

# In the United States Court of Federal Claims

## NOTICE OF PROPOSED AMENDMENTS TO RULES

Pursuant to 28 U.S.C. §§ 2071(b) and 2503(b), the United States Court of Federal Claims hereby provides notice that it proposes to amend its rules and invites public comment on the proposed amendments. This proposal involves three sets of amendments: (i) substantive changes to RCFC 8, 13, and 15 and the addition of new RCFC 62.1, which are identical to the substantive changes to the Federal Rules of Civil Procedure that are scheduled to become effective on December 1, 2009; (ii) time-computation changes to RCFC 6, 12, 32, 42, 52, 53, 55, 59, 62, 65, and 68 and Appendices B, D, and F, which are consistent with the time-computation changes to the Federal Rules of Civil Procedure that are scheduled to become effective on December 1, 2009; and (iii) substantive changes to RCFC 14, 23, 32, 54, and 83.1 and Vaccine Rule 5 proposed by the court. Text that is to be deleted is indicated by strikethrough; text that is to be added is highlighted in yellow.

Comments must be received by December 18, 2009, and must be addressed to:

Hazel Keahey  
Clerk of Court  
United States Court of Federal Claims  
717 Madison Place, NW  
Washington, DC 20005

Absent further notice, these amendments will take effect January 11, 2010.

  
Hazel Keahey  
Clerk of Court

Proposed Rule Changes  
Adopting Substantive Changes to FRCP  
Scheduled to Become Effective  
December 1, 2009

RCFC 8, 13, 15, and 62.1

## Substantive Changes Based on FRCP

### Rule 8. General Rules of Pleading

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#### (c) Affirmative Defenses.

(1) *In General.* In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- contributory negligence;
- ~~discharge in bankruptcy;~~
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

\* \* \* \* \*

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

#### Rules Committee Notes

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##### 2010 Amendment

RCFC 8(c)(1) has been amended by deleting “discharge in bankruptcy” from the list of affirmative defenses in accordance with the corresponding change to FRCP 8 that became effective December 1, 2009.

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### Rule 13. Counterclaim

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~~(f) Omitted Counterclaim.~~ The court may

~~permit a party to amend a pleading to add a counterclaim if it was omitted through oversight, inadvertence, or excusable neglect or if justice so requires.~~

~~(g)(f)~~ **Crossclaim Against a Coparty.** [Not used.]

~~(h)(g)~~ **Joining Additional Parties.** [Not used.]

~~(i)(h)~~ **Separate Trials; Separate Judgments.** If the court orders separate trials under RCFC 42(b), it may enter judgment on a counterclaim under RCFC 54(b) when it has jurisdiction to do so, even if the opposing party’s claims have been dismissed or otherwise resolved.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

#### Rules Committee Notes

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##### 2010 Amendment

Former subdivision (f) was deleted in accordance with the corresponding change to FRCP 13 that became effective December 1, 2009.

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### Rule 15. Amended and Supplemental Pleadings

#### (a) Amendments Before Trial.

(1) *Amending as a Matter of Course.* A party may amend its pleadings once as a matter of course **within:**

(A) ~~before being served with a responsive pleading~~ **21 days after service;** or

(B) ~~within 20 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar~~ **if the pleading is one to which a**

## Substantive Changes Based on FRCP

responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under RCFC 12(b), (e), or (f), whichever is earlier.

- (2) **Other Amendments.** In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.
- (3) **Time to Respond.** Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within ~~10~~ 14 days after service of the amended pleading, whichever is later.

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

### Rules Committee Notes

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#### 2010 Amendment

RCFC 15(a) has been amended in accordance with the corresponding changes to FRCP(a) that became effective December 1, 2009.

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#### Rule 62.1. Indicative Ruling on Motion for Relief That is Barred by a Pending Appeal

- (a) **Relief Pending Appeal.** If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:
- (1) defer considering the motion;
  - (2) deny the motion; or
  - (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion

raises a substantial issue.

- (b) **Notice to the Court of Appeals.** The movant must promptly notify the circuit clerk under Federal Rule of Appellate Procedure Circuit Rule 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue.
- (c) **Proceedings on Remand.** The district court may decide the motion if the court of appeals remands for further proceedings.

(Added \_\_\_\_\_.)

