



FEDERAL ACTIVITIES INVENTORY REFORM (FAIR) ACT:

REPORT OF THE

U.S. OFFICE OF SPECIAL COUNSEL

FOR FISCAL YEAR 2005

Background

The Office of Special Counsel (OSC) is a small, independent law enforcement agency within the Executive Branch. As of June 30, 2005, OSC has 116 total positions, including presently vacant positions.¹ Two employees are part-time. The majority of OSC employees are assigned to the agency's program operating units. A small core staff of employees, other federal agencies (through cross-servicing agreements), and private vendors (by contract) provide such management and program support services, including functions classified as commercial activities, as may be needed by OSC. The agency does not provide administrative or commercial services.

Summary

The following is a summary of the aggregate data in OSC's fiscal year (FY) 2005 inventory of commercial and inherently governmental activities:

SUMMARY OF FY 2005 INVENTORY									
OSC	Commercial Activity Inventory					Inherently Governmental Inventory			
	FAIR Act	Uniformed Services	Foreign Nationals	Other	<u>TOTAL</u>	Inherently Governmental*	Uniformed Services	Foreign Nationals	<u>TOTAL</u>
	16	0	0	0	16	101	0	0	101
*Minus uniformed services personnel and foreign nationals									

The 16 functional allocations identified as commercial activities represent 14% of OSC's total of 117 FTE equivalents represented on the inventory. All commercial FTEs have been designated as exempt from competition (reason code A) by OSC's Competitive Sourcing Official, Roderick Anderson, Director, Management and Budget Division.

FY 2004 Inventory

OSC received no administrative challenges to its 2004 inventory of commercial and inherently governmental activities after OMB's notice of its availability in the *Federal Register*, and the posting of the inventory on OSC's web site. Therefore, no changes were made to the 2004 inventory after OMB's approval.

¹ The FY 2005 inventory total of 117 FTE (rather than 116) reflects the rounding of activities, as specified by the Office of Management and Budget (OMB) in allocating function codes.

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Point of Contact

For further information about OSC's FY 2005 inventory, please contact:

Roderick Anderson
Director, Management & Budget Division
Office of Special Counsel
1730 M Street, N.W. (Suite 218)
Washington, DC 20036-4505
Tel: (202) 254-3600

Web Site Address

Following OMB's approval, OSC will make its FY 2005 inventory available to the public on the agency web site, at www.osc.gov (under "E-Library").

Inventory Challenge Process

OSC has implemented the inventory challenge process required by OMB Circular A-76 as follows:

1. **Submission of Inventory Challenge.** After publication of OMB's *Federal Register* notice that OSC's FY 2005 inventory is available, an interested party may challenge the inventory. The challenge must be in writing and received by OSC within 30 working days of the publication of OMB's *Federal Register* notice that the inventory is available. The inventory challenge must be limited to: (a) the classification of an activity as inherently governmental or commercial, or (b) the application of reason codes. *Function codes are not subject to the inventory challenge process.* An inventory challenge must specify the OSC location(s) and function(s) of the activity or activities being challenged, and must be addressed to the following agency inventory challenge official:

Erin M. McDonnell
Associate Special Counsel for Legal Counsel and Policy
Office of Special Counsel
1730 M Street, N.W. (Suite 218)
Washington, DC 20036-4505

2. **Inventory Challenge Decision.** Within 28 working days of receiving an appropriate inventory challenge (defined in the previous paragraph), the inventory challenge official will: (a) validate the commercial or inherently governmental

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categorization or reason code designation of the challenged activity in a written decision letter, and (b) send the letter, including the reason(s) for the decision, to the interested party who submitted the challenge. The decision letter will include an explanation of the party's right to file an appeal of any adverse decision on the challenge. If the official determines that a challenge is not appropriate under the OSC process, the person who submitted the challenge will be informed in writing of the reason(s) for that determination.

3. Submission of an Appeal of an Inventory Challenge Decision. Upon receipt of an adverse decision on an inventory challenge, the recipient may appeal it. An appeal must be submitted to OSC in writing within 10 working days to the following OSC inventory appeal official:

James Renne
Deputy Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W. (Suite 218)
Washington, DC 20036-4505

4. Inventory Appeal Decision. Within 10 working days of receipt of an appeal, the inventory appeal official will issue and send a written decision letter on the appeal to the person who submitted it. The letter will include the reason(s) for the decision.

If the inventory challenge process results in a change to OSC's inventory, OSC will send a copy of the change to OMB and Congress, make the change available to the public, and publish a notice of public availability in the *Federal Register*.

