

# **2 FAM 280**

## **CLAIMS AGAINST THE UNITED STATES**

*(TL:GEN-248; 10-29-1987)*

(See 4 FAM 480)

### **2 FAM 281 TORT CLAIMS**

#### **2 FAM 281.1 Authority**

*(TL:GEN-95; 08-24-1967)*

The Federal Tort Claims Act (28 U.S.C. 2672), the Act of August 1, 1956 (22 U.S.C. 2669), and the Act of June 19, 1939 (22 U.S.C. 227e), authorize the Secretary of State to receive, consider, settle, and pay tort claims and certain property damage claims against the United States.

##### a. Claims Within the United States

Under the Federal Tort Claims Act, the Secretary of State or designee for the purpose is authorized to consider and settle administratively tort claims, except those specifically excluded by the act (28 U.S.C. 2680), on account of damage to or loss of property or on account of personal injury or death arising in the United States as a consequence of the negligent or wrongful act or omission of any employee of the Department acting within the scope of the employee's employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Because of amendments to the Federal Tort Claims Act affected by the Act of July 18, 1966 (80 Stat. 306) and regulations of the Attorney General implementing that act, the requirements for the settlement of claims arising from accidents or incidents occurring on or after January 18, 1967 differ from those for the settlement of claims arising from accidents or incidents occurring before that date. The differences relate to the amount for which a claim may be settled, the authority of the Secretary of State to delegate settlement authority, and the procedure to be followed in the settlement of large claims.

##### b. Claims Outside the United States

Claims arising before January 18, 1967 may not be settled for an amount in excess of \$2,500. The Secretary of State may delegate settlement authority for claims not in excess of \$2,500 to chiefs of mission and principal officers of fiscal-reporting posts.

With regard to claims arising on or after January 18, 1967, no limitation is made on the amount of settlement, but awards in excess of \$25,000 require the prior approval of the Attorney General or the Attorney General's designee. The Secretary of State may delegate settlement authority for claims, not in excess of \$1,000, to chiefs of mission and principal officers of fiscal-reporting posts. Under the Act of August 1, 1956, the Secretary of State is authorized to pay tort claims arising in foreign countries in connection with Department of State operations abroad in the same manner as tort claims arising in the United States are paid under the first paragraph of 28 U.S.C. 2672, the Federal Tort Claims Act. Under the Act of June 19, 1939, the Secretary of State, acting through such officers as may be designated, is authorized to consider, adjust, and pay claims for damages to land or other private property, not in excess of \$1,000, arising out of the activities of the United States Section, International Boundary and Water Commission, United States and Mexico.

**NOTE:** (The Agency for International Development, the United States Information Agency, the Foreign Agricultural Service of the Department of Agriculture, the Department of the Army, Navy, and Air Force, and the Veterans' Administration have separate authority to consider, settle, and pay tort claims arising in foreign countries attributed to negligent acts or omissions of their personnel in connection with activities of such agencies abroad. Tort claims arising out of activities of the above-mentioned agencies and based on negligent or wrongful acts or omissions of their personnel are not cognizable under the Act of August 1, 1956. Such claims are handled in accordance with the existing regulations and procedures with the existing regulations and procedures of the respective agencies.)

## **2 FAM 281.2 Delegation of Authority**

*(TL:GEN-248; 10-29-1987)*

The Legal Adviser and the Deputy Legal Advisers are authorized to consider, ascertain, adjust, determine, compromise, and settle claims capable of administrative settlement under the Federal Tort Claims Act and the Act of August 1, 1956, except claims arising out of activities of the Commission. The Assistant Legal Adviser for International Claims and Investment Disputes is authorized to consider, ascertain, adjust and determine all claims arising from the above acts, including the denial of all claims, and to compromise and settle such claims in the amount of \$2,500 or less. Chiefs of mission and principal officers of fiscal-reporting posts are authorized to consider, ascertain, adjust, determine, and settle claims arising before January 18, 1967, in an amount of \$2,500 or less, or claims arising on or after January 18, 1967, in an amount of \$1,000 or less, which are capable of administrative settlement under the Act of August 18, 1956, arising out of the activities of their respective establishments. The Commissioner is authorized to consider, ascertain, adjust, determine, and settle claims cognizable under the Federal

Tort Claims Act and the Act of June 19, 1939, arising out of activities of the Commission.

