegate the responsibility to designate the appropriate official(s) to receive and decide the initial challenges. As mandated by the FAIR Act, the deciding official must decide the initial challenge and transmit to the interested party a written notification of the decision within 28 calendar days of receiving the challenge. The notification must include a discussion of the rationale for the decision and, if the decision is adverse, an explanation of the party's right to file an appeal.

5. An interested party may appeal an adverse decision to an initial challenge within 10 working days after receiving the written notification of the decision. The agency head may delegate the responsibility to receive and decide appeals to the official identified in paragraph 9.a of the Circular (or an equivalent senior policy official), without further delegation. Within 10

working days of receipt of the appeal, the official must decide the appeal and transmit to the interested party a written notification of the decision together with a discussion of the rationale for the decision. The agency must also transmit to OMB and the Congress a copy of any changes to the inventory that result from this process, make the changes available to the public and publish a notice of public availability in the *Federal Register*."

"**H. Agency Review and Use of Inventory.**

Section 2(d) of the FAIR Act requires that each agency, within a reasonable time after the publication of the notice that its inventories are publicly available, review the activities on the detailed commercial activities inventory. Agencies will report to OMB on this process as part of the Report on Agency Management of Commercial Activities required under Paragraph I, below. In addition, Section 2(d)-(e) of the FAIR Act provides that, each time the head of the executive agency considers contracting with a private-sector source for the performance of an activity included on the inventory, the agency must use a competitive process to select the source and must ensure that, when a cost comparison is used or otherwise required for the comparison of costs, all costs are considered and the costs considered are realistic and fair. In carrying out these requirements, agencies must rely on the guidance contained in Circular A-76 and this Supplemental Handbook to determine if cost comparisons are required and what competitive method is appropriate. All competitive costs of in-house and contract performance are included in the cost comparison, when such comparison is required, including the costs of quality assurance, technical monitoring, liability insurance, retirement benefits, disability benefits and overhead that may be allocated to the function under study or may otherwise be expected to change as a result of changing the method of performance."

"**I. Annual Report on Agency Management of Commercial Activities.**

As part of ongoing agency responsibility to manage their performance of commercial activities and ongoing OMB oversight, OMB will require agencies to report annually on such management. The content of the reports is likely to vary depending upon the progress made by each agency in reviewing their inventory and on the experience OMB gains from the first round of inventory submissions, review, challenges and appeals mandated by the FAIR Act. OMB anticipates issuing subsequent guidance if it determines that supplemental reports or other information is needed for future inventory submissions to assure that agencies have correctly implemented all of the provisions of the FAIR Act and taken advantage of the management information inherent in the detailed Commercial Activities Inventory."

Attachment 2

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON. D.C. 20503

August 4, 1983 (REVISED1999) CIRCULAR NO. A-76

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Performance of Commercial Activities

1. Purpose. This Circular establishes Federal policy regarding the performance of commercial activities and implements the statutory requirements of the Federal Activities Inventory Reform Act of 1998, Public Law 105-270. The Supplement to this Circular sets forth the procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel.

2. Rescission. OMB Circular No. A-76 (Revised), dated March 29, 1979; and Transmittal Memoranda 1 through 14 and 16 through 18.

3. Authority. The Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq*.), The Office of Federal Procurement Policy Act Amendments of 1979. (41 U.S.C. 401 *et seq*.), and The Federal Activities Inventory Reform Act of 1998. (P. L. 105-270).

4. Background.

a. In the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs.

b. This national policy was promulgated through Bureau of the Budget Bulletins issued in 1955, 1957 and 1960. OMB Circular No. A-76 was issued in 1966. The Circular was previously revised in 1967, 1979, and 1983. The Supplement (Revised Supplemental Handbook) was previously revised in March 1996 (Transmittal Memorandum 15).

5. Policy. It is the policy of the United States Government to:

a. Achieve Economy and Enhance Productivity. Competition enhances quality, economy, and productivity. Whenever commercial sector performance of a Government operated commercial activity is permissible, in accordance with this Circular and its Supplement, comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who will do the work. When conducting cost comparisons, agencies must ensure that all costs are

considered and that these costs are realistic and fair.

b. Retain Governmental Functions In-House. Certain functions are inherently Governmental in nature, being so intimately related to the public interest as to mandate performance only by Federal employees. These functions are not in competition with the commercial sector. Therefore, these functions shall be performed by Government employees.

c. Rely on the Commercial Sector. The Federal Government shall rely on commercially available sources to provide commercial products and services. In accordance with the provisions of this Circular and its Supplement, the Government shall not start or carry on any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.

