APPENDIX B
VACCINE RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

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APPENDIX B
VACCINE RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

TITLE I. SCOPE OF RULES; COMMENCING AN ACTION

Rule 1. Scope of Rules

(a) In General. These rules govern all proceedings before the United States Court of Federal Claims pursuant to the National Childhood Vaccine Injury Act, as amended, 42 U.S.C. §§ 300aa-1 to -34 (Vaccine Act), including proceedings before the Office of Special Masters and any subsequent proceedings before a judge of the Court of Federal Claims.

(b) Matters Not Specifically Addressed by the Vaccine Rules. In any matter not specifically addressed by the Vaccine Rules, the special master or the court may regulate the applicable practice, consistent with these rules and with the purpose of the Vaccine Act, to decide the case promptly and efficiently.

(c) Applying the RCFC. The RCFC apply only to the extent they are consistent with the Vaccine Rules.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 2. Commencing an Action

(a) In General. A proceeding for compensation under the Vaccine Act is commenced by filing a petition with the United States Court of Federal Claims. Only one petition may be filed with respect to each administration of a vaccine.

(b) Method of Filing; Filing Fee.

(1) ***Paper Form.*** Petitioner must forward an original and 2 copies of the petition, along with the required filing fee, by mail or other delivery, to:

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

A copy of the applicable schedule of fees may be found on the court's website at www.uscfc.uscourts.gov or may be obtained by contacting the clerk's office.

(2) ***Electronic Copy.*** If the petition exceeds 20 pages and petitioner is not appearing *pro se* pursuant to Vaccine Rule 14, petitioner must also file one copy of the petition in electronic form using a disc in CD-ROM format.

(c) Contents of a Petition.

(1) ***The Petition.*** The petition must set forth:

(A) a short and plain statement of the grounds for an award of compensation, including:

(i) the name of the individual to whom the vaccine was administered;

(ii) the date and place of the vaccination;

(iii) a specific description of the injury alleged; and

(iv) whether the injury claimed is contained within the Vaccine Injury Table (see "Guidelines for Practice Under the National Vaccine Injury Compensation Program," Attachment 8, posted on the court's website at www.uscfc.uscourts.gov); and

(B) a specific demand for relief to which the petitioner asserts entitlement or a statement that

such demand will be deferred pursuant to 42 U.S.C. § 300aa-11(e).

(2) ***Required Attachments.*** As required by 42 U.S.C. § 300aa-11(c), the petition must be accompanied by the following documents:

(A) ***Medical Records.*** The petitioner must include all available medical records supporting the allegations in the petition, including physician and hospital records relating to:

(i) the vaccination itself;

(ii) the injury or death, including, if applicable, any autopsy reports or death certificate;

(iii) any post-vaccination treatment of the injured person, including all in-patient and out-patient records, provider notes, test results, and medication records; and

(iv) if the injured person was younger than five years when vaccinated, the mother's pregnancy and delivery records and the infant's lifetime records, including physicians' and nurses' notes, test results, and well-baby visit records, as well as growth charts, until the date of vaccination.

(B) ***Affidavits***.

(i) If the required medical records are not submitted, the petitioner must include an affidavit detailing the efforts made to obtain such records and the reasons for their unavailability.

(ii) If petitioner's claim does not rely on medical records alone but is also based in any part on the observations or testimony of any person, the petitioner should include the substance of each person's proposed testimony in a detailed affidavit(s) supporting all elements of the allegations made in the petition.

(C) ***Proof of Authority to File in a Representative Capacity.*** If the petition is filed on behalf of a deceased person or is filed by an individual other than the injured person or the parent of an injured minor, the petition must also be accompanied by documents establishing the authority to file the petition in a representative capacity or a statement explaining when such documentation will be available.

(d) **Format.** All documents accompanying the petition must be assembled into one or more bound volume(s) or three-ring notebook(s). Each bound volume or notebook must contain the caption of the case and a table of contents, and all pages of each bound volume or notebook must be numbered consecutively.

(e) **Service.**

(1) The petitioner must serve one copy of the petition and accompanying documents on the Secretary of Health and Human Services, by first class or certified mail, to:

Director, Division of Vaccine Injury Compensation
Healthcare Systems Bureau
Parklawn Building, Room 11C-26
5600 Fishers Lane
Rockville, MD 20857.

(2) The clerk must serve one copy of the petition and accompanying documents on the Attorney General.

(As revised and reissued May 1, 2002; as

amended Sept. 15, 2003, Aug. 2, 2005, July 13, 2009, July 15, 2011.)

TITLE II. PROCEEDINGS BEFORE THE SPECIAL MASTER

Rule 3. Role of the Special Master

(a) Case Assignment. After a petition has been filed with the clerk, the chief special master will assign the case to a special master to conduct proceedings in accordance with the Vaccine Rules

(b) Duties. The special master is responsible for:

- **(1)** conducting all proceedings, including taking such evidence as may be appropriate, making the requisite findings of fact and conclusions of law, preparing a decision, and determining the amount of compensation, if any, to be awarded; and
- **(2)** endeavoring to make the proceedings expeditious, flexible, and less adversarial, while at the same time affording each party a full and fair opportunity to present its case and creating a record sufficient to allow review of the special master's decision.

(c) Absence. In the absence of the assigned special master, the chief special master may act on behalf of the special master or designate another special master to act.

(d) Reassignment. When necessary for the efficient administration of justice, the chief special master may reassign the case to another special master.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 4. Respondent's Review of Petitioner's Records; Early Status Conference; Respondent's Report

(a) Respondent's Review of Petitioner's Records.

- **(1)** ***In General.*** Within 30 days after the filing of a petition, respondent must review the accompanying documents to determine whether all information necessary to enable respondent to evaluate the merits of the claim has been filed.
- **(2)** ***Missing Documents.*** If respondent concludes that relevant documents are missing, respondent must immediately notify petitioner regarding the perceived omission.
- **(3)** ***Disagreement Between the Parties.*** If the parties disagree about the completeness of the records filed or the relevance of the requested information, either party may request the special master to resolve the matter.

(b) Early Status Conference. The special master may convene an early status conference within 45 days after the filing of the petition to discuss the case.

(c) Respondent's Report.

