

ORDER

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2300.2A

10/22/93

SUBJ: EMPLOYEE INDEMNIFICATION POLICY AND PROCEDURES

1. PURPOSE. This order establishes Federal Aviation Administration (FAA) policy and procedures to implement the statutory authority to protect officers and employees of the FAA from personal liability arising out of conduct taken within the scope of an employee's official duties.
2. DISTRIBUTION. This order is distributed to all FAA employees.
3. CANCELLATION. This order cancels Order 2300.2, Employee Indemnification Policy and Procedures, dated December 14, 1988.
4. BACKGROUND. On December 30, 1987, the President signed into law the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100-223. Section 205 of this Act added a new subsection (e) to Section 313 of the Federal Aviation Act of 1958, 49 U.S.C. App. 1354(e). This subsection provides:

The Administrator is empowered to indemnify any officer or employee of the Federal Aviation Administration against any claim or judgment against such person if such claim or judgment arises out of an act or acts committed, as determined by the Administrator, within the scope of such person's official duties. The Administrator may issue such regulations as may be necessary to implement this subsection.
5. EXPLANATION OF CHANGES. This order provides that the Administrator may entertain requests for indemnification at any time after a claim or complaint has been filed against an employee or former employee. Under the prior order, only in exceptional circumstances would the Administrator entertain such a request prior to the entry of an adverse verdict, judgment, monetary award, or sanction.

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Initiated By: AGC-400

6. SCOPE. This order applies to all present and former officers and employees of the FAA.

7. POLICY.

a. The Administrator may indemnify, in whole or in part, a present or former employee of the FAA for any verdict, judgment, or other monetary award or sanction which is rendered against any such employee, provided that the conduct giving rise to the verdict, judgment, award, or sanction was taken within the scope of employment with the FAA and that such indemnification is in the interest of the United States, as determined by the Administrator, in his/her discretion.

b. The Administrator may at any time settle or compromise a claim for money damages against a present or former employee of the FAA by the payment of available funds, provided the alleged conduct giving rise to the claim for money damages was taken within the scope of employment with the FAA and that such settlement or compromise is in the interest of the United States, as determined by the Administrator, in his/her discretion.

c. The Administrator may entertain requests for indemnity at any time after a complaint has been filed against an employee or former employee. In so doing, the Administrator will decide whether the conduct complained of was within the scope of the employee's official duties, and whether it is in the best interests of the Agency to indemnify the employee for any adverse judgment, verdict, or award. If the Administrator later becomes aware of facts that indicate the employee was not acting within the scope of his or her official duties, the Administrator reserves the right to deny indemnification to the employee.

d. The Administrator's decision to indemnify an officer or employee is contingent on the availability of appropriated funds of the FAA at the time of payment. The Administrator's decision to indemnify an employee, to the extent funds may be available, does not in any way imply that Congress will, at a later date, appropriate funds sufficient to cover payment of an adverse judgment, verdict, or award for that officer or employee.

e. The Administrator will not entertain requests for indemnity unless the Office of the Chief Counsel or the Assistant Chief Counsel has been notified of the claim or suit against the employee prior to the time an answer is required. If the claim is compromised, the Assistant Chief Counsel for Litigation (AGC-400) must be notified prior to any settlement agreement in order for the employee to be eligible for indemnity from the FAA.

8. PROCEDURES.

a. When a present or former officer or employee becomes aware that a lawsuit has been filed or is about to be filed against the officer or employee in his or her individual capacity as a result of conduct taken within the scope of an employee's official duties, the officer or employee should immediately notify the Assistant Chief Counsel for Litigation, AGC-400, that such an action is pending or imminent.

(1) The officer or employee will generally be entitled to legal representation by the Department of Justice under 28 C.F.R. 15.

(2) In any lawsuit which is filed against the officer or employee alleging a common law tort taken within the scope of employment, the United States may be substituted for the individual officer or employee, and any liability which may be found will be assessed against the government, pursuant to the Federal Employess Liability Reform and Tort Compensation Act of 1988, Public Law 100-694.

b. The officer or employee may, thereafter, request either indemnification to satisfy a verdict, judgment, award, or sanction against the officer or employee, or payment to settle or compromise a claim for money damages.

c. The officer or employee shall submit a written request, with appropriate documentation, to the head of his/her employing component, who shall thereupon submit to the Office of the Chief Counsel, in a timely manner, a recommended disposition of the request. The request should include:

(1) Copies of the verdict, judgment, award, or settlement proposal.

(2) The name, present office address, position title, office telephone number, and present home address of the applicant.

(3) The time, place, and nature of the occurrence with respect to which the claim or judgment arose.


(4) The title of the applicant's position at the FAA at such time.

(5) The names and addresses of the claimant or claimants, or plaintiff, or plaintiffs.

(6) If a lawsuit or claim has been filed, the court and case number; the date of commencement; the names and addresses of any co-defendants.

(7) If the requester has retained a personal attorney, the name, address, and telephone number of the attorney, and the date on which representation by such attorney commenced.

9. AVAILABILITY OF FUNDS. Any payment under this order shall be contingent upon the availability of appropriated funds of the FAA.



David R. Hinson
Administrator