



Title: FAIR Act Challenges and Appeals / General Administration, BAM Title II Section 610

Last Updated: April 14, 2024

Originating Office: Office of Management Services (OMS)

(a) PURPOSE:

This policy describes the U.S. Agency for Global Media's (USAGM) procedures for reviewing and deciding challenges and appeals under the Federal Activities Inventory Reform Act of 1998 ([FAIR Act](#)).

(b) POLICY:

(1) FAIR Act

(i) USAGM is committed to annually identifying the activities performed within USAGM and of those activities, distinguishing which are inherently governmental or commercial in nature.

(ii) Under Section 3 of the [FAIR Act](#), an "interested party" (see "[Definitions](#)") can challenge or appeal:

(A) Agency decisions on whether a particular activity belongs on its inventory of activities that are not inherently governmental.

(B) The Agency's application of the Office of Management and Budget's (OMB) commercial activity reason codes.

(c) PRIMARY RESPONSIBILITIES:

(1) Office of Management Services (OMS)

(i) Receives all challenges from interested parties, makes determinations on challenges, and notifies interested parties of the Agency's decision.

(2) FAIR Act Appeals Committee

(i) Makes appeal determinations on adverse OMS decisions concerning challenges filed by interested parties.

(3) Office of the General Counsel (GC)

(i) Advises the FAIR Act Appeals Committee, as necessary, on applicable laws and regulations.

(d) PROCEDURES:

(1) Filing a Challenge

(i) Challenge Requirements

(A) Challenges must be made by an interested party, and they are limited to the reclassification of activities as inherently governmental or commercial or the application of commercial activity reason codes. In addition, challenges must be in writing and must:

(1) Identify the activity being challenged as specifically as possible, so the Agency office can identify it.

(2) Specify the location of each activity being challenged and the relevant Agency office.

(3) Include a statement that the activity being challenged should be reclassified as inherently governmental or as commercial and/or that an associated commercial activity reason code should be changed.

(4) Include the interested party's reasons for its assertion that the activity being challenged should be reclassified and/or that an associated commercial activity reason code should be changed.

(5) Provide any supporting information or documentation that the interested party wishes the Agency to consider in support of its challenge, including but not limited to precedent set by other Federal agencies that have contracted for a particular activity.

(B) All the above items are required for *each* activity or reason code being challenged.

(ii) Challenge Submission

(A) Interested parties' challenges must be submitted within 30 days after either of the following:

(1) Within 30 days after OMB publishes a notice in the Federal Register stating that the Agency's inventory is publicly available.

(2) Within 30 days after the Agency publishes its inventory on its website *if*:

(i) OMB fails to publish the required notice within 45 days after an inventory is submitted for review; *and*

(ii) OMB guidance indicates that the Agency should publish its inventory on its website.

(B) The Agency is not required to consider any challenges to inventories that are untimely filed, including challenges to inventories from previous fiscal years.

(C) All challenges are sent by U.S. mail, express delivery, or similar service to:

Office of Management Services
U.S. Agency for Global Media
330 Independence Ave, SW
Washington, DC 20237

(2) Agency's Decision on Challenges

(i) Within 28 working days after receiving a challenge, the OMS will decide the challenge and transmit to the interested party a written notification of the Agency's decision. The written notification must include the Agency's rationale for its decision. If the Agency's decision is adverse to the interested party's challenge, the written notification must explain the interested party's right to file an appeal.

(3) Filing an Appeal

(i) An interested party may appeal an adverse challenge decision. During an appeal, the Agency is not required to consider new reasons why an activity should be reclassified, or a commercial activity reason code should be changed if the interested party excluded these reasons from its original challenge.

(ii) Appeals must be in writing and include:

(A) All reasons for the interested party's assertion that the Agency should have decided in the interested party's favor.

(B) Any supporting documentation that the interested party wishes the Agency to consider in support of its appeal.

(C) A copy of the challenge document and the Agency's decision.

(iii) Appeals are sent by U.S. mail, express delivery, or similar service to:

Office of Management Services
ATTN: FAIR Act Appeals Committee
U.S. Agency for Global Media
330 Independence Ave, SW
Washington, DC 20237

(4) Agency's FAIR Act Appeals Committee

(i) The FAIR Act Appeals Committee is headed by the USAGM Chief Management Officer (CMO). The Committee includes four representatives designated by, respectively, the Directors of OMS/Human Resources (HR), OMS/Contracts (C), the Voice of America (VOA), and the Office of Cuba Broadcasting (OCB). USAGM designates a representative when positions within these Agency elements are the subject of an appeal.

(ii) Within 10 working days of receipt of the appeal, the FAIR Act Appeals Committee must decide the appeal and transmit to the interested party a written notification indicating the decision and explaining its rationale.

(iii) The Agency's decision on the appeal is final. No further appeals will be considered.

(5) Agency Changes to FAIR Act Inventory Because of a Challenge or Appeal

(i) OMS will transmit to OMB a copy of any change(s) to the inventory that result from this process, submit for publication in the Federal Register a notice of public availability, and make those change(s) available to the public on the Agency's website.

(ii) USAGM's Office of Congressional Affairs will transmit to the Congress a copy of any change(s) to the inventory that results from this process.

(e) SCOPE:

(A) This policy applies to federal government employees of USAGM and its federal entities, including USAGM, the Voice of America (VOA), and the Office of Cuba Broadcasting (OCB), known collectively as "the Agency" or USAGM.

(f) AUTHORITIES:

- (1) [Public Law 105-270 - Federal Activities Inventory Reform \(FAIR\) Act of 1998.](#)
- (2) [OMB Circular A-76 Revised - Performance of Commercial Activities.](#)
- (3) Other authorities applicable to a specific section or paragraph are cited therein.

(g) DEFINITIONS:

(1) Inherently Governmental Function

(i) As defined in Section 5 of the [FAIR Act](#), this means a function that is so intimately related to the public interest as to require performance by Federal Government employees. For additional guidance, see Section 5(2)(B) of the FAIR Act or [OMB Circular A-76 Revised](#).

(2) Interested Party

(i) A private sector source that:

(A) Is an actual or prospective offeror for any contract or other form of agreement to perform an Agency activity.

(B) Has a direct economic interest in performing an Agency activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

(ii) A representative of any business or professional association that includes within its membership private sector sources referred to above.

(iii) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform an Agency activity.

(iv) The head of any labor organization referred to in [Title 5 of U.S. Code, Section 7103\(a\)\(4\)](#) that includes within its membership officers or employees of an organization referred to in paragraph (g)(2)(iii) above.