RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

As amended through July 1, 2014

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RULES OF THE UNITED STATES
COURT OF FEDERAL CLAIMS

Originally effective October 1, 1982,
as revised and reissued May 1, 2002,
and as amended through July 1, 2014

The United States Court of Federal Claims (formerly designated United States Claims Court) was created by the Federal Courts Improvement Act of 1982 (Pub. L. No. 97-164, 96 Stat. 25 (1982)). The court inherited the jurisdiction formerly exercised by the United States Court of Claims. Title 28 U.S.C. § 2503(b) authorizes the United States Court of Federal Claims to prescribe rules of practice and procedure for its proceedings.

The Federal Rules of Civil Procedure applicable to civil actions tried by a United States district court sitting without a jury have been incorporated into the following rules to the extent appropriate for proceedings in this court.

2002 Rules Committee Note

In the 2002 revision, the court has endeavored to create a set of rules that conforms to the Federal Rules of Civil Procedure as amended through November 30, 2001, to the extent practicable given differences in jurisdiction between the United States district courts and the United States Court of Federal Claims. Consistent with this objective, interpretation of the court's rules will be guided by case law and the Advisory Committee Notes that accompany the Federal Rules of Civil Procedure. The court's own Rules Committee Notes are intended primarily to state the source of a given rule but in some instances also to provide interpretive guidance.

Future revisions to these rules will be posted on the court's website at www.uscfc.uscourts.gov.

2005 Rules Committee Note

The 2005 revision extends the symmetry between these rules and the Federal Rules of Civil Procedure. Immediately after each rule, a parenthetical reference indicates the date of adoption and the dates of any amendments, commencing with the substantial revision and reordering of the rules that occurred in 2002. Each rule is also followed by a Rules Committee Note or Notes explaining the basis and purpose of the rule as revised in 2002 and of any substantive amendments thereafter. The evolution of the court's rules has been increasingly significant to the court's work, and the addition of historical Rules Committee Notes should aid both counsel and the court in resolving issues that may arise regarding the rules. Stylistic changes also have been made to various rules and in a few instances, minor substantive revisions have been effected. Each substantive amendment is accompanied by a Rules Committee Note.

Historical Note

The rules of this court as initially promulgated on October 1, 1982, and as thereafter amended are set forth in the United States Claims Court Reporter and, after December 1992, in the Federal Claims Reporter. The relevant citations to changes in the rules from their inception through 2002 are as follows:

1 Cl. Ct. XXII–CXLVI (1982) (General Order No. 3, adopting the Rules of the United States Claims Court, effective October 1, 1982);

9 Cl. Ct. XXI–CXXXVIII (1985) (General Order No. 11, adopting revised Rules of the United States Claims Court, effective November 1, 1985);

10 Cl. Ct. XXI (1986) (General Order No. 12, amending Rule 77(k)(2) (fee schedule), effective October 1, 1986);

12 Cl. Ct. XXV (1987) (General Order No. 14, amending Rule 77(k)(2) (fee schedule), effective May 1, 1987);

15 Cl. Ct. XXV (1989) (General Order No. 21, amending Rule 77(k)(2) (fee schedule), effective February 1, 1989);

16 Cl. Ct. XXI (1989) (General Order No. 23, adopting the Vaccine Rules of the United States Claims Court, effective January 25, 1989);

18 Cl. Ct. XIX–XXII (1990) (General Order No. 25, specifying the use of a complaint cover sheet, effective January 1, 1990);

19 Cl. Ct. XIX–XXXII (1990) (General Order No. 26, adopting Appendix J to the Rules of the United States Claims Court and specifying the procedures for reviewing decisions of the special masters on claims for vaccine-related compensation, effective January 8, 1990);

22 Cl. Ct. XXIX–CLXII (1991) (General Order No. 28, adopting revised Rules of the United States Claims Court, effective March 15, 1991);

23 Cl. Ct. XXIII–XXIV (1991) (General Order No. 29, amending Appendix J to the Rules of the United States Claims Court, effective July 1, 1991);

25 Cl. Ct. XIX–CLXVII (1992) (General Order No. 31, adopting revised Rules of the United States Claims Court, effective March 15, 1992);

26 Cl. Ct. XXVII (1992) (General Order No. 32, amending Rule 10(a) and Appendix J, ¶ 16, effective July 15, 1992);

27 Fed. Cl. XXV (1992) (General Order No. 33, recognizing the change in the name of the court to the United States Court of Federal Claims and redesignating the court's rules as "RCFC," effective December 4, 1992);

28 Fed. Cl. LII–XCII (1993) (General Order No. 34, adopting the Rules Governing Complaints of Judicial Misconduct and Disability, effective June 2, 1993);

30 Fed. Cl. XXIII–XXIV (1994) (General Order No. 36, amending Rule 77(f), effective January 24, 1994).

32 Fed. Cl. XXIII (1994) (General Order No. 37 concerning admission fees).

48 Fed. Cl. XXV–XXXIV (2000) (General Order 39 concerning motions for admissions; amending fee schedule).

51 Fed. Cl. XIII–CXCIV (2002) (adopting revised Rules of the United States Court of Federal Claims, effective May 1, 2002).

Post-2002 Amendments

To maintain symmetry between the court's rules and the Federal Rules of Civil Procedure, the court has adopted a policy of regularly amending its rules to reflect parallel changes in the Federal Rules of Civil Procedure. In keeping with this policy, citations to post-2002 amendments to the revised rules of the court are as follows:

55 Fed. Cl. XII–XVI (2003) (General Order No. 2003-42 adopting Interim Procedures for Electronic Case Filing, effective March 17, 2003).

57 Fed. Cl. CLXXIV–CLXXV (2003) (amending fee schedule).

61 Fed. Cl. XXI (2004) (amending fee schedule).

64 Fed. Cl. XIII (2005) (Notice of Adoption amending Rule 77.1).

68 Fed. Cl. XIII–CCXXXIII (2005) (amendments to Rules 77.1, 80.1, 80.3, Appendices A to H, and Forms 1, 2, 4, 6, 7A, 8, 9, 10, and 12).

72 Fed. Cl. XII–XXX (2006) (amendments to Table of Contents; Rules 7, 7.2, 52.1, 52.2, 56, 56.1, 56.2, 83.1, 86; Appendix B (Vaccine Rules 9, 11, 12, 21); and Forms 1, 2, 5, 10).

* * * * *

After 2006, revisions to the court's rules no longer appear in the bound volumes of the Federal Claims Reporter. Access to post-2006 rules revisions is, however, available on the court's website, at www.uscfc.uscourts.gov, under "Rules Archives." These revisions are listed as follows:

November 15, 2007 (renumbering Rules 5.2–5.4; amending Rules 5, 16, 26, 33, 34, 37, 45, 58, 77.3, and 80, and Appendices A and C; adopting new Appendix E; abrogating Appendix G; redesignating former Appendix E as Appendix I).

April 10, 2008 (adopting revised rules governing complaints against judges as promulgated by the Judicial Conference of the United States).

November 3, 2008 (adopting changes in rule structure and word usage that were introduced as restyling changes into the Federal Rules of Civil Procedure on December 1, 2007; introducing minor

changes in scope or content (including changes to conform to the FRCP) into Rules 4.1, 5, 5.5, 7, 9, 12, 23, 25, and 40.2; and adding new Rules 5.2 and 71, each reflecting the language of its FRCP counterpart).

July 13, 2009 (amending Rule 77.3(a); adopting revised Rule 83.2; introducing new subpoena forms (Forms 6A, B, and C); restyling Appendix B (Vaccine Rules) to conform to the restyling changes that were introduced into the court's rules on November 3, 2008; and amending Vaccine Rules 13, 17, 34, and 36).

January 11, 2010 (adopting substantive changes to Rules 8, 13, 15, and new Rule 62.1in accordance with parallel changes to the Federal Rules of Civil Procedure that became effective December 1, 2009; adopting time-computation changes to Rules 6, 12, 32, 42, 52, 53, 55, 59, 62, 65, 68, and 83.1 and Appendices B, D, and F consistent with amendments to the Federal Rules of Civil Procedure that became effective December 1, 2009; and amending Rules 14, 23, 32, 54, and 83.1, and Vaccine Rule 5).

July 15, 2011 (amending RCFC 3.1, 4, 5.5, 15, 26, 56, 59, 83.1, and 83.2; amending Vaccine Rules 2, 16, and 17; amending Appendices A, C, and E; and introducing new Supplement to Appendix B ("Electronic Case Filing Procedure in Vaccine Act Cases") and new Form 14 ("Order Implementing Fed. R. Evid. 502(d)").

July 2, 2012 (amending RCFC 5.5, 9, 26, 41, 52.1, and 58.1, Appendix E, and Form 8).

August 30, 2013 (amending RCFC 14, 80, and 80.1, Vaccine Rule 8, and Forms 3B and 3C).

July 1, 2014 (amending RCFC 45 and Forms 6A, 6B, 6C, and 7A).

TITLE I. SCOPE OF RULES; FORM OF ACTION

Rule 1. Scope and Purpose

These rules govern the procedure in the United States Court of Federal Claims in all suits. They should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

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

Rules Committee Notes
2002 Revision

The Rules of the United States Court of Federal Claims are drawn under the authority of 28 U.S.C. §§ 2071(a), (c); 2503(b) (generally); 2521(a) (subpoena and incidental powers). These rules may be cited as "RCFC." Rule 1 has been revised to: (i) reflect the change in the court's name; (ii) eliminate, as no longer necessary, the previous reference to proceedings pending in the court on October 1, 1982, the year of the court's establishment; (iii) incorporate the 1993 revision to Rule 1 of the Federal Rules of Civil Procedure (FRCP) emphasizing that the rules are to be both construed and administered to ensure that civil litigation is resolved not only fairly, but without undue cost and delay; (iv) delete subdivision (a)(3) for consistency with the FRCP (while retaining the substance of this provision in RCFC 83(b), which is modeled on FRCP 83(b)); and (v) move subdivision (b) to the preamble, because it is explanatory rather than prescriptive.

2008 Amendment

The language of RCFC 1 has been amended to conform to the general restyling of the FRCP.

Rule 2. One Form of Action

There is one form of action—the civil action.

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

Rules Committee Notes
2002 Revision

RCFC 2 is identical to its FRCP counterpart.

2008 Amendment

The language of RCFC 2 has been amended to conform to the general restyling of the FRCP.

TITLE II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencing an Action

A civil action is commenced by filing a complaint with the court.

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

Rules Committee Notes
2002 Revision

In the interest of achieving greater uniformity with the corresponding FRCP, a number of changes have been made to RCFC 3. First, former subdivision (a) was fully conformed to the FRCP; the reference to RCFC 40.2 calls attention to this court's "related case" rule. Second, former subdivision (b), which addressed disputes regarding filing dates, was deleted—both in the interest of uniformity and in the belief that it was inappropriate to include a rule of decision as part of a procedural rule. Third, former subdivision (c) (prescribing a cover sheet and identifying the number of copies required for filing) was moved to RCFC 5.3(d).

2008 Amendment

The caption of RCFC 3 has been amended to conform to the general restyling of the FRCP.

In addition, the parenthetical reference to RCFC 40.2(a) ("Related Cases") that was included in the former version of RCFC 3 has been deleted as unnecessary.

Rule 3.1. Transfers and Referrals

(a) Transfer From Another Court.

(1) ***Filing Requirements.*** When the transfer of a case from another court is permitted by law, including compliance with 28 U.S.C. §1292(d)(4)(B), the case will be filed in this court when the clerk receives:

(A) a certified copy of the docket or record made in the other court; and

(B) an order granting the transfer.

(2) ***Notice of Filing.*** After a case is filed in this court, the clerk must serve the parties with a notice of the filing as required by RCFC 5.

(3) ***Filing Fee.*** No filing fee is required in this court when all filing fees required in the other court are shown to have been paid.

(4) ***Amended Complaint.*** Within 28 days after service of the notice of filing, the plaintiff must file an amended complaint, conforming to the requirements of RCFC 5.5(d)(1) and setting forth the claim or claims transferred.

(5) ***Serving an Amended Complaint.*** The clerk must serve the amended complaint on the United States in accordance with RCFC 4.

(b) Referral of a Case by the Comptroller General.

(1) ***Serving a Notice.*** When a case is referred to the court by the Comptroller General, the clerk must serve a notice, under RCFC 5:

(A) on each person whose name and address are shown by the papers transmitted and who appears to have an interest in the subject matter of the reference; and

(B) on the Attorney General.

(2) ***Contents of the Notice; Time for a Response.*** The notice required by this subdivision must:

(A) indicate that the reference has been filed;

(B) explain that the person notified appears to have an interest in the subject matter of the reference; and

(C) advise that a complaint setting forth any claim of such person must be filed within 90 days.

(3) ***If a Party Fails to Appear.*** If no interested person files a complaint within the time specified in the notice served by the clerk, the case will be submitted to

the court upon the papers filed and upon such evidence, if any, as may be produced by the Attorney General.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, July 15, 2011.)

Rules Committee Notes
2002 Revision

RCFC 3.1 has no FRCP counterpart. The rule formerly appeared in these rules as RCFC 84. The renumbering of RCFC 84 was intended to reflect its more logical placement in the organizational structure of the court's rules.

2008 Amendment

The language of RCFC 3.1 has been amended to conform to the general restyling of the FRCP.

In addition, the restyled rule omits as unnecessary the former provision specifying the filing of "8 copies of the complaint filed in the other court" and the instruction that after the filing of the complaint, or after referral of a case by the Comptroller General, "further proceedings will be governed by this court's rules."

2011 Amendment

RCFC 3.1(a)(4) 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*, one copy of the complaint in electronic form using a disc in CD-ROM format when the complaint exceeds 20 pages.

Rule 4. Serving a Complaint on the United States

(a) Manner of Service. To serve a complaint on the United States, the clerk must deliver one copy of the complaint to the Attorney General or to an agent designated by authority of the Attorney General by hand delivery or by sending it to an electronic address designated by the Attorney General for this purpose.

(b) Proof of Service. When serving a complaint, the clerk must enter the fact of service on the docket, and this entry will be prima facie proof of service.

(c) Date of Service. The date of service made is the date of filing with the clerk.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, July 15, 2011.)

Rules Committee Notes
2002 Revision

The title of RCFC 4 has been changed to more closely conform to FRCP 4(i). Other provisions of FRCP 4(i)—those dealing with service upon agencies, corporations, or officers of the United States—have not been made a part of this court's RCFC 4 because, in this court (with the exception of vaccine cases), only the United States is properly the named defendant. See RCFC 10(a).

2008 Amendment

The language of RCFC 4 has been amended to conform to the general restyling of the FRCP.

2011 Amendment

RCFC 4(a) has been amended to permit service of a complaint on the United States by the clerk's delivery of one copy of the complaint (in lieu of the formerly required 5 copies) "by hand delivery or by sending it to an electronic address designated by the Attorney General for this purpose."

Rule 4.1. Serving an Order in a Contempt Proceeding

(a) Order Initiating a Contempt Proceeding.

(1) ***In General.*** An order initiating a contempt proceeding against a person or entity other than a party must be served by a United States marshal or deputy marshal or by a person specially appointed by the court. A person specially appointed for that purpose should make service as provided for in FRCP 4(*l*).