- **(1)** ***In General.*** Within 90 days after the filing of a petition, or in accordance with any schedule set by the special master after petitioner has satisfied all required documentary submissions, respondent must file a report setting forth a full and complete statement of its position as to why an award should or should not be granted.
- **(2)** ***Contents.*** The report must contain respondent's medical analysis of petitioner's claims and must present any legal arguments that respondent may have in opposition to the petition. General denials are not sufficient.

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, July 13, 2009.)

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) Imposing Fees and Costs.

(1) ***Authority.*** To ensure effective case management, the special master is authorized under RCFC 16(f)(2) to order a 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 imposing fees and costs must describe the noncompliance and explain the basis for the imposition of fees and costs.

(3) ***Review.*** An order by a special master imposing fees and costs will be reviewable by an assigned judge on motion by the noncompliant party or the noncompliant 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 July 13, 2009, Jan. 11, 2010.)

Rule 6. Informal Status Conferences

(a) In General. To expedite the processing of the case, the special master will conduct informal status conferences on a periodic basis.

(b) Input From the Parties. A party may:

(1) request a status conference at any time; and

(2) propose procedures to aid in resolving the case in the least adversarial and most efficient way possible.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 7. Discovery

(a) In General. There is no discovery as a matter of right. The informal and cooperative exchange of information is the ordinary and preferred practice.

(b) Formal Discovery.

(1) ***By Motion.*** If a party believes that informal discovery is not sufficient, the party may move the special master, either orally during a status conference or by filing a motion, to employ any of the discovery procedures set forth in RCFC 26–37.

(2) ***Contents of the Motion.*** The moving party must indicate the discovery sought and state with particularity the reasons therefor, including an explanation as to why informal discovery techniques have not been sufficient.

(c) Subpoena. On the request of a party, the special master may approve the issuance of a subpoena pursuant to RCFC 45. See RCFC Appendix of Forms, Form 7A.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 8. Taking Evidence; Hearing Argument

(a) In General. The special master will determine the format for taking evidence and hearing argument based on the specific circumstances of each case and after

consultation with the parties.

(b) Evidence.

(1) ***Rules.*** In receiving evidence, the special master will not be bound by common law or statutory rules of evidence but must consider all relevant and reliable evidence governed by principles of fundamental fairness to both parties.

(2) ***Form.*** The parties may present evidence in the form of documents, affidavits, or oral testimony which may be given in person or by telephone, videoconference, or videotape.

(c) Conducting an Evidentiary Hearing.

(1) ***Purpose.*** The special master may conduct an evidentiary hearing to provide for the questioning of witnesses either by the special master or by counsel, or for the submission of sworn testimony in written form.

(2) ***Subpoenas.*** The special master may order the clerk or counsel to issue a subpoena requiring the attendance of a witness at the hearing.

(3) ***Transcript.*** A transcript of the hearing will be prepared in conformity with RCFC 80.1.

(d) Decision Without an Evidentiary Hearing. The special master may decide a case on the basis of written submissions without conducting an evidentiary hearing. Submissions may include a motion for summary judgment, in which event the procedures set forth in RCFC 56 will apply.

(e) Hearing Argument. The special master may hear argument during a scheduled telephone conference or a hearing, or through written submissions. The special master may establish requirements for any written submissions, e.g., contents or page limitations, as appropriate.

(f) Waiver of a Fact or Argument.

(1) ***In General.*** Any fact or argument not raised specifically in the record before the special master will be considered waived and cannot be raised by either party in proceedings on review of a special master's decision.

(2) ***Exception.*** This rule does not apply to legal arguments raised by the party that stands in the role of the appellee on review.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 9. Suspending Proceedings

(a) In General. On motion of a party and for good cause shown, the special master may suspend proceedings on a petition.

(b) Period of Suspension.

(1) ***Initial Motion.*** The special master will grant an initial motion for suspension, filed by either party, for a period of 30 days.

(2) ***Subsequent Motions.*** The special master may grant subsequent motions for suspension, if deemed appropriate, for not more than 150 additional days in total.

(c) Effect. All periods of suspension will be excluded for purposes of the time limitations set forth in 42 U.S.C. § 300aa-12(d)(3)(A) and Vaccine Rules 4(c) and 10.

(As revised and reissued May 1, 2002; as amended June 20, 2006, July 13, 2009.)

Rule 10. Decision of the Special Master

(a) In General. Pursuant to 42 U.S.C. § 300aa-12(d)(3)(A), the special master will issue a decision on the petition with respect to whether an award of compensation is to be made and, if so, the amount thereof.

(b) Timing. The special master must issue a decision on the petition within 240 days after the date the petition was filed, exclusive of all periods of suspension pursuant to Vaccine Rule 9.

(c) Effect. The special master's decision concludes the proceedings on the petition,

except for any ancillary proceedings pursuant to Vaccine Rules 12(b) or 13.

(d) Failing to Issue a Timely Decision.

(1) ***Notice to Petitioner.*** If the special master fails to issue a decision within the time specified in Vaccine Rule 10(b), the special master must file a notice to petitioner pursuant to 42 U.S.C. § 300aa-12(g)(1).

(2) ***Notice to Continue or to Withdraw the Petition.*** Within 30 days after the date of filing of the special master's notice, the petitioner may file a notice to continue or to withdraw the petition pursuant to 42 U.S.C. § 300aa-21(b).

(3) ***Concluding Proceedings.*** If the petitioner elects to withdraw the petition, the special master must issue an order concluding proceedings. The special master's order, upon entry, will be deemed a judgment for purposes of 42 U.S.C. § 300aa-15(e)(1).

(e) Motion for Reconsideration.

(1) ***Initial Motion.*** Either party may file a motion for reconsideration of the special master's decision within 21 days after the issuance of the decision, if a judgment has not been entered and no motion for review under Vaccine Rule 23 has been filed.

(2) ***Response.*** The special master may seek a response from the nonmoving party, specifying both the method of and the timing for the response.

(3) ***Ruling on the Motion.*** The special master has the discretion to grant or deny the motion, in the interest of justice.

(A) ***If Granted.*** If the special master grants the motion for reconsideration, the special master must file an order withdrawing the challenged decision. The decision, once withdrawn, becomes void for all purposes and the special master must subsequently enter a superseding decision. The special master may not, however:

(i) issue an order withdrawing a decision if either a judgment has been entered or a motion for review has been filed; or

(ii) issue a superseding decision reaching a result different from the original decision without affording the nonmoving party an opportunity to respond to the moving party's arguments.