6. Definitions. For purposes of this Circular:

a. A commercial activity is one which is operated by a Federal executive agency and which provides a product or service that could be obtained from a commercial source. Activities that meet the definition of an inherently Governmental function provided below are not commercial activities. A representative list of commercial activities is provided in Attachment A. A commercial activity also may be part of an organization or a type of work that is separable from other functions or activities and is suitable for performance by contract.

b. A conversion to contract is the changeover of an activity from Government performance to performance under contract by a commercial source.

c. A conversion to in-house is the changeover of an activity from performance under contract to Government performance.

d. A commercial source is a business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia or the Commonwealth of Puerto Rico, which provides a commercial product or service.

e. An inherently Governmental function is a function which is so intimately related to the public interest as to mandate performance by Government employees. Consistent with the definitions provided in the Federal Activities Inventory Reform Act of 1998 and OFPP Policy Letter 92-1, these functions include those activities which require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government. Services or products in support of inherently Governmental functions, such as those listed in Attachment A, are commercial activities and are normally subject to this Circular. Inherently Governmental functions normally fall into two categories:

(1) The act of governing; i.e., the discretionary exercise of Government authority. Examples include criminal investigations, prosecutions and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and

other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

(2) Monetary transactions and entitlements, such as tax collection and revenue disbursements; control of the Treasury accounts and money supply; and the administration of public trusts.

f. A cost comparison is the process of developing an estimate of the cost of Government performance of a commercial activity and comparing it, in accordance with the requirements of the Supplement, to the cost to the Government for contract performance of the activity.

g. Directly affected parties are Federal employees and their representative organizations and bidders or offerors on the instant solicitation.

h. Interested parties for purposes of challenging the contents of an agency's Commercial Activities Inventory under the Federal Activities Inventory Reform Act of 1998 are:

(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.

(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.

7. Scope.

a. Unless otherwise provided by law, this Circular and its Supplement shall apply to all executive agencies and shall provide administrative direction to heads of agencies.

b. This Circular and its Supplement apply to printing and binding only in those agencies or departments which are exempted by law from the provisions of Title 44 of the U.S. Code.

c. This Circular and its Supplement shall not:

(1) Be applicable when contrary to law, Executive Orders, or any treaty or international agreement;

(2) Apply to inherently Governmental functions as defined in paragraph 6.e.;

(3) Apply to the Department of Defense in times of a declared war or military mobilization;

(4) Provide authority to enter into contracts;

(5) Authorize contracts which establish an employer-employee relationship between the Government and contractor employees. An employer-employee relationship involves close, continual supervision of individual contractor employees by Government employees, as distinguished from general oversight of contractor operations. However, limited and necessary interaction between Government employees and contractor employees, particularly during the transition period of conversion to contract, does not establish an employer-employee relationship.

(6) Be used to justify conversion to contract solely to avoid personnel ceilings or salary limitations;

(7) Apply to the conduct of research and development. However, severable in-house commercial activities in support of research and development, such as those listed in Attachment A, are normally subject to this Circular and its Supplement; or

(8) Establish and shall not be construed to create any substantive or procedural basis for anyone to challenge any agency action or inaction on the basis that such action or inaction was not in accordance with this Circular, except as specifically set forth in Part 1, Chapter 3, paragraph K of the Supplement, " Appeals of Cost Comparison Decisions" and as set forth in Appendix 2, Paragraph G, consistent with Section 3 of the Federal Activities Inventory Reform Act of 1998.

d. The requirements of the Federal Activities Inventory Reform Act of 1998 apply to the following executive agencies:

(1) an executive department named in 5 USC 101,

(2) a military department named in 5 USC 102, and

(3) an independent establishment as defined in 5 USC 104.

e. The requirements of the Federal Activities Inventory Reform Act of 1998 do not apply to the following entities or activities:

(1) the General Accounting Office,

(2) a Government corporation or a Government controlled corporation as defined in 5 USC 103,

(3) a non-appropriated funds instrumentality if all of its employees are referred to in 5 USC 2105(c), or

(4) Depot-level maintenance and repair of the Department of Defense as defined in 10 USC 2460.

