

ORDER

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

1800.16

2/16/90

LEGAL PROGRAM EVALUATION

SUBJ:

1. PURPOSE. This order prescribes the responsibilities and process for the evaluation of the FAA's legal program which will be carried out under the direction of the Deputy Chief Counsel.
2. DISTRIBUTION. This order is distributed to the Associate Administrator for Administration and to branch level in the Office of the Chief Counsel and to the regional and center Assistant Chief Counsel.
3. BACKGROUND.
 - a. Order 1800.2E, Evaluation of Agency Programs, establishes agency policy regarding the Evaluation and appraisal of agency programs and activities. The order requires senior management officials to establish evaluation programs that at least triennially evaluate programs and activities under their direction.
 - b. The Legal Program Evaluation (LPE) was established prior to issuance of Order 1800.2E and an evaluation of all offices under the responsibility of the Chief Counsel was conducted during fiscal year 1989, using guidelines upon which this order is based. This order incorporates and expands the LPE procedures followed in the recent evaluation.
4. SCOPE.
 - a. The Legal Program Evaluation is necessary to ensure that the Chief Counsel has adequate data from which to determine the effectiveness of the agency's legal program, the quality of the legal services being provided by agency legal staff, the adequacy of legal office staffing levels, and the quality of the management of the various legal offices, divisions, and staffs under his or her supervision.
 - b. It is expected that a primary benefit of this process will be increased standardization, where possible, of the legal work being done in the various regions, centers, and headquarters. The process is designed to focus on areas where

policy guidance is necessary so that less consultation and coordination is required prior to action. The evaluation process will promote the consistent interpretation, application, and enforcement of the law. In addition, it is expected that this process will identify areas in which agency legal staff need more training, more resources, or better coordination with client offices.

5. RELATIONSHIP OF LPEs TO PERFORMANCE EVALUATIONS.

a. The Chief Counsel and Deputy Chief Counsel may consider the reports of Legal Program Evaluations in conducting annual performance evaluations appraisals of each Assistant Chief Counsel. However, individual performance appraisals are not the primary purpose of the LPEs, which is to help assure the quality of legal services to the Administrator and to legal program client offices.

b. Accordingly, LPE teams do not conduct performance evaluations as such. To the extent that an LPE team gathers information which is of a personal nature or which is otherwise more appropriately considered in a personnel evaluation, such matters will not be included in the LPE report but will be transmitted to the Chief Counsel and Deputy Chief Counsel separately and to the Assistant Chief Counsel involved. However, issues of program effectiveness should not be excluded from the LPE report simply because they may raise an issue of individual manager performance.

c. Notwithstanding the information in paragraphs 5.a. and 5.b., an Assistant Chief Counsel's progress in implementing an action plan which emanates from a Legal Program Evaluation or special evaluation and which has been previously agreed to between the Chief Counsel or Deputy Chief Counsel and the Assistant Chief Counsel at the time of the Assistant's final performance evaluation for the fiscal year should be considered (see paragraph 9).

6. PROCESS - GENERAL.

a. Regional and center legal offices, and headquarters divisions and staffs will be comprehensively evaluated at least once every two years. In addition, evaluations focused on selected subject areas will be conducted during alternate years.

b. The teams conducting the on-site portion of each evaluation will consist of only Assistant Chief Counsel, Deputy

Assistant Chief Counsel, or supervisory or senior attorneys from headquarters and the regional and center legal offices. The normal number of team members will be three.

c. The primary tools of the evaluation will consist of interviews with legal staff, legal office managers, and client office staff, and sampling of case files, interpretation files and other documents prepared or reviewed in the legal office being evaluated.

d. Order 1800.2E requires an annual evaluation plan for the upcoming fiscal year to be submitted to the Deputy Administrator for Appraisal by September 1.