(2) ***Proof of Service.*** Proof of service must be made in accordance with RCFC 45(b)(4).

(b) All Other Orders Related to a Contempt Proceeding. All other orders related to a contempt proceeding must be served either:

(1) in the manner prescribed by RCFC 4, if against an agent of the United States; or

(2) in the manner prescribed by RCFC 5, if against a plaintiff, a plaintiff's representative, or a nonparty.

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

Rules Committee Notes
2002 Revision

New RCFC 4.1 implements the contempt authority granted to this court by § 910 of the Federal Courts Administration Act of 1992, Pub. L. No. 102-572, 106 Stat. 4506, 4519-20. That section, now codified at 28 U.S.C. § 2521(b), (c) (1994), reads in relevant part as follows:

> (b) The United States Court of Federal Claims shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority as—
>
> > (1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
> >
> > (2) misbehavior of any of its officers in their official transactions; or
> >
> > (3) disobedience or resistance to its lawful writ, process, order, rule, decree or command.
>
> (c) The United States Court of Federal Claims shall have assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. The United States marshal for any district in which the Court of Federal Claims is sitting shall, when requested by the chief judge of the Court of Federal Claims, attend any session of the Court of Federal Claims in such district.

The rule adopts the mode of service specified in FRCP 4.1, which requires that service of process, other than a summons, be effected upon non-parties through means more formal than mailing. See generally FRCP 4.1 Advisory Committee Notes (recognizing a distinction in service requirements between parties and non-parties); *I.A.M. Nat'l Pension Fund v. Wakefield Indus.*, 699 F.2d 1254, 1259-62 (D.C. Cir. 1983) (discussing service of contempt orders).

2008 Amendment

The language of RCFC 4.1 has been amended to conform to the general restyling of the FRCP.

In addition, subdivision (a)(1) has been changed in two respects. First, the phrase "or entity" has been added to make clear that the service requirements applicable to an order initiating a contempt proceeding against a nonparty apply to "a person or entity other than a party." Second, the phrase "shall deliver a copy of the order to the person named therein" has been omitted in favor of the following new sentence: "A person specially appointed for that purpose should make service as provided for in FRCP 4(*l*)." No other substantive changes are intended.

Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required.

(1) ***In General.*** Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) ***If a Party Fails to Appear.*** No service is

required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under RCFC 4.

(3) ***Seizing Property.*** [Not used.]

(b) Service: How Made.

(1) ***Serving an Attorney.*** If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) ***Service in General.*** A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address—in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it by electronic means if the person consented in writing—in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) ***Using Court Facilities.*** [Not used.]

(c) Serving Numerous Defendants. [Not used.]

(d) Filing.

(1) ***Required Filings; Certificate of Service.*** Any paper after the complaint that is required to be served—together with a certificate of service—must be filed within a reasonable time after service. But disclosures under RCFC 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(2) ***How Filing Is Made—In General.*** A paper is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

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

(4) ***Acceptance by the Clerk.*** The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules.

(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008.)

Rules Committee Notes
2002 Revision

The changes made to RCFC 5 were intended to bring the rule into closer conformity with FRCP 5. Thus, in addition to a change in sequence, changes in text include the following:

First, the text of subdivision (b) has been modified to reflect the December 1, 2001, changes to the FRCP which significantly affect organization

and which also make possible consensual service by electronic means. In addition, the clause "but filing is not" has been deleted from the last sentence of that subdivision. The deleted language was not in conformity with the FRCP. Filing is not complete on mailing; filing is controlled by subdivisions (d) and (e) of this rule.

Second, subdivision (e) adopts the language of the FRCP recognizing the appropriateness of permitting papers to be "filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes." *It should be noted that no decision has yet been made by the court to implement electronic filing. Such a decision, when made, will be accomplished through an amendment to the rules. Until the issuance of such amendment, the clerk's office will not accept electronic filings. Individual chambers, however, may allow counsel to transmit "courtesy" copies of filed documents by electronic means.**

Third, subdivision (e) also adds the final sentence from FRCP 5(e) stating that "[t]he clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules." The addition of this language to the rule was not intended to alter the court's practice of treating all non-conforming complaints as filed upon receipt in the clerk's office while referring other non-conforming papers received in the clerk's office to a judge for instructions as to whether to permit their filing or to require counsel's correction of the papers' defects.

Finally, former subdivision (e), titled "Proof of Service," no longer appears in FRCP 5. In order to conform more closely to FRCP 5, former subdivision (e) was deleted from this rule and now appears as RCFC 5.1.

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* *On March 17, 2003, the court adopted General Order No. 42A instituting an interim program requiring electronic filing for some cases. The court anticipates that electronic filing procedures will be incorporated into the rules.*

2007 Amendment

RCFC 5 has been amended to reflect the court's requirement of filing by electronic means subject to reasonable exceptions. The amendment reflects the development of electronic filing and parallels a similar change in FRCP 5(e).

2008 Amendment

The language of RCFC 5 has been amended to conform to the general restyling of the FRCP.

In addition, the phrase "except one that may be heard ex parte" has been added to RCFC 5(a)(1)(D) to conform to the FRCP.

Rule 5.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention [Not used.]

Rule 5.2. Privacy Protection For Filings Made with the Court

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials; and

(4) the last four digits of the financial-account number.

(b) Exemptions from the Redaction Requirement. The redaction requirement does not apply to the following:

(1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction

requirement when originally filed; and

(5) a filing covered by RCFC 5.2(d).

(c) Limitations on Remote Access to Electronic Files; Social-Security Appeals and Immigration Cases. [Not used.]

(d) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) Protective Orders. For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) Option for Additional Unredacted Filing Under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) Option for Filing a Reference List. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) Waiver of Protection of Identifiers. A person waives the protection of RCFC 5.2(a) as to the person's own information by filing it without redaction and not under seal.

(Added Nov. 3, 2008.)

Rules Committee Note
2008 Adoption

New RCFC 5.2 has been added to correspond to the adoption of the same rule in the FRCP (which became effective December 1, 2007). (The redaction of personal information as addressed in RCFC 5.2 also appears in Appendix E ("Electronic Case Filing Procedure"), paragraph 26 ("Personal Information").)

Rule 5.3. Proof of Service

(a) In General. Service is made by the party, attorney of record, or any other person acting under the attorney of record's direction by executing a certificate of service containing the following information:

(1) the day and manner of service;

(2) the person or entity served; and

(3) the method of service employed, e.g., in person, by mail, or by electronic or other means.

(b) Attaching the Certificate of Service. The certificate of service must be attached to the end of any original document, including an appendix, and to any copies of that document.

(c) Amending the Certificate of Service. The certificate of service may be amended or supplied to the court at any time unless doing so would result in material prejudice to the substantial rights of any party.

(As revised and reissued May 1, 2002; as renumbered Nov. 15, 2007; as amended Nov. 3, 2008.)

Rules Committee Notes
2002 Revision

RCFC 5.1 has no FRCP counterpart. The text of this rule formerly appeared as subdivision (e) of former RCFC 5.

2007 Amendment

RCFC 5.2 formerly appeared in these rules as RCFC 5.1 and has been renumbered in light of the adoption of FRCP 5.1, effective December 1, 2006, to preserve the consistency in numbering systems between the court's rules and the FRCP.

2008 Amendment

The language of RCFC 5.3 has been amended to conform to the general restyling of the FRCP.

RCFC 5.3 formerly appeared in these rules as

RCFC 5.2 and has been renumbered to accommodate the court's adoption of FRCP 5.2 (which became effective December 1, 2007) and to preserve the consistency in numbering systems between the court's rules and the FRCP.

Rule 5.4. Contents and Length of a Brief or Memorandum

(a) Contents.

(1) ***In General.*** A brief or memorandum must be compact, concise, logically arranged, and free of burdensome, irrelevant, immaterial, and scandalous matter. The court may disregard a brief or memorandum that fails to comply with this rule.

(2) ***Initial Brief or Memorandum.*** Except in a brief or memorandum of 10 pages or fewer or in pretrial findings under Appendix A, the first brief or memorandum must contain the following items, arranged under proper headings and in the following order:

(A) a table of contents, including the specific contents of any appendix or appendices to the brief or memorandum, listing a description of every item or exhibit being reproduced in the appendix and the page number at which the item or exhibit appears;

(B) a table of cited constitutional provisions, treaties, statutes, regulations, and cases, giving the volume and page number of the edition where each may be found (using the United States Claims Court Reporter or the Federal Claims Reporter for all published United States Claims Court and United States Court of Federal Claims orders and opinions) and arranging the cases in alphabetical order;

(C) a concise statement of each question presented;

(D) a concise statement of the case, making reference to specific findings, stipulations of fact, or other pertinent portions of the record and setting out verbatim the pertinent portions of the applicable constitutional provisions, treaties, statutes, regulations, and texts of all administrative decisions directly involved in the case (unless previously reproduced in or as an exhibit to the complaint);

(E) a clear statement of the argument, setting forth the points of fact and law being presented and the authorities relied upon;

(F) a concise conclusion, indicating the relief sought; and

(G) any appendix to the brief or memorandum, numbered consecutively within itself to enable the court to find and read the material more easily and, if set forth in a volume separate from the brief or memorandum, containing a table of contents with a description of every item or exhibit being reproduced and the page number at which the item or exhibit appears.

(3) ***Opposing Brief or Memorandum.*** An opposing or answering brief must conform to the requirements set forth in RCFC 5.4(a)(2), except that the items referred to in 5.4(a)(2)(C) and (D) need not be included unless the party is dissatisfied with the other side's presentation.

(4) ***Reply Brief or Memorandum.*** A reply brief or memorandum must conform to the requirements of RCFC 5.4(a)(3).

(5) ***Cross-Motions.***

(A) ***Initial Motion.*** Any cross-motion must:

(i) conform to the requirements of RCFC 5.4(a)(3);

(ii) be contained in the same

document as the response to the original motion.

(B) ***Response.*** A response to a cross-motion must be contained in the same document as the reply to the original motion.

(b) Length.

(1) ***Initial Brief or Memorandum.*** Except by leave of the court on motion, a party's initial brief or memorandum must not exceed 40 pages (50 pages for a cross-movant), not including:

(A) the table of contents;

(B) the list of citations to constitutional provisions, treaties, statutes, regulations, and cases; and

(C) any appendix setting out the pertinent portion of any constitutional provisions, treaties, statutes, regulations, agency and board decisions, court decisions, excerpts from transcripts of testimony, and documentary exhibits.

(2) ***Reply Brief or Memorandum.*** Except by leave of the court on motion, a reply brief or memorandum must not exceed 20 pages (30 pages when a response to a motion is included).

(3) ***Relying on a Previously Filed Brief or Memorandum.*** A party must not incorporate a brief or memorandum by reference; the court will disregard any such incorporation. To rely upon a previously filed brief or memorandum, a party must:

(A) reproduce the brief or memorandum (or, when appropriate, the selected excerpts of such document) in an appendix;

(B) identify the total number of pages considered relevant in a footnote included on the first page of the brief or memorandum; and

(C) include the number of pages identified when calculating the maximum allowable pages set forth in RCFC 5.4(b)(1) and (2).

(As revised and reissued May 1, 2002; as renumbered Nov. 15, 2007; as amended Nov. 3, 2008.)

Rules Committee Notes

2002 Revision

RCFC 5.2 has no FRCP counterpart. The rule formerly appeared in these rules as RCFC 83.1. The renumbering of RCFC 83.1 was intended to reflect its more logical placement in the organizational structure of the court's rules.

Several changes have been made to the rule; they include:

First, the deletion from subdivision (a) of language identifying the plaintiff's brief or memorandum as "the first brief or memorandum" normally to be filed.

Second, subparagraphs (A) and (G) of subdivision (a) were revised to indicate that any index to a separate appendix should be included both at the beginning of the appendix and at the beginning of the accompanying brief or memorandum.

Third, subdivision (b)(4), relating to "a motion for leave to exceed the page limitation," was deemed unduly burdensome and was therefore stricken.

2007 Amendment

RCFC 5.3 formerly appeared in these rules as RCFC 5.2 and has been renumbered in light of the adoption of FRCP 5.1, effective December 1, 2006, to preserve the consistency in numbering systems between the court's rules and the FRCP.

2008 Amendment

The language of RCFC 5.4 has been amended to conform to the general restyling of the FRCP.

In addition, to improve organizational structure, the subdivision dealing with the contents of cross-motions, formerly included in these rules as RCFC 7.2(e) ("Time for Filing"), has been included as paragraph 5 to RCFC 5.4(a).

RCFC 5.4 formerly appeared in these rules as

RCFC 5.3 and has been renumbered to accommodate the court's adoption of FRCP 5.2 (which became effective December 1, 2007) and to preserve the consistency in numbering systems between the court's rules and the FRCP.

Rule 5.5. Format of Filings and Required Information

(a) In General. All papers filed with the clerk, and, where applicable, all documents filed electronically, must conform to the requirements of this rule.

(b) Duplication. Any method of duplication must produce clear black images on white paper and must conform to the requirements of RCFC 5.5(c).

(c) Size and Form.

(1) ***Paper Size and Type.*** All papers filed with the clerk:

(A) must be printed on pages not exceeding 8 1/2 by 11 inches;

(B) must contain type matter of letter quality, except for those papers included as exhibits; and

(C) must be of sufficient quality that the typed material does not bleed through the page.

(2) ***Type Size.*** The type size for text and footnotes must be no smaller than 12 point.

(3) ***Margins.*** Margins must not be less than 1 inch on each side.

(4) ***Spacing.*** Text must be double spaced, except that quoted and indented material and footnotes may be single spaced.

(5) ***Binding.*** A paper filing of 50 or fewer pages must be stapled in the upper lefthand corner. A paper filing exceeding 50 pages must be bound or attached along the entire lefthand margin in book form and must have legible margins.

(6) ***Numbering.*** All pages, including appendices, must be numbered in large distinct type that appears in the center of the bottom margin of the page.

(d) Number of Copies.

(1) ***Complaint.***

(A) ***Paper Form.*** Plaintiff must file an original and 2 copies of the complaint, attaching a completed cover sheet to the original (shown in Form 2 of the Appendix of Forms).

(B) ***Electronic Copy.*** If the complaint exceeds 20 pages and plaintiff is not appearing *pro se* pursuant to RCFC 83.1, plaintiff must also file one copy of the complaint in electronic form using a disc in CD-ROM format.

(2) ***Subsequent Filings.*** Except in an electronic case under Appendix E, a party must file an original and 2 copies of any filing.

(3) ***Filings in a Congressional Reference Case.*** In a congressional reference case, a party must file an original and 4 copies of any filing.

(e) Date. Each paper must bear the date it is signed on the signature page.

(f) Electronic Mail Address and Telephone and Facsimile Numbers. The electronic mail address and telephone and facsimile numbers (including area code) of the attorney of record must appear directly below the signature line of every filing.

(g) Name of Judge. In all filings other than the complaint, the name of the judge assigned to the case must be included directly below the docket number.

(h) Bid Protest Cases. The words "Bid Protest" must be included in the caption of all filings directly below the name of the court.

(As revised and reissued May 1, 2002; as amended July 1, 2004; as renumbered Nov. 15, 2007; as amended Nov. 3, 2008, July 15, 2011, July 2, 2012.)