## **2 FAM 281.3 Limitations**

*(TL:GEN-95; 08-24-1967)*

Claims arising under the Federal Tort Claims Act and the Act of August 1, 1956, must be presented in writing within 2 years after accrual. Claims arising under the Act of June 19, 1939, must be presented in writing within one year after the property damage or loss is alleged to have occurred.

## **2 FAM 281.4 Action by Claimant**

### **2 FAM 281.4-1 Claimant**

*(TL:GEN-95; 08-24-1967)*

a. Claims for property loss or damage may be filed by the owner of the property, the owner's duly authorized agent or legal representative, or survivors.

b. A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer.

c. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

d. Claims for personal injury may be filed by the injured person, the person's duly authorized agent or legal representative.

e. Claims for death may be filed by the executor or administrator of the decedent's estate, or by any other person legally or beneficially entitled to assert such a claim in accordance with applicable local law governing the rights of survivors.

f. When filed by an agent or legal representative, the claim is presented in the name of the real claimant, is signed by the agent or legal representative, shows the title or legal capacity of the person signing, and is accompanied by evidence of the person's authority to present a claim on behalf of the claimant as agent, legal representative, executor, administrator, parent, guardian, or other legal representative.

## **2 FAM 281.4-2 Form of Claim**

*(TL:GEN-95; 08-24-1967)*

### **a. Claims Within the United States**

A claim arising in the United States and in the Territories and possessions of the United States shall be prepared, in duplicate, on form SF--95, Claim for Damage or Injury, promulgated by Bureau of the Budget. Copies of this form shall be furnished upon a request to the Department or the commission, as the case may be. All information requested therein shall be given in detail. It is especially important that the amount claimed for property damage and for personal injury be indicated in the spaces provided.

### **b. Claims Outside the United States**

A claim arising in foreign countries shall be prepared in the form of a sworn statement and submitted in duplicate. The original copy of the claim shall be sworn to or affirmed before an official with authority to administer oaths or affirmations and shall contain the following information, at least:

- (1) The name and address of the claimant.
- (2) The amount claimed for injury or death and for property loss or damage.
- (3) If property was lost or damaged, the amount paid or payable by the insurer and the name of the insurer.
- (4) The facts and circumstances, in detail, giving rise to the claim including the date, place, and time of the accident or incident.
- (5) If property was involved, a description of the same, and of the nature and extent of the damage, and of the cost or repair or replacement.
- (6) If personal injury was involved, the nature of the injury, the cost of medical services, and time and income lost from incapacitation.
- (7) If death is involved, the names and ages of the claimants and their relationship to the decedent.
- (8) The name of the employee of the United States who is alleged to be responsible for the accident or incident, and the name and address of the Foreign Service establishment by whom the employee was employed.
- (9) The names and addresses of any witnesses to the accident or incident.
- (10) If desired, the law applicable to the claim.

## **2 FAM 281.4-3 Place of Filing Claim**

*(TL:GEN-95; 08-24-1967)*

A claim shall be submitted directly to the office, bureau, division, or Foreign Service establishment of the Department, or of the Commission, out of whose activities the accident or incident occurred, if known; if not known, to the Office of the Assistant Legal Adviser for International Claims and Investment Disputes, L/CID, Department of State, Washington, DC 20520.

## **2 FAM 281.4-4 Evidence and Information to be Submitted by Claimant**

*(TL:GEN-95; 08-24-1967)*

### **a. General**

The amount claimed on account of damage to or loss of property or on account of personal injury or death shall, so far as possible, be substantiated by competent evidence. Supporting statements, estimates and the like shall, if possible, be obtained from disinterested parties. All evidence shall be submitted in duplicate. Original evidence or certified copies shall be attached to the original copy of the claim, and simple copies shall be attached to the other copy of the claim. All documents in other than the English language shall be accompanied by English translations.

