

OFFICE OF THE GENERAL COUNSEL

The Office of General Counsel (OGC) is the Department of Commerce's chief legal office. The OGC serves as the legal adviser to the Secretary, the Under Secretaries, the Assistant Secretaries, and other officers of the Department, including bureau heads. The project descriptions that follow and the *Department Organization Order 10-6*, governing OGC's responsibilities, offer further insight on services provided.

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WORKING CAPITAL FUND (WCF) PROJECTS

OFFICE OF THE ASSISTANT GENERAL COUNSEL FOR LEGISLATION AND REGULATION PROJECT 0030000

Description of Service: The Office of the Assistant General Counsel for Legislation and Regulation (AGC/L&R) evaluates proposed legislation to determine its impact on DoC policies, procedures, operations and existing statutory authority. This evaluation is used to develop DoC's position on proposed and pending bills. It involves coordinating the views of all DoC interested agencies. AGC/L&R works with client offices in drafting all DoC legislative materials (i.e., bills, testimony of Department officials, and reports to Congressional committees on legislative proposals). This includes draft Presidential messages on legislative proposals such as signing statements, veto messages, and special messages to the Congress. The office also assists program components in negotiating draft changes to pending bills and Committee reports.

On the regulatory side, AGC/L&R coordinates and ensures DoC compliance with Executive Orders governing the regulatory process, the Regulatory Flexibility Act, the Administrative Procedure Act, the Paperwork Reduction Act, and any other administrative or procedural regulatory requirements. AGC/L&R also maintains status records of all draft regulatory actions being reviewed. AGC/L&R prepares or clears all DoC regulatory items published in the *Federal Register*. Those items that are reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 are submitted to OMB by the AGC/L&R. This office also advises on and gathers submissions pertaining to their most important significant regulatory actions. AGC/L&R approved submissions are included in the Regulatory Plan of the United States Government as required by Executive Order 12866. Semi-annually, the AGC/L&R also prepares DoC's submission for the Unified Agenda of Federal Regulatory and De-regulatory Actions that are submitted to OMB and published in the *Federal Register*. All expressions of legal opinion on regulatory matters are either prepared or coordinated and cleared by AGC/L&R.

Of equal importance, AGC/L&R serves as the DoC's legislative and regulatory liaison officer with the OMB. This responsibility involves obtaining clearance and advice from OMB on all legislation and regulations, and providing advice to senior DoC officials who are to appear before Congressional committees.

Basis of Charge: Costs are billed to Departmental bureaus, based on prior year actuals, of office staffing and workload assignments. Each staff member tracks his/her time spent on the work of each bureau.

LIBRARY PROJECT 0031000

Description of Service: The Library makes legal and program resources available to DoC employees and the general public. Services include use and borrowing from the collection, reference and research assistance, and access to legal information retrieval systems. The collection consists of federal, Congressional, scholarly, domestic and international materials. The Library serves as the centralized purchasing point for books and subscriptions ordered by Departmental staff, including on-line services.

Basis of Charge: Costs are billed to operating units based upon their percentage of the HCHB population.

LEGAL INFORMATION RETRIEVAL PROJECT 0032000

Description of Service: The Library negotiates the contracts for DoC to access the LEXIS/NEXIS and WESTLAW legal information systems. The Library staff may run searches for DoC employees or the employees can perform the research at their own office computer terminal.

Basis of Charge: Bureaus are billed for on-line services based on historical patterns of usage.

ITA - OFFICE OF THE CHIEF COUNSEL FOR INTERNATIONAL COMMERCE PROJECT 0033000

Description of Service: The Office of the Chief Counsel for International Commerce (OCC/IC) provides programmatic legal advice to the International Trade Administration (ITA), except regarding those laws and programs administered by Import Administration. The office provides legal advice to the Under Secretary for International Trade, as well as the Assistant Secretaries for Trade Promotion, Manufacturing and Services, and Market Access and Compliance and their staffs, on international trade, intellectual property rights, and investment issues, as well as other programmatic issues faced by ITA. Some specific issues covered are:

1. International Trade and Investment Negotiations: OCC/IC provides legal support to U.S. international trade and investment negotiations on most of the non-agricultural subjects covered by such negotiations, including investment, services, electronic commerce, standards, intellectual property rights, competition policy, customs, government procurement, market access and dispute settlement.
2. Trade Agreement Compliance: OCC/IC works closely with ITA in reviewing complaints by U.S. companies and other evidence of breaches of international trade and investment agreements to which the United States is a party, particularly the World Trade Organization Agreement and our free trade agreements, which adversely impact U.S. exports and investments. OCC/IC also works with ITA on reducing or eliminating

barriers to U.S. exports that are not prohibited by a trade agreement.