Rules Committee Notes
2002 Revision

New RCFC 5.3 has no FRCP counterpart.

The rule formerly appeared in these rules as RCFC 82 and 83. The consolidation and renumbering of RCFC 82 and 83 were intended to reflect their more logical placement in the organizational structure of the court's rules.

In addition to the renumbering, the text of former RCFC 82 has been modified in several respects: First, subdivision (a) has been modified by deleting the last sentence of that subdivision which read, "[t]he clerk shall refuse to file any paper which is not in substantial conformity with this rule or not in clear type." The deletion corresponds to the change made in RCFC 5(e) directing that "[t]he clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form." However, as noted in the Advisory Committee Note to FRCP 5(e), the "clerk may of course advise a party or counsel that a particular instrument is not in proper form, and may be directed to so inform the court."

Second, subdivision (c) has been modified to eliminate certain redundancies, to fix the type size, and to clarify binding and pagination requirements. Appendices will now be subject to pagination. The binding requirement changes were intended to discourage rubber bands, paper clips, and other non-secure binding.

Third, former subdivision (e), now subdivision (f), has been amended to include a requirement listing a facsimile number for the attorney of record.

Fourth, subdivision (d) was added to this rule to incorporate the "number of copies" requirement that formerly appeared as RCFC 83, as well as the requirement formerly found in RCFC 3(c) regarding the number of copies to be filed when filing a complaint.

Finally, subdivision (g) was also added. The text of this subdivision formerly appeared as part of RCFC 10(a).

2004 Amendment

Subdivision (h) has been added to the text of RCFC 5.3 to facilitate case management and administrative record-keeping requirements.

2007 Amendment

RCFC 5.4 formerly appeared in these rules as RCFC 5.3 and has been renumbered in light of the adoption of FRCP 5.1, effective December 1, 2006, to preserve the consistency in numbering systems between the court's rules and the FRCP.

2008 Amendment

The language of RCFC 5.5 has been amended to conform to the general restyling of the FRCP.

In addition, language has been added to clarify that the rule's requirements extend to all filings, whether in paper or electronic form, except as specifically noted.

Finally, the sentences "Such pages need not be justified on the right margin" from former RCFC 5.4(c) and "All copies shall be identical, or otherwise conformed, to the original" from former RCFC 5.4(d) have been deleted as unnecessary.

RCFC 5.5 formerly appeared in these rules as RCFC 5.4 and has been renumbered to accommodate the court's adoption of FRCP 5.2 (which became effective December 1, 2007) and to preserve the consistency in numbering systems between the court's rules and the FRCP.

2011 Amendment

RCFC 5.5(d)(1)(A) has been amended by reducing the required number of copies of a complaint to be filed from an original and 7 copies to an original and 2 copies. Additionally, subparagraph (d)(1)(B) has been added to require a plaintiff, except a plaintiff appearing *pro se*, to also file one copy of the complaint in electronic form using a disc in CD-ROM format when the complaint exceeds 20 pages.

Finally, subdivision (f) has been amended to require the attorney of record to include an electronic mail address directly below the signature line of every filing.

2012 Amendment

RCFC 5.5(d)(2) has been amended to eliminate the requirement that parties file paper copies of notices of appeal in electronic cases.

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 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 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.

(6) ***"Legal Holiday" Defined.*** "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.

(1) ***In General.*** When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) ***Exceptions.*** The court must not extend the time to act under RCFC 52(b), 59(b), (d), and (e), and 60(b).

(c) Motions, Notices of Hearing, and Affidavits. [Not used.]

(d) Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after service and service is made under RCFC 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under RCFC 6(a).

(As revised and reissued May 1, 2002; as amended June 20, 2006, Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes
2002 Revision

RCFC 6 has been changed to conform to FRCP 6. In particular, that part of subdivision (b) which formerly specified the content of motions for enlargement has been moved to a new RCFC 6.1, "Enlargements of Time."

2006 Amendment

Subdivision (e) has been amended to reflect the corresponding changes to FRCP 6(e) that became effective December 1, 2005.

2008 Amendment

The language of RCFC 6 has been amended to conform to the general restyling of the FRCP.

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, the definition of "last day" in subparagraph (a)(4)(B) has been amended to include a reference to the after-hours filing permitted under RCFC 77.1(a).

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

Rule 6.1 Motion for an Enlargement of Time

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

(1) the specific number of additional days requested;

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

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

(4) the reason for the enlargement.

(b) Communication With Opposing Counsel. 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.

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

Rules Committee Notes
2002 Revision

New RCFC 6.1 has no FRCP counterpart. The text of the new rule formerly appeared in these rules as part of RCFC 6(b). However, the language in former RCFC 6(b), which addressed the content of the reasons offered in support of a motion for enlargement of time, has been stricken as unnecessary.

2008 Amendment

The language of RCFC 6.1 has been amended to conform to the general restyling of the FRCP.

TITLE III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

(a) Pleadings. Only these pleadings are allowed:

- **(1)** a complaint;
- **(2)** an answer to a complaint;
- **(3)** an answer to a counterclaim designated as a counterclaim;
- **(4)** a reply to any offset or plea of fraud contained in the answer;
- **(5)** a third-party pleading permitted under RCFC 14; and
- **(6)** if the court orders one, a reply to an answer.

(b) Motions and Other Papers.

- **(1)** ***In General.*** A request for a court order must be made by motion. Any motion, objection, or response may be accompanied by a brief or memorandum and, if necessary, affidavits supporting the motion. The motion must:
  - **(A)** be in writing unless made during a hearing or trial;
  - **(B)** state with particularity the grounds for seeking the order; and
  - **(C)** state the relief sought.
- **(2)** ***Form.*** The rules governing captions and other matters of form in pleadings apply to motions and other papers.

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

Rules Committee Notes
2002 Revision

Minor grammatical changes have been introduced.

2008 Amendment

The language of RCFC 7 has been amended to conform to the general restyling of the FRCP.

In addition, the provision included in former paragraph (b)(1) stating that a motion may "be accompanied by a proposed order" has been omitted in favor of full conformance with FRCP 7.

Rule 7.1. Disclosure Statement

(a) Who Must File; Contents. A nongovernmental corporate party must file 2 copies of a disclosure statement that:

- **(1)** identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or
- **(2)** states that there is no such corporation.

(b) Time to File; Supplemental Filing. A party must:

- **(1)** file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and
- **(2)** promptly file a supplemental statement if any required information changes.

(Added Sept. 15, 2003; as amended Nov. 3, 2008.)

Rules Committee Notes
2003 Adoption

RCFC 7.1 has been added to correspond to the adoption of the same rule in the FRCP.

2008 Amendment

The language of RCFC 7.1 has been amended to conform to the general restyling of the FRCP.

Rule 7.2. Time for Filing

(a) In General.

- **(1)** ***Responses and Objections.*** Unless otherwise provided in these rules or by order of 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.

(b) Motions Under RCFC 12(b), 12(c), 52.1, and 56.

- **(1)** ***Responses.*** A response to any of these motions must be filed within 28 days after service of the motion.
- **(2)** ***Replies.*** A reply to a response may be

filed within 14 days after service of the response.

(c) Cross-Motions.

(1) ***Initial Motion.*** A cross-motion may be filed within the time allowed for responses in RCFC 7.2(a) and (b).

(2) ***Response and Reply.*** A party will have the same amount of time to respond and reply to a cross-motion as to an original motion.

(d) Motions Filed by Leave of Court. The time for filing a response to a motion filed by leave of court on motion by a party will run from the date of filing and not from the date of service.

(As revised and reissued May 1, 2002; as amended Sept. 15, 2003, June 20 2006, Nov. 3, 2008.)

Rules Committee Notes
2002 Revision and 2003 Amendment

RCFC 7.2 has no FRCP counterpart. The rule formerly appeared in these rules as RCFC 83.2 and, following the court's May 1, 2002, revision of its rules, as RCFC 7.1. The first renumbering of the rule (from RCFC 83.2 to RCFC 7.1) was intended to reflect its more logical placement in the organizational structure of the court's rules; the second renumbering (from RCFC 7.1 to RCFC 7.2) accommodates the court's adoption of FRCP 7.1 effective December 1, 2002, and preserves the consistency in numbering systems between the court's rules and the FRCP.

2006 Amendment

A cross-reference in subdivision (c) was revised to accord with the addition of RCFC 52.1.

2008 Amendment

The language of RCFC 7.2 has been amended to conform to the general restyling of the FRCP.

In addition, to improve organizational structure, the subdivision dealing with the contents of cross-motions, formerly included in these rules as RCFC 7.2(e), has been moved to RCFC 5.4(a).

Rule 8. General Rules of Pleading

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) ***In General.*** In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) ***Denials—Responding to the Substance.*** A denial must fairly respond to the substance of the allegation.

(3) ***General and Specific Denials.*** A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) ***Denying Part of an Allegation.*** A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) ***Lacking Knowledge or Information***. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) ***Effect of Failing to Deny.*** An

allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(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;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) ***Mistaken Designation.*** If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) ***In General.*** Each allegation must be simple, concise, and direct. No technical form is required.

(2) ***Alternative Statements of a Claim or Defense.*** A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) ***Inconsistent Claims or Defenses.*** A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes

2002 Revision

Minor changes have been made in subdivisions (b) and (c) to conform to FRCP 8. In addition, subdivision (c) was amended to require the pleading, as an affirmative defense, of assumption of risk and contributory negligence. Although these defenses are typically associated with tort claims (i.e., with claims outside this court's jurisdiction), there can be circumstances in which reliance on these defenses would be appropriate, for example, in congressional reference cases, in some aspects of contract litigation, and with respect to counterclaims asserted pursuant to 28 U.S.C. § 2508.

2008 Amendment

The language of RCFC 8 has been amended to conform to the general restyling of the FRCP.

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.

Rule 9. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) ***In General.*** Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) ***Raising Those Issues.*** To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) Conditions Precedent. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) Official Document or Act. In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) Time and Place. An allegation of time or place is material when testing the sufficiency of a pleading.

(g) Special Damages. If an item of special damage is claimed, it must be specifically stated.

(h) Admiralty or Maritime Claim. [Not used.]

(i) Inverse Condemnation Claim. In pleading a claim for just compensation under the Fifth Amendment of the United States Constitution, a party must identify the specific property interest alleged to have been taken by the United States.

(j) Citation to Statutes, Regulations, and Orders. In pleading a claim founded on a statute, regulation, or executive order, a party must include the citation to the act of Congress, regulation of an executive department or agency, or Executive Order of the President on which the claim is founded.

(k) Contract or Treaty. In pleading a claim founded on a contract or treaty, a party must identify the substantive provisions of the contract or treaty on which the party relies. In lieu of a description, the party may annex to the complaint a copy of the contract or treaty, indicating the relevant provisions.

(*l*) Patent Claim. In pleading a patent infringement, a party must describe the patent or patents alleged to be infringed.

(m) Tax Refund Claim. In pleading a claim for a tax refund, a party must include:

(1) a copy of the claim for refund, and

(2) a statement identifying:

(A) the tax year(s) for which a refund is sought;

(B) the amount, date, and place of each payment to be refunded;

(C) the date and place the return was filed, if any;

(D) the name, address, and identification number (under seal) of the taxpayer(s) appearing on the return;

(E) the date and place the claim for refund was filed; and

(F) the identification number (under seal) of each plaintiff, if different from the identification number of the taxpayer.

(n) Ownership of a Claim; Assignment. In pleading a claim or part of a claim, ownership of which was acquired by assignment or other transfer, a party must include a statement describing when and upon what consideration the assignment or transfer was made.

(o) Action by Another Tribunal or Body. In relying on an action by another tribunal or body, a party must describe the action taken

on the claim by Congress, a department or agency of the United States, or another court.

(p) Prior Litigation. In pleading a claim that has been previously presented to another court, whether in whole or in part or directly or indirectly, a party must include a statement identifying the effect, if any, of the prior litigation on this court's subject matter jurisdiction.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, July 2, 2012.)

Rules Committee Notes
2002 Revision

Subdivision (a) (relating to "Capacity") has been changed to conform to FRCP 9.

Subdivision (h)(6) (relating to special requirements applicable to complaints in "Tax Refund Suits") was amended by prescribing, as additional information to be included as part of a tax refund complaint, the following: (i) the taxpayer's or filer's identification number; and (ii) a copy of the claim for refund.

Subdivision (h)(7) was added as a means to clarify the nature of the property interest asserted to have been taken in an inverse condemnation action.

2008 Amendment

The language of RCFC 9 has been amended to conform to the general restyling of the FRCP.

In addition, former subdivision (h) ("Special Matters Required in Complaint"), comprised of paragraphs (1) through (7), has been reorganized as separate subdivisions (i) through (o), and a requirement was added to new subdivision (m) ("Tax Refund Claim") directing that taxpayer identification numbers be included under seal.

2012 Amendment

RCFC 9(p) has been added to require a claimant to address the effect, if any, that a pending prior suit brought in another court may have on this court's jurisdiction in light of 28 U.S.C. § 1500. *See United States v. Tohono O'Odham Nation*, ___ U.S. ___, 131 S. Ct. 1723 (2011).

Rule 10. Form of Pleadings

(a) Caption; Names of Parties. Every pleading must have a caption with the court's name, a title, a file number, and a RCFC 7(a) designation. The title of the complaint must name all the parties (see RCFC 20(a)), with the United States designated as the party defendant; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is part of the pleading for all purposes.

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

Rules Committee Notes
2002 Revision

RCFC 10 has been changed in minor respects in order to achieve closer textual conformity with FRCP 10. The former last sentence of subdivision (a) has been moved to RCFC 5.3.

The last sentence of former subdivision (c) ("unless otherwise indicated, but the adverse party shall not be deemed to have admitted the truth of the allegations in such exhibit merely because the adverse party has failed to deny them explicitly") was omitted as not in conformity with the FRCP and because it was deemed unnecessary.

2008 Amendment

The language of RCFC 10 has been amended to conform to the general restyling of the FRCP.

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper must be signed by or for the attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) ***In General.*** If, after notice and a reasonable opportunity to respond, the court determines that RCFC 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) ***Motion for Sanctions.*** A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates RCFC 11(b). The motion must be served under RCFC 5, but it must not be filed or presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) ***On the Court's Initiative.*** On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated RCFC 11(b).

(4) ***Nature of a Sanction.*** A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) ***Limitations on Monetary Sanctions.*** The court must not impose a monetary

sanction:

(A) against a represented party for violating RCFC 11(b)(2); or

(B) on its own, unless it issued the show-cause order under RCFC 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) ***Requirements for an Order***. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under RCFC 26 through 37.

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

Rules Committee Notes
2002 Revision

The changes to RCFC 11 reflect the corresponding revision of FRCP 11 that was introduced in December 1993. For a detailed explanation of the reasons for revision of FRCP 11, see 28 U.S.C.A. Rule 11 Advisory Committee Notes (West Supp. 2001).

2008 Amendment

The language of RCFC 11 has been amended to conform to the general restyling of the 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 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 21 days after being served with the order, unless the order specifies a different time.

(2) ***United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.*** [Not used.]

(3) ***United States Officers or Employees Sued in an Individual Capacity.*** [Not used.]