### **b. Death**

In support of a claim based on death, the claimant shall submit the following evidence or information to the extent necessary to substantiate the elements of the claim:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including monthly or yearly salary or earnings (if any), and duration of last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of death.

(4) Degree of support afforded by the decedent to each survivor dependent upon the decedent for support at the time of death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment of such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

c. Personal Injury

In support of a claim for personal injury, including pain and suffering, the claimant shall submit the following evidence or information to the extent necessary to establish the elements of the claim:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the Department or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that the claimant has, upon request, furnished the report referred to in the first sentence of this paragraph and has made or agrees to make available to the Department any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of the claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such treatment.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from the claimant's employer showing actual time lost from employment, whether the claimant is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

d. Damage to Personal Property

In support of a claim for damage to, or loss or destruction of personal property, the claimant shall submit the following evidence or information to the extent necessary to substantiate the elements of the claim.

(1) Proof of ownership, in cases where doubt exists that claimant was the owner.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) Where the property has been repaired, an itemized receipt, or, where not repaired, itemized estimates of the cost of repairs by two reliable persons who specialize in such work.

(4) Where the property is not economically repairable, a statement with respect to date of purchase, purchase price and salvage value, accompanied, where doubt exists, by the corroborative statements of two reliable qualified persons.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the damage or loss or the damages claimed.

e. Damage to Real Property

In support of a claim for damage or destruction of real property, the claimant shall submit the following evidence or information to the extent necessary to substantiate the elements of the claim:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of the property.

(3) Where the property has been repaired, an itemized receipt, or, where it has not been repaired, itemized estimates of the cost of repairs by two reliable persons who specialize in such work.

(4) Where the property is not economically repairable, corroborative statements of two reliable qualified persons with regard to the value of the property before and after the incident and the cost of replacement.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the damage or the damages claimed.

f. Damage to Crops

In support of a claim for damage to crops, the claimant shall submit the following evidence or information:

(1) Proof of ownership of the crop.

(2) An itemized signed statement showing the number of acres, or other unit of measure, of crop damaged, the probable yield per unit, the gross amount which would have been realized from such probable yield, and an estimate of the costs of cultivating, harvesting, and marketing the crop; in addition, if the crop is one which need not be planted each year, a statement of the diminution in value of the land beyond the damage to the current year's crop.

(3) Any other evidence or information which may have a bearing on either the responsibility of the United States for the damage or the damages claimed.

## **2 FAM 281.5 Investigation of Claims**

*(TL:GEN-1; 12-31-88)*

a. When a claim is received, the office, bureau, division, or Foreign Service establishment out of whose activities the claim arose shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim. Such investigation shall include a statement by the supervisor of the activities out of which the claim arose, setting forth the supervisor's views concerning the accident or incident and any additional information or evidence relating to the claim. It is desirable that the investigation also include a sworn statement by the person alleged to be responsible for the accident or incident.

Where the claim arose at a constituent post, the principal officer of that post shall review the results of the investigation, and make a recommendation as to the settlement of the claim, before transmitting the claim and its supporting file to the central fiscal-reporting post. At the conclusion of the investigation, the claim, the claim together with all pertinent material, and a recommendation, based on the merits of the case, with regard to allowance or disallowance of the claim, shall be transmitted to the Assistant Legal Adviser for International Claims and Investment Disputes, Commissioner, chief of mission or principal officer of fiscal-reporting post, as the case may be. (With regard to the processing of vouchers for a claims settlement award, see 4 FAM 480.)

b. A chief of mission or principal officer of a fiscal-reporting post may, at that officer's discretion, appoint from among post personnel a committee of no less than three American officers to review claims arising at the officer's post or at a constituent post and to make recommendations as to the settlement of claims. The determination and settlement of a claim shall be made by the chief of mission or principal officer of a fiscal-reporting post, even when an advisory committee has also reviewed the claim.

c. Pursuant to instructions from the Department, acting at the request of any other Federal agency, a Foreign Service establishment shall make such investigations as may be necessary or appropriate for the determination of the validity of the claim arising outside the United States, and thereafter shall forward the claim, together with all pertinent material, and a recommendation regarding allowance or disallowance of the claim, to the Department for transmission to the requesting agency.