### Rules Committee Note

#### 2010 Adoption

RCFC 62.1 has been added to correspond to the adoption of the same rule in the FRCP that became effective December 1, 2009.

Proposed Rule Changes  
Consistent With Time-Computation Changes  
to FRCP Scheduled to Become Effective  
December 1, 2009

RCFC 6, 12, 32, 42, 52, 53, 55, 59, 62, 65, and 68  
Appendices B, D, and F

## Time-Computation Changes Based on FRCP

### Current Version

#### Rule 6. Computing and Extending Time; Time for Motion Papers

(a) **Computing Time.** The following rules apply in computing any time period specified in these rules:

- (1) **Day of the Event Excluded.** Exclude the day of the act, event, or default that begins the period.
- (2) **Exclusions from Brief Periods.** Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.
- (3) **Last Day.** Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or—if the act to be done is filing a paper in court—a day on which weather or other conditions make the clerk’s office inaccessible. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk’s office is inaccessible.
- (4) **“Legal Holiday” Defined.** As used in these rules, “legal holiday” means:
  - (A) the day set aside by statute for observing New Year’s Day, Inauguration Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day; and
  - (B) any other day declared a holiday by the President or Congress.

(b) **Extending Time.**

\* \* \* \* \*

- (2) **Exceptions.** The court must not extend the time to act under RCFC 52(b), 54(d)(1), 59(b), (d), and (e), and 60(b), except as those rules allow.

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### Proposed Version

#### Rule 6. Computing and Extending Time; Time for Motion Papers

(a) **Computing Time.** The following rules apply in computing any time period specified in these rules, in any court order, or in any statute that does not specify a method of computing time.

(1) **Period Stated in Days or a Longer Unit.** When the period is stated in days or a longer unit of time:

- (A) exclude the day of the event that triggers the period;
- (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
- (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) **Period Stated in Hours.** When the period is stated in hours:

- (A) begin counting immediately on the occurrence of the event that triggers the period;
- (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and
- (C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) **Inaccessibility of the Clerk’s Office.** Unless the court orders otherwise, if the clerk’s office is inaccessible:

- (A) on the last day for filing under RCFC 6(a)(1), then the time for filing is extended to the first accessible day that is not a

## Time-Computation Changes Based on FRCP

### Current Version

(As revised and reissued May 1, 2002; as amended June 20, 2006, Nov. 3, 2008.)

### Proposed Version

- Saturday, Sunday, or legal holiday; or
- (B) during the last hour for filing under RCFC 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.
- (4) **“Last Day” Defined.** Unless a different time is set by a statute or court order, the last day ends:
- (A) for electronic filing, at midnight in the court’s time zone; and
- (B) for filing by other means, when the clerk’s office is scheduled to close.
- (5) **“Next Day” Defined.** The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
- (6) **“Legal Holiday” Defined.** “Legal holiday” means:
- (A) the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day; and
- (B) any other day declared a holiday by the President or Congress.
- (b) **Extending Time.**
- \* \* \* \* \*
- (2) **Exceptions.** The court must not extend the time to act under RCFC 52(b), 54(d)(1), 59(b), (d), and (e), and 60(b); except as those rules allow.
- \* \* \* \* \*

## Time-Computation Changes Based on FRCP

### Proposed Version

(As revised and reissued May 1, 2002; as amended June 20, 2006, Nov. 3, 2008, \_\_\_\_\_.)

### Rules Committee Notes

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#### **2010 Amendment**

RCFC 6 has been amended in accordance with the corresponding changes to FRCP 6 that became effective December 1, 2009. These changes govern the computation of any time period specified in these rules, in any court order, or in any statute that does not specify a method of computing time. For a comprehensive explanation of the time-computation changes, see the 2009 Committee Note to FRCP 6.

In addition, paragraph (b)(2) has been amended to delete the reference to RCFC 54(d)(1).

## Time-Computation Changes Based on FRCP

### Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

#### (a) Time to Serve a Responsive Pleading.

##### (1) *In General*

- (A) The United States must file an answer to a complaint within 60 days after being served with the complaint.
- (B) If the answer contains a counterclaim, offset, or plea of fraud, a party must file an answer to the counterclaim, and may file a reply to the offset or plea of fraud, within 20 21 days after being served with the answer.
- (C) If a reply to an answer or a responsive pleading to a third-party complaint or answer is ordered by the court, a party must file the reply or responsive pleading within 20 21 days after being served with the order, unless the order specifies a different time.

