

Requesting a Liability Letter – explanation

A Liability Letter signed by the Director serves as a declaration to a third party that a unit of the United States Coast Guard Auxiliary, when acting within the scope of its authorized activities, comes under the provisions and protection of the Federal Tort Claims Act, as amended (28 USC §§ 2671-2680). The Coast Guard Auxiliary is a part of the United States Coast Guard pursuant to 14 USC §821. Under Section 821 (b)(1) the Federal Tort Claims Act is applicable to the Auxiliary provided its activity is being conducted within the scope of 14 USC § 822. If the particular activity is in conformity with the provisions of Section 822 the Auxiliary and its respective units are "at all times [deemed to] be an instrumentality of the United States".

Pursuant to the Anti-Deficiency Act (31 U.S.C. § 1341), the United States Government, its departments, agencies and bureaus acting through its officers, agents or employees, is prohibited from entering into indemnity agreements. Indemnity agreements may cause the government to incur an expenditure of funds which may exceed the amount available in an appropriation or fund. An indemnity clause contained in a contract may cause to be made the payment of money by the United States at some future time for goods, services or indemnities before an appropriation is made unless authorized by law. Violation of this Federal statute could result in the violator receiving a fine of not more than \$5,000.00 (31 U.S.C. §§ 1350, 1519) or imprisonment for not more than 2 years, or both, as well as possible civil penalties (31 U.S.C. §§ 1341 (a), 1342 or 1517 (a)) or incur personal liability under the contract containing the indemnity clause if coverage is denied by the Department of Justice under the Tort Claims Act.

An Auxiliary unit may be participating in a public event, hosting a boating safety booth, using a premises for a public education class or a unit training class, or using a public or private building or site for an Auxiliary social function. The public or private owner of the site or the sponsor of the event frequently requires each participant using its premises to carry a policy of liability insurance to protect the owner or sponsor from suits or claims by third parties against it or the Auxiliary unit allegedly arising from the activities or participation by the Auxiliary unit.

If a request for liability coverage of an Auxiliary unit is made, the unit leader can request that the Director of Auxiliary issue a Liability Letter to the party seeking the protection from exposure. It is the procedure in the First Southern Region to have the request for a Liability Letter to the Director to be channeled through the DSO-Legal in order that the subject matter of the request may be scrutinized prior to submission to the Director.

Also, it is for the reasons stated above and the mandate of the Auxiliary Manual, that the DSO-L MUST review all agreements to be signed by a unit of the Auxiliary BEFORE the agreement is signed by the authorized Auxiliary elected officer.

The following procedure will be employed:

1. A request for a Director's Liability Letter will be made in writing through the DSO-L or an ADSO-L.
2. The request will (a) set forth the nature of the event or activity with sufficient particularity to determine whether it falls within the scope of the Auxiliary's statutory authority; (b) that the activity has been duly authorized or sanctioned by the unit's senior elected leader or the unit's governing body or in rare cases, the Coast Guard itself; (c) the time and place where the activity will occur as well as estimate duration.
3. Provide the name and address of the entity who is to be the covered beneficiary of the Liability Letter. If the letter is to be sent directly to the covered beneficiary please note this in your request to the DSO/ADSO-Legal.
4. Provide the name, address, telephone number of the Auxiliarist making the request. It is preferable that requests come from the unit's senior elected leader if at the flotilla level; at the Division level from the Division Commander or Vice Division Commander and at the District Level from the DCO, VCO, Directorate Heads or DSOs. Such a procedure will insure that senior leadership at a particular Auxiliary level is supporting the request, has sanctioned the activity and constitutes an activity within the scope of the Auxiliary's statutory authority.
5. After review, the DSO/ADSO-Legal will forward the request to the appropriate person in the Director's Office with the necessary information to permit the Director to generate a Liability Letter. The Director's office will send the Liability Letter to the party requesting coverage or to the Auxiliarist making the request.