

certain agencies, organizations, and individuals which participated in the manufacture, distribution, and administration of the swine flu vaccine. Similar authority has been conferred on the Attorney General with respect to certain suits against fiduciaries of the Federal Retirement Thrift Savings Fund (5 U.S.C. 8477(e)(4)); atomic weapon testing contractors (42 U.S.C. 2212); and certain individuals enrolled as volunteers in National Volunteer Programs (42 U.S.C. 5055(f)).

Finally, several statutes, without expressly providing for certification, confer Federal employee status on certain persons who would not otherwise be encompassed within the Federal Tort Claims Act's definition of an "employee of the United States" as that term is defined by 28 U.S.C. 2671. *E.g.*, 5 U.S.C. 3102 (persons employed to assist handicapped federal employees in performing duties); 5 U.S.C. 3111 (unpaid student volunteers); 7 U.S.C. 2272 (volunteers to Department of Agriculture); 10 U.S.C. 1588 (volunteers to Armed Services); 16 U.S.C. 18i (volunteers to National Park Service); 16 U.S.C. 558c (volunteers to Forest Service); 22 U.S.C. 2504 (Peace Corps volunteers); 29 U.S.C. 1706 (Job Corps enrollees); 33 U.S.C. 569c (volunteers to Army Corps of Engineers); 42 U.S.C. 3788 (volunteers to Office of Justice Programs, Bureau of Justice Assistance, National Institute of Justice Assistance, and Bureau of Justice Statistics).

Part 15 has not been revised since the enactment of the Federal Employees Liability Reform and Tort Compensation Act. The regulations were initially promulgated after passage of the Federal Drivers Act, 26 FR 11420 (1961), and revised as additional certification statutes were enacted. *See* 40 FR 4910 (1975); 42 FR 15409 (1977); 44 FR 9379 (1979); 49 FR 44995 (1984). As last revised, Part 15 comprises three sections (15.1, 15.2, and 15.3) and an appendix. Each section in turn is subdivided into three subsections which govern suits subject to (1) the Federal Drivers Act and the malpractice certification statutes; (2) the swine flu statute; and (3) the atomic weapons testing statute.

This rule revises Part 15 to conform it to the provisions of the Federal Employees Liability Reform and Tort Compensation Act, and to delete references to specific certification statutes. Section 15.1 is new and sets forth definitions of the terms "appropriate Federal agency," "Federal employee," and "covered person." Sections 15.2, 15.3, and 15.4 cover the same subjects which were covered by the prior versions of sections 15.1, 15.2, and 15.3, respectively, except that rather

than the former tripartite subdivision, each section is subdivided into two paragraphs, one of which governs suits against Federal employees, and the other which governs suits against covered persons. The appendix is removed.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to Federal employees and certain non-employees against whom civil actions are filed under circumstances in which the remedy against the United States under the Federal Tort Claims Act has been made exclusive of the remedy against such Federal employees and non-employees. The regulation requires Federal employees in those circumstances promptly to deliver the process and pleadings in such actions to their employing Federal agency, and the agency to send a report concerning the matter to the appropriate United States Attorney and the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice. The regulation further requires covered non-employees in those circumstances promptly to deliver the process and pleadings in such actions to the appropriate Federal agency, and the agency to send a report concerning the matter to the appropriate United States Attorney and the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice. The rule's economic impact is minimal.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 15

Authority delegations (Government agencies), Tort claims.

■ For the reasons stated in the preamble, the Department of Justice revises 28 CFR part 15 to read as follows:

PART 15—CERTIFICATION AND DECERTIFICATION IN CONNECTION WITH CERTAIN SUITS BASED UPON ACTS OR OMISSIONS OF FEDERAL EMPLOYEES AND OTHER PERSONS

Sec.

- 15.1 General provisions.
- 15.2 Expeditious delivery of process and pleadings.
- 15.3 Agency report.
- 15.4 Removal and defense of suits.

Authority: 5 U.S.C. 301, 8477(e)(4); 10 U.S.C. 1054, 1089; 22 U.S.C. 2702; 28 U.S.C. 509, 510, and 2679; 38 U.S.C. 7316; 42 U.S.C. 233, 2212, 2458a, and 5055(f); and the National Swine Flu Immunization Program of 1976, 90 Stat. 1113 (1976).

§ 15.1 General provisions.

(a) This part contains the regulations of the Department of Justice governing the application for and the issuance of statutory certifications and decertifications in connection with certain suits based upon the acts or omissions of Federal employees and certain other persons as to whom the remedy provided by the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2672, is made exclusive of any other civil action or proceeding for money damages by reason of the same subject matter