\* \* \* \* \*

#### (4) *Effect of a Motion.* Unless the court sets a different time, serving a motion under this rule or RCFC 56 alters these periods as follows:

- (A) if the court denies the motion, in whole or in part, or postpones its disposition until trial, or if a party withdraws the motion, the responsive pleading must be filed by the later of:
  - (i) 10 14 days after notice of the court's action or the motion's withdrawal; or
  - (ii) the date the response otherwise would have been due.
- (B) if the court grants a motion for a

more definite statement, the responsive pleading must be served within 10 14 days after the more definite statement is served.

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- (e) **Motion for a More Definite Statement.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 10 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

- (f) **Motion to Strike.** The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

- (1) on its own; or
- (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 20 21 days after being served with the pleading.

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

### Rules Committee Notes

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#### 2010 Amendment

The time periods of 10 and 20 days formerly set forth in RCFC 12 have been changed to 14 and 21 days, respectively, in accordance with the corresponding changes to FRCP 12 that became effective December 1, 2009.

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## Time-Computation Changes Based on FRCP

### Rule 32. Using Depositions in Court Proceedings

#### (a) Using Depositions.

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#### (5) *Limitations on Use.*

- (A) *Deposition Taken on Short Notice.* A deposition must not be used against a party who, having received less than ~~10~~ 14 days' notice of the deposition, promptly moved for a protective order under RCFC 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken.

\* \* \* \* \*

#### (d) Waiver of Objections.

\* \* \* \* \*

#### (3) *To the Taking of the Deposition.*

\* \* \* \* \*

- (C) *Objection to a Written Question.* An objection to the form of a written question under RCFC 31 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within ~~5~~ 7 days after being served with it.

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

#### Rules Committee Notes

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#### 2010 Amendment

The time periods of 11 and 5 days formerly set forth in RCFC 32 have been changed to 14 and 7 days, respectively, in accordance with the corresponding changes to FRCP 32 that became

effective December 1, 2009.

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### Rule 42. Consolidation; Separate Trials

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#### (c) Separate Determinations of Liability and Damages.

\* \* \* \* \*

- (2) *Motion for Reconsideration.* The parties may file a motion for reconsideration within ~~10~~ 14 days after a separate determination of liability.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

#### Rules Committee Notes

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#### 2010 Amendment

The time period of 10 days formerly set forth in RCFC 42(c)(2) has been changed to 14 days in accordance with the FRCP's general guidelines for time computation that became effective December 1, 2009.

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### Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

\* \* \* \* \*

- (b) *Amended or Additional Findings.* On a party's motion filed no later than ~~10~~ 30 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under RCFC 59.

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

#### Rules Committee Notes

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## Time-Computation Changes Based on FRCP

### 2010 Amendment

RCFC 52(b) has been amended to change the period for filing a post-judgment motion from 10 to 30 days in accordance with the corresponding change to FRCP 52(b) that became effective December 1, 2009. RCFC 6(b) continues to prohibit any extension of the time allowed under this rule.

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### Rule 53. Masters

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#### (f) Action on the Master's Order, Report, or Recommendations.

\* \* \* \* \*

- (2) *Time to Object or Move to Adopt or Modify.* A party may file objections to—or a motion to adopt or modify—the master's order, report, or recommendations no later than ~~20~~ 21 days after a copy is served, unless the assigned judge sets a different time.

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(As revised and reissued May 1, 2002; as amended July 1, 2004, Nov. 3, 2008, \_\_\_\_\_.)

### Rules Committee Notes

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### 2010 Amendment

The time period of 20 days formerly set forth in RCFC 53(f)(2) has been changed to 21 days in accordance with the corresponding change to FRCP 53(f)(2) that became effective December 1, 2009.

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### Rule 55. Default; Default Judgment

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#### (b) Entering a Default Judgment.

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- (2) *By the Court.* The party must apply to

the court for a default judgment. A default judgment may be entered only if the claimant establishes a claim or right to relief by evidence that satisfies the court. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least ~~3~~ 7 days before the hearing. The court may conduct hearings or make referrals when, to enter or effectuate judgment, it needs to:

\* \* \* \* \*

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

### Rules Committee Notes

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### 2010 Amendment

The time period of 3 days formerly set forth in RCFC 55(b)(2) has been changed to 7 days in accordance with the corresponding change to FRCP 55(b)(2) that became effective December 1, 2009.