3. **Export Promotion:** OCC/IC serves as program legal counsel to the U.S. and Foreign Commercial Service (which has offices across the country and around the world to assist U.S. companies in exporting) and the Advocacy Center (which supports U.S. companies competing for specific international contracts or export opportunities), and ITA personnel involved in other export promotion activities, such as trade missions, export transactions counseling, and the Export Trade Certificate of Review Program (which provides limited antitrust immunity for certified exporters of goods and services).
4. **U.S. Trade, Intellectual Property, and Investment Law:** OCC/IC advises ITA on the many U.S. laws and regulations that impact their mission, including the Foreign Investment and National Security Act, the Foreign Service Act, U.S. trade preference program laws, and Trade Promotion Authority legislation.

Basis of Charge: ITA funds all the work performed by this office.

ITA - OFFICE OF THE CHIEF COUNSEL FOR IMPORT ADMINISTRATION
PROJECT 0034000

Description of Service: The Office of the Chief Counsel for Import Administration (OGC/IA) provides legal support to ITA, specifically the Assistant Secretary for Import Administration, in connection with the administration of laws regulating imports into the U.S., primarily the anti-dumping (AD) and countervailing duty (CVD) laws. The work is divided into the following areas:

1. **Administrative Advice:** OGC/IA works closely with IA in administrative proceedings to ensure that the ultimate decisions are defensible under U.S. law and consistent with prior practice and our international obligations, and do not have negative implications for U.S. objectives in related negotiations.
2. **Litigation:** OGC/IA plays a critical role in defending ITA's determinations before domestic courts and NAFTA bi-national panels, and in the WTO. In the case of domestic litigation, this entails working closely with the Department of Justice. The office has sole litigating authority for NAFTA panels and has primary responsibility, in consultation with USTR, for defending AD/CVD determinations in the WTO.
3. **Trade Agreements:** OGC/IA works closely with IA in negotiating and implementing a range of multilateral and bilateral trade agreements, particularly in the areas of government subsidies, anti-dumping and countervailing measures, and dispute settlement.
4. **Textiles:** CC-IA also provides advice to IA's textile office (OTEXA) on a wide range of textile matters, including proceedings arising from FTAs such as NAFTA and CAFTA-DR,

and in connection with China's accession to the WTO.

OGC/IA also provides legal support in connection with proposed legislation or regulations affecting any of the statutes IA administers, including the Foreign-Trade Zones Program, the Florence Agreement relating to duty-free entry of scientific instruments, and the Insular Possessions Watch Program.

Basis of Charge: ITA funds all the work performed by this office.

CENSUS/ESA/BEA - OFFICE OF THE CHIEF COUNSEL FOR ECONOMIC AFFAIRS PROJECT
0038000

Description of Service: The Office of the Chief Counsel for Economic Affairs (OGC/EA) provides legal advice on the major authorities, responsibilities and functions of the Economic and Statistics Administration (ESA). ESA consists of the Bureau of the Census, the Bureau of Economic Analysis, STAT-USA, and the staff offices of the Under Secretary of Commerce for Economic Affairs and Administrator of ESA. OGC/EA provides legal advice on issues associated with the collection and dissemination of statistical data concerning the domestic economy, certain social changes, United States investment abroad, and foreign investment in the United States. The office responds to legal questions arising from day-to-day operations, inter-agency activities, and policy development. It also serves as legal advocate and liaison. As required, the office assists the U.S. Attorneys Office and the Department of Justice with litigation relating to ESA's mission, in particular litigation arising out of Decennial Census operations. The office also assists ESA by assessing the legal sufficiency of a variety of products such as Secretarial correspondence, legislative initiatives, bills, regulations, and Congressional testimony.

Basis of Charge: Census/ESA funds all the work performed by this office.