(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) 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 14 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;
(3) improper venue [not used];
(4) insufficient process;
(5) insufficient service of process;
(6) failure to state a claim upon which relief can be granted; and
(7) failure to join a party under RCFC 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under RCFC 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under RCFC 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(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 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 21 days after being served with the pleading.

(g) Joining Motions.

(1) ***Right to Join.*** A motion under this rule may be joined with any other motion allowed by this rule.

(2) ***Limitation on Further Motions.*** Except as provided in RCFC 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) ***When Some Are Waived.*** A party waives any defense listed in RCFC 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in RCFC 12(g)(2); or
(B) failing to either:
(i) make it by motion under this rule; or
(ii) include it in a responsive pleading or in an amendment allowed by RCFC 15(a)(1) as a matter of course.

(2) ***When to Raise Others.*** Failure to state a claim upon which relief can be granted, to join a person required by RCFC 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under RCFC 7(a);
(B) by a motion under RCFC 12(c); or
(C) at trial.

(3) ***Lack of Subject-Matter Jurisdiction.*** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in RCFC 12(b)(1)-(7)—whether made in a pleading or by

motion—and a motion under RCFC 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes
2002 Revision

To more closely parallel FRCP 12, subdivisions (b) and (h) of the court's rule have been enlarged by adding the defense of "insufficiency of service of process" and the defense of "failure to join a party indispensable under RCFC 19." Further, as an aid to practitioners, most of whom are familiar with practice in the district courts, the enumeration of defenses in subdivision (b) has been brought into conformity with the corresponding subdivision of the FRCP. Finally, subdivision (i) ("Suspension of Discovery") has been deleted. That subdivision is not part of the comparable FRCP, and its subject matter is more appropriately dealt with as a case management matter.

2008 Amendment

The language of RCFC 12 has been amended to conform to the general restyling of the FRCP.

In addition, former paragraph (a)(1) (the text of which is unique to our court) has been reworded to provide that while a reply to an answer containing a counterclaim is mandatory, a reply to an answer containing an offset or a plea of fraud is not (unless ordered by the court). This rewording, although a departure from past practice, was deemed advisable in order to avoid the consequences of an unintended admission caused by a party's inadvertent failure to respond to a defense of offset or plea of fraud that was not clearly designated as such in the answer.

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.

Rule 13. Counterclaim

(a) Compulsory Counterclaim.

(1) ***In General.*** A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) ***Exceptions.*** The pleader need not state the claim if, when the action was commenced, the claim was the subject of another pending action.

(b) Permissive Counterclaim. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) Relief Sought in a Counterclaim. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) Counterclaim Against the United States. These rules do not expand the right to assert a counterclaim—or to claim a credit—against the United States or a United States officer or agency.

(e) Counterclaim Maturing or Acquired After Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

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

(g) Joining Additional Parties. [Not used.]

(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, Jan. 11, 2010.)

Rules Committee Notes
2002 Revision

Subdivision (d) has been changed to add the language of FRCP 13(d) in recognition of the fact that there is no statutory bar to third-party defendants filing counterclaims against the United States. *See* 41 U.S.C. § 114 and RCFC 14. Other significant differences between this version and the FRCP have been preserved as necessary in light of the fact that the United States is the only defendant in this court.

2008 Amendment

The language of RCFC 13 has been amended to conform to the general restyling of the FRCP.

In addition, the text of subdivisions (a) and (f) has been modified to recognize that counterclaims, while generally filed in this court by the defendant, could, under certain circumstances, also be filed by a summoned third party (see RCFC 14). Hence, the terms "pleader" and "pleading," respectively, have been substituted for the more restrictive terms "defendant" and "answer."

2010 Amendment

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

Rule 14. Third-Party Practice

(a) When the United States May Bring in a Third Party. [Abrogated (eff. Aug. 30, 2013.]

(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.

(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 file an appropriate pleading pursuant to RCFC 14(c)(1)(A); and

(iii) state 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).

(c) Third Parties Pleadings.

(1) ***In General.***

(A) A person served with a notice issued under this rule may file an appropriate pleading setting forth the person's interest in the subject matter of the litigation.

(B) A third party's pleading must comply with the requirements of RCFC 5, 5.2, 5.3, 5.5, 7, 7.1, and 7.2.

(2) ***Time.*** A third-party's pleading must be filed within 42 days after service of the notice issued pursuant to this rule.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010, Aug. 30, 2013.)

Rules Committee Notes

2002 Revision

RCFC 14 has been substantially revised. The order of the rule has been changed to distinguish more clearly between the two types of actions it permits with respect to entities that are not yet parties to the suit. New subdivision (a) deals exclusively with summons to persons whom the United States seeks to join formally as third parties. The procedures for such summons are now gathered under that subdivision. The same has been done with respect to motions for notice to inform non-parties of the pendency of the action and the opportunity to join as parties. In addition, language in the old rule with respect to service of notice by publication, as well as the consequences of failing to appear in response to such notice, have been stricken. The law in this area is unsettled; hence, the possibility existed that the manner and method of notice prescribed by the rule might not be found constitutionally adequate in all potential situations.

It is important to note that RCFC 14's notice requirements do not apply to the procedures for notifying potential intervenors in procurement protest cases filed pursuant to 28 U.S.C. § 1491(b). RCFC 14 implements the authority set forth in 41 U.S.C. § 114. For service of third-party complaints, see RCFC 5.

2008 Amendment

The language of RCFC 14 has been amended to conform to the general restyling of the FRCP.

In addition, in RCFC 14(c)(1)(B), instead of directing that a third-party pleading "shall comply with the requirements of these rules with respect to the filing of original complaints and answers," the rule specifies that a third-party pleading must comply with RCFC 5, 5.2, 5.3, 5.5, 7, and 7.1.

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).

In addition, in the interest of internal consistency, the phrase in RCFC 14(b)(3)(B)(ii) "may seek intervention to assert an interest in the suit" has been changed to read "may file an appropriate pleading pursuant to RCFC 14(c)(1)(A)."

2013 Amendment

RCFC 14 has been amended to delete what formerly appeared as subdivision (a) ("When the United States May Bring in a Third Party"). This deletion was made necessary by the repeal of former Section 114(b) of Title 41 ("Public Contracts") of the United States Code that occurred as part of the revision and enactment into positive law of Title 41 by Public Law Number 111-350, 124 Stat. 3677, 3855, 3857 (2011). The deleted Section 114(b), originally enacted as part of the Contract Settlement Act of 1944, 58 Stat. 663 (1944), provided the jurisdictional basis for this court's authority to summon a third party.

In addition, subparagraph (c)(1)(B) has been amended by deleting as no longer necessary the phrase "except that a third party need only file an original and 2 copies of its complaint instead of the 7 copies required by RCFC 5.5(d)."

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) 21 days after service of the pleading; or

(B) if the pleading is one to which a 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 14 days after service of the amended pleading, whichever is later.

(b) Amendments During and After Trial.

(1) ***Based on an Objection at Trial.*** If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) ***For Issues Tried by Consent.*** When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) ***When an Amendment Relates Back.*** An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if RCFC 15(c)(1)(B) is satisfied and if the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) ***Notice to the United States.*** [Not Used.]

(d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010, July 15, 2011.)

Rules Committee Notes
2002 Revision

Significant changes were made to FRCP 15 in 1991; minor changes were made in 1993. Most notable is the listing of criteria for relation back of amendments in subdivision (c). RCFC 15 was conformed to the comparable FRCP, with two exceptions: first, the language in FRCP subdivision (c)(3), relating to the timing of an amendment changing the name of a party, was omitted as inapplicable; and second, language in subdivision (c) of the FRCP, relating to faulty service on federal officers, also was omitted.

2008 Amendment

The language of RCFC 15 has been amended to conform to the general restyling of the FRCP.

2010 Amendment

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

2011 Amendment

RCFC 15(a)(1)(A) has been amended to clarify that the 21-day time period runs from the date of service of the pleading.

Rule 16. Pretrial Conferences; Scheduling; Management

(a) Purposes of a Pretrial Conference. In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

(1) expediting disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation;

(5) facilitating settlement; and

(6) assessing the utility of dispositive motions.

(b) Scheduling.

(1) ***Scheduling Order.*** The court will issue a scheduling order:

(A) after receiving the parties' Joint Preliminary Status Report under Appendix A, paragraphs 4–6; or

(B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means.

(2) ***Time to Issue.*** The court will issue the scheduling order as soon as practicable after the filing of the Joint Preliminary Status Report, but in any event within 14 days after any preliminary scheduling conference.

(3) ***Contents of the Order.***

(A) ***Required Contents.*** The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.

(B) ***Permitted Contents***. The scheduling order may:

(i) modify the timing of

disclosures under RCFC 26(a) and 26(e)(1);

(ii) modify the extent of discovery;

(iii) provide for disclosure or discovery of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(v) set dates for pretrial conferences and for trial;

(vi) direct that the parties file any of the submissions set out in Appendix A ¶¶ 14, 15, 16, or 17; and

(vii) include other appropriate matters.

(4) ***Modifying a Schedule.*** A schedule may be modified only for good cause and with the judge's consent.

(c) Attendance and Matters for Consideration at a Pretrial Conference.

(1) ***Attendance.*** A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) ***Matters for Consideration***. At any pretrial conference, the court may consider and take appropriate action on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Federal Rule of Evidence 702;

(E) determining the appropriateness and timing of summary adjudication under RCFC 52.1 and 56;

(F) controlling and scheduling discovery, including orders affecting disclosures and discovery under RCFC 26 and RCFC 29 through 37;

(G) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;

(H) referring matters to a master;

(I) settling the case and using special procedures to assist in resolving the dispute;

(J) determining the form and content of the pretrial order;

(K) disposing of pending motions;

(L) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(M) ordering a separate trial under RCFC 42(b) of a claim, counterclaim, third-party claim, or particular issue;

(N) ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law or a judgment on partial findings under RCFC 52(c);

(O) establishing a reasonable time limit on the time allowed to present

evidence; and

(P) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) Pretrial Orders. After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(e) Final Pretrial Conference and Orders. The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

(f) Sanctions.

(1) ***In General.*** On motion or on its own, the court may issue any just orders, including those authorized by RCFC 37(b)(2)(A)(ii)–(vii), if a party or its attorney:

(A) fails to appear at a scheduling or other pretrial conference;

(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) ***Imposing Fees and Costs.*** Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

(g) Additional Pretrial Procedures. See Appendix A to these rules ("Case Management Procedure") for additional provisions controlling pretrial procedures.

(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008.)

Rules Committee Notes

2002 Revision

RCFC 16 has been completely revised to parallel the structure and content of its counterpart in the FRCP. The limited number of changes to the current FRCP reflect those deemed necessary to accommodate procedural requirements particular to this court. Except for these changes, the rule shown conforms fully to the text of FRCP 16.

2007 Amendment

Subdivision (b) of RCFC 16 has been amended by the addition of subparagraphs 5 and 6 to reflect the corresponding changes to FRCP 16

2008 Amendment

The language of RCFC 16 has been amended to conform to the general restyling of the FRCP.

In addition, reference to RCFC 26(e)(1) ("Supplementing Disclosures and Responses") was added to RCFC 16(b)(3)(B)(i) to conform to the FRCP.

TITLE IV. PARTIES

Rule 17. Plaintiff and Defendant; Capacity

(a) Real Party in Interest.

(1) ***Designation in General.*** An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;
(B) an administrator;
(C) a guardian;
(D) a bailee;
(E) a trustee of an express trust;
(F) a party with whom or in whose name a contract has been made for another's benefit; and
(G) a party authorized by statute.

(2) ***Action in the Name of the United States for Another's Use or Benefit.*** [Not used.]

(3) ***Joinder of the Real Party in Interest.*** The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) Capacity to Sue or Be Sued. Capacity to sue or be sued is determined as follows:

(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;

(2) for a corporation, by the law under which it was organized; and

(3) for all other parties, by the law of the applicable state, except that:

(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and

(B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.

(c) Minor or Incompetent Person.

(1) ***With a Representative.*** The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;
(B) a committee;
(C) a conservator; or
(D) a like fiduciary.

(2) ***Without a Representative.*** A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

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

Rules Committee Notes
2002 Revision

RCFC 17 has been modified in minor respects in order to achieve closer conformity with FRCP 17. A difference between the court's rule and the corresponding FRCP occurs in subdivision (b). Subdivision (b) of the FRCP, subtitled "Capacity to Sue or Be Sued," provides generally that in those cases for which no rule of decision is provided, "capacity to sue or be sued shall be determined by the law of the state in which the district court is held." In recognition of this court's nationwide jurisdiction, the quoted language was rewritten by substituting "by the law of the applicable state" for "by the law of the state in which the district court is held."

2008 Amendment

The language of RCFC 17 has been amended to conform to the general restyling of the FRCP.

Rule 18. Joinder of Claims

(a) In General. A party asserting a claim or counterclaim may join, as independent or alternative claims, as many claims as it has against an opposing party. A third party may join, to the extent permitted by law, as many claims as it has against an opposing party.

(b) Joinder of Contingent Claims. A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights.

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

Rules Committee Notes
2002 Revision

The final sentence added to subdivision (a) was intended to recognize both the right of a third party to assert a claim and the limitations on that right as set forth in 41 U.S.C. § 114 and applicable case law.

2008 Amendment

The language of RCFC 18 has been amended to conform to the general restyling of the FRCP.

Rule 19. Required Joinder of Parties

(a) Persons Required to Be Joined if Feasible.

(1) ***Required Party.*** A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) ***Joinder by Court Order.*** If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) ***Venue.*** [Not used.]

(b) When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgement rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) Pleading the Reasons for Nonjoinder. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) Exception for Class Actions. This rule is

subject to RCFC 23.

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

Rules Committee Notes
2002 Revision

Reference to RCFC 14 was deleted from subdivision (a) and other minor changes have been made in order to more closely conform to FRCP 19. Some differences, however, were retained—the most significant being the deletion of the last sentence of FRCP 19(a) from this court's rule. The last sentence addresses objections to venue raised by a joined party. Such objections would not be assertable in this court.

2008 Amendment

The language of RCFC 19 has been amended to conform to the general restyling of the FRCP.

Rule 20. Permissive Joinder of Parties

(a) Persons Who May Join or Be Joined.

(1) ***Plaintiffs.*** Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) ***Defendants.*** [Not used.]

(3) ***Extent of Relief.*** A plaintiff need not be interested in obtaining all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights.

(b) Protective Measures. The court may issue orders—including an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

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

Rules Committee Notes
2002 Revision

The authority previously contained in RCFC 20(a)(1)–(2), permitting unrestricted joinder of additional plaintiffs to a pending multi-party action, proved cumbersome in practice and an impediment to sound case management. The joinder of additional plaintiffs should proceed by appropriate motion under RCFC 15. Accordingly, RCFC 20 was modified so as to more closely parallel the text of the corresponding FRCP.

2008 Amendment

The language of RCFC 20 has been amended to conform to the general restyling of the FRCP.

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

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

Rules Committee Notes
2002 Revision

The last sentence of the former rule, "To add plaintiffs, see RCFC 20(a)(1)–(2)," was eliminated to more closely conform the rule to FRCP 21.

2008 Amendment

The language of RCFC 21 has been amended to conform to the general restyling of the FRCP.

Rule 22. Interpleader [Not used.]