8. Government Performance of a Commercial Activity. Government performance of a commercial activity is authorized under any of the following conditions:

a. No Satisfactory Commercial Source Available. Either no commercial source is capable of providing the needed product or service, or use of such a source would cause unacceptable delay or disruption of an essential program. Findings shall be supported as follows:

(1) If the finding is that no commercial source is capable of providing the needed product or service, the efforts made to find commercial sources must be documented and made available to the public upon request. These efforts shall include, in addition to consideration of preferential procurement programs (see Part I, Chapter 1, paragraph C of the Supplement) at least three notices describing the requirement in the *Commerce Business Daily* over a 90-day period or, in cases of *bona fide* urgency, two notices over a 30-day period. Specifications and requirements in the solicitation shall not be unduly restrictive and shall not exceed those required of in-house Government personnel or operations.

(2) If the finding is that a commercial source would cause unacceptable delay or disruption of an agency program, a written explanation, approved by the assistant secretary or designee in paragraph 9.a. of the Circular, must show the specific impact on an agency mission in terms of cost and performance. Urgency alone is not adequate reason to continue in-house operation of a commercial activity. Temporary disruption resulting from conversion to contract is not sufficient support for such a finding, nor is the possibility of a strike by contract employees. If the commercial activity has ever been performed by contract, an explanation of how the instant circumstances differ must be documented. These decisions must be made available to the public upon request.

(3) Activities may not be justified for in-house performance solely on the basis that the activity involves or supports a classified program or the activity is required to perform an agency's basic mission.

b. National Defense.

(1) The Secretary of Defense shall establish criteria for determining when Government performance of a commercial activity is required for national defense reasons. Such criteria shall be furnished to OMB, upon request.

(2) Only the Secretary of Defense or his designee has the authority to exempt commercial activities for national defense reasons.

c. Patient Care. Commercial activities performed at hospitals operated by the Government shall be retained in-house if the agency head, in consultation with the agency's chief medical director, determines that in-house performance would be in the best interests of direct patient care.

d. Lower cost. Government performance of a commercial activity is authorized if a cost comparison prepared in accordance with the Supplement demonstrates that the Government is operating or can operate the activity on an ongoing basis at an estimated lower cost than a qualified commercial source.

9. Action Requirements. To ensure that the provisions of this Circular and its Supplement are followed, each agency head shall:

a. Designate an official at the assistant secretary or equivalent level and officials at a comparable level in major component organizations to have responsibility for implementation of this Circular and its Supplement within the agency.

b. Establish one or more offices as central points of contact to carry out implementation. These offices shall have access to all documents and data pertinent to actions taken under the Circular and its Supplement and will respond in a timely manner to all requests concerning inventories, schedules, reviews, results of cost comparisons and cost comparison data.

c. Be guided by Federal Acquisition Regulation (FAR) Subpart 24.2 (Freedom of Information Act) in considering requests for information.

d. Implement this Circular and its Supplement with a minimum of internal instructions. Cost comparisons shall not be delayed pending issuance of such instructions.

e. Ensure the reviews of all existing in-house commercial activities are completed within a reasonable time in accordance with the Federal Activities Inventory Reform Act of 1998 and the Supplement.

10. Annual Reporting Requirement. As required by the Federal Activities Inventory Reform Act of 1998 and Appendix 2 of the Supplement, no later than June 30 of each year, agencies shall submit to OMB a Commercial Activities Inventory and any supplemental information requested by OMB. After review and consultation by OMB, agencies will transmit a copy of the Commercial Activities Inventory to Congress and make the contents of the Inventory available to the public. Agencies will follow the process provided in the Supplement for interested parties to challenge (and appeal) the contents of the inventory.

11. OMB Responsibility and Contact Point. All questions or inquiries should be submitted to the Office of Management and Budget, Room 6002 NEOB, Washington, DC 20503. Telephone number (202) 395-6104, FAX (202) 395-7230.

