

NOTICE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

N 1100.339

National Policy

Effective Date:
07/10/12

Cancellation Date:
07/10/13

SUBJ: Office of the Chief Counsel Realignment (AGC)

1. Purpose of this notice. This notice announces the realignment and restructuring of the substantive legal practice areas and units within the Office of the Chief Counsel.

2. Who this affects. The notice announces a change in reporting structure that is primarily internal to the Office of the Chief Counsel and has limited impact on other FAA lines of business and staff offices.

3. Where you can get a copy of this notice. You can find this Notice on the MyFAA Employee Web site: https://employees.faa.gov/tools_resources/orders_notices/. This Notice is available to the public at http://www.faa.gov/regulations_policies/orders_notices/.

4. Background.

a. This notice announces a series of moves within the Office of the Chief Counsel designed to: streamline and strengthen the organization; transition to a more broadly focused and agile workforce structure capable of quickly responding to the changing demands of clients, the national air space system, the flying public and Congress; and start positioning the Office to operate effectively in a future environment characterized by constrained budgets, limited resources and unprecedented retirement turnover. The near-term objective is to reduce the number of units reporting directly to the Deputy and Chief Counsel, currently over 20, to nine units, including seven legal service divisions headed by executives who are empowered to address all matters falling within their subject matter or practice area. Essentially, with the exception of the Office of Dispute Resolution for Acquisition, the existing legal service units will be consolidated into seven divisions in their current form with largely the same functions and responsibilities. This near-term objective is implemented through this notice. Over the mid-term, primarily through attrition, the Office will reshape and trim the management structure, shift available positions and funding to increase the number of staff attorneys providing direct legal services to client offices, and recast an outdated stove-piped organizational structure in favor of one that allows for more diverse work experience for staff attorneys and broader advancement potential.

b. Specifically, the Office of the Chief Counsel will continue to be led by the Chief Counsel (AGC-1) and the Deputy Chief Counsel (AGC-2). The Director, Office of Dispute Resolution for Acquisition (ODRA), AGC-70, with its current functions will report directly to the Chief Counsel. The Assistant Chief Counsel for Administration will continue to report to the Chief Counsel, but will add the library, historian and correspondence control functions thereby consolidating all administrative activities under a single Assistant Chief Counsel. The substantive legal practice areas or units will be restructured into seven divisions each headed by an executive level Assistant Chief Counsel. One new executive position will be created, the Assistant Chief Counsel for Field Operations, whose primary function is to direct, oversee, and represent the operations and staff of the Regional and Center Counsel Offices. The International, Legislative and Ethics Staffs will be consolidated into one of the headquarters divisions as set forth below.

5. New Organizational Structure and Functions. The Office of the Chief Counsel is realigned into the following units:

a. The Director, Office of Dispute Resolution for Acquisition (ODRA), AGC-70, reports directly to the Chief Counsel. The ODRA is the statutorily designated tribunal for all contract disputes and bid protests under the FAA's Acquisition Management System. It provides FAA and its contractors with both dispute resolution services and a streamlined adjudication process. To ensure an independent adjudicative function, FAA officials who are responsible for issuing final decisions in acquisition-related disputes must be formally separated or "bubbled" from any potential dispute that may come before them for decision. The designated FAA officials in the "bubble" are the Administrator, Chief Counsel and ODRA personnel. Realigning the ODRA as a direct report to the Chief Counsel serves to reinforce and highlight the independence of the adjudicatory function. The Deputy Chief Counsel, AGC-2, is outside of the decision-making "bubble" and is available to advise and consult with agency procurement attorneys and officials during the adjudicative process. The functions and responsibilities of the ODRA are unchanged.

b. The Assistant Chief Counsel for Administration, AGC-10, has a new routing symbol, but remains a direct report to the Chief Counsel, responsible for office-wide administrative matters, including budget formulation and execution, prioritization of budget and resource matters, personnel activity, internal personnel processes, representation of the office on labor matters, resource management, IT systems, training, strategic and business planning, and management systems. Newly assigned responsibilities include the library, historian and correspondence control functions and staff. All administrative functions are consolidated into a single unit, the Legal Program Management Staff.

c. The Assistant Chief Counsel for Employment and Labor Law, AGC-100, has a new routing symbol, but continues to serve as the Administrator's primary legal advisor on personnel and employment, equal opportunity and labor law matters. The Assistant Chief provides executive direction, oversight and policy guidance on all legal activities and functions related to the development and implementation of agency policy and programs on personnel and employment, labor and equal opportunity employment; litigation in all forums on personnel and employment, equal opportunity employment and select labor matters; and oversight of all legal involvement in labor contract negotiations. The executive exercises line authority over the

headquarters division and works closely with the Field Operations executive to facilitate effective and consistent execution of policy direction and program planning in the field.

