

*Section 2. MEMORANDUM.*

Whenever the Secretary of Transportation settles any administrative claim pursuant to the authority granted by section 1 for an amount in excess of \$50,000 and within the amount delegated to him under section 1, a memorandum fully explaining the basis for the action taken shall be executed. A copy of this memorandum shall be sent to the Director, FTCA Staff, Torts Branch of the Civil Division.

[Order No. 1302-88, 53 FR 37753, Sept. 28, 1988, as amended by Order No. 1471-91, 56 FR 4943, Feb. 7, 1991; Order No. 1482-91, 56 FR 12846, Mar. 28, 1991; Order No. 1583-92, 57 FR 13320, Apr. 16, 1992; 58 FR 36867, July 9, 1993; 61 FR 66220, Dec. 17, 1996]

**PART 15—DEFENSE OF CERTAIN SUITS AGAINST FEDERAL EMPLOYEES: CERTIFICATION AND DEFENSE OF CERTAIN SUITS AGAINST PROGRAM PARTICIPANTS UNDER THE NATIONAL SWINE FLU IMMUNIZATION PROGRAM OF 1976, AND CERTIFICATION AND DECERTIFICATION OF CERTAIN SUITS BASED UPON ACTS OR OMISSIONS OF CONTRACTORS IN CARRYING OUT AN ATOMIC WEAPONS TESTING PROGRAM UNDER A CONTRACT WITH THE UNITED STATES**

Sec.

- 15.1 Expeditious delivery of process and pleadings.  
 15.2 Providing data bearing upon scope of employment or program participant status.  
 15.3 Removal and defense of suits.

APPENDIX TO PART 15

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 1089; 22 U.S.C. 817; 28 U.S.C. 509, 510 and 2679; 38 U.S.C. 4116; 42 U.S.C. 233, 247b and 2458a, and the Department of Defense Authorization Act of 1985.

CROSS REFERENCE: For Organization Statement, Civil Division, see subpart I of part 0 of this chapter.

**§ 15.1 Expeditious delivery of process and pleadings.**

(a) Any Federal employee against whom a civil action or proceeding is brought for damages to property, or for personal injury or death, on account of the employee's operation of a motor vehicle in the scope of his office or em-

ployment with the Federal Government or on account of the employee's performance of medical care, treatment, or investigation in the scope of his office or employment with the Public Health Service or the Veterans Administration Department of Medicine and Surgery, the Department of State (including the Agency for International Development), the Armed Forces, the Department of Defense, the Central Intelligence Agency, or the National Aeronautics and Space Administration shall promptly deliver all process and pleadings served upon the employee, or an attested true copy thereof, to the employee's immediate superior or to whoever is designated by the head of the employee's department or agency to receive such papers. If the action is brought against an employee's estate this procedure shall apply to the employee's personal representative. In addition, upon the employee's receipt of such process or pleadings, or any prior information regarding the commencement of such a civil action or proceeding, he shall immediately so advise his superior or the designee thereof by telephone or telegraph. The superior or designee shall furnish the U.S. Attorney for the district embracing the place wherein the action or proceeding is brought and the Branch Director of the Torts Branch, Civil Division, Department of Justice, information concerning the commencement of such action or proceeding, and copies of all process and pleadings therein.

(b) Any program participant as that term is defined in 42 U.S.C. 247b(k)(2)(B) against whom a civil action or proceeding is brought for damages for personal injury or wrongful death on account of the administration of swine flu vaccine under the National Swine Flu Immunization Program of 1976 (or the personal representative or successor of such program participant, if the action is brought against the estate or successor of such program participant) shall promptly deliver all process and pleadings served upon such program participant, or an attested true copy thereof, to the Branch Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530, and to the Department Claims Officer, Office of the General

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Counsel, Department of Health, Education and Welfare, Washington, DC 20201. The Branch Director shall promptly furnish copies of the papers to the U.S. Attorney for the district embracing the place wherein the action or proceeding is brought.

(c) Any person against whom an action for injury, loss of property, personal injury, or death has been brought due to exposure to radiation based on acts or omissions by a contractor, as defined in section 1631(d) of the Department of Defense Authorization Act of 1985, in carrying out an atomic weapons testing program under a contract with the United States, shall promptly deliver all process and pleadings served upon such person, or an attested true copy thereof, to the Branch Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.

[42 FR 15409, Mar. 22, 1977; 42 FR 17111, Mar. 31, 1977, as amended at 46 FR 52355, Oct. 27, 1981; Order No. 1074-84, 49 FR 44995, Nov. 14, 1984]

### § 15.2 Providing data bearing upon scope of employment or program participant status.

(a) The employee's employing Federal agency shall submit a report containing all data bearing upon the question whether the employee was acting within the scope of his office or employment with the Federal Government, at the time of the incident out of which the suit arose, to the United States Attorney for the district embracing the place wherein the civil action or proceeding is brought, with a copy of the report to the Branch Director of the Torts Branch, Civil Division, Department of Justice, at the earliest possible date, or within such time as shall be fixed by the U.S. Attorney upon request.

(b) A program participant as that term is defined in 42 U.S.C. 247b(k)(2)(B) shall deliver all information in the participant's possession or reasonably available to the participant concerning the participant's status as a program participant to the Branch Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530, upon request and within such time as shall be fixed.

(c) A person against whom an action has been brought for injury, loss of property, personal injury, or death due to exposure to radiation based on acts or omissions by a contractor, as defined in section 1631(d) of the Department of Defense Authorization Act of 1985, in carrying out an atomic weapons testing program under a contract with the United States, shall deliver all information in the person's possession or reasonably available to the person concerning (1) the person's status as a contractor within the meaning of section 1631(d) of the Department of Defense Authorization Act of 1985; (2) the relation, if any, of the civil action or injury, loss of property, personal injury, or death due to exposure to radiation to acts or omissions by a contractor in carrying out an atomic weapons testing program under a contract with the United States; and (3) the subject matter of the action to the Branch Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530, upon request within such time as shall be fixed and shall cooperate with the Justice Department in defense of said action upon request following certification of an action pursuant to section 1631(b) of the Department of Defense Authorization Act of 1985.

[Order No. 254-61, 26 FR 11420, Dec. 2, 1961, as amended at 42 FR 15410, Mar. 22, 1977; Order No. 960-81, 46 FR 52355, Oct. 27, 1981; Order No. 1074-84, 49 FR 44995, Nov. 14, 1984]

### § 15.3 Removal and defense of suits.

(a) The U.S. Attorneys are authorized to make the certifications provided for in 10 U.S.C. 1089(c), 22 U.S.C. 817(c), 28 U.S.C. 2679(d), 38 U.S.C. 4116(c), and 42 U.S.C. 233(c) and 2458a(c) with respect to civil actions or proceedings brought against Federal employees in their respective districts. Such a certification may be withdrawn if a further evaluation of the relevant facts or the consideration of new or additional evidence calls for such action. The making, withholding, or withdrawing of certifications, and the removal and defense of, or the refusal to remove and defend, such civil actions or proceedings by the U.S. Attorneys shall be subject to the