Rules Committee Note
2002 Revision

The interpleader practice permitted under FRCP 22 is, for the most part, incompatible with the jurisdiction exercisable by this court. However, in those cases where the United States is in the position of a stakeholder facing the risks of

double liability, RCFC 14 provides the means for summoning a third party.

Rule 23. Class Actions

(a) Prerequisites. One or more members of a class may sue as representative parties on behalf of all members only if:

- **(1)** the class is so numerous that joinder of all members is impracticable;
- **(2)** there are questions of law or fact common to the class;
- **(3)** the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- **(4)** the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. A class action may be maintained if RCFC 23(a) is satisfied and if:

- **(1)** [not used];
- **(2)** the United States has acted or refused to act on grounds generally applicable to the class; and
- **(3)** the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
  - **(A)** the class members' interests in individually controlling the prosecution of separate actions;
  - **(B)** the extent and nature of any litigation concerning the controversy already begun by class members;
  - **(C)** [not used]; and
  - **(D)** the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) ***Certification Order.***

- **(A)** ***Time to Issue.*** At an early practicable time after a person sues as a class representative, the court must determine by order whether to certify the action as a class action.
- **(B)** ***Defining the Class; Appointing Class Counsel.*** An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under RCFC 23(g).
- **(C)** ***Altering or Amending the Order.*** An order that grants or denies class certification may be altered or amended before final judgment.

(2) ***Notice.***

- **(A)** [Not used.]
- **(B)** For any class certified under RCFC 23(b), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:
  - **(i)** the nature of the action;
  - **(ii)** the definition of the class certified;
  - **(iii)** the class claims, issues, or defenses;
  - **(iv)** that a class member may enter an appearance through an attorney if the member so desires;
  - **(v)** that the court will include in the class any member who requests inclusion;
  - **(vi)** the time and manner for requesting inclusion;
  - **(vii)** the binding effect of a class judgment on members under RCFC 23(c)(3).

(3) ***Judgment.*** Whether or not favorable to the class, the judgment in a class action must include and specify or describe those to whom the RCFC 23(c)(2) notice was directed, and whom the court finds to be class members.

(4) ***Particular Issues.*** When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) ***Subclasses.*** When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) ***In General.*** In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require—to protect class members and fairly conduct the action—giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) ***Combining and Amending Orders.*** An order under RCFC 23(d)(1) may be altered or amended from time to time and may be combined with an order under RCFC 16.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

(2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.

(3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) [Not used.]

(5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

(f) Appeals. [Not used.]

(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 represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under RCFC 23(h); and

(E) may make further orders in connection with the appointment.

(2) ***Standard for Appointing Class Counsel.*** When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under RCFC 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) ***Interim Counsel.*** The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) ***Duty of Class Counsel.*** Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under RCFC 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under RCFC 52(a).

(4) [Not used.]

(As revised and reissued May 1, 2002; as amended July 1, 2004, Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes
2002 Revision

RCFC 23 has been completely rewritten. Although the court's rule is modeled largely on the comparable FRCP, there are significant differences between the two rules. In the main, the court's rule adopts the criteria for certifying and maintaining a class action as set forth in *Quinault Allottee Ass'n v. United States*, 197 Ct. Cl. 134, 453 F.2d 1272 (1972).

Because the relief available in this court is generally confined to individual money claims against the United States, the situations justifying the use of a class action are correspondingly narrower than those addressed in FRCP 23. Thus, the court's rule does not accommodate, *inter alia*, the factual situations redressable through declaratory and injunctive relief contemplated under FRCP 23(b)(1) and (b)(2).

Additionally, unlike the FRCP, the court's rule contemplates only opt-in class certifications, not opt-out classes. The latter were viewed as inappropriate here because of the need for specificity in money judgments against the United States, and the fact that the court's injunctive powers—the typical focus of an opt-out class—are more limited than those of a district court.

Finally, the court's rule does not contain a provision comparable to FRCP 23(f). That subdivision, which provides that a "court of appeals may in its discretion permit an appeal from an order . . . granting or denying class certification," has its origin in 28 U.S.C. § 1292(e), which authorizes the Supreme Court to promulgate rules that provide for an appeal of an interlocutory

decision other than those set out in Section 1292. Because no comparable statutory authority exists for this court's promulgation of a similar rule, subdivision (f) has been omitted. It should be noted, however, that the Court of Federal Claims may certify questions to the Court of Appeals for the Federal Circuit pursuant to 28 U.S.C. §§ 1292(b), 1295.

2004 Amendment

In addition to the rule changes introduced in 2002, the text of the current rule also incorporates the revisions to FRCP 23 effective December 1, 2003. These revisions, which appear as subdivisions (c), (e), (g), and (h) of the rule, adopt the text of the FRCP except where modification in wording was necessary to accommodate the "opt-in" character of this court's class action practice.

2008 Amendment

The language of RCFC 23 has been amended to conform to the general restyling of the FRCP.

In addition, subdivision (h) ("Attorney's Fees and Nontaxable Costs") has been expanded to (i) recognize that an award of attorney's fees may be authorized either by law (as was previously recognized in the rule) or "by the parties' agreement"; and (ii) include the procedural protections accorded class members under FRCP 23(h)(1)–(3) with respect to claims for an award of attorney's fees.

2010 Amendment

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

Rule 23.1. Derivative Actions

(a) Prerequisites. This rule applies when one or more shareholders or members of a corporation or an unincorporated association bring a derivative action to enforce a right that the corporation or association may properly assert but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.

(b) Pleading Requirements. The complaint must be verified and must:

- **(1)** allege that the plaintiff was a shareholder or member at the time of the transaction complained of, or that the plaintiff's share or membership later devolved on it by operation of law;
- **(2)** allege that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and
- **(3)** state with particularity:
  - **(A)** any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and
  - **(B)** the reasons for not obtaining the action or not making the effort.

(c) Settlement, Dismissal, and Compromise. A derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.

(Added May 1, 2002; as amended Nov. 3, 2008.)

Rules Committee Notes

2002 Adoption

This is a new rule. This version of RCFC 23.1 is in conformity with the corresponding FRCP. The Federal Circuit has ruled that under certain circumstances, this court has jurisdiction to hear shareholder derivative suits. *First Hartford Corp. Pension Plan & Trust v. United States,* 194 F.3d 1279 (Fed. Cir. 1999). *Cf. Branch v. United States,* 69 F.3d 1571 (Fed. Cir. 1995); and *California Housing Sec., Inc. v. United States,* 959 F.2d 955 (Fed. Cir. 1992).

2008 Amendment

The language of RCFC 23.1 has been

amended to conform to the general restyling of the FRCP.

Rule 23.2. Actions Relating to Unincorporated Associations [Not used.]

Rules Committee Note
2002 Revision

This rule is procedurally unnecessary in light of the opt-in class-action procedures of RCFC 23.

Rule 24. Intervention

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention.

(1) ***In General.*** On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) ***By a Government Officer or Agency.*** [Not used.]

(3) ***Delay or Prejudice***. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in RCFC 5. The motion must state the grounds for the intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

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

Rules Committee Notes
2002 Revision

Minor changes have been made to subdivision (c) of this rule in order to more closely conform to FRCP 24.

2008 Amendment

The language of RCFC 24 has been amended to conform to the general restyling of the FRCP.

In addition, as pointed out in the 2007 Committee Note in the FRCP, the final sentence in subdivision (c)—specifying that the procedure called for under the rule "shall be followed when a statute of the United States gives a right to intervene"—was deleted as unnecessary.

Rule 25. Substitution of Parties

(a) Death.

(1) ***Substitution if the Claim is Not Extinguished.*** If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by the decedent must be dismissed.

(2) ***Continuation Among the Remaining Parties.*** After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) ***Service.*** A motion to substitute, together with a notice of hearing, must be served on the parties as provided in RCFC 5. A statement noting death must be served in the same manner.

(b) Incompetency. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be

served as provided in RCFC 25(a)(3).

(c) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in RCFC 25(a)(3).

(d) Public Officers; Death or Separation from Office. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

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

Rules Committee Notes
2002 Revision

RCFC 25 omits the text of subdivision (d) of FRCP 25 which addresses the substitution of a successor in an action naming a public officer who dies or is separated from service while the action is pending.

2008 Amendment

The language of RCFC 25 has been amended to conform to the general restyling of the FRCP.

In addition, subdivision (d) ("Public Officers; Death or Separation from Office"), which is identical in text to FRCP 25(d) but was previously "not used," was added in recognition of the provision's potential applicability to claims for compensation filed in this court under the National Childhood Vaccine Injury Act. In such suits, a public officer (the Secretary of Health and Human Services) is always the named respondent.

TITLE V. DISCLOSURES AND DISCOVERY

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) Required Disclosures.

(1) ***Initial Disclosure.***

(A) ***In General.*** Except as exempted by RCFC 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under RCFC 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) [not used].

(B) ***Proceedings Exempt from Initial Disclosure.*** The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record, including procurement protest and military pay cases;

(ii) [not used];

(iii) [not used];

(iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(v) [not used];

(vi) [not used];

(vii) [not used];

(viii)[not used];

(ix) an action to enforce an arbitration award; and

(x) an action under the National Childhood Vaccine Injury Act.

(C) ***Time for Initial Disclosures—In General.*** A party must make the initial disclosures at or within 14 days after the Early Meeting of Counsel (see Appendix A ¶3) unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the Joint Preliminary Status Report. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(D) ***Time for Initial Disclosures—For Parties Served or Joined Later.*** A party that is first served or otherwise joined after the Early Meeting of Counsel (see Appendix

A ¶3) must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) ***Basis for Initial Disclosure; Unacceptable Excuses.*** A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) ***Disclosure of Expert Testimony.***

(A) ***In General***. In addition to the disclosures required by RCFC 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) ***Witnesses Who Must Provide a Written Report.*** Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) ***Witnesses Who Do Not Provide a Written Report.*** Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) ***Time to Disclose Expert Testimony***. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under RCFC 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

(E) ***Supplementing the Disclosure.*** The parties must supplement these disclosures when required under RCFC 26(e)

(3) ***Pretrial Disclosures.*** [Not used; see Appendix A ¶¶ 13, 15, and 16.]

(4) ***Form of Disclosures.*** Unless the court orders otherwise, all disclosures under RCFC 26(a) must be in writing, signed, and served.

(b) Discovery Scope and Limits.

(1) ***Scope in General.*** Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by RCFC 26(b)(2)(C).

(2) ***Limitations on Frequency and Extent.***

(A) ***When Permitted.*** By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under RCFC 30. By order, the court may also limit the number of requests under RCFC 36.

(B) ***Specific Limitations on Electronically Stored Information.*** A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for the discovery.

(C) ***When Required.*** On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(3) ***Trial Preparation: Materials.***

(A) ***Documents and Tangible Things.*** Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to RCFC 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under RCFC 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) ***Protection Against Disclosure.*** If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) ***Previous Statement.*** Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and RCFC 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites substantially verbatim the person's oral statement.

(4) ***Trial Preparation: Experts.***

(A) ***Deposition of an Expert Who May Testify***. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If RCFC 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) ***Trial-Preparation Protection for Draft Reports or Disclosures.*** RCFC 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under RCFC 26(a)(2), regardless of the form in which the draft is recorded.

(C) ***Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses.*** RCFC 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under RCFC 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) ***Expert Employed Only for Trial Preparation.*** Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in RCFC 35(b); or

(ii) on showing exceptional circumstances under which it

is impracticable for the party to obtain facts or opinions on the same subject by other means.

(E) ***Payment.*** Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under RCFC 26(b)(4)(A) or (D); and

(ii) for discovery under (D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(5) ***Claiming Privilege or Protecting Trial-Preparation Materials.***

(A) ***Information Withheld.*** When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) ***Information Produced.*** If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) Protective Orders.

(1) ***In General.*** A party or any person from whom discovery is sought may move for a protective order. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court

directs.

(2) ***Ordering Discovery.*** If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) ***Awarding Expenses.*** RCFC 37(a)(5) applies to the award of expenses.

(d) Timing and Sequence of Discovery.

(1) ***Timing.*** A party may not seek discovery from any source before the parties have conferred as required by Appendix A ¶ 3, except in a proceeding exempted from initial disclosure under RCFC 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.

(2) ***Sequence.*** Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

(e) Supplementing Disclosures and Responses.

(1) ***In General.*** A party who has made a disclosure under RCFC 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) ***Expert Witness.*** For an expert whose report must be disclosed under RCFC 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under RCFC 26(a)(3) are due.

(f) Conference of the Parties; Planning for Discovery. [Not used; see Appendix A ¶ 3.]

(g) Signing Disclosures and Discovery Requests, Responses, and Objections.

(1) ***Signature Required; Effect of Signature.*** Every disclosure under RCFC 26(a)(1) or Appendix A ¶¶ 13, 15, and 16, and every discovery request, response, or objection must be signed by the attorney of record in the attorney's own name—or by the party personally, if unrepresented—and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at

stake in the action.

(2) ***Failure to Sign.*** Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) ***Sanction for Improper Certification.*** If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008, July 15, 2011, July 2, 2012.)

Rules Committee Notes

2002 Revision

RCFC 26 has been revised to parallel the structure and content of its counterpart in the FRCP. The limited number of changes to the current FRCP, as amended in 2000, reflect those deemed necessary to accommodate the nature and jurisdiction of this court. Except for these changes, the rule shown conforms fully to the text of FRCP 26. Because the Appendix A Early Meeting of Counsel substantially accomplishes the same purpose as the FRCP 26(f) Conference of Parties, the timing of initial disclosures was keyed to the former. Consequently, in lieu of the language of FRCP 26(f), cross reference is made to Appendix A ¶ 3.

2007 Amendment

Rule 26 has been amended to reflect the changes to subdivisions (a) and (b) of FRCP 26 that became effective December 1, 2006. The changes to subdivision (f) of FRCP 26 that became effective December 1, 2006, were also adopted by the court but appear as changes to Appendix A, ¶ 3.

2008 Amendment

The language of RCFC 26 has been amended to conform to the general restyling of the FRCP.

In addition, the references in former subparagraph (a)(1)(E) to the initial disclosure requirements after the filing of the Joint Preliminary Status Report have been changed in now-restyled subparagraphs (a)(1)(C) and (D) to "after the Early Meeting of Counsel" to reflect the corresponding event (the Rule 26(f) conference) identified in the federal rule.

2011 Amendment

RCFC 26 has been amended in accordance with the corresponding changes to FRCP 26 that became effective December 1, 2010.

2012 Amendment

RCFC 26(a)(2)(D) has been amended to conform to its FRCP counterpart. In particular, the time within which a party must disclose expert testimony has been tied to the date of trial rather than to the scheduled close of discovery.

Rule 27. Depositions to Perpetuate Testimony

(a) Before an Action Is Filed.

(1) ***Petition.*** A person who wants to perpetuate testimony about any matter cognizable in the court may file a verified petition. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

(A) that the petitioner expects to be a party to an action cognizable in the court but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) [not used]; and

(E) the name, address, and expected

substance of the testimony of each deponent.

(2) ***Notice and Service.*** The petitioner must serve the United States with a copy of the petition in the same manner as the complaint. See RCFC 4. The petitioner may thereafter request a hearing by motion served on counsel for the United States (see RCFC 5), or on its own, the court may order a hearing on the petition.

(3) ***Order and Examination***. If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by RCFC 34 and 35.