(B) ***If Denied or Not Acted Upon.*** The filing of a motion for reconsideration will not toll the 30-day period for filing a motion for review pursuant to Vaccine Rule 23. If the special master denies the motion for reconsideration or fails to act upon the motion, the 30-day period for filing a motion for review will continue to run and either party may file a motion for review before the expiration of that period.

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, July 13, 2009.)

TITLE III. JUDGMENT AND FURTHER PROCEEDINGS

Rule 11. Judgment

(a) In General. In the absence of a motion for review under Vaccine Rule 23, the clerk will enter judgment 30 days after either the filing of the special master's decision under Vaccine Rule 10 or the entry of an order of dismissal under Vaccine Rule 21(b). The clerk may enter judgment prior to the expiration of the 30-day period if each party files a notice stating that the party will not seek such review.

(b) Stipulation for Judgment. Any stipulation for a money judgment must be signed by authorized representatives of the Secretary of Health and Human Services and the Attorney General.

(As revised and reissued May 1, 2002; as amended June 20, 2006, July 13, 2009.)

Rule 12. Election

(a) In General. Within 90 days after the entry of judgment under Vaccine Rule 11, petitioner must file with the clerk an election either:

(1) to accept the judgment; or

(2) to file a civil action for damages for the alleged injury or death.

(b) Failure to File an Election. If petitioner fails to file an election within the time prescribed, petitioner will be deemed to have filed an election to accept the judgment.

(c) Moving for Limited Compensation.

(1) ***In General.*** If petitioner does not elect to receive an award of compensation, the election to file a civil action for damages may be accompanied by a motion for the limited compensation provided by 42 U.S.C. § 300aa-15(f)(2).

(2) ***Decision on the Motion.*** The clerk will forward the motion to the special master for a decision thereon. The decision of the special master on the motion constitutes a separate decision for purposes of Vaccine Rules 11, 18, and 23.

(3) ***Waiver.*** If such a motion is not filed at the time the election is filed, petitioner will be deemed to have waived the limited compensation.

(As revised and reissued May 1, 2002; as amended June 20, 2006, July 13, 2009.)

Rule 13. Attorney's Fees and Costs

(a) In General. Any request for attorney's fees and costs pursuant to 42 U.S.C. § 300aa-15(e) must be filed no later than 180 days after the entry of judgment or the filing of an order concluding proceedings under Vaccine Rule 10(d)(3) or 29.

(b) Decision on the Motion. Except for a request for fees and costs arising under Vaccine Rule 34(b), the clerk will forward the fee request to the special master for a decision thereon. The decision of the special master on the fee request—including a request for interim fees—constitutes a separate decision for purposes of Vaccine Rules 11, 18, and 23.

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, July 13, 2009.)

TITLE IV. GENERAL PROVISIONS

Rule 14. Attorneys

(a) Eligibility to Practice.

(1) ***In General.*** An attorney is eligible to practice before the Office of Special Masters if the attorney is a member of the bar of the United States Court of Federal Claims under RCFC 83.1 and complies with the Vaccine Rules.

(2) ***Pro Se Litigants.*** An individual who is not an attorney may represent oneself or a member of one's immediate family. The terms counsel, attorney, or attorney of record in the Vaccine Rules include such individuals appearing *pro se.*

(b) Attorney of Record.

(1) ***In General.*** A party may have only one attorney of record in a case at any one time and, with the exception of a *pro se* litigant appearing under Vaccine Rule 14(a), must be represented by an attorney (not a firm) admitted to practice before the Court of Federal Claims. Any attorney assisting the attorney of record must be designated "of counsel."

(2) ***Contact Information.*** The attorney of

record must include on all filings the attorney's name, address, telephone number, and facsimile number and must promptly file with the clerk and serve on all other parties a notice of any change in the attorney's contact information.

(3) ***Signing Filings.*** All filings must be signed in the attorney of record's name. Any attorney who is admitted to practice before the Court of Federal Claims may sign a filing in the attorney of record's name by adding the following after the name of the attorney of record: "by [the signing attorney's full name]."

(c) Substituting Counsel. A party may substitute its attorney of record pursuant to RCFC 83.1(c)(4).

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 15. Third Parties

No person may intervene in a vaccine injury compensation proceeding, but the special master may afford all interested individuals an opportunity to submit relevant written information within 60 days after publication of notice of the petition in the Federal Register, or later with leave of the special master.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 16. Caption of Filings

(a) In General. All filings, including the petition, must be captioned with the court's name, the case title and docket number, and the name of the assigned special master. (The petition should leave blank the spaces for the special master's name and the docket number.) See Appendix of Forms, Form 7.

(b) Petitions Filed on Behalf of a Minor. If the petition is filed on behalf of a minor, the caption may include only the minor's initials.

(As revised and reissued May 1, 2002; as amended July 13, 2009, July 15, 2011.)

Rule 17. Serving and Filing Papers After the Petition

(a) Serving a Document.

(1) ***In General.*** A copy of every document filed with the clerk must be served on opposing counsel or the opposing unrepresented party.

(2) ***Certificate of Service.*** A certificate of service in accordance with RCFC 5.3 must be appended to the original document and any copies thereof.

(b) Filing a Document.

(1) ***In General.*** All pleadings and other papers required under the Vaccine Rules or by order of the special master or the court must be brought to the attention of the special master or the court through formal filings with the clerk rather than through correspondence.

(2) ***How Filing Is Made—In General.*** A paper is filed by delivering it to the clerk at the address provided in Vaccine Rule 2.

(3) ***Electronic Filing.*** The court requires filing by electronic means, subject to reasonable exceptions, as provided in the Supplement to these rules. A paper filed electronically in compliance with the Supplement to the Vaccine Rules is a written paper for purposes of these rules.

(4) ***Filing Defined.***

(A) ***Paper Form.*** A document in paper form is filed when it is received and marked filed by the clerk, not when mailed.

(B) ***Electronic Form.*** A document in electronic form is filed on the date stated in the "Notice of Electronic Filing."

(c) Date. Each filing must bear on the signature page the date on which it is signed.