7. PROCESS - COMPREHENSIVE EVALUATIONS.

a. The program areas which will be evaluated in any comprehensive evaluation include:

- (1) Enforcement including EIS (the Enforcement Information System)
- (2) Rulemaking
- (3) FOIA/Privacy Act
- (4) Ethics/conflict of interest
- (5) Litigation/claims handling
- (6) Procurement
- (7) Airports/environmental
- (8) Employee litigation/EEO
- (9) Office management and work environment
- (10) Other areas may be added as deemed appropriate.

b. By November 1 of each year in which comprehensive LPE evaluations are to be conducted, the Deputy Chief Counsel will draw up a schedule for the fiscal year which will enable the evaluations to be completed by July 15 of that year. The schedule will identify the individuals who will comprise the team responsible for the evaluation of each legal office, division, or staff. The schedule may be accelerated by agreement of the team members and the manager of the office being evaluated, but no scheduled evaluation may be delayed beyond the month in which it is originally scheduled.

c. The type of questions to be asked of clients will relate to the timeliness of legal services, the quality of communication with the legal staff, whether adequate feedback is received on the client's work, whether additional assistance is requested from the legal staff, and questions of like

nature. The clients will normally consist of the regional or center division chiefs, the Regional Administrator or Center director, or the primary client office managers identified by Headquarters' Assistant Chief Counsel. A request will be made that managers of client offices also solicit input from their subordinates for their response. Appropriate clients should also be queried (1) about their judgments regarding the quality of their own work product/input which they give to the legal office for legal review or analysis, and (2) when indicated, what they intend to do to improve the quality of that input.

d. The type of questions to be asked of the manager of the legal office/division or staff staff being evaluated will relate to his or her perception of areas where additional policy guidance is necessary, where standardization is desirable, where he or she is experiencing problems with resources, training, clients, coordination, etc. In addition, the manager will be asked to describe, for the various program areas being addressed, what type of legal functions are being performed, what types of work are being coordinated with his or her office, and if there are any areas in which the manager feels more or less legal review is necessary.

e. The type of questions to be asked of the legal staff members will relate to how the office is managed, how the performance evaluation process is carried out, how agency policies on human resource management and EEO are implemented, whether additional training is necessary and whether sufficient guidance and assistance from supervisors is made available.

f. Before conducting any on-site evaluation, evaluation teams should provide the office being evaluated a list of items and informational matter which will be examined or focused on during the evaluation. Evaluation teams are encouraged to give such offices, as well as clients to be interviewed, as much advance notice of these matters as possible in order to facilitate the on-site sessions.

g. The on-site portion of a comprehensive evaluation normally should take no more than 3 days. It will consist of an entrance briefing between the team and the Assistant Chief Counsel and his or her staff, if the Assistant Chief Counsel so desires. The purpose of this briefing is for the team to explain how they will proceed, to discuss with the Assistant Chief Counsel any data of interest previously identified, and to focus more deeply on any problem areas the Assistant Chief Counsel has identified.

h. Various case files and documents prepared by or coordinated in the office will be examined, with a view toward determining the adequacy and timeliness of legal services as well as the office's or division's compliance with policy guidance or other requirements of the Chief Counsel and Deputy Chief Counsel. The currency of data in the Enforcement Information System (EIS) for cases being handled in the office also will be sampled.

i. Personal interviews will then follow of clients and members of the staff of the legal office being evaluated. The purpose of these interviews will be to focus more specifically on any areas of concern previously identified and to discuss, in general terms, the services the office is performing and the management of the office. Staff members of the offices being evaluated should be interviewed separately, or, at the least, be given an opportunity to be interviewed separately rather than in groups. In client interviews, the clients should be asked to answer the following questions: (1) What do you think of the quality of your work product/input which you give to the legal office of legal review or other legal service? (2) What do you intend to do to improve the quality of the work product/input, if improvement is necessary?