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### Rule 59. New Trial; Reconsideration; Altering or Amending a Judgment

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#### (b) Time to File a Motion for a New Trial and a Response.

- (1) A motion for a new trial under RCFC 59(a)(1)(A) or (B) must be filed no later than ~~10~~ 30 days after the entry of judgment.

\* \* \* \* \*

#### (d) New Trial on the Court's Initiative or for

Rules 53, 55, and 59

## Time-Computation Changes Based on FRCP

**Reasons Not in the Motion.** No later than ~~10~~ 30 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

- (e) **Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment must be filed no later than ~~10~~ 30 days after the entry of the judgment.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

### Rules Committee Notes

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#### 2010 Amendment

RCFC 59 has been amended to change the period for filing post-judgment motions from 10 to 30 days in accordance with the corresponding changes to FRCP 59 that became effective December 1, 2009. RCFC 6(b) continues to prohibit extension of the time allowed under this rule.

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### Rule 62. Stay of Proceedings to Enforce a Judgment

- (a) **Automatic Stay; Exceptions for Injunctions and Patent Accountings.** Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until ~~10~~ 14 days have passed after its entry. But unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:

\* \* \* \* \*

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

### Rules Committee Notes

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#### 2010 Amendment

The time period of 10 days formerly set forth in RCFC 62(a) has been changed to 14 days in accordance with the corresponding change to FRCP 62(a) that became effective December 1, 2009.

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### Rule 65. Injunctions and Restraining Orders

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- (b) **Temporary Restraining Order.**

\* \* \* \* \*

- (2) **Contents; Expiration.** Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed ~~10~~ 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

### Rules Committee Notes

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#### 2010 Amendment

The time period of 10 days formerly set forth in RCFC 65(b)(2) has been changed to 14 days in accordance with the corresponding change to

## Time-Computation Changes Based on FRCP

FRCP 65(b)(2) that became effective December 1, 2009.

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### Rule 68. Offer of Judgment

(a) **Making an Offer; Judgment on an Accepted Offer.** ~~More than 10~~ **At least 14** days before the **date set for** trial begins, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within ~~10~~ **14** days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

\* \* \* \* \*

(c) **Offer After Liability Is Determined.** When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time—but at least ~~10~~ **14** days—before **the date set for** a hearing to determine the extent of liability.

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

### Rules Committee Notes

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#### **2010 Amendment**

RCFC 68 has been amended in accordance with the corresponding changes to FRCP 68 that became effective December 1, 2009, (i) directing that the time for service of an offer of judgment be measured from the date set for trial or hearing rather than from the date the trial or hearing is expected to begin; and (ii) extending the time periods of 10 days to 14 days.

# Time-Computation Changes Based on FRCP

## Appendix B

### Current Version

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#### Rule 19. Computing and Extending Time

(a) **Computing Time.** The following criteria apply in computing any time period specified in these rules, in an order of the special master or the court, or in any applicable statute:

- (1) **Day of the Event Excluded.** Exclude the day of the act, event, or default that begins the period.
- (2) **Exclusions from Brief Periods.** Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days. For legal holidays, see RCFC 6(a)(4).
- (3) **Last Day.** Include the last day of the period unless it is a Saturday, Sunday, or legal holiday or—if the act to be done is filing a paper in court—a day on which weather or other conditions make the clerk’s office inaccessible. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk’s office is inaccessible.

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(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

### Proposed Version

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#### Rule 19. Computing and Extending Time

(a) **Computing Time.** The following criteria apply in computing any time period specified in these rules, in an order of the special master or the court, or in any applicable statute that does not specify a method of computing time.

- (1) **Period Stated in Days or a Longer Unit.** When the period is stated in days or a longer unit of time:
  - (A) exclude the day of the event that triggers the period;
  - (B) count every day, including intermediate Saturdays, Sundays, and legal holidays (for legal holidays, see RCFC 6(a)(6)); and
  - (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (2) **Period Stated in Hours.** When the period is stated in hours:
  - (A) begin counting immediately on the occurrence of the event that triggers the period;
  - (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and
  - (C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.
- (3) **Inaccessibility of the Clerk’s Office.** Unless the court orders otherwise, if the

## Time-Computation Changes Based on FRCP

### Proposed Version

clerk's office is inaccessible:

(A) on the last day for filing under Vaccine Rule 19(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Vaccine rule 19(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) ***“Last Day” Defined.*** Unless a different time is set by a statute or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) ***“Next Day” Defined.*** The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

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(As revised and reissued May 1, 2002, as amended \_\_\_\_\_, \_\_\_\_\_.)