(d) Number of Copies. Except in an electronic case under the Supplement to these rules, a party must file an original and 2 copies of each paper filed with the clerk, although for a filing of 50 pages or more, an original and 1 copy will suffice.

(As revised and reissued May 1, 2002; as amended July 13, 2009, July 15, 2011.)

Rule 18. Availability of Filings

(a) In General. All filings with the clerk pursuant to the Vaccine Rules are to be made available only to the special master, the judge, and the parties, with the exception of certain court-produced documents as set forth in subdivision (b) of this rule. A transcript prepared pursuant to Vaccine Rule 8(c) constitutes a filing for purposes of this rule.

(b) Decision of the Special Master or Judge. A decision of the special master or judge will be held for 14 days to afford each party an opportunity to object to the public disclosure of any information furnished by that party:

(1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or

(2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

An objecting party must provide the court with a proposed redacted version of the decision. In the absence of an objection, the entire decision will be made public.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

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 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 Eastern Time Zone; and

(B) for filing by other means, when the clerk's office is scheduled to close, subject to the provision for after-hours filing permitted under RCFC 77.1(a).

(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.

(b) Extending Time.

(1) ***In General.*** The special master or the court may grant a motion for an enlargement of time for good cause shown except when such an extension is prohibited by these rules.

(2) ***Contents of a Motion for Enlargement.*** A motion for an enlargement of time must set forth:

(A) the specific number of additional days requested;

(B) the date to which the enlargement is to run;

(C) the total number of days granted in any previously filed motions for enlargement; and

(D) the reason for the enlargement.

(3) ***Communication With Opposing Counsel.*** Prior to filing a motion for enlargement, the moving party must make a reasonable effort to discuss the motion with opposing counsel and must indicate in the motion whether an opposition will be filed, or, if opposing counsel cannot be consulted, an explanation of the efforts that were made to do so.

(c) Additional Time After Service By Mail. When a party may or must act within a specified time after service and service is made by mail, 3 days are added to the prescribed period, unless the special master or the court orders otherwise.

(As revised and reissued May 1, 2002; as amended Jan. 11, 2010.)

Rule 20. Motions and Other Papers; Time for Filing; Oral Argument

(a) In General. All motions must:

(1) state with particularity the grounds for the motion;

(2) set forth the relief or order sought; and

(3) be in writing and filed with the clerk, unless made orally during a hearing.

Any motion may be accompanied by a proposed order and any motion, objection, or response may be accompanied by a memorandum and, if necessary, by supporting affidavits or exhibits.

(b) Time for Filing.

(1) ***Responses and Objections.*** Unless otherwise provided in these rules or by order of the special master or the court, a response or an objection to a written motion must be filed within 14 days after service of the motion.

(2) ***Replies.*** A reply to a response or an objection may be filed within 7 days after service of the response or objection.

(c) Oral Argument. A party desiring oral argument on a motion must so request in the motion or response.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 21. Dismissal of Petitions

(a) Voluntary Dismissal.

(1) ***In General.*** Petitioner may dismiss the petition without order of the special master or the court by filing:

(A) a notice of dismissal at any time before service of respondent's report; or

(B) a stipulation of dismissal signed by all parties who have appeared in the action.

(2) ***Effect.*** Unless the notice or stipulation states otherwise, the dismissal is without prejudice, except that a notice of dismissal may, in the discretion of the special master or the court, be deemed to operate as an adjudication on the merits if filed by a petitioner who has previously dismissed the same claim.

(3) ***Concluding Proceedings.*** A petition dismissed under this subdivision (a) will not result in a judgment pursuant to Vaccine Rule 11 for purposes of 42 U.S.C. § 300aa-21(a). For the court's administrative purposes, the special master will instead issue an order concluding proceedings.

(b) Involuntary Dismissal.

(1) ***In General.*** The special master or the court may dismiss a petition or any claim therein for failure of the petitioner to prosecute or comply with these rules or any order of the special master or the court.

(2) ***Effect.*** A petition dismissed under this subdivision (b) will result in a judgment pursuant to Vaccine Rule 11 for purposes of 42 U.S.C. § 300aa-21(a).

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, June 20, 2006, July 13, 2009.)

TITLE V. REVIEW OF A DECISION OF THE SPECIAL MASTER

Rule 22. General [Abrogated (eff. Jan. 2, 2001); abrogation published as part of revisions dated May 1, 2002.]

Rule 23. Motion for Review

(a) In General. To obtain review of the special master's decision, a party must file a motion for review with the clerk within 30 days after the date the decision is filed.

(b) Time Extensions. No extensions of time will be permitted under this rule and the failure of a party to file a motion for review in a timely manner will constitute a waiver of the right to obtain review.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 24. Memorandum of Objections

(a) In General. A motion for review must be accompanied by a memorandum of numbered objections to the decision.

(b) Contents of the Memorandum. The memorandum must:

(1) fully and specifically state and support each objection to the decision, including specific citations to the record created by the special master (e.g., to specific page numbers of the transcript, exhibits, or other papers);

(2) set forth any legal argument the party desires to present to the reviewing judge; and

(3) absent leave of the court, be limited to 20 pages and conform to the provisions of RCFC 5.4.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 25. Response

(a) In General. A party may file a response to a motion for review within 30 days after the filing of the motion. If both parties file motions for review, each party may file a response to the other party's motion. The response must:

(1) be in memorandum form and fully respond to each numbered objection, including specific citations to the record

created by the special master (e.g., to specific page numbers of the transcript, exhibits, or other papers);

(2) set forth any legal argument the party desires to present to the reviewing judge; and

(3) absent leave of the court, be limited to 20 pages and conform to the provisions of RCFC 5.4.

(b) Time Extensions. No extensions of time will be permitted under this rule and the failure of a party to file a response in a timely manner will constitute a waiver of the right to respond.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 26. Assigning a Case for Review

After a motion for review has been filed with the clerk, the case will be assigned to a judge of the Court of Federal Claims pursuant to RCFC 40.1.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 27. Reviewing a Decision of the Special Master

After reviewing a decision of the special master, the assigned judge may:

(a) uphold the findings of fact and conclusions of law and sustain the special master's decision;

(b) set aside any findings of fact or conclusions of law found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and issue a separate decision; or

(c) remand the case to the special master for further action as directed.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 28. Time for Review

(a) In General. The assigned judge must complete the review within 120 days after the last date for the filing of a response under Vaccine Rule 25, excluding any days the case is before a special master on remand.