**NIST - OFFICE OF THE CHIEF COUNSEL FOR THE NATIONAL INSTITUTE OF STANDARDS
AND TECHNOLOGY AND THE NATIONAL TECHNICAL INFORMATION SERVICE** PROJECT
0042000

Description of Service: The Office of the Chief Counsel for the National Institute of Standards and Technology (OCC/NIST) provides programmatic legal counsel and services to the National Institute of Standards and Technology (NIST) and the National Technical Information Service. The OCC/NIST advises its clients on activities carried out under the NIST Act, as amended including activities performed by various NIST laboratories, the Technology Innovation Program, and the Manufacturing Extension Partnership Program. The OCC/NIST also provides advice to the Baldrige National Quality Program. In addition to the programmatic legal services provided to NIST and NTIS, OCC/NIST also provides counsel throughout DoC on intellectual property matters involving patents, patent licensing, and cooperative research and development agreements (CRADAs). In addition, OCC/NIST drafts, reviews and negotiates research agreements, international agreements, contracts, licenses, confidentiality agreements, inter-agency agreements and other agreements. Other duties of the Office include reviewing and providing advice on

regulations, legislation and laws, appeals on patent license terminations and all Government employee invention rights determinations, drafting and commenting on proposed regulations and other policy documents, reviewing projects involving human subjects, and preparing formal legal opinions on intellectual property and other matters.

Basis of Charge: NIST and NTIS fund all the work performed by this office.

BIS - OFFICE OF THE CHIEF COUNSEL FOR INDUSTRY AND SECURITY
PROJECT 0045000

Description of Service: The Office of the Chief Counsel for Industry and Security. BIS plays a central role in advancing the nation's security, foreign policy, and defense industrial base interests. BIS's activities include the following:

- administering and enforcing U.S. export controls on dual-use items attentive to the nation's national security, foreign policy, antiterrorism, short supply, and non-proliferation objectives;
- cooperating with other countries on export control and strategic trade issues;
- enforcing laws prohibiting U.S. persons from participating in foreign boycotts;
- assisting U.S. industry to comply with international arms control agreements (particularly the Chemical Weapons Convention); and
- monitoring the health of the U.S. defense industrial base.

OCC/IS provides legal services to BIS including counseling to decision makers on legal and policy issues related to BIS programs; drafting and reviewing documents, such as proposed laws, draft regulations, reports, Congressional testimony, and correspondence; reviewing responses to requests for disclosure of documents and information; drafting and reviewing advisory opinions and interpretations relating to various statutes and regulations, including those dealing with BIS responsibilities on export controls, the Chemical Weapons Convention, and the Defense Priorities and Allocations System; prosecuting administrative enforcement cases, including representing BIS in administrative enforcement proceedings before an administrative law judge; assisting BIS's criminal investigators on issues such as the use of police powers and the conduct of their investigations; working with the Department of Justice in prosecuting criminal export control cases and defending court challenges relating to BIS programs; assisting assessments of the national security implications of foreign takeovers of U.S. companies; conducting investigations into the effect of imports on the national security; and representing BIS in interagency meetings and international conferences and negotiations.

Basis of Charge: BIS funds all the work performed by this office.

OFFICE OF THE ASSISTANT GENERAL COUNSEL FOR ADMINISTRATION
PROJECT 0048000

Description of Service: The Office of the Assistant General Counsel for Administration (AGC/Admin) coordinates all legal matters involved in and concerned with the activities and interests of DoC in administrative law. Clients of this office include all Presidential appointees, heads of operating units, and their staffs, and AGC/Admin provides advice in these matters across organizational lines. The AGC/Admin is the source of legal expertise in specific areas of personnel, property management, intellectual property, administrative law, civil rights, labor relations, collective bargaining, merit pay, travel allowance, and employee benefits. The AGC/Admin also advises on special statutes such as the Anti-Deficiency Act, the Freedom of Information Act, the Hatch Act, the Privacy Act, the Paperwork Reduction Act, and the Federal Advisory Committee Act. The office has program responsibilities regarding operating systems for collecting financial disclosure reports (public and confidential - SF 278s and OGC Form 450s), and for conducting ethics briefings, which are required by Government-wide regulations. The office also has responsibilities for providing legal services on ethics issues relating to the confirmation process for Presidential appointees in positions requiring Senate confirmation. The office advises all DoC employees (including USPTO employees) on conflict of interest laws and ethics regulations and both current and former employees on post-employment restrictions. AGC/Admin also provides legal representation on behalf of the DoC in the conduct of litigation involving adverse actions, civil rights, and cases before the Merit Systems Protection Board, the Federal Labor Relations Authority, and other labor law forums.

