

## NOTICE OF ADOPTION OF AMENDMENTS TO RULES

On November 9, 2009, the court posted notice on its website advising of proposed amendments to its rules, including substantive and time-computation changes consistent with changes to the Federal Rules of Civil Procedure scheduled to go into effect on December 1, 2009, and certain other changes introduced by the court. The notice provided for a public comment period extending through December 18, 2009. In response to this invitation, comments were submitted by the Court of Federal Claims Bar Association, the United States Department of Justice, and a number of practitioners involved in the vaccine injury compensation program.

The court has carefully considered these comments and, after full deliberation, has voted to adopt the rules as proposed except for the changes identified below.

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

As originally proposed, paragraph (a)(4) of Rule 6 defined the “last day” for meeting a filing deadline as ending, in the case of an electronic filing, at “midnight in the court’s time zone” and in the case of filing by other means, “when the clerk’s office is scheduled to close.” In the interest of avoiding any uncertainty in the application of these time standards, the ending time for the last day for an electronic filing has been changed to read “midnight in the Eastern Time Zone” and the last day for a filing by other means has been expanded to include filing in the court’s night box after the clerk’s office has closed as permitted under RCFC 77.1.

### Rule 14. Third-Party Practice

As originally proposed, RCFC 14(b)(3)(B)(ii) specified that the notice given to a nonparty must identify the time within which the person “may seek intervention to assert an interest in the suit.” That phrase has been changed to direct that the notice must identify the time within which the person “may file an appropriate pleading pursuant to subparagraph (c)(1)(A).” The court believes such a change is warranted both to promote internal consistency in the wording of the rule and to align the rule more closely with 41 U.S.C. § 114(b), the statutory provision which authorizes the court to notify persons with possible interests in the litigation to appear and defend their interests.

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

As originally proposed, subdivision (c) of Vaccine Rule 5 provided the special masters with sanctioning authority, in the interest of more effective case management, to impose on a party or a party’s attorney any noncontempt sanctions authorized under RCFC 37(b)(2)(A)(ii)–(v) and/or order a party or a party’s 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 made an award of

expenses unjust. The court received numerous comments from vaccine practitioners objecting to this proposal. The chief criticism was that the proposed amendments are inconsistent with the non-adversarial nature that Congress intended for the Vaccine Program. Several comments suggested that a more appropriate approach to addressing delays in a vaccine case would be through frank and open discussion with the offending party.

The comments additionally suggested that the incorporation of Rule 37 sanctioning authority into the framework of Vaccine Rule 5 would compel a change in the manner in which pretrial conferences are conducted. Whereas such conferences are now conducted informally and are typically not recorded, sanctions would necessarily demand the procedural protection of a written record.

The court is sensitive to these concerns. At the same time, however, experience has demonstrated the need to provide the special masters with means of addressing situations in which scheduled deadlines are repeatedly ignored. The court believes that the imposition of fees and costs associated with such noncompliance, fully documented as to the reasons for the imposition and reviewable at the conclusion of proceedings, will provide a reasonable means of addressing repeated, unjustifiable delay.

Based on the foregoing, the court has voted to implement a modified version of the proposed rule. Specifically, the new Vaccine Rule 5 will omit any reference to the sanctions provided under RCFC 37(b)(2)(A)(ii)–(v), but will retain the special masters’ authority to impose fees and costs as provided in RCFC 16(f)(2).

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The court wishes to thank the individuals who submitted comments for the time and effort spent in reviewing the proposed amendments and for the thoughtfulness of the resulting suggestions. Their contributions are greatly and sincerely appreciated.

The rules amended by this note are available on the court’s web site at:  
<http://www.uscfc.uscourts.gov/rules-and-forms>.

Issued: January 11, 2010.