12. Effective Date. This Circular and the changes to its Supplement are effective immediately.

EXAMPLES OF COMMERCIAL ACTIVITIES

Audiovisual Products and Services

- Photography (still, movie, aerial, etc.)
- Photographic processing (developing, printing, enlarging, etc.)
- Film and videotape production (script writing, direction, animation, editing, acting, etc.)
- Microfilming and other microforms
- Art and graphics services
- Distribution of audiovisual materials
- Reproduction and duplication of audiovisual products
- Audiovisual facility management and operation
- Maintenance of audiovisual equipment

Automatic Data Processing

- ADP services - batch processing, time-sharing, facility management, etc.
- Programming and systems analysis, design, development, and simulation
- Key punching, data entry, transmission, and teleprocessing services
- Systems engineering and installation
- Equipment installation, operation, and maintenance

Food Services

- Operation of cafeterias, mess halls, kitchens, bakeries, dairies, and commissaries
- Vending machines
- Ice and water

Health Services

- Surgical, medical, dental, and psychiatric care
- Hospitalization, outpatient, and nursing care
- Physical examinations
- Eye and hearing examinations and manufacturing and fitting glasses and hearing aids
- Medical and dental laboratories
- Dispensaries
- Preventive medicine
- Dietary services
- Veterinary services

Industrial Shops and Services

- Machine, carpentry, electrical, plumbing, painting, and other shops
- Industrial gas production and recharging
- Equipment and instrument fabrication, repair and calibration
- Plumbing, heating, electrical, and air conditioning services, including repair
- Fire protection and prevention services
- Custodial and janitorial services
- Refuse collection and processing

Maintenance, Overhaul, Repair, and Testing

- Aircraft and aircraft components
- Ships, boats, and components
- Motor vehicles
- Combat vehicles
- Railway systems
- Electronic equipment and systems
- Weapons and weapon systems
- Medical and dental equipment
- Office furniture and equipment
- Industrial plant equipment
- Photographic equipment
- Space systems

Management Support Services

- Advertising and public relations services
- Financial and payroll services
- Debt collection

Manufacturing, Fabrication, Processing, Testing, and Packaging

- Ordnance equipment
- Clothing and fabric products
- Liquid, gaseous, and chemical products
- Lumber products
- Communications and electronics equipment
- Rubber and plastic products
- Optical and related products
- Sheet metal and foundry products
- Machined products
- Construction materials
- Test and instrumentation equipment

Office and Administrative Services

- Library operations
- Stenographic recording and transcribing
- Word processing/data entry/typing services
- Mail/messenger
- Translation
- Management information systems, products and distribution
- Financial auditing and services
- Compliance auditing
- Court reporting
- Material management
- Supply services

Other Services

- Laundry and dry cleaning
- Mapping and charting
- Architect and engineer services
- Geological surveys
- Cataloging
- Training -- academic, technical, vocational, and specialized Operation of utility systems (power, gas, water steam, and sewage)
- Laboratory testing services

Printing and Reproduction

- Facility management and operation
- Printing and binding -- where the agency or department is exempted from the provisions of Title 44 of the U.S. Code
- Reproduction, copying, and duplication
- Blueprinting

Real Property

- Design, engineering, construction, modification, repair, and maintenance of buildings and structures; building mechanical and electrical equipment and systems; elevators; escalators; moving walks
- Construction, alteration, repair, and maintenance of roads and other surfaced areas
- Landscaping, drainage, mowing and care of grounds
- Dredging of waterways

Security

- Guard and protective services
- Systems engineering, installation, and maintenance of security systems and individual privacy systems
- Forensic laboratories

Special Studies and Analyses

- Cost benefit analyses
- Statistical analyses
- Scientific data studies
- Regulatory studies
- Defense, education, energy studies
- Legal/litigation studies
- Management studies

Systems Engineering, Installation, Operation, Maintenance, and Testing

- Communications systems - voice, message, data, radio, wire, microwave, and satellite
- Missile ranges
- Satellite tracking and data acquisition
- Radar detection and tracking
- Television systems - studio and transmission equipment, distribution systems, receivers, antennas, etc.
- Recreational areas
- Bulk storage facilities

Transportation

- Operation of motor pools
- Bus service
- Vehicle operation and maintenance
- Air, water, and land transportation of people and things
- Trucking and hauling

Appendix

Summary of Comments Received

OMB received 82 responses to its March 1, 1999, *Federal Register* request for comments: 10 Federal agencies; 61 industry or trade groups, and 8 employee organizations responded, in addition to 4 letters from members of Congress. A discussion of the significant comments, and OMB's responses (including resulting changes that have been made to Circular A-76 and its Supplemental Handbook), is provided below.