Commercial and Inherently Governmental FTE Inventory Worksheet

Seq No.	Org Unit		Location			Status				Additional Information					
	Agy	Bur	Abbreviation	State	City	Country	Total FTEs	Activity Fct Code	Status	Reason	First Year On Inventory	Reserved	Reserved	Reserved	Reserved
1	436-00	OSC		DC	WASHINGTON	US	2	Y105	I						
2	436-00	OSC		DC	WASHINGTON	US	1	Y610	I						
3	436-00	OSC		DC	WASHINGTON	US	2	Y510	I						
4	436-00	OSC		DC	WASHINGTON	US	2	Y199	I						
5	436-00	OSC		DC	WASHINGTON	US	5	Y210	I						
6	436-00	OSC		CA	OAKLAND	US	1	Y210	I						
7	436-00	OSC		TX	DALLAS	US	1	Y210	I						
8	436-00	OSC		DC	WASHINGTON	US	11	Y405	I						
9	436-00	OSC		DC	WASHINGTON	US	47	Y415	I						
10	436-00	OSC		CA	OAKLAND	US	7	Y415	I						
11	436-00	OSC		TX	DALLAS	US	6	Y415	I						
12	436-00	OSC		MI	DETROIT	US	5	Y415	I						
13	436-00	OSC		DC	WASHINGTON	US	1	U301	I						
14	436-00	OSC		DC	WASHINGTON	US	1	F399	I						
15	436-00	OSC		DC	WASHINGTON	US	1	W000	C	A	2000				
16	436-00	OSC		DC	WASHINGTON	US	1	C000	C	A	2001				
17	436-00	OSC		DC	WASHINGTON	US	4	Y403	C	A	2000				
18	436-00	OSC		DC	WASHINGTON	US	1	Y810	I						
19	436-00	OSC		DC	WASHINGTON	US	1	B710	I						
20	436-00	OSC		DC	WASHINGTON	US	1	B999	I						
21	436-00	OSC		DC	WASHINGTON	US	1	W100	I						
22	436-00	OSC		DC	WASHINGTON	US	1	Y550	I						
23	436-00	OSC		DC	WASHINGTON	US	1	W410	C	A	2001				
24	436-00	OSC		DC	WASHINGTON	US	1	W825	C	A	1999				
25	436-00	OSC		DC	WASHINGTON	US	1	Y820	C	A	2001				
26	436-00	OSC		CA	OAKLAND	US	1	Y820	C	A	2001				
27	436-00	OSC		TX	DALLAS	US	1	Y820	C	A	2001				
28	436-00	OSC		DC	WASHINGTON	US	2	B700	C	A	2000				
29	436-00	OSC		DC	WASHINGTON	US	1	Y820	C	A	2001				
30	436-00	OSC		DC	WASHINGTON	US	2	Y899	I						
31	436-00	OSC		CA	OAKLAND	US	1	Y899	I						
32	436-00	OSC		TX	DALLAS	US	1	Y899	I						
33	436-00	OSC		DC	WASHINGTON	US	2	Y815	C	A	2001				
34						US									
35						US									



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Accompanying Justifications to the FAIR - for Use of Commercial Reason Code A

W000:

In this category there are several individuals at OSC who each perform a small amount of activities that qualify as commercial. The only one that is significant according to the guidance is .5 of an FTE in the Management and Budget Division, which is spent on working with the various operating units of the agency to develop customer requirements upon which the IT branch can act.

Due to the benefit that OSC receives from this individual's non-commercial work, we have decided against private sector competition for the portions of work that qualify as commercial. The noncommercial portion of this work is essential to OSC's budget and must be handled by a government employee.

C000:

This 1 FTE is performed by a federal career intern in a formalized program, the purpose of which is to enable recruitment of quality future government employees after two years of evaluation as an intern.

Y403:

Half of this 4 FTE category consists of two paralegals in OSC's customer service unit. These are the only two paralegals in the agency, and we have decided not to open these positions to private sector competition because 1) we want to develop the paralegal skill set within the agency, and 2) one of the mission critical functions of paralegals in OSC is to handle the "Officer of the Week" function, where incoming calls and queries from complainants are handled by a knowledgeable and trained OSC employee. Paralegals are perfect for this because they have legal knowledge and training, while providing a way for OSC to avoid continually tying up an OSC attorney as Officer of the Week.

Further, these paralegal positions serve as training ground for possible positions within other operating divisions within the agency. OSC requires a sufficient number of FTE within this function to provide an in-house cadre of suitable candidates for career growth in mission critical areas of the agency.

The other half of this 4 FTE category consists of law clerks. These individuals have completed law school and are currently taking the bar exam. Once the law clerks pass the bar, they will become non-commercial Y415s. So these law clerk positions are part of a formalized program for hiring attorneys straight out of law schools.

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Y410:

This category of 1 FTE is made up of 80% of an IT specialist's position that focuses on information and information systems. Given the critical nature of the information systems and the small size of OSC's IT Branch, we have determined that there is a requirement to have a sufficient number of specialized FTE (in this case – one) with this expertise in the agency.

W825:

In this category there are two individuals at OSC who each perform a small amount of maintenance of ADP equipment that can qualify as commercial. Together these add up to a portion of an FTE, which is rounded up to 1 FTE. The only one that is significant according to the guidance is .4 FTE of an Information Technology Specialist in the Information Technology Branch who works on the agency network and servers.

Due to the benefit that OSC receives from this individual's non-commercial work, we have decided against private sector competition for the portions of work that qualify as commercial. The non-commercial portion of this work is Information and Telecommunications Program Management, which includes supervision of contractors and in this case is an inherently governmental function.

Y820:

This category of 3 FTE consists of approximately half the time of three administrative employees in separate field offices and 100% of the time of an employee in DC on disability leave. Given the criticality of continuity of operations in OSC's very small yet extremely busy field offices, we have determined that there is a requirement to have a sufficient number of specialized FTE (in this case – one in each office) with expertise and training in agency policies and procedures.

B700:

Function routinely requires working with proprietary, sensitive, pre-decisional business information to develop various proposals for consideration by inherently governmental final agency decision makers.

Y815:

The two employees currently performing this commercial function both have disabilities.

Agy_Bur	Org Unit	Last Name	First Name	Prefix	Suffix	Email	Phone
436-00	OSC	Anderson	Roderick			randerson@osc.gov	202-254-3600