## Time-Computation Changes Based on FRCP

### **Rule 31. Motion for Reconsideration**

Within ~~10~~ **30** days after entry of judgment, either party may file a motion for reconsideration of the assigned judge's decision in accordance with RCFC 59.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_, \_\_\_\_\_.)

### **Rules Committee Notes**

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#### **2010 Amendments**

**Rule 19.** Subdivision (a) ("Computing Time") has been amended in accordance with the corresponding changes to RCFC 6.

**Rule 31.** The time period for filing a motion for reconsideration has been changed from 10 to 30 days in accordance with the corresponding change to RCFC 59.

## Time-Computation Changes Based on FRCP

### Appendix D

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**9. Rehearing.** Within ~~10~~ 14 days after service of the report of the review panel, any party may file a motion for rehearing to alter or amend the report. The motion shall state with particularity any contention of law or fact which the movant believes has been overlooked or misapprehended, and shall contain arguments in support thereof. Oral argument in support of the motion shall not be permitted. No response to a motion for rehearing is required but will be considered if filed within ~~10~~ 14 days after the date the motion for rehearing is served. No time extension shall be allowed for filing such a response. If the motion for rehearing is granted, the review panel shall take such further action as in its discretion may be required by the circumstances of the particular case. The chief judge will entertain no appeals or requests for review of any rulings or actions by a hearing officer or a review panel.

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#### Rules Committee Notes

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##### **2010 Amendment**

The time periods of 10 days formerly set forth in paragraph 9 have been changed to 14 days in accordance with the FRCP's general guidelines for time computation that became effective December 1, 2009.

## Time-Computation Changes Based on FRCP

### Appendix F

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#### Rule 2. Commencement of Partnership Action

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##### (f) Notice of Filing.

**(1) Complaints by the Tax Matters Partner.** Within 5 **7** days after receiving the Notice of Assignment from the clerk, the tax matters partner shall serve notice of the filing of the complaint on each partner in the partnership as required by Code Section 6223(g). Said notice shall include the docket number assigned to the case by the court and the date of the Notice of Assignment.

**(2) Complaints by Other Partners.** Within 5 **7** days after receiving the Notice of Assignment from the clerk, the complainant shall serve a copy of the complaint on the tax matters partner and at the same time notify the tax matters partner of the docket number assigned to the case by the court and of the date of the Notice of Assignment. Within 5 **7** days after receiving a copy of the complaint and of the aforementioned notification from the complainant, the tax matters partner shall serve notice of the filing of the complaint on each partner in the partnership as required by Code Section 6223(g). Said notice shall include the docket number assigned to the case by the court and the date of the Notice of Assignment.

**(g) A Copy of the Complaint to Be Provided to All Partners.** Upon request by any partner in the partnership as referred to in Code Section 6231(a)(2)(A), the tax matters partner shall, within ~~10~~ **14** days after receipt of such request, make available to such partner a copy of any complaint filed by the tax matters partner or by any other partner.

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#### Rules Committee Notes

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**2010 Amendment**

The time periods of 5 and 10 days formerly set forth in Rule 2 have been changed to 7 and 14 days, respectively, in accordance with the FRCP's general guidelines for time computation that became effective December 1, 2009.

Substantive Changes  
Proposed by the Court

RCFC 14, 23, 32, 54, and 83.1  
Vaccine Rule 5

## Substantive Changes Proposed by the Court

### Rule 14. Third-Party Practice

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#### (b) Notice to an Interested Party.