(b) Period of Remand. If the judge remands the case to the special master, the total period of remand must not exceed 90 days.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 28.1 Decision on Remand

(a) In General. If the assigned judge remands the case to the special master, the special master, after completing the remand assignment, must file a decision on remand resolving the case, unless the remand order directs otherwise. The clerk must promptly notify the assigned judge of the filing of the decision on remand.

(b) Effect. Unless otherwise specified in the remand order, the decision on remand constitutes a separate decision for purposes of Vaccine Rules 11, 18, and 23, i.e., judgment automatically will be entered in conformance with the special master's decision on remand unless a new motion for review is filed pursuant to Vaccine Rule 23.

(c) Motion for Review. If a party seeks review of the decision on remand, the clerk will assign the case to the same judge who remanded the case.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 29. Withdrawing a Petition

(a) Notice to Petitioner. If the assigned judge fails to enter judgment within 420 days after the date the petition was filed, exclusive of any periods of remand or suspension pursuant to Vaccine Rule 9, the judge must file a notice to petitioner pursuant to 42 U.S.C. § 300aa-12(g)(2).

(b) Notice to Continue or to Withdraw the Petition. Within 30 days after the date of

filing of the assigned judge's notice, the petitioner may file a notice to continue or to withdraw the petition pursuant to 42 U.S.C. § 300aa-21(b).

(c) Concluding Proceedings. If the petitioner elects to withdraw the petition, the assigned judge must issue an order concluding proceedings. The judge's order, upon entry, will be deemed a judgment for purposes of 42 U.S.C. § 300aa-15(e)(1).

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, July 13, 2009.)

Rule 30. Judgment

(a) In General. Upon issuance of the assigned judge's decision on review, the clerk will enter judgment in accordance with the decision.

(b) Stipulation for Judgment. Any stipulation for a money judgment must be signed by authorized representatives of the Secretary of Health and Human Services and the Attorney General.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 31. Motion for Reconsideration

Within 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 Jan. 11, 2010.)

Rule 32. Notice of Appeal

To appeal a decision of the Court of Federal Claims, a party must file a notice of appeal with the clerk of the United States Court of Appeals for the Federal Circuit (i.e., a petition for review under 42 U.S.C. § 300aa-12(f)) within 60 days after the date of the entry of judgment.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 33. Election

(a) In General. Within 90 days after the entry of judgment under Vaccine Rule 30, petitioner must file with the clerk an election as described in Vaccine Rule 12.

(b) Exception. If an appeal is filed with the United States Court of Appeals for the Federal Circuit pursuant to Vaccine Rule 32, the 90-day period for filing an election will run not from the original date of judgment but from the date of the appellate court's mandate or any subsequent judgment of the Court of Federal Claims on remand, whichever occurs later.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 34. Attorney's Fees and Costs Following Review

(a) In General. Except as provided in subdivision (b) of this rule, any request for attorney's fees and costs following review by an assigned judge must be filed in accordance with Vaccine Rule 13.

(b) Additional Fees and Costs. Following review by an assigned judge of a special master's decision on attorney's fees and costs under Vaccine Rule 13, a request for any additional fees and costs relating to such review may be decided either by the assigned judge or by the special master on remand.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rule 35. Availability of Filings [Abrogated (eff. Jan. 2, 2001); abrogation published as part of revisions dated May 1, 2002.]

TITLE VI. RELIEF FROM JUDGMENT

Rule 36. Relief from a Judgment

(a) In General. If, after the entry of judgment

or the issuance of an order concluding proceedings pursuant to Vaccine Rule 10, 21, or 29, a party files a motion for reconsideration pursuant to RCFC 59 or otherwise seeks relief from a judgment or order pursuant to RCFC 60, the clerk will refer the motion as follows:

(1) If the petition had previously been assigned to a judge for review pursuant to Vaccine Rule 23, the clerk will refer the motion to the assigned judge.

(2) If the petition had not previously been assigned to a judge for review pursuant to Vaccine Rule 23, the clerk will refer the motion to the assigned special master.

(b) Ruling by the Special Master.

(1) ***In General.*** If a motion pursuant to RCFC 59 or 60 is referred to the special master pursuant to subdivision (a) of this rule, the special master must file a written ruling on the motion.

(2) ***Effect.*** The ruling of the special master will be the final ruling of the court on the motion, unless a party files with the clerk a motion for review of that ruling.

(3) ***Motion for Review.*** A party may file a motion for review of the special master's ruling, accompanied by a memorandum of objections to the ruling, within 30 days after the date of the ruling. See Vaccine Rules 23 and 24.

(4) ***Response.*** The nonmoving party may file a response to a motion for review within 30 days after the filing of the motion. See Vaccine Rule 25.

(5) ***Length.*** The motion and response of each party must, absent leave of the court, be limited to 20 pages and must conform to the provisions of RCFC 5.4. See Vaccine Rules 24 and 25.

(6) ***Assigning the Case for Review.*** If a motion for review is filed with the clerk, the case will be assigned to a judge of the Court of Federal Claims pursuant to RCFC 40.1. See Vaccine Rule 26.

(7) ***Reviewing the Ruling of the Special Master.*** After reviewing the ruling of the special master, the assigned judge may set aside the ruling only if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See Vaccine Rule 27.

(c) If Judgment is Altered. If the original judgment is modified pursuant to RCFC 59 or 60 or otherwise, and the petitioner is to receive any award for damages calculated with respect to the date of judgment, such damages must be calculated based on the date of the original judgment, unless the ruling of the special master or the court directs otherwise.

(As revised and reissued May 1, 2002; as amended July 13, 2009.)

Rules Committee Notes
2002 Revision

Appendix B sets forth rules applicable to proceedings involving claims for compensation under the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-1 to -34. These rules originally became effective on January 25, 1989, and were revised on March 15, 1991, and May 1, 2002. The text of these rules as originally promulgated may be found at 16 Cl. Ct. XXI–LXI (1989) and, as initially revised, at 22 Cl. Ct. CXLVIII–CLX (1991).