1. The Development and Submission of the Commercial Activities Inventory

OMB received a number of comments regarding the proposed revisions to Appendix 2 of the Supplemental Handbook that address the requirement in Section 2(a) of the FAIR Act that agencies develop and submit to OMB, by June 30th of each year, "a list of activities performed by Federal Government sources for the executive agency that, in the judgment of the head of the executive agency, are not inherently Governmental functions."

a. Comment: One agency commenter stated that it would be burdensome for the agency to include in the agency's inventory the name of a Federal employee with respect to each listed commercial activity.

Response: This data element is specifically required by Section 2(a)(3) of the FAIR Act itself.

b. Comment: Several commenters asked for changes to the data elements to prevent any implication that agency savings could only be achieved by "outsourcing" (converting work from in-house to contract performance) but not by "insourcing" (converting work from contract to in-house performance). Specifically, the commenters asked that OMB delete the commercial activity data element for "CIV/FTE Savings" (item g, of the Supplemental Handbook's Appendix 2). The commenters also asked for savings information to be collected when a conversion is from contract to in-house performance. Finally, the commenters asked that agencies provide, as part of the data that is collected pursuant to paragraph "F" in Appendix 2 of the Handbook, aggregate data on the numbers of contractor employees performing work for the agency.

Response: The cost-comparison process under Circular A-76 provides a level playing field for agencies to determine whether savings would result from a conversion of work, whether that conversion is from in-house to contract performance or from contract to in-house performance. Moreover, the cost-comparison process can result in savings even if no conversion occurs. The commercial activity data element for "CIV/FTE Savings" reflects the number of civilian FTE saved as a result of conducting a cost comparison, whether the function is retained in-house or converted to contract. This data element, therefore, is not meant to suggest that savings can only occur through outsourcing.

With respect to the request for additional information on savings that result from

conversions from contract to in-house performance, the inventories will include an additional data element (a "reason code") to identify those commercial activities that are "being performed in-house as a result of a cost comparison resulting in a decision to convert from contract to in-house performance" (new reason code "I"). A corresponding change has been made to limit reason code "E" to functions retained in-house as a result of a cost comparison. The request for information on the aggregate number of agency contractor employees is beyond the scope of the FAIR Act, which is limited to performance of commercial activities by Federal employees.

c. Comment: Several commenters suggested that additional "reason codes" be included that would identify commercial functions that, in the agency's view, should not be subject to conversion to contract because of its need for a cadre of highly skilled employees, in a specialized technical or scientific development area, to ensure that a minimum in-house capability ("core capability") in the area is maintained.

Response: The inclusion of a function on the agency's inventory of commercial activities does not mean that the agency is required to compete the function for outsourcing. Rather, the FAIR Act in Section 2(d) requires each agency to review its inventory of commercial activities. Presumably, this review would include consideration of outsourcing, consolidation, privatization, other reinvention alternatives or maintaining the *status quo*. Not all commercial activities performed by Federal employees should be performed by the private sector, though all such activities should be inventoried under the provisions of the FAIR Act and Circular A-76. The decision as to which commercial functions represent "core capabilities," and thus should be retained in-house, remains with the agency head. Accordingly, a specific reason code for "core capability" was not added to the inventory.

d. Comment: A number of commenters requested that the inventory be expanded to include inherently Governmental positions, along the lines of the information requested of the agencies on May 12, 1998 (Memorandum M-98-10, "Inventory of Commercial Activities").

Response: The FAIR Act requires agencies to develop an inventory of the agency activities that "are not inherently Governmental functions." The FAIR Act does not request any information on inherently Governmental activities; its focus is limited to commercial activities.

As part of its pre-FAIR Act oversight function to evaluate how agencies determine what functions performed by Federal employees are classified as commercial, OMB requested summary information from agencies that also included functions they classified as not commercial (i.e., inherently Governmental functions). When OMB conducts its FAIR Act review and consultation on the Commercial Activities Inventory submissions, it will do so in light of the information gained from its review of the agencies' responses to OMB's Memorandum M-98-10.

e. Comment: Several commenters expressed their views as to which positions in the Department of Defense should be designated as inherently Governmental and, therefore, excluded from the Commercial Activities Inventory.