- (1) ***In General.*** The court, on motion or on its own, may notify any person with the legal capacity to sue or to be sued who is alleged to have an interest in the subject matter of the suit.
- (2) ***Motion for Notice.***
  - (A) ***Contents.*** A motion for notice must:
    - (i) contain the name and address of the person to be notified; **and**
    - (ii) state the person's interest in the pending action; ~~and~~
    - ~~(iii) contain, as attachments, copies of all pleadings that have been filed in the suit.~~
  - (B) ***Timing.***
    - (i) A plaintiff must file any motion for notice at the time the complaint is filed.
    - (ii) The United States must file any motion for notice on or before the date the answer is required to be filed.
    - (iii) For good cause shown, the court may allow a motion for notice to be filed at a later time.
- (3) ***Issuing a Notice; Contents.***
  - (A) When the court, on motion or on its own, orders a nonparty to be notified, the clerk must issue an original and one copy of the notice.
  - (B) The notice must:
    - (i) contain the name of the person notified;
    - (ii) identify the time within which the person may seek intervention to assert an interest in the suit; and
    - (iii) **state** ~~indicate~~ that the notice

is accompanied by copies of all pleadings that have been filed in the suit.

- (4) ***Serving a Notice Issued on Motion of a Party.*** When notice is ordered by the court on motion of a party:
  - (A) the clerk must deliver the notice to the moving party for service, at the moving party's expense, on the person to be notified;
  - (B) the moving party must serve the notice, **together with copies of all pleadings that have been filed in the suit**, by registered or certified mail, return receipt requested; and
  - (C) the return of such service must be made directly to the clerk and include a copy of the notice with return receipt attached.
- (5) ***Serving a Notice Issued on the Court's Own Initiative.*** When notice is ordered by the court on its own initiative:
  - (A) each party must, at the clerk's request, deliver to the clerk copies of the party's pleadings;
  - (B) the clerk, upon receipt of the pleadings, must:
    - (i) issue a notice as specified in RCFC 14(b)(3); and
    - (ii) forward the notice to the Attorney General for service in accordance with RCFC 14 (b)(4)(B) and (C).
- (6) ***Serving a Person Outside the United States.*** When serving a notice on a person in a foreign country, proof of service must be made in accordance with FRCP 4(f).

\* \* \* \* \*

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

## Substantive Changes Proposed by the Court

### Rules Committee Notes

\* \* \* \* \*

#### **2010 Amendment**

The requirement formerly set forth in RCFC 14(b)(2)(A) that a motion for notice must “contain, as attachments, copies of all pleadings that have been filed in the suit” has been stricken in favor of requiring that such copies be provided by the moving party when serving the notice under RCFC 14(b)(4)(B).

## Substantive Changes Proposed by the Court

### Rule 23. Class Actions

\* \* \* \* \*

#### (g) Class Counsel.

(1) *Appointing Class Counsel.* Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel's knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and ~~adequately~~ accurately represent the interests of the class;

\* \* \* \* \*

(As revised and reissued May 1, 2002; as amended July 1, 2004, Nov. 3, 2008, \_\_\_\_\_.)

#### Rules Committee Notes

\* \* \* \* \*

#### **2010 Amendment**

RCFC 23(g)(1)(B) has been amended by substituting the word "adequately" for the word "accurately" to conform to the FRCP.

## Substantive Changes Proposed by the Court

### Rule 32. Using Depositions in Court Proceedings

#### (a) Using Depositions.

\* \* \* \* \*

(4) *Unavailable Witness.* A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

- (A) that the witness is dead;
- (B) ~~on motion and notice,~~ that the witness is more than 100 miles from the place of hearing or trial ~~or~~ is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition the court also finds:
  - ~~(i) that the witness's absence was procured by the party offering the deposition; or~~
  - ~~(ii) that it is not desirable in the interest of justice and with due regard to the importance of live testimony in open court to permit the deposition to be used;~~
- (C) that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;
- (D) that the party offering the deposition could not procure the witness's attendance by subpoena; or
- (E) on motion and notice, that exceptional circumstances make it desirable—in the interest of justice and with due regard to the importance of live testimony in open court—to permit the deposition to be used.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_.)

### Rules Committee Notes

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#### 2010 Amendment

RCFC 32(a)(4) has been amended to more closely parallel the text of its FRCP counterpart, except that the reference in paragraph (4)(B) to the 100-mile limitation on the use at trial of the deposition of a witness has been eliminated so as to reinforce the court's clear preference for live testimony.

## Substantive Changes Proposed by the Court

### Rule 54. Judgment; Costs

\* \* \* \* \*

#### (d) Costs; Attorney's Fees.

##### (1) *Costs Other Than Attorney's Fees.*

Costs—other than attorney's fees—should be allowed to the prevailing party to the extent permitted by law. See 28 U.S.C. § 2412(a).