2003 Amendment

Vaccine Rule 2(c)(1) has been amended to require that service upon the respondent be directed to the Director, Division of Vaccine Injury Compensation, Office of Special Programs, Health Resources and Services Administration, in lieu of the Director, Bureau of Health Professionals.

2005 Amendment

Both stylistic and substantive changes have

been made to the Vaccine Rules. The substantive changes are identified below.

Rule 2. Subdivision (b) previously listed the amount of the filing fee that was required to accompany a petition. The listing of the fee amount has been eliminated in favor of referring petitioners to the fee schedule posted on the court's website. This change is administrative only and is intended to permit future changes in fee amount to be implemented without the necessity for publication of a corresponding change in rule. Subdivision (c)(1) has been amended to show the current address for service upon respondent.

Rule 4. Subdivision (b), titled "Early Status Conference," has been added to acknowledge the authority of a special master, exercisable at the special master's discretion, to convene an early status conference as an aid in the identification and scheduling of further proceedings.

Rule 10. The text of subdivision (a) has been amended to identify the alternative procedures a petitioner may elect to adopt—withdrawal of the petition or continuance of proceedings—following the special master's issuance of a notice under 42 U.S.C. § 300aa-12(g)(1) advising that a decision on the petition will not be entered within the prescribed statutory period (240 days, exclusive of periods of suspension and remand). Subdivision (a) further provides that in instances where the petitioner elects to withdraw the petition in lieu of continuing proceedings, the conclusion of proceedings will be identified by the special master's issuance of an order so indicating. Finally, the subdivision specifies that upon entry of the special master's order, such order shall be deemed a judgment for purposes of 42 U.S.C. § 300aa-15(e)(1). Subdivision (b), which dealt with vaccines administered prior to October 1, 1988, has been abrogated as being no longer necessary. Subdivision (c), titled "Reconsideration," has been amended to indicate that where the special master elects to grant a motion for reconsideration, the special master shall not issue a superseding decision reaching a different result from the original decision without affording the non-moving party an opportunity to respond to the arguments raised in the motion for reconsideration.

Rule 13. This rule has been amended to recognize that the right to seek recovery of attorneys' fees and costs under 42 U.S.C. § 300aa-15(e) extends not only to cases in which a judgment has been entered but also to cases in which a petitioner exercises the statutory right to withdraw a petition following the issuance of an order concluding proceedings under Vaccine Rule 10(a) or 29.

Rule 21. Under the Vaccine Act, the court enters judgment pursuant to a "decision of the special master," i.e., a determination "with respect to whether compensation is to be provided under the Program and the amount of such compensation." 42 U.S.C. § 300aa-12(d)(3)(A). A special master's decision, in other words, contemplates an adjudication. With this in mind, subdivision (a) of this rule has been amended to clarify that where a petition is voluntarily dismissed without order of the special master or the court (either by the filing of a notice of dismissal before service of respondent's report or pursuant to a stipulation of the parties) then, for administrative purposes, the conclusion of proceedings will be identified by an order of the special master rather than by a decision. Correspondingly, language has also been added to subdivisions (b) and (c) to clarify that an involuntary dismissal operates as an adjudication on the merits with respect to which a judgment will be entered.

Rule 29. The opening sentence of this rule has been amended to identify the procedural requirement that applies in cases where a judge fails to direct entry of judgment within 420 days after the date of filing of the petition ("the judge shall file the notice required by 42 U.S.C. § 300aa-12(g)(2)"). Additionally, a final sentence has been added to clarify that where a petitioner elects to withdraw a petition following the receipt of the notice required by 42 U.S.C. § 300aa-12(g)(2), the conclusion of proceedings will be identified by the judge's issuance of an order rather than by a judgment. The same sentence

further notes that upon entry, such order shall be deemed a judgment for purposes of 42 U.S.C. § 300aa-15(e)(1).

2006 Amendment

Rule 21. Former subdivision (b) ("Failure to Prosecute or Participate") has been stricken as its provisions were either redundant or unnecessary. The substance of the first and second sentences of that former subdivision is set forth in the text of former subdivision (c) ("Involuntary Dismissal; Effect Thereof"), now renumbered as subdivision (b). The third sentence of former subdivision (b) was unnecessary; to obtain compensation, the statute provides that a petitioner must supply evidence establishing his or her entitlement to same, regardless of whether the respondent participates. The renumbering of subdivision (c) is also reflected in corresponding changes to the text of Vaccine Rules 11(a) and 12(a).

2009 Amendment

The language of the Vaccine Rules has been amended to conform to the general restyling of the RCFC.

Rule 13. Subdivision (b) has been modified in two respects. First, the introductory phrase "Except for a request for fees and costs arising under Vaccine Rule 34(b)" was added to reflect the corresponding procedural change in Vaccine Rule 34(b) regarding a request for additional fees and costs. Second, the phrase "including a request for interim fees" was added to the second sentence to reflect the result in Avera v. Secretary of Health and Human Services, 515 F.3d 1343 (Fed. Cir. 2008).

Rule 17. Paragraph (b)(2) ("Filing Defined") has been expanded to include electronic filings.

Rule 34. Subdivision (b) has been added to this rule to clarify that a request for additional attorney's fees and costs incurred on a petition for review of a special master's decision addressing attorney's fees and costs may be decided either by the assigned judge or by the special master on remand.

Rule 36. The phrase "or the issuance of an order concluding proceedings pursuant to Vaccine Rule 20, 21, or 29" has been added to the opening sentence of subdivision (a) to extend the remedies available under RCFC 59 ("New Trial; Reconsideration; Altering or Amending a Judgment") and RCFC 60 ("Relief From a Judgment or Order") to cases concluded by means other than a judgment.

2010 Amendment

Rule 5. Subdivision (c) ("Imposing Fees and Costs") has been added to reinforce the special master's case management authority. The rule permits a special master to order, 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 any other pretrial order." The exercise of this authority is subject to the requirement that the order describe the noncompliant conduct and explain the basis for the imposition of fees and costs.

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.

2011 Amendment

Rule 2. Subdivision (b) has been amended to adopt the revised filing requirements of RCFC 5.5(d)(1) specifying that a plaintiff must file 2 copies of the complaint and, except a plaintiff appearing *pro se*, an additional copy of the complaint in electronic form using a disc in CD-ROM format when the complaint exceeds 20 pages.