(4) ***Using the Deposition.*** A deposition to perpetuate testimony may be used under RCFC 32(a) in any later-filed action in this court involving the same subject matter if the deposition was taken under these rules.

(b) Pending Appeal.

(1) ***In General.*** If a judgment has been rendered and an appeal has been taken or may still be taken, the court may permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in the court.

(2) ***Motion.*** The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in this court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) ***Court Order.*** If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by RCFC 34 and 35. The depositions may be taken and used as any other deposition taken in an action pending in this court.

(c) Perpetuation by an Action. [Not used.]

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

Rules Committee Notes
2002 Revision

RCFC 27 closely parallels FRCP 27, the only differences being those necessary for compatibility with the jurisdiction and other rules of the court.

2008 Amendment

The language of RCFC 27 has been amended to conform to the general restyling of the FRCP.

Rule 28. Persons Before Whom Depositions May Be Taken

(a) Within the United States.

(1) ***In General.*** Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths either by federal law or by the law in the place of examination; or

(B) a person appointed by the court to administer oaths and take testimony.

(2) ***Definition of "Officer."*** The term "officer" in RCFC 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under RCFC 29(a).

(b) In a Foreign Country.

(1) ***In General.*** A deposition may be taken in a foreign country:

(A) under an applicable treaty or

convention;

(B) under a letter of request, whether or not captioned a "letter rogatory";

(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) ***Issuing a Letter of Request or a Commission.*** A letter of request, a commission, or both may be issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) ***Form of a Request, Notice, or Commission.*** When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in [name of country]." A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) ***Letter of Request—Admitting Evidence.*** Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States.

(c) **Disqualification.** A deposition must not be taken before a person who is any party's relative, employee, or attorney; who is related to or employed by any party's attorney; or who is financially interested in the action.

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

Rules Committee Notes
2002 Revision

RCFC 28 parallels in form and content FRCP 28. The single difference between the two rules occurs in subdivision (a): the court's rule eliminates the reference to other courts by omitting the phrasing "in which the action is pending."

2008 Amendment

The language of RCFC 28 has been amended to conform to the general restyling of the FRCP.

Rule 29. Stipulations About Discovery Procedure

Unless the court orders otherwise, the parties may stipulate that:

(a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition; and

(b) other procedures governing or limiting discovery be modified—but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.

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

Rules Committee Notes
2002 Revision

RCFC 29 is identical to its FRCP counterpart.

2008Amendment

The language of RCFC 29 has been amended to conform to the general restyling of the FRCP.

Rule 30. Depositions by Oral Examination

(a) When a Deposition May Be Taken.

(1) ***Without Leave.*** A party may, by oral questions, depose any person, including a party, without leave of court except as

provided in RCFC 30(a)(2). The deponent's attendance may be compelled by subpoena under RCFC 45.

(2) ***With Leave***. A party must obtain leave of court, and the court must grant leave to the extent consistent with RCFC 26(b)(2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or RCFC 31 by the plaintiffs, or by the defendant, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take the deposition before the time specified in RCFC 26(d), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time; or

(B) if the deponent is confined in prison.

(b) Notice of the Deposition; Other Formal Requirements.

(1) ***Notice in General.*** A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) ***Producing Documents.*** If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under RCFC 34 to produce documents and tangible things at the deposition.

(3) ***Method of Recording.***

(A) ***Method Stated in the Notice.*** The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) ***Additional Method.*** With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) ***By Remote Means.*** The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this rule and RCFC 28(a) and 37(b)(1), the deposition takes place where the deponent answers the questions.

(5) ***Officer's Duties.***

(A) ***Before the Deposition.*** Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under RCFC 28. The officer must begin the deposition with an on-the-record statement that includes:

(i) the officer's name and business address;

(ii) the date, time, and place of the

deposition;

(iii) the deponent's name;

(iv) the officer's administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

(B) ***Conducting the Deposition; Avoiding Distortion.*** If the deposition is recorded nonstenographically, the officer must repeat the items in RCFC 30(b)(5)(A)(i)–(iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) ***After the Deposition.*** At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) ***Notice or Subpoena Directed to an Organization.*** In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Written Questions.

(1) ***Examination and Cross-Examination.*** The examination and cross-examination of a deponent proceed as they would at trial under the Federal Rules of Evidence, except Rules 103 and 615. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under RCFC 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) ***Objections.*** An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition , or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under RCFC 30(d)(3).

(3) ***Participating Through Written Questions.*** Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Duration; Sanction; Motion to Terminate or Limit.

(1) ***Duration.*** Unless otherwise stipulated or ordered by the court, a deposition is

limited to 1 day of 7 hours. The court must allow additional time consistent with RCFC 26(b)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) ***Sanction.*** The court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) ***Motion to Terminate or Limit.***

(A) ***Grounds.*** At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) ***Order.*** The court may order that the deposition be terminated or may limit its scope and manner as provided in RCFC 26(c). If terminated, the deposition may be resumed only by order of the court.

(C) ***Award of Expenses.*** RCFC 37(a)(5) applies to the award of expenses.

(e) Review by the Witness; Changes.

(1) ***Review; Statement of Changes.*** On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) ***Changes Indicated in the Officer's Certificate.*** The officer must note in the certificate prescribed by RCFC 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing.

(1) ***Certification and Delivery.*** The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) ***Documents and Tangible Things.***

(A) ***Originals and Copies.*** Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they

are marked—in which event the originals may be used as if attached to the deposition.

(B) ***Order Regarding the Originals.*** Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) ***Copies of the Transcript or Recording.*** Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) ***Notice of Filing.*** [Not used.]

(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses. A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

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

Rules Committee Notes
2002 Revision

RCFC 30 parallels the structure and content of its FRCP counterpart. The limited number of differences between the two rules reflects those necessary for compatibility with the jurisdiction and other rules of the court.

2008 Amendment

The language of RCFC 30 has been amended to conform to the general restyling of the FRCP.

Rule 31. Depositions by Written Questions

(a) When a Deposition May Be Taken.

(1) ***Without Leave.*** A party may, by written questions, depose any person, including a party, without leave of court except as provided in RCFC 31(a)(2). The deponent's attendance may be compelled by subpoena under RCFC 45.

(2) ***With Leave***. A party must obtain leave of court, and the court must grant leave to the extent consistent with RCFC 26(b)(2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or RCFC 30 by the plaintiffs, or by the defendant, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take a deposition before the time specified in RCFC 26(d); or

(B) if the deponent is confined in prison.

(3) ***Service; Required Notice.*** A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) ***Questions Directed to an Organization.*** A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with RCFC 30(b)(6).

(5) ***Questions from Other Parties.*** Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) Delivery to the Officer; Officer's Duties. The party who noticed the deposition must deliver to the officer a copy of all questions served and of the notice. The officer must promptly proceed in the manner provided in RCFC 30(c), (e), and (f) to:

(1) take the deponent's testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and of the notice.

(c) Notice of Completion or Filing.

(1) ***Completion.*** The party who noticed the deposition must notify all other parties when it is completed.

(2) ***Filing.*** [Not used.]

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

Rules Committee Notes
2002 Revision

RCFC 31 closely parallels the text of FRCP 31. Subdivision (a) is identical in wording to the current FRCP. Subdivisions (b) and (c) are nearly identical, the only differences being those necessary to reflect the court's practice of not requiring depositions to be filed.

2008 Amendment

The language of RCFC 31 has been amended to conform to the general restyling of the FRCP.

Rule 32. Using Depositions in Court Proceedings

(a) Using Depositions.

(1) ***In General.*** At a hearing or trial, all or part of a deposition may be used against a party on these conditions:

(A) the party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying; and

(C) the use is allowed by RCFC 32(a)(2) through (8).

(2) ***Impeachment and Other Uses.*** Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the Federal Rules of Evidence.

(3) ***Deposition of Party, Agent, or Designee.*** An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under RCFC 30(b)(6) or 31(a)(4).

(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) that the witness is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition;

(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.

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

(A) ***Deposition Taken on Short Notice.*** A deposition must not be used against a party who, having received less than 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.

(B) ***Unavailable Deponent; Party Could Not Obtain an Attorney.*** A deposition taken without leave of court under the unavailability provision of RCFC 30(a)(2)(A)(iii) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(6) ***Using Part of a Deposition.*** If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) ***Substituting a Party.*** Substituting a party under RCFC 25 does not affect the right to use a deposition previously taken.

(8) ***Deposition Taken in an Earlier Action.*** A deposition lawfully taken and, if required, filed in any federal- or state-court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the Federal Rules of Evidence.

(b) **Objections to Admissibility.** Subject to RCFC 28(b) and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissable if the witness were present and testifying.

(c) **Form of Presentation.** Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but may provide the court with the testimony in nontranscript form as well.

(d) **Waiver of Objections.**

(1) ***To the Notice.*** An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) ***To the Officer's Qualification.*** An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

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

(A) ***Objection to Competence, Relevance, or Materiality.*** An objection to a deponent's competence—or to the competence, relevance, or materiality of testimony—is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) ***Objection to an Error or Irregularity.*** An objection to an error or irregularity at an oral examination is waived if:

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that

might have been corrected at that time; and

(ii) it is not timely made during 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 7 days after being served with it.

(4) ***To Completing and Returning the Deposition.*** An objection to how the officer transcribed the testimony—or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition—is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes
2002 Revision

RCFC 32 is identical to its FRCP counterpart, except for (1) omission of the last sentence in subdivision (c), applicable only in jury trials, (2) deletion of the word "filed" in subdivision (d)(4), because this court does not require that depositions routinely be filed, and (3) revision of subparagraphs (a)(3)(B) and (E) to require application and notice for the use of depositions of a witness who is at a greater distance than 100 miles from the place of trial or hearing.

2008 Amendment

The language of RCFC 32 has been amended to conform to the general restyling of the FRCP.

In addition, in the interest of structural clarity, the text of former subparagraph (a)(3)(E) (relating to the requirement governing the use at trial of the deposition of a witness located more than 100 miles from the place of trial or hearing) has been incorporated into restyled subparagraph (a)(4)(B).

2010 Amendment

RCFC 32(a)(4) has been amended to more closely parallel its FRCP counterpart, except that the provision in subparagraph (a)(4)(B) allowing the use of deposition testimony where the witness is more than 100 miles from the place of trial has been stricken to reinforce the court's clear preference for live testimony, particularly given the availability of video and telephone conferencing. A witness's distance from the place of trial may nevertheless be considered as a basis for the allowance of deposition testimony under the "exceptional circumstances" provision of subparagraph (a)(4)(E).

In addition, 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.

Rule 33. Interrogatories to Parties

(a) In General.

(1) ***Number.*** Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with RCFC 26(b)(2).

(2) ***Scope.*** An interrogatory may relate to any matter that may be inquired into under RCFC 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(b) Answers and Objections.

(1) ***Responding Party.*** The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

(2) ***Time to Respond.*** The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under RCFC 29 or be ordered by the court.

(3) ***Answering Each Interrogatory.*** Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) ***Objections.*** The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) ***Signature.*** The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) **Use.** An answer to an interrogatory may be used to the extent allowed by the Federal Rules of Evidence.

(d) **Option to Produce Business Records.** If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008.)

Rules Committee Notes

2002 Revision

RCFC 33 is identical to FRCP 33.

2007 Amendment

RCFC 33 has been amended to reflect the corresponding changes to FRCP 33 that became effective December 1, 2006.

2008 Amendment

The language of RCFC 33 has been amended to conform to the general restyling of the FRCP.

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

(a) **In General.** A party may serve on any other party a request within the scope of RCFC 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by

the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Procedure.

(1) ***Contents of the Request.*** The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) ***Responses and Objections.***

(A) ***Time to Respond.*** The party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated to under RCFC 29 or be ordered by the court.

(B) ***Responding to Each Item.*** For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.

(C) ***Objections.*** An objection to part of a request must specify the part and permit inspection of the rest.

(D) ***Responding to a Request for Production of Electronically Stored Information.*** The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

(E) ***Producing the Documents or Electronically Stored Information.*** Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(c) Nonparties. As provided in RCFC 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008.)

Rules Committee Notes

2002 Revision

RCFC 34 is identical to FRCP 34.

2007 Amendment

RCFC 34 has been amended to reflect the corresponding changes to FRCP 34 that became effective December 1, 2006.

2008 Amendment

The language of RCFC 34 has been amended to conform to the general restyling of the FRCP.

Rule 35. Physical and Mental Examinations

(a) Order for an Examination.

(1) ***In General.*** The court may order a party whose mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) ***Motion and Notice; Contents of the Order.*** The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

(b) Examiner's Report.

(1) ***Request by the Party or Person Examined.*** The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) ***Contents.*** The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) ***Request by the Moving Party.*** After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) ***Waiver of Privilege.*** By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(5) ***Failure to Deliver a Report.*** The court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) ***Scope.*** This subdivision (b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subdivision does not preclude obtaining an examiner's report or deposing an examiner under other rules.

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

Rules Committee Notes
2002 Revision

RCFC 35 is identical to FRCP 35, except for the omission of the words "in which the action is pending" in subdivision (a).

2008 Amendment

The language of RCFC 35 has been amended to conform to the general restyling of the FRCP.

Rule 36. Requests for Admission

(a) Scope and Procedure.

(1) ***Scope.*** A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of RCFC 26(b)(1) relating to:

(A) facts, the application of law to fact,

or opinions about either; and

(B) the genuineness of any described documents.

(2) ***Form; Copy of a Document.*** Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) ***Time to Respond; Effect of Not Responding.*** A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under RCFC 29 or be ordered by the court.

(4) ***Answer.*** If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) ***Objections.*** The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) ***Motion Regarding the Sufficiency of an Answer or Objection.*** The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. RCFC 37(a)(5) applies to an award of expenses.

(b) Effect of an Admission; Withdrawing or Amending It. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to RCFC 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

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

Rules Committee Notes
2002 Revision

RCFC 36 is identical to FRCP 36.

2008 Amendment

The language of RCFC 36 has been amended to conform to the general restyling of the FRCP.

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) Motion for an Order Compelling Disclosure or Discovery.

(1) ***In General.*** On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to

obtain it without court action.

(2) ***Appropriate Court.*** [Not used.]

(3) ***Specific Motions.***

(A) ***To Compel Disclosure.*** If a party fails to make a disclosure required by RCFC 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) ***To Compel a Discovery Response.*** A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under RCFC 30 or 31;

(ii) a corporation or other entity fails to make a designation under RCFC 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under RCFC 33; or

(iv) a party fails to respond that inspection will be permitted—or fails to permit inspection—as requested under RCFC 34.

(C) ***Related to a Deposition.*** When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) ***Evasive or Incomplete Disclosure, Answer, or Response***. For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

(5) ***Payment of Expenses; Protective Orders.***

(A) ***If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).*** If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) ***If the Motion Is Denied.*** If the motion is denied, the court may issue any protective order authorized under RCFC 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) ***If the Motion Is Granted in Part and Denied in Part.*** If the motion is granted in part and denied in part, the court may issue any protective order authorized under RCFC 26(c) and may, after giving an opportunity to be heard, apportion the

reasonable expenses for the motion.

(b) Failure to Comply with a Court Order.

(1) ***Sanctions Concerning Deponents.*** If the court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court.