\* \* \* \* \*

##### (C) *Procedures Applicable to a Bill of Costs.*

(i) *Objection.* An objection to some or all of the requested costs may be filed within 28 days after service of the Bill of Costs.

(ii) *Reply.* A reply to an objection may be filed within 7 days after service of the objection.

(iii) *Action by the Clerk.* Unless a conference is scheduled by the clerk, the taxation or disallowance of costs will be made by the clerk on the existing record.

(iv) *Court Review.* A motion for review of the clerk's action may be filed with the court within 14 days after action by the clerk. Unless the court orders otherwise, the review will be made on the existing record.

~~(v) *Time Extensions.* No extensions of time will be permitted under this rule and the failure of the prevailing party to file a Bill of Costs in a timely manner will constitute a waiver of any claim for costs.~~

\* \* \* \* \*

##### (2) *Attorney's Fees.*

\* \* \* \* \*

##### (D) *Procedures Applicable to a Motion for Attorney's Fees.*

(i) *Response.* A response to a motion for attorney's fees may be filed within **28** ~~14~~ days after service of the motion.

(ii) *Reply.* A reply to a response may be filed within 14 days after service of the response.

(iii) *Subsequent Procedures.* After the filing of a response and a reply to a motion for attorney's fees, the court will enter an order prescribing the procedures to be followed.

\* \* \* \* \*

(As revised and reissued May 1, 2002; as amended July 1, 2004, Nov. 3, 2008, \_\_\_\_\_.)

### Rules Committee Notes

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#### **2010 Amendment**

RCFC 54(d) has been amended by deleting item (1)(C)(v) ("Time Extensions") in its entirety. In addition, the 14-day time period formerly set forth in item (2)(D)(i) for filing a response to a motion for attorney's fees has been restored to 28 days.

## Substantive Changes Proposed by the Court

### Rule 83.1. Attorneys

\* \* \* \* \*

#### (b) Admission to Practice.

(1) **Qualifications.** Any person of good moral character who is a member in good standing of the bar of ~~the Supreme Court of the United States, the United States Court of Appeals for the Federal Circuit, or the highest court of any U.S. state, territory, or possession or the District of Columbia~~ may be admitted to practice before this court.

#### (2) Procedures.

(A) **In General.** An attorney may be admitted to practice before this court by oral motion or by verified application.

(i) **By Oral Motion in an Admissions Proceeding.** A member of the bar of this court may make an oral motion to admit an applicant to the bar during the monthly attorney admissions proceeding held at the Howard T. Markey National Courts Building, 717 Madison Place, NW, Washington, DC 20005, at the times posted on the court's website at [www.uscfc.uscourts.gov](http://www.uscfc.uscourts.gov) (generally 10:00 a.m. on Thursday of the first full week in every month). Motions will be heard in a courtroom posted in the lobby of the courthouse on the day of the proceeding. Applicants for admission must appear in the clerk's office no later than 9:30 a.m. to:

(I) pay the admission fee set forth in RCFC 83.1(b)(4);

(II) complete a "Form for Admission via Motion in Open Court" (available on the court's website); and fill out the necessary form.

(III) present a certificate of the clerk of the highest court of any U.S. state, territory, or possession or the District of Columbia which has been issued within 30 days and states that the applicant is a member in good standing of the bar of such court.

Applicants who for special reasons are unable to appear for admission on one of the posted dates should contact the clerk's office to make alternate arrangements.

(ii) **By Oral Motion in a Proceeding Outside Washington, DC.** A member of the bar of this court may make an oral motion to admit an applicant to the bar during a court proceeding before any judge of this court so long as the applicant:

(I) provides the judge with a completed copy of a verified application for admission (see Appendix of Forms, Form 1); or

(II) advises the judge of the applicant's qualifications as set forth in RCFC 83.1(b)(1), and represents that the applicant will promptly

## Substantive Changes Proposed by the Court

apply to the clerk for admission by verified application as provided in RCFC 83.1(b)(2)(a)(iii) 83.1(b)(2)(C).