Rule 16. Subdivision (b) has been added to provide privacy protection in the caption of all petitions filed on behalf of a minor, consistent with the requirement of RCFC 5.2(a).

Rule 17. Subdivision (b) ("Filing a Document") has been amended to reflect the

court's requirement of filing by electronic means in Vaccine Act cases, subject to reasonable exceptions.

SUPPLEMENT TO APPENDIX B
ELECTRONIC CASE FILING PROCEDURE
IN VACCINE ACT CASES

I. INTRODUCTION

1. In General. This Supplement sets forth the procedures governing electronic filings in Vaccine Act cases. A Case Management/Electronic Case Files (CM/ECF) User Manual is available on the court's website—http://www.uscfc.uscourts.gov.

2. Definitions. For purposes of this Supplement, the following definitions apply:

- **(a)** "ECF System" means the court's system for electronic case filing;
- **(b)** "ECF case" means any Vaccine Act case designated by the court as an electronic case in the ECF System;
- **(c)** "Filing User" means a member of the court's bar to whom the court has issued a log-in and password to file documents electronically in the ECF System;
- **(d)** "filing" means any document that is filed electronically in the ECF System; and
- **(e)** "court" means the assigned judge or special master.

II. ELECTRONIC CASE DESIGNATION AND NOTICE

3. Scope.

- **(a) Newly Filed Cases.** All newly filed Vaccine Act cases will be designated ECF cases except for cases involving *pro se* litigants.
- **(b) Converted Cases.** The court may convert a pending non-ECF case to an electronic case at any time.

4. Notice to Counsel. The clerk will notify counsel that a Vaccine Act case has been designated an ECF case by filing a "Notice of Designation." All ECF cases will be listed on the court's website.

III. ACCESS TO ECF SYSTEM; RESPONSIBILITY OF FILING USERS; EXEMPTION FROM USE

5. Eligibility. An attorney admitted to the bar of this court may register as a Filing User by completing the form provided by the clerk, a copy of which is available on the court's website. By registering as a Filing User, an attorney consents to electronic service of all filings.

6. Log-in and Password.

- **(a) Notification.** Once registered, a Filing User will be notified of his or her user log-in and password.
- **(b) Security.** A Filing User must protect the security of his or her password and immediately notify the clerk if it appears to have been compromised.
- **(c) Use.** No Filing User or other person may knowingly permit or cause a Filing User's log-in and password to be used by anyone other than an authorized agent of the Filing User. Any Filing User or other person may be subject to sanctions for failure to comply with this provision.

7. Exemption From Filing Electronically. By filing an appropriate motion, an individual not registered as a Filing User may, for good cause, seek to be exempted from filing documents electronically in an ECF case.

IV. FILING REQUIREMENTS

8. Filings.

- **(a) Initial Filings.**
  - **(i) The Petition.** The filing of a Vaccine Act petition, limited to the requirements of Vaccine Rule 2(c)(1), and the payment of the initial filing fee must be accomplished in the traditional

manner in accordance with Vaccine Rule 2(b) rather than electronically. No medical records or other documents may be filed with the petition.

(ii) Required Attachments. Once a case has been designated an ECF case, the petitioner must electronically file as promptly as possible the medical records and other documents (including affidavits) pertaining to the petition as set forth in Vaccine Rule 2(c)(2). (See paragraph 11 of this Supplement, discussing the alternative method of filing voluminous medical records via CD-ROM.)

(b) Subsequent Filings. Once a case has been designated an ECF case, all subsequent filings must be made electronically, except as provided in this Supplement or by leave of the court in exceptional circumstances that prevent a Filing User from filing electronically.

(c) Exhibits and Attachments. Unless otherwise ordered by the court, when filing an exhibit or attachment, a Filing User:

(i) must file the exhibit or attachment electronically along with the main document under one entry number;

(ii) must include the exhibit or attachment in its entirety; and

(iii) may seek leave to file a memorandum or brief, generally in advance of the evidentiary hearing, to direct the court's attention to the most relevant portion of the exhibit or attachment.

9. Size Limitations.

(a) In General. A single filing may be divided into multiple Adobe PDF files.

(b) Number of Files. Counsel must endeavor to minimize the total number of Adobe PDF files that constitute a single filing.

(c) Size of Files.

(i) Unless otherwise ordered by the court, each Adobe PDF file must not exceed the size limitations established by the court.

(ii) Current size limitations are posted on the court's website or may be obtained by calling the clerk's office.

(d) Exceeding Size Limitations. For files that exceed size limitations, the Filing User may:

(i) use a disc in CD-ROM format; or

(ii) seek leave of the court to file in some other electronic format.

10. Dividing Medical Records into Multiple PDF Files.

(a) Contents and Pagination of Files. Each file should contain one exhibit and each exhibit should be independently paginated (hand-written pagination prior to scanning is sufficient).

(b) Labeling and Identifying Files. Each file should:

(i) be consecutively numbered or lettered as an exhibit;

(ii) be labeled according to its source or subject matter; and

(iii) include a brief written description of the records it contains.

For example, the first PDF file might contain prenatal records and be labeled "Petitioner's Exhibit 1—Prenatal Records, Dr. Smith"; the second PDF file might contain birth records and be labeled "Petitioner's Exhibit 2—Birth Records, Smalltown

Hospital"; the third and fourth PDF files might contain pediatric records of different physicians and be labeled "Petitioner's Exhibit 3—Pediatric Records, Dr. John" and "Petitioner's Exhibit 4—Pediatric Records, Dr. Jack."

11. CD-ROM Filings.

(a) In General. Filing documents on a CD-ROM is accomplished by:

(i) electronically filing a "Notice of Intent to File" containing:

(A) an index of the exhibits included on the disc;

(B) a statement certifying that the contents of the disc have been scanned using anti-virus software with up-to-date anti-virus definitions; and

(C) a certificate stating when copies of the disc were mailed or delivered to the clerk's office;

(ii) providing the clerk's office with two copies of the disc along with a printed copy of the "Notice of Intent to File"; and

(iii) serving one copy of the disc on opposing counsel.

(b) Date of Filing. The CD-ROM is deemed filed on the date it is received in the clerk's office.