d. The Assistant Chief Counsel for International Law, Legislation and Regulations, AGC-200, provides executive direction and oversight of all legal aspects pertaining to the development and execution of the FAA international, legislative and regulatory programs. Activities and functions for which the executive is responsible in the regulatory program area include: developing and executing legal aspects of the FAA regulatory program; rendering opinions and interpretations of FAA regulations; drafting regulations; ensuring that agency rulemaking policies are consistent with government statutes, Executive Orders and Department of Transportation policies; and developing procedures for processing rulemaking actions in a timely and systematic manner. In addition to these existing duties, the Assistant Chief Counsel takes on the international law and legislative legal program functions, responsibilities and staff, formerly comprising AGC-7 and AGC-60. The international program responsibilities include: developing the agency's position on international aviation law issues; serving as liaison for FAA on international aviation legal matters with international organizations, foreign countries, other Government agencies and industry; providing legal policy advice on matters related to international aviation; and providing legal support for FAA emergency operations and warnings to the aviation community respecting foreign airspace. The legislative program responsibilities include: representing the agency regarding the legal aspects of legislative policy matters; reviewing written testimony; providing technical assistance and drafting as required; providing legal advice and guidance during agency development, coordination and drafting of resolutions, legislative proposals, testimony and reports; and providing advice and counsel on legal matter arising from appearances of FAA witnesses before Congressional hearings. The Assistant Chief Counsel has subject matter responsibility for all legal matters of a legislative, international or regulatory nature pertaining to airworthiness and certification, operations, air traffic procedures, flight standards subjects, commercial space law and treaties and conventions concerning aviation and space matters. In order to assist the Assistant Chief Counsel in managing this expanded portfolio, a Deputy position is hereby established. The division will retain an international lead or focal point, a legislative lead or focal point, and a regulatory lead or focal point.

e. The Assistant Chief Counsel for Enforcement, AGC-300, retains currently assigned functions and responsibilities, providing executive direction and oversight on all matters related to the legal enforcement program and those arising from agency regulatory compliance and enforcement programs. The Assistant Chief Counsel is responsible for developing and reviewing legal enforcement policies and programs; providing guidance to agency personnel on enforcement matters; and providing legal support for agency enforcement and compliance initiatives, including, for example, the FAA's various voluntary safety programs, such as the Aviation Safety Action Program (ASAP), Voluntary Disclosure Reporting Program (VDRP), and Flight Operational Quality Assurance (FOQA). As necessary, the Assistant Chief Counsel reviews enforcement actions of national significance for correctness and consistency with agency policy and objectives. Moreover, the Assistant Chief is responsible for tracking and monitoring legal enforcement activity office-wide for adherence to agency policy, consistency (as appropriate) in implementation, compliance with office business measures, and alignment with agency priorities and objectives. Further, the enforcement function includes representing the FAA in enforcement actions before the National Transportation Safety Board, the DOT Office of

Administrative Law Judges, the FAA Decisionmaker, and the United States Courts of Appeals in cases referred by the Flight Standards Service, Aircraft Certification Service, the Office of Aerospace Medicine, the Office of Security and Hazardous Materials, the Office of Airports, and the Office of Commercial Space Transportation.

f. The Assistant Chief Counsel for Litigation and General Law, AGC-400, retains currently assigned functions and resumes responsibility for the ethics function and staff. The Assistant Chief Counsel provides executive direction and oversight primarily for tort litigation and all agency litigation that is not otherwise handled by specific subject matter experts; the civil penalty adjudication program; 49 CFR Part 9; and general law functions, including legal aspects of the Freedom of Information Act program, Privacy Act program, and Federal Advisory Committee Act program. The Assistant Chief Counsel provides legal services to FAA and its employees in aircraft accident investigations and associated litigation; processes tort claims; secures Department of Justice (DOJ) representation for FAA employees sued in their individual capacities; assists DOJ in defending wrongful death, personal injury and property damage lawsuits; represents the FAA before federal courts of appeals in some petitions to review agency orders; processes and oversees actions related to requests for employee testimony in private litigation matters; provides legal advice and guidance on all aspects of the external OSHA program, Freedom of Information Act and Privacy Act programs and Federal Advisory Committee Act requirements; and, with the Chief Counsel, serves as the Administrator's primary advisor in matters involving the agency's civil penalty adjudication program. The Assistant Chief Counsel resumes primary responsibility for managing the agency-wide ethics program, which includes: annual collection and review of financial disclosure reports; annual ethics training, interpretation and advice on the Office of Government Ethics Standards of Ethical Conduct for Executive Branch Employees; and review of requests by senior management on use of agency aircraft.