## **2 FAM 281.6 Determination of Claims**

*(TL:GEN-95; 08-24-1967)*

Claims shall be determined in accordance with the applicable statute and the applicable subpart of this part. Questions of law shall be determined in accordance with the law of the place where the accident or incident occurred.

## **2 FAM 281.7 Adjustment or Settlement of Claims**

*(TL:GEN-1; 12-31-1988)*

a. Except on instructions from the Legal Adviser, Deputy Legal Advisers, or the Assistant Legal Adviser for Office of International Claims and Investment Disputes, no claim arising on or after January 18, 1967, shall be adjusted or settled by a chief of mission or principal officer of a fiscal-reporting post if it falls within one of the following categories:

- (1) A new precedent or new point of law.
- (2) A claim which involves or may involve a question of policy.

(3) A claim in which the United States is or may be entitled to indemnity or contribution from a third party and the claim against the third party has not been settled.

(4) A claim whose adjustment or settlement would, for any reason, control the disposition in a related claim in which the amount to be paid may exceed \$25,000.

(5) A claim in which the United States, an employee, agent, or cost-plus contractor, is involved in litigation based on a claim arising out of the same transaction.

b. If a chief of mission or principal officer of a fiscal-reporting post considers, after the investigation of the claim has been completed, that the claim falls within one of the categories listed in paragraph a of this section, the responsible officer shall transmit the claim, together with all pertinent material, to Office of the Assistant Legal Adviser for International Claims and Investment Disputes.

c. When the Legal Adviser, Deputy Legal Adviser, or the Assistant Legal Adviser for International Claims and Investment Disputes, considers that a claim arising on or after January 18, 1967, falls within one of the categories listed in paragraph a of this section, said officer shall consult the Department of Justice. Such consultation shall be initiated by a written communication addressed to the Assistant Attorney General, Civil Division, containing (1) a short and concise statement of the facts and of the reasons for the referral, (2) copies of relevant portions of the claim file, and (3) a statement of the recommendations and views of the Department

d. The settlement of a claim arising on or after January 18, 1967, for an amount in excess of \$25,000 shall not be effected until the Legal Adviser, Deputy Legal Adviser, or the Assistant Legal Adviser for International Claims and Investment Disputes, has obtained the written approval of the Department of Justice. Consultations with a view to obtaining such approval shall be initiated, as provided in paragraph c of this section. For the purpose of this paragraph, a principal claim and a derivative or subrogated claim shall be treated as a single claim.

## **2 FAM 281.8 Final Denial of Claim**

*(TL:GEN-95; 08-24-1967)*

Final denial of an administrative claim shall be made in writing and sent to the claimant, the claimant's attorney, or legal representative by certified or registered mail, or, where this is not available, by messenger who shall obtain receipt for the notice.

Except in the case of claims arising in foreign countries, the notification of final denial shall contain a statement that if the claimant is dissatisfied with the decision, the claimant may file suit in an appropriate U.S. District Court not later than six months after the date of mailing of the notification.

## **2 FAM 281.9 Acceptance of Award or Settlement by Claimant**

*(TL:GEN-95; 08-24-1967)*

The acceptance by the claimant of an award, compromise, or settlement is final and conclusive on the claimant, the claimant's agent (or legal representative) and any person on whose behalf (or for whose benefit) the claim has been presented, and constitutes a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

## **2 FAM 281.10 Attorney's Fees**

*(TL:GEN-95; 08-24-1967)*

Any attorney who charges, demands, receives, or collects for services rendered in connection with a claim any amount in excess of 20 percent of any award, compromise, or settlement made pursuant to section 2672 of Title 28, if recovery be had, shall be fined not more than \$2,000 or imprisoned not more than one year, or both.

## **2 FAM 282 UNASSIGNED**

## **2 FAM 283 PROCUREMENT OF LEGAL SERVICES BY THE POST**

*(TL:GEN-95; 08-24-1967)*

(Welfare and whereabouts, 7 FAM 100; Suits Against the U.S. Government and/or U.S. Government Employees, 7 FAM 990; Extradition, 11 FAM 146.)