These matters are common to the OS and all DoC operating units, with the exception of the U.S. Patent and Trademark Office (USPTO). AGC/Admin provides services to USPTO in accordance with *Department Organization Order 10-14, section 3.04*. (These services include the full range of services provided by the Ethics Law and Programs Division; legal advice from the General Law Division regarding the exercise of the Secretary's policy direction and several secretarial authorities; and collaboration with the Employment and Labor Law Division regarding department-wide litigation and class actions.)

The office consists of the Assistant General Counsel, and three divisions - the Employment and Labor Law Division, the Ethics Law and Programs Division, and the General Law Division.

Employment and Labor Law Division

The Employment and Labor Law Division (ELLD) provides counseling on all aspects of employment law, the Equal Employment Opportunity (EEO) complaint process, and the Federal sector labor-management relations law. ELLD attorneys represent the Department in administrative proceedings for personnel matters before the Merit Systems Protection Board, the Office of Special Counsel, and the Foreign Service Grievance Board; in Equal Employment Opportunity cases before the Equal Employment Opportunity Commission; and in labor proceedings before the Federal Labor Relations Authority. The attorneys also represent the Department in third-party arbitrations and assist the Department of Justice with litigation arising out of personnel actions and EEO complaints.

Ethics Law and Programs Division

The Ethics Law and Programs Division operates the Department's ethics program and provides legal services relating to ethics issues. The division gives advice to all Department officers, employees and former employees regarding the conflict of interest statutes and the Standards of Conduct. It operates two programs for Department employees that are mandated by regulation: the financial disclosure program and the ethics training program. Financial disclosure reports from approximately 7,900 employees are collected and reviewed each year by division staff. Division staff members conduct ethics briefings for approximately 5,000 employees. Training is provided, as required by the regulations, for officials in Washington, D.C. and in Department of Commerce regional offices located throughout the United States on ethics issues including financial conflicts of interest, outside employment activities, gifts, misuse of Government resources, seeking employment and post employment restrictions. The division also provides specialized services to Presidential appointees and members of Federal advisory committees.

General Law Division

The General Law Division provides advice regarding the administration and management of the Department, in areas which are governed by statutes and regulations of Government-wide applicability. Division attorneys provide advice on such administrative legal topics as appropriations, user fee regulations, the use of various statutes (such as the Economy Act and the Department's Joint Project authority) to enter into Memoranda of Understanding with other parties, the administrative provisions of the Department's organic authority, use of the Department's emblems and logos, the Anti-lobbying Act, travel regulations, the Federal Advisory Committee Act, the Paperwork Reduction Act, the classification and protection of classified records, publishing and advertising, real and personal property, records management and disposition, intellectual property (including copyright, trademark, and internet laws), and release of information. Attorneys support litigation in Federal courts challenging the Department's execution of administrative statutes.

Basis of Charge: Costs are billed to Departmental bureaus, based on prior year actuals, of office staffing and workload assignments. Each staff member tracks his/her time spent on the work of a bureau.

OFFICE OF THE ASSISTANT GENERAL COUNSEL FOR FINANCE AND LITIGATION **PROJECT 0049000**

Description of Service: The Office of the Assistant General Counsel for Finance and Litigation (AGC/F&L) provides legal advice and services to DoC officials on issues relating to all commercial legal matters, including debt collection, loans, loan guarantees, financial audits, financial assistance, interagency agreements, real property, procurement and defensive environmental litigation. AGC/F&L represents DoC on all general and commercial litigation matters, including procurement, federal assistance, tort and admiralty claims, bankruptcies, debts, debarments, and foreclosures.

AGC/F&L also advises on and carries out litigation related to several statutes, including, inter alia,

the Administrative Procedure Act, the Federal Property and Administrative Services Act, the Contract Disputes Act, the Brooks Act, the Services Acquisition Reform Act, the Competition in Contracting Act, the False Claims Act, the Tucker Act, the Federal Tort Claims Act, the Suits in Admiralty Act, the Public Vessels Act, the National Environmental Policy Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Debt Collection Act, the Program Fraud and Civil Remedies Act, and the Federal Grants and Cooperative Agreement Act. AGC/F&L also gives advice concerning Touhy Regulations and Federal Grant Programs.