(c) Striking a Notice of Intent to File. If the CD-ROM is not received in the clerk's office within 5 days after the "Notice of Intent to File" is electronically docketed, the court may enter an order striking the "Notice of Intent to File" from the docket.

(d) Designation of Files. The name of each file on the disc should:

(i) begin with the letters "Ex" followed by the exhibit letter or number (e.g., 01, 02, . . . 09, 10);

(ii) include a brief description of the content of the exhibit and the six-digit docket number (e.g., 98-0000);

(iii) represent spaces with an underscore; and

(iv) contain ".pdf" as the file extension.

For example, the first PDF file on the disc might be labeled "EX01_University_Hospital_98-0000.pdf."

(e) Format. Before filing a CD-ROM, the Filing User should :

(i) "close" or finalize the disc so that additional material cannot be written onto the disc; and

(ii) scan the disc using appropriate anti-virus software after its creation and closure.

(f) Packaging and Labeling. The Filing User should package the disc in a paper, plastic, or waxed paper envelope and label the package with:

(i) the case caption, including the case number;

(ii) the date of filing; and

(iii) the range of exhibits the disc contains (e.g., Exhibits 01-20).

V. FILING PROCEDURES

12. Notice of Filing; Service.

(a) Notifying Filing Users. At the time a document is filed, the ECF System automatically generates a "Notice of Electronic Filing" and automatically e-mails the notice to all case participants who are Filing Users.

(b) Notifying Individuals Other Than Filing Users. The clerk will serve the "Notice of Electronic Filing" (but not the underlying filing) on case participants who are not Filing Users by e-mail, hand delivery, facsimile,

or first-class postage-prepaid mail.

(c) Service. The transmission of the "Notice of Electronic Filing" satisfies the service requirement of RCFC 5 and the proof of service requirement of RCFC 5.3.

13. Effect of Filing and Transmission of Notice of Filing. A filing by a party under this Supplement, together with the transmission of the "Notice of Electronic Filing," constitutes a filing under RCFC 5 and an entry on the docket kept by the clerk under RCFC 58 and 79.

14. Official Court Record. The official court record is the electronic recording of the document as stored by the court and the filing party is bound by the document as filed.

15. Date of Filing. Except for CD-ROM filings and in the case of a document first filed in paper form and subsequently converted to an ECF filing, a document filed in an ECF case is deemed filed on the date stated in the "Notice of Electronic Filing."

16. Timeliness of Filing. Unless otherwise ordered by the court, a filing under this Supplement must be submitted before midnight local time in Washington, DC, to be considered timely filed on that date.

17. Date Stamp. Each filing must contain at the top of the first page a banner stating that it was "Electronically Filed on [date]."

VI. SIGNATURES AND RELATED MATTERS

18. Signature Defined. A Filing User's log-in and password will serve as his or her signature on a filing for all purposes.

19. Signature Requirements.

(a) Electronic Signature. Filings must include a signature block, in compliance with RCFC 11(a), with the name of the Filing User under whose log-in and password the document is submitted along with an "s/[name of Filing User]" typed in the space where the signature would otherwise appear.

(b) Written Signature. A Filing User may also satisfy the signature requirement by scanning a document containing his or her written signature.

(c) Noncompliance. A filing that does not comply with this provision will be deemed in violation of RCFC 11 and may be stricken from the record.

20. Signatures of Multiple Parties. Documents requiring signatures of more than one party may be filed electronically:

(a) by submitting a scanned document containing all necessary written signatures;

(b) by representing the consent of the other parties on the document; or

(c) in any other manner approved by the court.

VII. COURT ORDERS, JUDGMENTS, AND APPEALS

21. Filings by the Court. Any order, opinion, judgment, or other proceeding of the court in an ECF case will be filed in accordance with this Supplement.

22. Effect of Filing. A filing by the court under this Supplement:

(a) is an entry on the docket kept by the clerk under RCFC 58 and 79; and

(b) has the same force and effect as a paper copy entered on the docket in the traditional manner.

23. Notice of Filing; Service.

(a) Notifying the Parties. Notice of a filing by the court will be accomplished by delivering to the parties a "Notice of Electronic Filing" in the manner prescribed in paragraph 12(a) or (b).

(b) Service. The transmission of the "Notice of Electronic Filing" satisfies the service requirement of RCFC 77(d).

24. Court-Ordered Deadlines. If an order or

opinion specifies a due date for the filing of a document, that date will control over any other filing deadline listed on the docket for that document.

25. Notice of Appeal. A notice of appeal to the United States Court of Appeals for the Federal Circuit (i.e., a petition for review under 42 U.S.C. § 300aa-12(f)) must be accomplished in the traditional manner in accordance with the Vaccine Rules rather than electronically.

VIII. PRIVACY

26. Filings Protected Against Public Disclosure. Except as provided in Vaccine Rule 18, all ECF filings submitted in a Vaccine Act case are placed under seal pursuant to the requirement of 42 U.S.C. § 300aa-12(d)(4)(A) and therefore are accessible only to court personnel and counsel of record.

27. Personal Information. Because all ECF filings submitted by the parties in a Vaccine Act case are placed under seal, Filing Users need not redact personal identifiers and other sensitive information. Filing Users should file all documents, including medical records, in their original form.

IX. RETENTION AND TECHNICAL FAILURE

28. Retaining in Paper Form Documents Requiring More Than One Signature. A document requiring signatures of more than one party (e.g., an affidavit or a joint status report) must be maintained in paper form by the Filing User until three years after all periods for appeal expire. The court may request the Filing User to provide the original document for review.

29. Technical Failure of the ECF System.

- **(a) Relief by Motion.** If a filing is deemed untimely as the result of a technical failure of the ECF System, the Filing User may seek appropriate relief from the court.
- **(b) Deeming the Clerk's Office Inaccessible.** If the ECF System is inaccessible for any significant period of time, the clerk will deem the clerk's office inaccessible under RCFC 6.

Rules Committee Note
2011 Adoption

The Supplement to the Vaccine Rules replaces former Office of Special Master's General Order No. 13 ("Procedure for Electronic Case Filing in Vaccine Act Cases"), issued on January 2, 2008, and amended on October 16, 2008, and establishes electronic case filing as a mandatory procedure applicable to all newly filed Vaccine Act cases except for those cases involving *pro se* litigants.