### **2 FAM 283.1 Authorization of Principal Officer to Procure Legal Services**

*(TL:GEN-95; 08-24-1967)*

Whenever legal services are required by the post to protect the U.S. Government's interests or to enable an employee of the Service to perform duties (including protection of U.S. nationals) or to carry on service in an efficient manner, the principal officer informs the Department of the situation and requests authorization to procure necessary legal services. Except as provided in section 2 FAM 283.2, such requests are made on an individual case basis, and no agreement or obligation is made with any attorney or solicitor prior to approval by the Department.

## **2 FAM 283.2 Emergency Authorization**

*(TL:GEN-95; 08-24-1967)*

In exceptional circumstances involving an emergency where (1) it is evident that any delay would cause irreparable injury to the interests of the Government, or (2) legal services need be obtained without delay to enable the Government to meet its responsibilities in the protection of a U.S. national, the chief of mission may approve procurement of legal services when in the chief of mission's judgment the facts appear to warrant such action. However, this authority does not extend to a Government commitment for employment of legal counsel to represent a U.S. citizen. An immediate report of each such case is made to the Department, including all the information required under section 2 FAM 283.4.

## **2 FAM 283.3 Special Post Situation**

*(TL:GEN-95; 08-24-1967)*

In any post where recurring problems are anticipated because of the provisions of local law or because of special circumstances peculiar to the post, a full report is submitted to the Department with a request for authorization to enter into an agreement with a local attorney or solicitor for services on a retainer basis. Complete information as required under section 2 FAM 283.4 is furnished, and no agreement or commitment is entered into until approval is received from the Department. The practice, in this regard, of other diplomatic or consular representatives at the post is to be reported.

## **2 FAM 283.4 Information Required for Approval of Legal Services**

*(TL:GEN-95; 08-24-1967)*

The following information is furnished the Department to request approval to obtain legal services, or to report emergency procurement of such services:

- a. The factual situation out of which the legal question have arisen, or are expected to arise.
- b. Name and address of the attorney or solicitor whose services are desired, or whose services are employed.
- c. Statement of the general background, qualifications, and experience of the attorney or solicitor, and if listed under 7 FAM 980.
- d. Comparative standing of the attorney or solicitor in the law profession, indicated by reputation and rating, as given in any professional rating service available.

e. Estimated cost of services and length of time for which they will be or were required.

## **2 FAM 284 SUITS IN FOREIGN COUNTRIES AGAINST THE UNITED STATES**

### **2 FAM 284.1 Background**

*(TL:GEN-95; 08-24-1967)*

It has been agreed by the Departments of State, Defense, and Justice that the Justice Department will represent the Government's interests in suits instituted in foreign courts against the United States or its agencies and instrumentalities, and suits against officers and employees of the United States when such suits are apparently based upon the individual's performance of official acts.

Action by Justice Department in the event of litigation within the purview of this section will include the engagement and instruction of local counsel. Accordingly, section 2 FAM 283 is not for application in such cases.

### **2 FAM 284.2 Scope**

*(TL:GEN-95; 08-24-1967)*

#### a. Suits Against the United States or an Agency Thereof

From time to time, suits are filed in foreign countries against the United States Government or against its agencies such as Army, Navy, and Air Force bases, missions, and units; post and naval exchanges; officers' and NCO clubs and messes; MAAG's; USOM's; USIS establishments; AID missions; FBO; embassies and consulates; etc. Most agencies are not legal persons under United States law and suits against them should be treated as suits against the United States Government.

#### b. Suits Against Individuals

Suits are also filed from time to time against individual U.S. officers and employees. Suits apparently related to the performance of official duties should be reported under this section. If a suit clearly is based upon the individual defendant's private acts, it is not within the purview of this section, but should be reported in accordance with section 2 FAM 226.

### **2 FAM 284.3 Responsibility of the Post**

*(TL:GEN-95; 08-24-1967)*

#### a. Report to Department

The Department and the Department of Justice should be promptly informed of new or imminent litigation against the United States with such details as to service, court, time of response, and nature of suit as may be available, and such recommendations as the post may wish to have considered in respect of its particular local situation. Information regarding the nature of the suit should include a detailed report on both the facts of the case and the issues that have been or are expected to be raised in the litigation by any party to the case.