j. The final on-site activity will be a exit briefing between the team and the Assistant Chief Counsel. The purpose of this meeting will be to give the Assistant Chief Counsel feedback about the information gathered during the evaluation and to get feedback from the Assistant Chief Counsel on that information. In order to ensure a frank and open exchange between the team and the Assistant Chief Counsel, the Chief Counsel has determined that it is not appropriate for anyone other than members of the Assistant Chief Counsel's staff to be present at the close-out meeting. The Assistant Chief Counsel will be asked specifically to comment or respond to anything to which he or she cares to respond or make comment and to do so in writing, if desired.

k. The final activity of the evaluation team will be the writing of a report of the team's findings and any recommendations the team has regarding improvements which could be made in the office evaluated or in other offices based on procedures identified in the office evaluated. A draft of the team's report will be shared with the Assistant Chief Counsel prior to the report's transmittal to the Chief Counsel and Deputy Chief Counsel. Any written comments or responses and/or

a summary of verbal responses or comments made by the concerned Assistant Chief Counsel will be included in the team's report to the Chief Counsel.

8. PROCESS - FOCUS AREA EVALUATIONS.

a. The particular program areas to be scrutinized in the fiscal year in which a comprehensive LPE is not conducted will be established by September 1 of the preceding fiscal year by the Deputy Chief Counsel, based in part on his or her review of issues raised by clients, Assistant Chief Counsel, and staff members in the legal office that fiscal year, including but not limited to any results of the comprehensive evaluations.

b. In all other respects, except as otherwise specified herein, the process to be followed in focus area evaluations will be similar to the process for comprehensive evaluations outlines in paragraphs 7.e. through 7.k.

9. CONFIDENTIALITY. Information collected by the team in evaluations will be depersonalized to the extent possible; that is, the names of individuals who provide the information in interviews will not be included in the team's report. However, confidentiality of the information itself is neither implied nor intended. Interviewees should be advised prior to interviews that, while identity of sources is not included in the report, any information provided is subject to inclusion and no further assurance of confidentiality can be made. This is necessary to assure proper follow-up of any aspect of the legal program which needs to be addressed.

10. DISTRIBUTION OF THE EVALUATION REPORTS.

a. The LPE team provides its report only to the Chief Counsel, the Deputy Chief Counsel, and the Assistant Chief Counsel whose office was evaluated. The Team may be asked by the Chief Counsel or Deputy Chief Counsel to supplement its report. After the Chief Counsel has adopted the report, the report shall be promptly provided to the Regional Administrator or Center Director, in the case of a regional or center legal office report. In addition, the report may be discussed with the Administrator, one or more Executive Directors, Associate Administrators, and the General Counsel, as appropriate. The reports are also available to the Deputy Associate Administrator for Appraisal. Finally, portions of each report addressing a specific area of the legal program will be given to the Assistant Chief Counsel in headquarters whose responsibilities fall include that area of the legal program.

b. The Assistant Chief Counsel are encouraged to discuss the findings of the report with their staff members.

c. Where the evaluations show that special initiatives developed by an office have met with success and should be considered for adoption by others, this information will be distributed to the other legal offices.

d. Reports of evaluations of focus areas are to be reviewed initially by the Chief Counsel and the Deputy Chief Counsel. After adoption of the report by the Chief Counsel, the report shall be promptly provided to all appropriate agency officials, as determined by the Chief Counsel, but at a minimum including the Deputy Associate Administrator for Appraisal.

11. SUMMARY OF ACCOMPLISHMENTS. As provided in Paragraph 9(c) of Order 1800.2E, by November 1 of each year, the Chief Counsel will submit to the Deputy Associate Administrator for Appraisal (AAD-2) a summary report of evaluation accomplishments during the preceding fiscal year that should be brought to the Administrator's attention.

12. ACTION PLANNING AS A FOLLOW-UP TO THE EVALUATION. Findings and recommendations from the evaluations may be used prospectively in the performance-rating process for each Assistant Chief Counsel. Following adoption by the Chief Counsel of the comprehensive Legal Program Evaluation report, each Assistant Chief Counsel shall draft an appropriate action plan to address the key findings and recommendations in the report. The plan will be worked out in concert with the Chief Counsel and the Deputy Chief Counsel, at the time of the final performance-rating session in August. Progress on the action plan will be examined as part of the interim performance evaluation sessions each year in February, as well as the next year's final performance evaluation session.