Response: Under the FAIR Act, the agency head makes the determination of which activities are to be excluded from the Commercial Activities Inventory because they are "inherently Governmental", as defined by the Act and existing guidance. Part of OMB's review of the agencies' submissions will be to review these judgments, and to consult with the agencies

on them.

f. Comment: One commenter interpreted the Act's use of the term "full-time employees (or its equivalent)" to mean that the Act applied only to civilian employees and, thus, to exclude military positions from the Act's Commercial Activities Inventory requirement.

Response: All activities of the Federal Government that "are not inherently Governmental" are to be inventoried under the FAIR Act. This requirement is not limited to civilian employees. Accordingly, military personnel performing commercial activities are subject to the FAIR Act and must be inventoried. For clarity, the data element FTE described in Appendix 2, paragraph "C" has been clarified to include "authorized full-time employees or FTE (as applicable)."

g. Comment: Several commenters stated that agencies should, in accordance with the principles of Executive Order 12871 ("Labor-Management Partnerships"), permit employee involvement in the development of the agencies' inventories of commercial activities.

Response: Executive Order 12871 does apply. Agencies should seek employee input in the development of the Commercial Activities Inventory, as appropriate, and the guidance has been revised to say so. It remains up to the agency head to make the determination whether a function is commercial or inherently Governmental in nature. The FAIR Act also provides that Federal employees and their representatives are "interested parties" who may challenge the contents of the inventory.

2. OMB's Review of the Commercial Activities Inventory and the Availability of the Inventories to the Public

a. Comment: Under Section 2(b) of the FAIR Act, OMB "shall review the executive agency's list for a fiscal year and consult with the head of the executive agency regarding the contents of the final list for that fiscal year." When that review and consultation is completed, the inventory is then made available to the public under Section 2(c), with a notice of availability published by OMB in the *Federal Register*. Several commenters expressed concern that the FAIR Act did not establish a timetable for OMB's review of agency inventories or their availability for public review.

Response: OMB intends to complete its review and consultation in a timely manner. Since this is a new process, OMB cannot set a firm timetable at this time. However, it is anticipated that the review and consultation should take about 60 days after OMB receives the agency inventory and any requested supplemental information. The notice of the inventory's public availability would be published within a few days thereafter.

b. Comment: Several commenters stated that, if an employee's activities are considered commercial and are therefore included on the agency's list, the Handbook should require timely notification to those employees.

Response: In accordance with Section 2(c) of the FAIR Act, OMB will publish a notice in the *Federal Register* when the inventories are available to the public (after the completion of OMB's review-and-consultation). The FAIR Act and the revised Handbook require each agency to make its inventory available to the public, which, of course, includes its

employees and their representatives.

3. "Competition" and "Cost Comparison" Provisions

a. Comment: Section 2(d) of the FAIR Act provides that, "[w]ithin a reasonable time after" an agency's inventory has been made available to the public, the head of the agency "shall review the activities on the list." Several commenters recommended that OMB define what constitutes a "reasonable time" for the agency to review its inventory of commercial activities. One commenter suggested a time frame of 1 to 2 years, depending on the number of commercial activities on an agency's inventory. One commenter also suggested that agencies should be required to publish for public comment their timetable for reviewing the inventory.

Response: The FAIR Act does not provide a definition of the phrase "reasonable time." OMB believes that agencies should conduct such review in conjunction with their larger ongoing review of all functions for possible re-engineering, privatization, consolidation or other reinvention under the NPR and the Government Performance and Results Act. As part of its ongoing oversight of agency management of commercial activities performance, OMB will now require agencies to provide annual reports to OMB on the FAIR Act process, including their review and use of the Commercial Activities Inventory.

b. Comment: Several commenters took issue with the statement in the preamble to the proposal that "the FAIR Act requires agencies . . . to review the activities on the list for possible performance by the private sector." (64 FR 10031) They pointed out that Section 2(d) of the FAIR Act does not specify a particular purpose for the review.

Response: The FAIR Act inventory provides information that can assist the agency in considering a wide variety of options for how to satisfy its commercial activity needs that are performed by Federal employees. These options include both the possibility of the private sector fulfilling the need (through such actions as direct conversion, competition, and privatization), as well as continued agency reliance on Federal employees (with, perhaps, improvements that can flow from process changes suggested in the competition).

c. Comment: Several commenters interpreted Section 2(d) of the FAIR Act as permitting the direct conversion, without a cost comparison, of any commercial activity on the list (of any size or type) to performance by the private sector. In their view, FAIR does not preclude an agency from utilizing any of the processes allowed by law, including private-private competition as prescribed in FAR Part 8, 15 and 36. Other commenters expressed concern that the proposed revisions to the Supplemental Handbook required public-private cost comparisons in situations where such cost comparisons are not presently required.