The post should initially report new or imminent litigation by telegram marked for the attention of the Office of the Legal Adviser and also marked "Pass Justice, Attention: Civil Division." The post's telegraphic report should be followed by a more detailed report to be transmitted by similarly addressed airmail. Copies of all pertinent documents should be forwarded to the Department with the post's airmail.

b. Action by Post During Course of Suit

Pertinent information or documents which become available after submission of the post's initial report should be promptly submitted, and the report revised, as necessary, until such time as the matter in litigation is resolved. The post should keep the Department currently informed of any unusual aspects of the case, especially where action taken by local counsel appears to conflict with U.S. policy. Posts should, however, except in an emergency, refrain from instructing local counsel in any of the matters with which they are charged by the Department of Justice. Should local considerations indicate the desirability of making or refraining from specific assertions or procedures, full information should be forwarded to the Department for discussion between the Department of State and Justice in Washington.

## **2 FAM 284.4 Sovereign Immunity**

### **2 FAM 284.4-1 Claim of Sovereign Immunity Through Diplomatic Channels**

*(TL:GEN-95; 08-24-1967)*

Posts shall not claim sovereign immunity through diplomatic channels without first obtaining the Department's authorization and instructions. If the Department decides that representations should be made through diplomatic channels to the government concerned, it will so advise the Department of Justice and will send appropriate instructions to the post. The Department's decision will be based on the established policy for sovereign immunity cases. However, if the Department has reason to believe that the case is of unusual interest to a particular post, the post will be asked to comment if it has not already done so.

### **2 FAM 284.4-2 Pleading a Defense of Sovereign Immunity Through Local Counsel**

*(TL:GEN-95; 08-24-1967)*

#### **a. Consultation With the Department**

The Department of Justice will first consult with the Department in cases in which it contemplates filing a plea of sovereign immunity unless it is clear from past experience that the Department would not claim such immunity through diplomatic channels, but would have no objection to the filing of a plea of sovereign immunity through local counsel. In all cases, the Department of Justice will keep the Department currently informed of its actions concerning sovereign immunity pleas.

#### **b. Possible Foreign Policy Objection to Filing a Plea of Sovereign Immunity**

If the Department believes that diplomatic level representations are unwarranted, it will so inform the Department of Justice and will at the same time indicate whether or not it has any foreign policy objection to a plea of sovereign immunity by local counsel in a particular case. Any such objection will be resolved by consultation between the interested Departments in Washington before instructions on entering the plea are transmitted to local counsel.

#### **c. Procedure in the Absence of a Foreign Policy Objection**

It is contemplated that there will be a number of suits against the United States in foreign countries in which the Department will not desire to make representations concerning sovereign immunity but will not have any major foreign policy objection to the plea of sovereign immunity on behalf of the United States in the foreign court by local counsel as a legal defense. The procedure fully protects the Department's responsibility for determining when international law and foreign policy require that a claim of sovereign immunity be made through diplomatic channels; it also allows the Department of Justice to assert every defense which is available under the law of the forum, including that of sovereign immunity, where that defense will not have disproportionate repercussions in the field of United States foreign relations.

## **2 FAM 284.5 Post to be Kept Informed Concerning Suits**

*(TL:GEN-95; 8-24-67)*

The Department of Justice will keep the posts informed concerning suits against the United States or any of its agencies by making them an information addressee of its correspondence with local counsel either directly or through the Office of the Legal Adviser of the Department.

Posts will prepare and process vouchers for payment of adverse judgments or compromise settlements only in accordance with instructions to be furnished in each case by the Department.

## **2 FAM 284.6 Necessity to Avoid Default Judgments**

*(TL:GEN-95; 8-24-67)*

Strict adherence to the foregoing procedures established by this section is required in order to avoid having default judgments entered against the United States Government, its agencies, instrumentalities, and officers and employees.

## **2 FAM 285 THROUGH 289 UNASSIGNED**