SEC. ___. AMENDMENTS TO THE FEDERAL ACTIVITIES INVENTORY REFORM ACT.

Section 2 of the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270; 31 U.S.C. 501 note) is amended—

(1) in subsection (a), by inserting "ending in an odd number" after "the third quarter of each fiscal year"; and

(2) in subsection (b), by striking "fiscal" each time it appears and inserting "reporting".

Section-by-Section Analysis

The purpose of this proposal is to improve government efficiency in the use of management resources by reducing the reporting burden associated with the Federal Activities Inventory Reform (FAIR) Act (P.L. 105-270 as amended), 31 U.S.C. 501 note. The FAIR Act requires federal agencies to annually prepare and submit to the Office of Management and Budget (OMB) inventories of commercial activities performed by federal employees. This proposal would amend the FAIR Act to require development of workforce inventories on no less than a biennial basis. OMB would require agency submission of inventories of their inherently governmental activities to OMB on a similar biennial reporting cycle.

Development of workforce inventories can help agencies gain a better understanding of how Federal employee labor is being used to carry out the agency's mission and improve human capital resource distribution. If an agency is considering public-private competition, the inventory also plays a role in helping to ensure that federal positions under consideration for competition are commercial and suitable for performance by either the private sector or public sector.

On average, the status of functions does not change dramatically year over year. In fact, a trend analysis of the inventories prepared between FYs 2012 and 2015 indicates that government-wide, the percentage of workforce FTEs performing commercial work has generally been between 55-60%. In addition, individual agency inventories have rarely shown a change of more than 10 percentage points during this period. Moreover, only a very small portion of any agency's workforce positions has been subject to study for public-private competition in any year in which public-private competition has not been subject to a statutory moratorium and history suggests that tailored and focused consideration of this management tool (as opposed to overly broad application) increases the likelihood for successful outcomes. By adjusting the cycle for developing inventories from once a year to once every two years, resources otherwise

required to review and update the inventory can instead be applied in a more impactful manner to other performance improvement initiatives.

Budget Implications: There would be no negative budgetary impact as a result of these legislative changes because the proposal would reduce a requirement and therefore would not increase the overall budget requirements of the Department or any other Federal agency.

Changes to Existing Law: The proposal would amend P.L. 105-270, as amended by section 840 of Division A of P.L. 109-115, as follows:

TITLE 31, UNITED STATES CODE

§ 501 Note

P.L 105-270, as amended by section 840 of Division A of P.L. 109-115.

SECTION 1. SHORT TITLE.
This Act may be cited as the "Federal Activities Inventory Reform Act of 1998".
SEC. 2. ANNUAL LISTS OF GOVERNMENT ACTIVITIES NOT INHERENTLY GOVERNMENTAL IN NATURE.
(a) LISTS REQUIRED.—Not later than the end of the third quarter of each fiscal year **ending in an odd number**, the head of each executive agency shall submit to the Director of the Office of Management and Budget 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. The entry for an activity on the list shall include the following:
(1) The fiscal year for which the activity first appeared on a list prepared under this section.
(2) The number of full-time employees (or its equivalent) that are necessary for the performance of the activity by a Federal Government source.
(3) The name of a Federal Government employee responsible for the activity from whom additional information about the activity may be obtained.
(b) OMB REVIEW AND CONSULTATION.—
The Director of the Office of Management and Budget shall review the executive agency's list for a ~~fiscal~~ **reporting** year and consult with the head of the executive agency regarding the content of the final list for that ~~fiscal~~ **reporting** year.
(c) PUBLIC AVAILABILITY OF LISTS.—
(1) PUBLICATION.—Upon the completion of the review and consultation regarding a list of an executive agency—
(A) the head of the executive agency shall promptly transmit a copy of the list to Congress and make the list available to the public; and
(B) the Director of the Office of Management and Budget shall promptly publish in the Federal Register a notice that the list is available to the public.
(2) CHANGES.—If the list changes after the publication of the notice as a result of the resolution of a challenge under section 3, the head of the executive agency shall promptly—
(A) make each such change available to the public and transmit a copy of the change to Congress; and
(B) publish in the Federal Register a notice that the change is available to the public.