(2) ***Sanctions Concerning Parties.***

(A) ***For Not Obeying a Discovery Order.*** If a party or a party's officer, director, or managing agent—or a witness designated under RCFC 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery, including an order under RCFC 16(b), 35, or 37(a), the court may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) ***For Not Producing a Person for Examination.*** If a party fails to comply with an order under RCFC 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in RCFC 37(b)(2)(A)(i)–(vi), unless the disobedient party shows that it cannot produce the other person.

(C) ***Payment of Expenses.*** Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) Failure to Disclose, to Supplement an Earlier Response, or to Admit.

(1) ***Failure to Disclose or Supplement.*** If a party fails to provide information or identify a witness as required by RCFC 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) [not used]; and

(C) may impose other appropriate sanctions, including any of the orders listed in RCFC 37(b)(2)(A)(i)–(vi).

(2) ***Failure to Admit.*** If a party fails to admit what is requested under RCFC 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that

proof. The court must so order unless:

(A) the request was held objectionable under RCFC 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.

(1) ***In General.***

(A) ***Motion; Grounds for Sanctions.*** The court may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent—or a person designated under RCFC 30(b)(6) or 31(a)(4)—fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under RCFC 33 or a request for inspection under RCFC 34, fails to serve its answers, objections, or written response.

(B) ***Certification.*** A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) ***Unacceptable Excuse for Failing to Act.*** A failure described in RCFC 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under RCFC 26(c).

(3) ***Types of Sanctions.*** Sanctions may include any of the orders listed in RCFC 37(b)(2)(A)(i)–(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) Failure to Provide Electronically Stored Information. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

(f) Failure to Participate in Framing a Discovery Plan. If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Appendix A ¶ 3, the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008.)

Rules Committee Notes
2002 Revision

RCFC 37 parallels the structure and content of FRCP 37. The limited number of differences between the two rules reflects those necessary for compatibility with the jurisdiction and other rules of the court.

2007 Amendment

RCFC 37 has been amended to reflect the corresponding changes to FRCP 37 that became effective December 1, 2006.

2008 Amendment

The language of RCFC 37 has been amended to conform to the general restyling of the FRCP.

TITLE VI. TRIALS

Rule 38. Right to a Jury Trial; Demand [Not used.]

Rule 39. Trial by Jury or by the Court [Not used.]

Rule 40. Scheduling Cases for Trial

The judge to whom a case is assigned is responsible for setting the case for trial by filing an order with the clerk. The court must give priority to actions entitled to priority by a federal statute.

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

Rules Committee Notes
2002 Revision

RCFC 40 parallels, but is not identical to, FRCP 40. Like its FRCP counterpart, however, the purpose of the rule is to identify the responsibility of the judge in scheduling a matter for trial. The changes made to the text of the rule are minor and intended to clarify the rule's essential purpose, i.e., that it is the judge's responsibility to determine the date and place of trial in accordance with 28 U.S.C. §§ 173, 798(a), and 2503(c).

2008 Amendment

The language of RCFC 40 has been amended to conform to the general restyling of the FRCP.

Rule 40.1. Assigning and Transferring Cases

(a) Random Assignment. After a complaint is served on the United States, or after recusal or disqualification of a judge to whom the case is assigned, the case will be assigned (or reassigned) to a judge at random.

(b) Transfer. To promote docket efficiency, to conform to the requirements of any case management plan, or for the efficient administration of justice, the assigned judge, either on a party's motion or on the court's own initiative, may order the transfer of a case to another judge upon the agreement of both judges.

(c) Transfer by the Chief Judge. The chief judge may reassign any case upon a finding that the transfer is necessary for the efficient administration of justice.

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

Rules Committee Notes
2002 Revision

RCFC 40.1 has no FRCP counterpart. The substance of the rule formerly appeared in these rules as part of paragraph (1) of RCFC 77(f). The renumbering of RCFC 77(f) reflects its more logical placement in the structure of the court's rules.

The new language introduced by the rule—subdivision (b)—represents a codification of internal procedures.

2008 Amendment

The language of RCFC 40.1 has been amended to conform to the general restyling of the FRCP.

Rule 40.2. Related Cases

(a) Directly Related Cases.

(1) ***In General.*** If a party is aware of the existence of any directly related case(s), the party must file a Notice of Directly Related Case(s).

(2) ***Definition.*** For the purpose of this rule, cases are directly related when:

(A) they involve the same parties and are based on the same or similar claims; or

(B) they involve the same contract, property, or patent.

(3) ***Notice.***

(A) ***Contents.*** The Notice of Directly Related Case(s):

(i) must identify the title and docket number of all directly related cases;

(ii) must explain why the cases qualify for treatment as directly related cases under RCFC 40.2(a)(2);

(iii) must state whether assigning the cases to a single judge can be expected to conserve judicial resources and promote the efficient administration of justice; and

(iv) if filed after the case has been assigned, may be accompanied by a motion to transfer pursuant to RCFC 40.1 or for consolidation pursuant to RCFC 42.1.

(B) ***Filing.*** A party must file the Notice of Directly Related Case(s):

(i) along with the complaint in a newly filed case; or

(ii) in the earliest-filed related case if the existence of directly related cases becomes apparent only after initial assignment. Counsel may appear in the earliest-filed case solely for purposes of filing the notice.

The clerk must file copies of the notice in all of the directly related cases.

(C) ***Service.*** A party must serve the Notice of Directly Related Case(s) on all parties in the related cases.

(4) ***Treatment of Directly Related Cases.***

(A) When a Notice of Directly Related Case(s) is filed with a complaint, the clerk will assign the case to the judge to whom the earliest-filed case is assigned. If the judge determines that the case is not in fact directly related to the earliest-filed case, the judge will return the case to the clerk for random reassignment.

(B) When a Notice of Directly Related Case(s) is filed after a case has been assigned and is accompanied by a motion to transfer or for consolidation, the judge in the earliest-filed case, after consultation with the judge(s) in the later-filed case(s), will grant or deny the motion to transfer or for consolidation.

(b) Indirectly Related Cases.

(1) ***In General.*** If a party is aware of the existence of any indirectly related case(s), the party may file a Notice of Indirectly Related Case(s).

(2) ***Definition.*** For the purpose of this rule, cases are indirectly related when:

(A) they present common issues of fact; and

(B) their consolidation for purposes of coordinated discovery can be expected significantly to promote the efficient administration of justice.

(3) ***Notice.***

(A) ***Contents.*** The Notice of Indirectly Related Case(s):

(i) must identify the title and docket number of all indirectly related cases; and

(ii) must explain why the cases qualify for treatment as indirectly related cases under RCFC 40.2(b)(2).

(B) ***Filing.*** A party must file the Notice of Indirectly Related Case(s) in the earliest-filed related case. Counsel may appear in the earliest-filed case solely for purposes of filing the notice or responding to the notice under RCFC 40.2 (b)(3)(C). The clerk must file copies of the notice in all of the indirectly related cases and must provide a courtesy copy of the notice to the chief judge.

(C) ***Service.*** A party must serve the Notice of Indirectly Related Case(s) on all parties in the related cases.

(D) ***Responding.*** Any response to the notice must be filed in the earliest-filed case within 21 days after service of the notice and must be served on all parties in the related cases. The clerk must file copies of the response in all of the related cases and must provide a courtesy copy of the response to the chief judge.

(4) ***Treatment of Indirectly Related Cases.*** When a Notice of Indirectly Related Case(s) is filed, the judge in the earliest-filed case will call a meeting of all of the assigned judges to determine what action, if any, is appropriate. All parties in the related cases will be notified of the determination reached.

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

Rules Committee Notes
2002 Revision

RCFC 40.2 has no FRCP counterpart. The subject of the rule—Related Cases—previously appeared in these rules as RCFC 77(f) (as revised by General Order No. 36). The renumbering of the rule reflects its more logical placement in the structure of the court's rules.

Unlike the predecessor rule, RCFC 40.2 recognizes two types of related cases: directly related cases and indirectly related cases. Directly related cases retain the definition that applied under former RCFC 77(f). Thus, cases that "involve the same parties and are based on the same or similar claims" or "involve the same contract, property, or patent" are deemed to be directly related. Cases that are directly related share an identity of parties and/or subject matter that, for the sake of consistency in outcome, warrant their assignment to a single judge. Indirectly related cases, by contrast, share only "common issues of fact." In the interests of efficiency and the conservation of resources, such cases may warrant consolidated management during the pretrial stage.

In addition to recognizing two forms of related cases, RCFC 40.2 also prescribes the notice procedures that are to be followed for the identification of such cases to the court and interested counsel.

2008 Amendment

The language of RCFC 40.2 has been amended to conform to the general restyling of the FRCP.

In addition, the text of subdivision (a) has been modified to clarify that it is the clerk's responsibility to file a notice of directly related cases in all related cases. The change thus adopts the same notice procedure that is prescribed for indirectly related cases under subdivision (b) of this rule.

Rule 40.3. Complaints Against Judges

(a) **In General.** A written complaint may be filed with the clerk against any judge of the court who has:

(1) engaged in conduct prejudicial to the effective and expeditious administration of the business of the court; or

(2) is unable to discharge all duties of the office by reason of mental or physical disability.

(b) **Rules Governing Complaints.** A copy of the applicable rules, titled "Rules for Judicial-Conduct and Judicial-Disability Proceedings," is available on the court's website at www.uscfc.uscourts.gov or may be obtained by contacting the Office of the Clerk of the United States Court of Federal Claims, 717 Madison Place, NW, Washington, DC 20439.

(As revised and reissued May 1, 2002; as amended Aug. 1, 2004, Apr. 10, 2008, Nov. 3, 2008.)

Rules Committee Notes
2002 Revision

RCFC 40.3 has no FRCP counterpart. However, the notice provided by the rule is in accordance with the recommendations of the Judicial Conference of the United States, urging

that such notice be made part of the court's rules.

The rule replaces former Appendix B ("Procedures for Processing Complaints of Judicial Misconduct") and its supplementing order, General Order No. 34 dated June 3, 1993. Inclusion of the rule as a subpart of RCFC 40 is intended to further a more coherent organizational structure of the court's rules.

2004 Amendment

Pursuant to the Judicial Improvements Act of 2002, Pub. L. No. 107-203, 116 Stat. 1758, the statutory directive requiring the court's issuance of rules for the filing of complaints of judicial misconduct, originally set forth in the Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c)(1)–(18), was amended and recodified as 28 U.S.C. §§ 351–364. This change is reflected in the 2004 amendment to RCFC 40.3 in the opening sentence of subdivision (a) by the deletion of the former statutory reference and the substitution of the new statutory reference.

Additionally, the rule has been amended to include notice of the availability on the court's website of the Rules of the United States Court of Federal Claims Governing Complaints of Judicial Misconduct and Disability.

2008 Amendments

RCFC 40.3(b) has been amended to reflect the change in the title of the rules establishing standards and procedures for addressing complaints against judges, as revised and promulgated by the Judicial Conference of the United States pursuant to 28 U.S.C. §§ 351–364 on March 11, 2008.

The language of RCFC 40.3 has been amended to conform to the general restyling of the FRCP.

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal.

(1) ***By the Plaintiff.***

(A) ***Without a Court Order.*** Subject to RCFC 23(e) and 23.1(c) and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves an answer, a motion for summary judgment, or a motion for judgment on the administrative record; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) ***Effect.*** Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) ***By Court Order; Effect.*** Except as provided in RCFC 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If the defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

(b) Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, the court may dismiss on its own motion or the defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction or failure to join a party under RCFC 19—operates as an adjudication on the merits.

(c) Dismissing a Counterclaim or Third-Party Claim. This rule applies to a dismissal of any counterclaim or third-party claim. A claimant's voluntary dismissal under RCFC

41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Costs of a Previously Dismissed Action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, July 2, 2012.)

Rules Committee Notes
2002 Revision

Minor changes have been made to more closely conform to FRCP 41. Substantively, however, the rule remains unchanged.

2008 Amendment

The language of RCFC 41 has been amended to conform to the general restyling of the FRCP.

2012 Amendment

RCFC 41(a)(1)(A)(i) has been amended to clarify that the filing of a motion for judgment on the administrative record by the opposing party is an event that thereafter precludes a plaintiff from dismissing an action without a court order.

Rule 42. Consolidation; Separate Trials

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

(1) join for hearing or trial any or all matters at issue in the actions;

(2) consolidate the actions; or

(3) issue any other orders to avoid unnecessary cost or delay.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, counterclaims, or third-party claims.

(c) Separate Determinations of Liability and Damages.

(1) ***In General.*** On stipulation of the parties or on its own, the court may at any time order that issues of liability and issues of damages be addressed in separate proceedings.

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

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes
2002 Revision

RCFC 42 remains unchanged. Thus, as before, the rule parallels in part FRCP 42 and, in addition, includes subdivision (c) ("Separate Determination of Liability") permitting the liability phase of a lawsuit to be separated from, and decided independently of, the quantum phase.

2008 Amendment

The language of RCFC 42 has been amended to conform to the general restyling of the FRCP.

2010 Amendment

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

Rule 42.1. Motion to Consolidate

(a) Consolidating Cases Assigned to the Same Judge. If a party seeks to consolidate cases assigned to the same judge, the party must file a motion to consolidate in each of the relevant cases.

(b) Consolidating Cases Assigned to Different Judges. If a party seeks to consolidate cases

assigned to different judges, the party must file a motion to transfer pursuant to RCFC 40.1, suggesting the appropriateness of consolidation.

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

Rules Committee Notes
2002 Revision

RCFC 42.1 has no FRCP counterpart. It identifies the procedure applicable to motions for the consolidation of actions pending before different judges.

2008 Amendment

The language of RCFC 38 has been amended to conform to the general restyling of the FRCP.

Rule 43. Taking Testimony

(a) In Open Court. At trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) Affirmation Instead of an Oath. When these rules require an oath, a solemn affirmation suffices.

(c) Evidence on a Motion. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(d) Interpreter. The court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.

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

Rules Committee Notes
2002 Revision

RCFC 43 is identical to FRCP 43.

2008 Amendment

The language of RCFC 43 has been amended to conform to the general restyling of the FRCP.

Rule 44. Proving an Official Record

(a) Means of Proving.

(1) ***Domestic Record.*** Each of the following evidences an official record—or an entry in it—that is otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

(i) by a judge of a court of record in the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) ***Foreign Record.***

(A) ***In General.*** Each of the following evidences a foreign official record—or an entry in it—that is otherwise admissible:

(i) an official publication of the record; or

(ii) the record—or a copy—that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a

certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) ***Final Certification of Genuineness.*** A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) ***Other Means of Proof.*** If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the record to be evidenced by an attested summary with or without a final certification.

(b) Lack of a Record. A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under RCFC 44(a)(1). For foreign records, the statement must comply with (a)(2)(C)(ii).

(c) Other Proof. A party may prove an official record—or an entry or lack of an entry in it—by any other method authorized by law.

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

Rules Committee Notes
2002 Revision

RCFC 44 is identical to FRCP 44.

2008 Amendment

The language of RCFC 44 has been amended to conform to the general restyling of the FRCP.

Rule 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination must be treated as a ruling on a question of law.

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

Rules Committee Notes
2002 Revision

RCFC 44.1 is identical to FRCP 44.1.

2008 Amendment

The language of RCFC 44.1 has been amended to conform to the general restyling of the FRCP.