(iii) **By Verified Application.** An attorney may seek admission to practice before this court without appearing in person by presenting the clerk with a verified application for admission (see Appendix of Forms, Form 1) along with the following documentation:

(I) a certificate of the clerk of the highest court of any U.S. state, territory, or possession or the District of Columbia which has been issued within 30 days and states that the applicant is a member in good standing of the bar of such court. ~~a judge or of the clerk of any of the courts specified in RCFC 83.1(b)(1) indicating that the applicant is a member in good standing of the bar of such court;~~

(II) two letters or signed statements of members of the bar of this court or of the Supreme Court of the United States, not related to the applicant, affirming that the applicant is personally known to them, that the applicant possesses all of the qualifications

required for admission to the bar of this court, that they have examined the application, and that the applicant's personal and professional character and standing are good; and

(III) an oath in the form prescribed in RCFC 83.1(b)(3) signed by the applicant and administered by an officer authorized to administer oaths in the U.S. state, territory, or possession or the District of Columbia where the oath is given, or as permitted by 28 U.S.C. § 1746.

\* \* \* \* \*

(5) **Foreign Attorneys.**

\* \* \* \* \*

(B) **Procedures.** A member of the bar of this court must file with the clerk a written motion to admit the applicant at least 3 7 days prior to the court's consideration of the motion. In the case of such an admission, an oath and fee are not required.

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(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, June 20, 2006, Nov. 3, 2008, \_\_\_\_\_.)

### Rules Committee Notes

\* \* \* \* \*

#### 2010 Amendment

RCFC 83.1 has been amended to restate the qualifications for admission to practice before the court (paragraph (b)(1)) and the procedures for admission, whether by oral motion or by verified

## **Substantive Changes Proposed by the Court**

application (paragraph (b)(2)). Specifically, admission to the highest court of any U.S. state, territory, or possession or the District of Columbia will be recognized as the only acceptable qualification for admission to practice before this court and confirmation of an applicant's admission status will require submission of a current certificate of good standing prepared by the clerk of such court.

In addition, the time period of 3 days formerly set forth in RCFC 83.1(b)(5)(B) has been changed to 7 days in accordance with the FRCP's general guidelines for time computation that became effective December 1, 2009.

## Substantive Changes Proposed by the Court

### Appendix B

#### Rule 5. Preliminary Status Conference and Tentative Findings and Conclusions

(a) **In General.** The special master will hold a status conference within 30 days after the filing of respondent's report under Vaccine Rule 4(c) to:

- (1) afford the parties an opportunity to address each other's positions;
- (2) review the materials submitted and evaluate the parties' respective positions; and
- (3) present tentative findings and conclusions.

(b) **Scheduling Order.** At the conclusion of this status conference, the special master may issue a scheduling order outlining the necessary proceedings for resolving the issues presented in the case.

#### (c) **Sanctions.**

##### (1) **Authority.**

(A) **In General.** To ensure effective case management, the special master may by order impose on a party or a party's attorney any noncontempt sanction authorized by RCFC 16 37(b)(2)(A)(ii)-(v) and may recommend to an assigned judge a contempt sanction against a party or a party's attorney.

(B) **Imposing Fees and Costs.** Instead of or in addition to any other sanction, the special master is authorized under RCFC 16(f)(2) to order the party, its attorney, or both to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with a scheduling or other pretrial order unless the noncompliance was substantially justified or

other circumstances make an award of expenses unjust.

(2) **Contents of the Order.** The special master's order must describe the sanctioned conduct and explain the basis for the sanction.

(3) **Review.** An order by a special master imposing a sanction will be reviewable by an assigned judge on motion by the sanctioned party or the sanctioned party's attorney either:

(A) upon the filing of the special master's decision; or

(B) upon the filing of an order concluding proceedings.

(As revised and reissued May 1, 2002; as amended \_\_\_\_\_.)

#### Rules Committee Notes

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#### 2010 Amendment

**Rule 5.** Subdivision (c) ("Sanctions") was added to formalize the special master's existing scheduling and case management authority to impose on a party or a party's attorney any of the sanctions authorized by RCFC 37(b)(2)(A)(ii)-(v) and/or to require, as authorized by RCFC 16(f)(2), the payment of "reasonable expenses—including attorney's fees—incurred because of any noncompliance with a scheduling or other pretrial order." In addition, subdivision (c) authorizes the special master, in appropriate cases, to recommend to an assigned judge the initiation of contempt proceedings against a party or a party's attorney.