(d) COMPETITION REQUIRED.—Within a reasonable time after the date on which a notice of the public availability of a list is published under subsection (c), the head of the executive agency concerned shall review the activities on the list. Each time that the head of the 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 to select the source (except as may otherwise be provided in a law other than this Act, an Executive order, regulations, or any executive branch circular setting forth requirements or guidance that is issued by competent executive authority). The Director of the Office of Management and Budget shall issue guidance for the administration of this subsection.
(e) REALISTIC AND FAIR COST COMPARISONS.—For the purpose of determining whether to contract with a source in the private sector for the performance of an executive agency activity on the list on the basis of a comparison of the costs of procuring services from such a source with the costs of performing that activity by the executive agency, the head of the executive agency shall ensure that all costs (including 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) are considered and that the costs considered are realistic and fair.
SEC. 3. CHALLENGES TO THE LIST.
(a) CHALLENGE AUTHORIZED.—An interested party may submit to an executive agency a challenge of an omission of a particular activity from, or an inclusion of a particular activity on, a list for which a notice of public availability has been published under section 2.
(b) INTERESTED PARTY DEFINED.—For the purposes of this section, the term “interested party”, with respect to an activity referred to in subsection (a), means the following:
(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 paragraph (1).
(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 paragraph (3).
(c) TIME FOR SUBMISSION.—A challenge to a list shall be submitted to the executive agency concerned within 30 days after the publication of the notice of the public availability of the list under section 2.
(d) INITIAL DECISION.—Within 28 days after an executive agency receives a challenge, an official designated by the head of the executive agency shall—
(1) decide the challenge; and
(2) transmit to the party submitting the challenge a written notification of the decision together with a discussion of the rationale for the decision and an explanation of the party’s right to appeal under subsection (e).
(e) APPEAL.—

(1) AUTHORIZATION OF APPEAL.—An interested party may appeal an adverse decision of the official to the head of the executive agency within 10 days after receiving a notification of the decision under subsection (d).
(2) DECISION ON APPEAL.—Within 10 days after the head of an executive agency receives an appeal of a decision under paragraph (1), the head of the executive agency shall decide the appeal and transmit to the party submitting the appeal a written notification of the decision together with a discussion of the rationale for the decision.
SEC. 4. APPLICABILITY.
(a) EXECUTIVE AGENCIES COVERED.—Except as provided in subsection (b), this Act applies to the following executive agencies:
(1) EXECUTIVE DEPARTMENT.—An executive department named in section 101 of title 5, United States Code.
(2) MILITARY DEPARTMENT.—A military department named in section 102 of title 5, United States Code.
(3) INDEPENDENT ESTABLISHMENT.—An independent establishment, as defined in section 104 of title 5, United States Code.
(b) EXCEPTIONS.—This Act does not apply to or with respect to the following:
(1) GOVERNMENT ACCOUNTABILITY OFFICE.—The Government Accountability Office.
(2) GOVERNMENT CORPORATION.—A Government corporation or a Government controlled corporation, as those terms are defined in section 103 of title 5, United States Code.
(3) NONAPPROPRIATED FUNDS INSTRUMENTALITY.—A part of a department or agency if all of the employees of that part of the department or agency are employees referred to in section 2105(c) of title 5, United States Code.
(4) CERTAIN DEPOT-LEVEL MAINTENANCE AND REPAIR.—Depot-level maintenance and repair of the Department of Defense (as defined in section 2460 of title 10, United States Code).
(5) Executive agencies with fewer than 100 full-time employees as of the first day of the fiscal year. However, such an agency shall be subject to section 2 to the extent it plans to conduct a public-private competition for the performance of an activity that is not inherently governmental.
SEC. 5. DEFINITIONS.
In this Act:
(1) FEDERAL GOVERNMENT SOURCE.—The term “Federal Government source”, with respect to performance of an activity, means any organization within an executive agency that uses Federal Government employees to perform the activity.
(2) INHERENTLY GOVERNMENTAL FUNCTION.—
(A) Definition.—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.
(B)Functions included.—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 so as—
(i) to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
(iii) to significantly affect the life, liberty, or property of private persons;
(iv) to commission, appoint, direct, or control officers or employees of the United States; or
(v) to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.
(C) Functions excluded.—The term does not normally include—
(i) gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials; or
(ii) any function that is primarily ministerial and internal in nature (such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services).
SEC. 6. EFFECTIVE DATE.
This Act shall take effect on October 1, 1998.