Response: The FAIR Act envisions the use of competition to select a source when an agency considers contracting with a private sector source for performance of an activity on the list, but the law did not modify existing policies regarding the conduct of competitions. Existing guidance provides guidelines for determining when cost comparisons are required and, if required, how they are conducted.

d. Comment: Several commenters viewed the FAIR Act as prohibiting an agency from converting commercial work from contract to in-house performance under any condition.

Response: The FAIR Act addresses only inventories of commercial activities that are performed by Federal employees. It does not address commercial activities that are performed through contract and, therefore, does not address the conversion of contract work to in-house performance.

e. Comment: Several commenters stated their view that the FAIR Act requires substantial changes to the Circular A-76 costing rules so that they incorporate "all costs," and in particular the costs listed in the parenthetical in Section 2(e) (i.e., the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs).

Response: Existing guidance already requires agencies, in conducting cost comparisons, to consider all the fair and reasonable costs addressed in Section 2(e) of the FAIR Act. (See 64 FR 10032). The Supplemental Handbook requires consideration of all costs to the taxpayer that could be expected to change as a result of a conversion to or from performance by in-house or contract employees.

f. Comment: Several commenters suggested that public-private competitions must be based on "best-value" principles. They were concerned that OMB's proposed guidance relies on "cost-only competitions," thus ignoring the potential use of the best-value approach in the cost comparison process.

Response: Existing guidance is not limited to "cost-only competitions." It also allows for best value tradeoffs between cost and other factors. The competitive-source selection process outlined at Part 1, Chapter 3, paragraph H of the Supplemental Handbook permits use of the best value source selection approach in the context of public-private competition.

4. The FAIR Act "Challenge" Process

a. Comment: Section 3 of the FAIR Act provides for an administrative "challenge" process under which "interested parties" may challenge the agency's omission, or inclusion, of an activity on its FAIR Act inventory. Under this process, an "initial decision" is rendered by an agency official designated by the agency head. The interested party may then file an appeal of an adverse decision to the agency head. Several commenters suggested that, in the case of an appeal, the agency should publish its initial decision and the appeal in the *Federal Register* and request comments of other interested parties so that they may be considered by the agency head. It was further suggested that the final appeal should be reviewed by OMB, the Small Business Administration, the General Accounting Office, and relevant congressional appropriations and authorization committee staff.

Response: The requested procedures would go far beyond the FAIR Act. In addition, since Section 3 provides the agency head with 10 days to decide an appeal, there is not sufficient time for the agency to solicit, receive, and consider public comments.

5. Implementing the FAIR Act Via Revisions to A-76 & the Supplemental Handbook

Comment: A number of commenters suggested that OMB use an alternative vehicle to implement the FAIR Act guidance, such as issuing regulations or a separate circular, rather than making changes to the existing guidance on the performance of commercial activities contained in OMB Circular A-76 and its Supplemental Handbook.

Response: Circulars are a well-established vehicle for directing agencies on management of their activities. Circular A-76 already establishes the broad principles and the Revised Supplemental Handbook provides the specific definitions and direction on management of commercial activities, including the inventory and other activities that are codified by the FAIR Act. For this reason, it makes much more sense to revise the existing guidance than to develop a new circular. More importantly, however, OMB wanted to provide the agencies with prompt and clear guidance on how to implement the Act within the short time frame available and without confusion or wasted effort on the part of the agencies. Without revising the Handbook to conform to the FAIR Act, repetitive and competing guidance would exist in a number of areas. For example, the Handbook already requires agencies to develop an annual inventory of their commercial activities and specifies what information (data elements) is to be included. It also contains guidance for when and how agencies are to conduct cost comparisons and what costs should be included. These are all specific areas addressed by the FAIR Act. Ironically, the confusion that could result from issuing a new circular might slow agencies down rather than speeding them up.

Revising the Circular and Supplemental Handbook so that they conform to the FAIR Act is the best way to provide agencies with clear and prompt guidance on how to implement the Act.