g. The Assistant Chief Counsel for Acquisition and Fiscal Law, AGC-500, retains currently assigned functions and responsibilities. The Assistant Chief Counsel is responsible for providing executive direction and oversight of all aspects of the legal services to clients in connection with: agency programs and activities associated with the acquisition of material, services, facilities and equipment necessary for the operation and maintenance of the Nation's airspace and airway systems; policies and practices related to agency acquisition, proprietary and commercial law activities; bid protests and conduct of litigation involving agency contracts and agreements; fiscal law and appropriation matters; aviation insurance matters; proposed legislation, regulations and agency orders affecting agency acquisition policies and programs, commercial law related activities and appropriation matters; and legal advice regarding all aspects of contract formation and administration, including intellectual property, antitrust, bankruptcy, debarment, conflict of interest, real estate, mergers, security, export control, procurement integrity, property disposal, fiscal, and socio-economic laws affecting acquisitions, advice on cooperative agreements, grants (other than airport improvement grants) interagency and other agreements involving either the obligation of federal funds or reimbursement of funds to FAA. The Assistant Chief Counsel participates in developing and updating the agency's acquisition management system policy, provides advice and determinations on inherently governmental functions, and assists the agency on comparisons between using federal employees or the private sector to perform commercial activities. The Assistant Chief Counsel is also responsible for policy providing technical

supervision and guidance for legal activities carried out in regional/center offices when the subject matter falls within the scope of the practice area.

h. The Assistant Chief Counsel for Airports and Environmental Law, AGC-600, retains currently assigned functions and responsibilities. The Assistant Chief Counsel provides executive direction and oversight of all aspects of legal services supporting the agency's airport matters and on environmental matters for all lines of business, including relationships with state and local governments. The Assistant Chief Counsel is responsible for providing legal advice concerning policies and procedures for airport planning and programs, such as the Airport Improvement Program, Passenger Facility Charge Program, the Airport Compliance Program, airport noise compatibility planning and programs, and the national program for review of airport noise and access restrictions. The Assistant Chief Counsel also is responsible for reviewing environmental impact statements and other environmental documents for airport development projects and projects proposed to increase capacity in the national airspace system, as well as providing, legal guidance regarding the promulgation of rulemaking in airport and environmental law matters. The Assistant Chief Counsel and the AGC-600 staff handle litigation within the subject matter of the division, representing the FAA in administrative proceedings concerning compliance with airport grant assurances and working closely with the U.S. Department of Justice to represent the FAA in federal court.

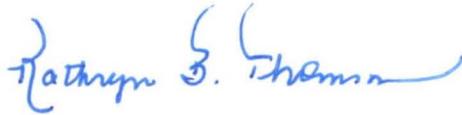
i. The Assistant Chief Counsel for Field Operations, AGC-700, is the newly created executive position responsible for directing and overseeing the broad range of legal services provided to FAA field offices and exercises line authority over the nine Regional Counsel and the Center Counsel at the Aeronautical Center and Technical Center. Specifically the Assistant Chief Counsel is primarily responsible for: ensuring that legal services are delivered in a manner that is timely, efficient and consistent with legal norms; representing the field office perspective, needs and unique operational requirements to the legal practice area executives, Deputy Chief Counsel and Chief Counsel; and ensuring consistent implementation and application of legal requirements and policy on legal matters across the regions and, as appropriate, the centers. The full-service legal practice of the Regional and Center Counsel Offices includes legal enforcement, employment law, regulatory interpretation, acquisition and commercial law, airport and environmental law, Freedom of Information Act, Privacy Act, ethics, regulatory activity of the specialized directorates, torts, and litigation across all disciplines. The Assistant Chief Counsel provides critical leadership and focus to ensure a consistent approach to recurrent legal matters across headquarters and field offices and ensures consistent implementation of legal policy and requirements across the field offices.

6. Supervision and Oversight. The Assistant Chief Counsel report to the Chief Counsel through the Deputy Chief Counsel

7. Documentation. The next revision of Order 1100.2, Organization- Federal Aviation Administration will document this new organizational structure.

8. Organizational Chart. Attached as Appendix A is the Office of the Chief Counsel Organizational Chart.

9. Distribution. This order is distributed to the division level in the Washington headquarters, regions and centers with distribution to each field office and facility.



Kathryn B. Thomson
Chief Counsel

Appendix A. Office of the Chief Counsel

