FEDERAL TRADE COMMISSION

16 CFR Part 1

Indemnification of Federal Trade Commission Employees

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is publishing a policy that permits indemnification of FTC employees in appropriate circumstances, as determined by the Commission or the Commission's designee, for claims made against them as a result of actions taken by them in the scope of their employment.

DATES: These amendments are effective July 5, 2017.

FOR FURTHER INFORMATION CONTACT: David C. Shonka, Acting General Counsel, (202) 326–2222, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Presently, the FTC does not have a policy to indemnify its employees who are sued in their individual capacities and who suffer an adverse judgment as a result of conduct taken within the scope of their employment; nor does the FTC have a policy to settle these claims with agency funds. Lawsuits against federal employees in their personal capacities have proliferated since the Supreme Court's decision in *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics,* 403 U.S. 388 (1971). This decision held that personal damage awards against a federal employee are permitted when, in the course of his or her employment, the federal employee is found to have violated an individual's constitutional rights. Although the Federal Liability Reform and Tort Compensation Act of 1988, Public Law 100–694, prohibits personal actions against Federal employees for common law torts committed while acting within the scope of their employment, that Act does not apply to suits against federal employees for violation of the Constitution or federal statutes.

The FTC believes that actions against its employees in their personal capacities and the potential for a judgment against agency employees hinder the agency's effectiveness as a law enforcement agency. The FTC's ability to effectively protect consumers and promote competition depends upon the willingness of its employees to pursue investigations and litigation. Uncertainty regarding what conduct may lead to a personal liability claim resulting in a monetary judgment tends to intimidate employees, stifle creativity and initiative, and limit decisive action. Thus, the threat of personal liability against an employee for a decision made or action taken as part of official duties can adversely affect the FTC's achievement of its mission. The adoption of a policy to permit indemnification would help alleviate these problems and afford FTC employees the same protection now given to other federal employees in several other government agencies, including the Agency for International Development, Commodity Futures Trading Commission, Department of Commerce, Department of Education, Department of Health and Human Services, Department of the Interior, and the Department of Justice.

The FTC's policy permits, but does not require, the agency to indemnify a FTC employee who suffers an adverse verdict, judgment, or other monetary award, provided that the actions giving rise to the judgment were taken within the scope of employment, and that such indemnification is in the interest of the FTC, as determined by the Commission or the Commission's designee. The policy also allows the agency to settle a claim brought against an employee in his or her individual capacity by the payment of funds, upon a similar determination by the Commission or the Commission's designee. Generally, the FTC will not entertain a request either to indemnify or to pay to settle a personal damage claim against an employee before entry of an adverse verdict, judgment, or monetary award. However, in certain cases, the Commission or its designee, may determine that exceptional circumstances justify the earlier indemnification or payment of a settlement amount. This policy is applicable to actions pending against FTC employees as of its effective date, as well as to actions commenced after that date.

Regulatory Flexibility Act

The Commission certifies that these new regulations, which deal solely with internal policies governing FTC personnel, do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because they will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

Paperwork Reduction Act

The regulations adopted herein do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

Administrative Procedure Act

The indemnification policy is published in final form without the opportunity for public notice and comment because it is a general statement of policy relating to FTC management and personnel. *See* 5 U.S.C. 553(a)(2),(b).

List of Subjects in 16 CFR Part 1

Administrative practice and procedure, Government employees, Indemnity payments.

For the reasons set forth in the preamble, the Federal Trade Commission amends part 1, title 16, of the Code of Federal Regulations, as follows:

PART 1—GENERAL PROCEDURES

■ 1. The authority citation for part 1 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

§§ 1.125 through 1.129 [Added and Reserved]

■ 2. In subpart Q, add and reserve §§ 1.125 through 1.129.

■ 3. Add subpart R to read as follows:

Subpart R—Policy With Regard to Indemnification of FTC Employees

Authority: 15 U.S.C. 46.

§ 1.130 Policy on employee indemnification.

(a) The Commission may indemnify, in whole or in part, its employees (which for the purpose of this regulation includes former employees) for any verdict, judgment, or other monetary award which is rendered against any such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her employment with the Federal Trade Commission and that such indemnification is in the interest of the Federal Trade Commission, as determined as a matter of discretion by the Commission, or its designee.

(b) The Commission may settle or compromise a personal damage claim against its employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the scope of employment and that such settlement or compromise is in the interest of the Federal Trade Commission, as determined as a matter of discretion by the Commission, or its designee.

(c) Absent exceptional circumstances, as determined by the Commission or its designee, the Commission will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or monetary award.

(d) When an employee of the Federal Trade Commission becomes aware that an action may be or has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee shall immediately notify his or her supervisor that such an action is pending or threatened. The supervisor shall promptly thereafter notify the Office of the General Counsel. Employees may be authorized to receive legal representation by the Department of Justice in accordance with 28 CFR 50.15.

(e)(1) The employee may, thereafter, request either:

(i) Indemnification to satisfy a verdict, judgment or award entered against the employee; or

(ii) Payment to satisfy the requirements of a settlement proposal.

(2) The employee shall submit a written request, with documentation including copies of the verdict, judgment, award, or settlement proposal, as appropriate, to the head of his or her division or office, who thereupon shall submit to the General Counsel, in a timely manner, a recommended disposition of the request. The General Counsel may also seek the views of the Department of Justice. The failure of an employee to provide notification under paragraph (d) of this section or make a request under this paragraph (e) shall not impair the agency's ability to provide indemnification or payment under this section if it determines it is appropriate to do so.

(f) Any amount paid under this section either to indemnify a Federal Trade Commission employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the Federal Trade Commission.

By direction of the Commission.

Donald S. Clark,

Secretary.

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS RALPH JOHNSON (DDG 114) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective July 5, 2017 and is applicable beginning June 23, 2017.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Kyle Fralick, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS RALPH JOHNSON (DDG 114) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended by:

■ a. In Table Four, paragraph 15, adding, in alpha numerical order, by vessel number, an entry for USS RALPH JOHNSON (DDG 114); and

■ b. In Table Five, by adding, in alpha numerical order, by vessel number, an entry for USS RALPH JOHNSON (DDG 114).

The additions read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

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Table Four

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