On behalf of DOC's components other than PTO, AGC/F&L also responds to Justice Department requests for Departmental views regarding pending intellectual property litigation in which federal courts have invited United States' participation.

Basis of Charge: Costs are billed to Departmental bureaus, based on prior year actuals, of office staffing and workload assignments. Each staff member tracks his/her time spent on the work of a bureau. NOAA costs for contract law services related to the GOES-R Satellite Series are billed pursuant to a Memorandum of Agreement between NOAA and O/S.

ADVANCES & REIMBURSEMENTS (A&R) PROJECTS

DECENNIAL CENSUS PROJECT 7015000

Description of Service: This office was established through a Memorandum of Understanding with the Employment and Labor Law Division, Assistant General Counsel for Administration, in order to respond to advice needs and litigation arising out of the 2010 Decennial Census mobilization. This agreement, and this project will terminate on September 30, 2012.

Basis of Charge - Manual Monthly Bill: Census funds all work performed by this office.

EXECUTIVE SUPPORT PROJECT 7030000

Description of Service: This office was established by senior DoC officials to handle the Department's overall relationship with the Intelligence Community and senior Community officials. The office provides all-source intelligence support to the Secretary and other senior level DoC decision makers in the development and implementation of Department programs, policies, and activities.

Basis of Charge - Automatic Monthly: There are two parts to this billing algorithm: (1) PTO costs are allocated and billed according to the Memorandum of Agreement between PTO and the Office of the Secretary; and (2) the remaining costs are billed according to the workload for each bureau.

COMPLEX LITIGATION UNIT (formerly Class Action Suit, initiated in FY-2001) PROJECT 7031000

Description of Service: This account is managed by the Employment and Labor Law Division, Office of the Assistant General Counsel for Administration. It tracks costs directly related to that Division providing legal representation on behalf of the Department in the conduct of the class action litigation (EEOC Case No. 100-A1-7429X). That class action, at times, has involved employees from all operating units of the Department, and the attorneys assigned to this case provide advice and representation on this and other matters across organizational lines. Over the past years, these attorneys filed two comprehensive motions to dismiss (along with appropriate rebuttals), and participated in oral argument with the U.S. Attorney's Office in U.S. District Court. The Department's second motion to dismiss was granted, and the Unit has successfully defended that decision on an interlocutory appeal to the D.C. Circuit. This case is awaiting a final order from the U.S. District Court, which has held jurisdiction pending a ruling on the individual claims that arise from that action. Pending a final order in this case, attorneys assigned to this case will also defend any appeals that ensue.

Two new class actions have been filed with the EEOC in FY08 (EEOC Case No. 570-2008-00284X and Agency Case No. 08-67-000082). They purport to involve the same class of employees throughout the entire Department, which attorneys have begun defending. The unit has filed with the assigned EEOC administrative judge a motion to dismiss EEOC Case No. 570-2008-00284X and is continuing to conduct internal research in order to prepare any future defense.

Basis of Charge - Automatic Monthly: There are two parts to this billing algorithm: (1) costs are billed to each bureau based on the bureau's percentage of potential class members in relation to Department-wide potential class members identified. (Relative percentages, based on an updated analysis done by the Office of Human Resources Management in May 2008, for each class action have been provided to the Office of Financial Management); and (2) costs may be paid according to any memoranda of understanding independently negotiated between the bureau and the Department.

COMMERCIAL LAW DEVELOPMENT PROGRAM (CLDP) PROJECTS (7033000 TO 7065000)

Description of Service: This DoC initiative works to improve the legal climate for doing business around the globe and is funded through external reimbursements, primarily from the Agency for International Development and the State Department.

This program provides training and consultative services to foreign countries and private organizations on a wide variety of legal issues affecting trade, intellectual property rights, project finance, mortgages, standards, government procurement, insurance, dispute resolution, regional economic integration and compliance with World Trade Organization obligations, among other things.

Basis of Charge - Quarterly Billings: Costs are billed in accordance with interagency agreements.