13. TREND ANALYSIS - EVALUATION MONITORING AND REPORTING.

a. In order to ensure the continued effectiveness and success of the agency's legal program, it is necessary to establish a tracking system to monitor the execution of each action plan that results from an evaluation. Each Assistant Chief Counsel's action plan shall serve as the initial tracking system report. The tracking system report will include the findings and action plan from the previous comprehensive Legal Program Evaluation. Each initial action plan/tracking system

report shall include a timetable agreed upon by the Assistant Chief Counsel and the Chief Counsel or Deputy Chief Counsel, to complete each action item.

b. Where the subject matter concerns the Office as a whole, a separate tracking system report will be established by the Deputy Chief Counsel.

c. In all years, including the fiscal year in which no comprehensive Legal Program Evaluation of the office is performed, the appropriate Assistant Chief Counsel shall advise the Chief Counsel of the progress made in implementing or completing the action plan during the interim and final performance evaluation sessions. In addition, information to update the tracking report will be gathered during the on-site portion of the next comprehensive Legal Program Evaluation conducted of the office, division, or staff and provided to the Chief Counsel as a part of the team's evaluation report. Therefore, previous action plans will be disseminated by the Chief Counsel to appropriate team members on or about November 1 of the fiscal year in which a comprehensive Legal Program Evaluation will be conducted.

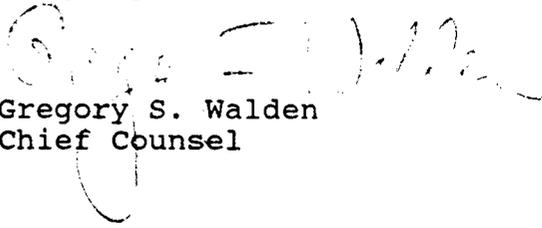
d. A copy of all action plans/tracking reports shall be maintained by the Deputy Chief Counsel and the appropriate Assistant Chief Counsel. An action plan should be tracked until such time as it is fully executed or the Chief Counsel or Deputy Chief Counsel otherwise determines. Actions may be closed out at any time, but not without the concurrence of the Chief Counsel or Deputy Chief Counsel.

e. By September 1 of each year, the Chief Counsel and Deputy Chief Counsel shall review the current tracking reports and the most recently conducted evaluation reports and action plans to note any trends requiring further evaluation or attention.

14. FEEDBACK TO CLIENT OFFICES. The goal of obtaining frank and useful information from clients will not be served if those clients receive no feedback from the Legal Program Evaluation. Therefore, each Assistant Chief Counsel is expected to meet with appropriate program offices, following the development of the action plan generated each year during the performance evaluation process. As appropriate, each Assistant Chief Counsel should discuss with the cognizant client any findings, recommendations, and action plan items, which relate to that

client's area. This is a critical aspect of the Legal Program Evaluation and clients are encouraged to assist in making these discussions as fruitful as possible.

15. STANDING COMMITTEE. There is hereby established a Standing Committee on Evaluation consisting of the Deputy Chief Counsel and six Assistant Chief Counsel from the headquarters, regions and centers to oversee the legal program evaluation. Membership on the Committee will be rotated from time to time except for the Deputy, who shall chair the Committee, to ensure a broad range of participation by Assistant Chief Counsel and to ensure a free exchange of views among all of the legal offices. At the end of each year, the Committee will review such issues as the sufficiency of evaluation resources, the need for training for evaluation teams, recommendations for any changes to the scope and frequency of evaluations, focus issues for the next year, and any other recommendations to be made to the Chief Counsel or Deputy Chief Counsel to ensure the adequacy and effectiveness of the legal program.


Gregory S. Walden
Chief Counsel