Rule 45. Subpoena

(a) In General.

(1) ***Form (See Appendix of Forms, Forms 6 and 7A) and Contents.***

(A) ***Requirements—In General.*** Every subpoena must:

(i) state the court from which it issued;

(ii) state the title of the action and its civil-action number;

(iii) command each person to whom it is directed to do the

following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of RCFC 45(d) and (e).

(B) ***Command to Attend a Deposition—Notice of the Recording Method.*** A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) ***Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.*** A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) ***Command to Produce; Included Obligations.*** A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(2) ***Issuing Court.*** A subpoena must issue from the court where the action is pending.

(3) ***Issued by Whom.*** The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the issuing court.

(4) ***Notice to Other Parties Before Service.*** If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

(b) Service.

(1) ***By Whom and How; Tendering Fees.*** Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.

(2) ***Service in the United States***. A subpoena may be served at any place within the United States.

(3) ***Service in a Foreign Country.*** 28 U.S.C. § 1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country.

(4) ***Proof of Service.*** Proving service, when necessary, requires filing with the court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where a person resides, is employed, or regularly transacts business in person; or

(B) at any place within the United States if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) ***Appearance Not Required.*** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) ***Objections.*** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) ***When Required.*** On timely motion, the court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to comply beyond the limitations specified in RCFC 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception of waiver applies; or

(iv) subjects a person to undue

burden.

(B) ***When Permitted.*** To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) ***Specifying Conditions as an Alternative***. In the circumstances described in RCFC 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information***. These procedures apply to producing documents or electronically stored information:

(A) ***Documents.*** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) ***Form for Producing Electronically Stored Information Not Specified.*** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) ***Electronically Stored Information Produced in Only One Form.*** The person responding need not produce the same electronically stored information in more than one form.

(D) ***Inaccessible Electronically Stored Information.*** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) ***Information Withheld.*** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess

the claim.

(B) ***Information Produced.*** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) Transferring a Subpoena-Related Motion. [Not used.]

(g) Contempt. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008, July 1, 2014.)

Rules Committee Notes
2002 Revision

RCFC 45 conforms to FRCP 45 to the extent feasible given the court's nationwide jurisdiction.

2007 Amendment

RCFC 45 has been amended to reflect the corresponding changes to FRCP 45 that became effective December 1, 2006.

2008 Amendment

The language of RCFC 45 has been amended to conform to the general restyling of the FRCP.

2014 Amendment

RCFC 45 has been amended to reflect the corresponding changes in wording and organizational structure to FRCP 45 that became effective December 1, 2013. The changes to RCFC 45 are not substantive; they do not alter the practice and procedure authorized under the court's rule.

Rule 46. Objecting to a Ruling or Order

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

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

Rules Committee Notes
2002 Revision

RCFC 46 is identical to FRCP 46.

2008 Amendment

The language of RCFC 46 has been amended to conform to the general restyling of the FRCP.

Rule 47. Selecting Jurors [Not used.]

Rule 48. Number of Jurors; Verdict [Not used.]

Rule 49. Special Verdict; General Verdict and Questions [Not used.]

Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling [Not used.]

Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error [Not used.]

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

(a) Findings and Conclusions.

(1) ***In General.*** In an action tried on the facts, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under RCFC 58.

(2) ***For an Interlocutory Injunction.*** In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) ***For a Motion.*** The court is not required to state findings or conclusions when ruling on a motion under RCFC 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) ***Effect of a Master's Findings.*** [Not used.]

(5) ***Questioning the Evidentiary Support.*** A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) ***Setting Aside the Findings.*** Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(b) Amended or Additional Findings. On a party's motion filed no later than 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.

(c) Judgment on Partial Findings. If a party has been fully heard on an issue during trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by RCFC 52(a).

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes

2002 Revision

The principal change in RCFC 52 relates to the enlargement of subdivision (c) to include, among issues subject to judgment on partial findings, the adjudication of issues critical to the legal sufficiency of a "defense." The amendment makes clear that judgments as a matter of law may be entered against both plaintiffs and defendants and with respect to issues or defenses that may not be wholly dispositive of a claim or defense.

2008 Amendment

The language of RCFC 52 has been amended to conform to the general restyling of the 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.

Rule 52.1. Administrative Record

(a) In General. When proceedings before an

agency are relevant to a decision in a case, the administrative record of those proceedings must be certified by the agency and filed with the court.

(b) Time for Filing. The court may establish a time for filing the administrative record by order.

(c) Motions for Judgment on the Administrative Record.

(1) ***Initial Motion.*** Absent an order by the court establishing a different procedure, a party may move for partial or other judgment on the administrative record and must include in its motion or supporting memorandum a statement of facts that draws upon and cites to the portions of the administrative record that bear on the issues presented to the court.

(2) ***Response.*** A party opposing a motion based on the administrative record must include in any response a counter-statement of facts that similarly draws upon and cites to the administrative record.

(3) ***Effect of a Motion.*** Unless otherwise provided by order of the court, a motion under this rule for judgment on the administrative record obviates the requirement for the filing of an answer under RCFC 12(a)(1).

(Added June 20, 2006; as amended Nov. 3, 2008, July 2, 2012.)

Rules Committee Notes
2006 Adoption

RCFC 52.1 has no FRCP counterpart. The rule replaces an earlier rule, RCFC 56.1, that applied certain standards borrowed from the procedure for summary judgment to review of an agency decision on the basis of an administrative record. That incorporation proved to be confusing in practice because only a portion of the summary judgment standards were borrowed. Summary judgment standards are not pertinent to judicial review upon an administrative record. *See Bannum, Inc. v. United States*, 404 F.3d 1346, 1355–57 (Fed. Cir. 2005). Specifically, the now-repealed Rule 56.1 did *not* adopt the overall standard that summary judgment might be appropriate where there were no genuine issues of material fact. See RCFC 56(c). Nonetheless, despite this omission, parties, in moving for judgment on the administrative record under the prior rule, frequently would contest whether the administrative record showed the existence of a genuine dispute of material fact. To avoid this confusion, the new rule omits any reference to summary judgment or to the standards applicable to summary judgment.

Cases filed in this court frequently turn only in part on action taken by an administrative agency. In such cases, the administrative record may provide a factual and procedural predicate for a portion of the court's decision, while other elements might be derived from a trial, an evidentiary hearing, or summary judgment or other judicial proceedings. This rule applies whether the court's decision is derived in whole or in part from the agency action reflected in the administrative record.

The standards and criteria governing the court's review of agency decisions vary depending upon the specific law to be applied in particular cases. The rule does not address those standards or criteria. Correspondingly, any motion for correction or supplementation of the administrative record should be made on the basis of either the specific law to be applied in the particular case or generally applicable principles of administrative law.

2008Amendment

The language of RCFC 52.1 has been amended to conform to the general restyling of the FRCP.

2012 Amendment

RCFC 52.1(c) has been amended to clarify that absent a court order directing otherwise, the filing of a motion for judgment on the administrative record obviates the requirement for the filing of an answer to the complaint.

Rule 52.2. Remanding a Case

(a) In General. In any case within its jurisdiction, the court, on motion or on its own, may order the remand of appropriate matters to an administrative or executive body or official.

(b) Remand Order.

(1) ***Contents.*** An order remanding a case must:

(A) include such direction as the court deems proper and just;

(B) establish the duration of the remand period, not to exceed 6 months;

(C) specify the extent to which court proceedings will be stayed during the remand period; and

(D) designate a party to report to the court, every 90 days or less, on the status of the remand proceedings.

(2) ***Service.*** A certified copy of the remand order must be served by the clerk in accordance with RCFC 5 on:

(A) each party; and

(B) the administrative or executive body or official to whom the order is directed.

(c) Administrative Record. After serving the remand order, the clerk must transmit the administrative record, if any, to the Department of Justice for return to the administrative or executive body or official to whom the order is directed.

(d) Extending or Terminating the Stay of Proceedings. If the administrative or executive body or official to whom the remand order is directed does not act on the remand within the period of stay specified in the remand order, a party may move for:

(1) an extension of the stay under RCFC 6; or

(2) termination of the stay and the initiation of other proceedings under RCFC 7 to dispose of the case.

(e) Completing Administrative Proceedings. When the action directed under a remand order is completed, the administrative or executive body or official to whom the order was directed must forward to the clerk for filing 4 copies of the final decision or other action taken. The clerk must serve each party with a copy of the final decision or other action. If the case is resolved at the administrative level, the plaintiff must file a motion to dismiss the case with prejudice.

(f) Post-Remand Proceedings.

(1) ***Notice.*** Within 30 days after the filing of the final decision or other action on remand, each party must file with the clerk and serve on each adverse party a notice stating:

(A) whether the final decision or other action on remand affords a satisfactory basis for disposition of the case; or

(B) whether further proceedings before the court are required and, if so, the nature of such proceedings.

(2) ***Issuing an Order.*** After service of the notice, the court will enter an order prescribing the procedure to be followed or directing any other action deemed appropriate.

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

Rules Committee Notes
2002 Revision and 2006 Amendment

RCFC 52.2 has no FRCP counterpart. The rule formerly appeared in these rules as RCFC 60.1 and, following the court's May 1, 2002, revision of its rules, as RCFC 56.2. The first renumbering of the rule (from RCFC 60.1 to RCFC 56.2) was intended to reflect a more logical placement in the organizational structure of the court's rules; the second renumbering (from RCFC 56.2 to RCFC 52.2) was attributable to a further change in the organizational structure of the court's rules as reflected in the abrogation of related RCFC 56.1 and its replacement by new RCFC 52.1.

2008 Amendment

The language of RCFC 52.2 has been amended to conform to the general restyling of the FRCP.

Rule 53. Masters

(a) Appointment.

(1) ***Scope.*** Unless a statute provides otherwise, the chief judge, at the request of the assigned judge, may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and post-trial matters that cannot be effectively and timely addressed by the assigned judge.

(2) ***Disqualification.*** A master must not have a relationship to the parties, attorneys, action, or assigned judge that would require disqualification of a judge under 28 U.S.C. § 455, unless the parties, with the assigned judge's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(3) ***Possible Expense or Delay.*** In requesting the appointment of a master, the assigned judge must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) Order Appointing a Master.

(1) ***Notice.*** Before requesting the appointment of a master, the assigned judge must give the parties notice and an opportunity to be heard. Any party may suggest to the assigned judge candidates for appointment.

(2) ***Contents.*** The appointing order must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under RCFC 53(c);

(B) the circumstances, if any, in which the master may communicate ex parte with the assigned judge or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under RCFC 53(g).

(3) ***Issuing.*** The assigned judge may request an order appointing a master only after:

(A) the master files an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455; and

(B) if a ground is disclosed, the parties, with the assigned judge's approval, waive the disqualification.

(4) ***Amending.*** The order appointing a master may be amended by the chief judge at any time upon recommendation of the assigned judge after the assigned judge has given the parties notice and an opportunity to be heard.

(c) Master's Authority.

(1) ***In General.*** Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) if conducting an evidentiary

hearing, exercise the assigned judge's power to compel, take, and record evidence.

(2) ***Sanctions.*** The master may by order impose on a party any noncontempt sanction provided by RCFC 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) Master's Orders. A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.

(e) Master's Reports. A master must report to the assigned judge as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the assigned judge orders otherwise.

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

(1) ***Opportunity for a Hearing; Action in General.*** In acting on a master's order, report, or recommendations, the assigned judge must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(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 21 days after a copy is served, unless the assigned judge sets a different time.

(3) ***Reviewing Factual Findings.*** The assigned judge must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the assigned judge's approval, stipulate that:

(A) the findings will be reviewed for clear error; or

(B) the findings of a master appointed under RCFC 53(a)(1)(A) or (C) will be final.

(4) ***Reviewing Legal Conclusions.*** The assigned judge must decide de novo all objections to conclusions of law made or recommended by a master.

(5) ***Reviewing Procedural Matters.*** Unless the appointing order establishes a different standard of review, the assigned judge may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(g) Compensation.

(1) ***Fixing Compensation.*** Before or after judgment, the assigned judge must fix the master's compensation on the basis and terms stated in the appointing order, but a new basis and terms may be set by the chief judge upon recommendation of the assigned judge after the assigned judge has given the parties notice and an opportunity to be heard.

(2) ***Payment.*** The compensation must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the assigned judge's control.

(3) ***Allocating Payment.*** The assigned judge must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

(h) Appointing a Magistrate Judge. [Not used.]

(As revised and reissued May 1, 2002; as amended July 1, 2004, Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes
2002 Revision

The text of RCFC 53 as revised on May 1, 2002, and its accompanying Rules Committee

Note, may be found at 51 Fed. Cl. LXXXV (2002) or in Westlaw, database USCA03, search CI(RCFC & 53).

2004 Amendment

RCFC 53 adopts the significantly revised text of FRCP 53, effective December 1, 2003, with minor adjustments in language reflecting differences in jurisdiction between this court and the district courts. The principal adjustments in language occur in the introductory text of subdivision (a) which adds the words "the chief judge, at the request of the assigned judge" as an additional qualification to the appointment of a master and in the related text of subdivisions (b)(4) and (h)(1). The distinction between the roles of chief judge and assigned judge is carried through into the subdivisions of the rule where the words "assigned judge" are substituted for the word "court." The added language addresses the fact that pursuant to 28 U.S.C. § 798(c), the court's authority to appoint special masters to assist the court in carrying out its functions rests exclusively with the chief judge.

2008 Amendment

The language of RCFC 53 has been amended to conform to the general restyling of the FRCP.

This rule does not apply to special masters appointed by the court to resolve Vaccine Act cases covered in Appendix B to these rules.

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.

TITLE VII. JUDGMENT

Rule 54. Judgment; Costs

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) Judgment on Multiple Claims or Involving Multiple Parties. When an action presents more than one claim for relief—whether as a claim, counterclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) Demand for Judgment; Relief to Be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(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).

(A) ***Filing a Bill of Costs.*** A claim for allowable costs must be made by filing a Bill of Costs with the clerk. See Appendix of Forms, Form 4.

(B) ***Timing and Contents of a Bill of Costs.*** A Bill of Costs must:

(i) be filed within 30 days after the date of final judgment, as defined in 28 U.S.C. § 2412(d)(2)(G);

(ii) be accompanied by an affidavit and a memorandum setting forth the grounds and authorities supporting all costs other than the filing fee; and

(iii) include as exhibits any vouchers, receipts, or invoices supporting the requested costs.

(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.

(D) ***Settlement Agreement.*** A settlement agreement should, by its own terms, resolve any issue relating to costs and in the absence of special agreement, each party must bear its own costs. The clerk may not tax costs on any action terminated by settlement.

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

(A) ***Claim to Be by Motion.*** A claim for attorney's fees and related

nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. See Appendix of Forms, Form 5.

(B) ***Timing and Contents of the Motion.*** Unless a statute or a court order provides otherwise, the motion must:

(i) be filed within 30 days after the date of final judgment, as defined in 28 U.S.C. § 2412(d)(2)(G);

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) ***Proceedings.*** The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in RCFC 52(a).

(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 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.

(E) ***Exceptions.*** Subparagraphs (A)–(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. § 1927.

(As revised and reissued May 1, 2002; as amended July 1, 2004, Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes

2002 Revision

RCFC 54(d) was revised in several respects. The subdivision was modified to conform its structure to FRCP 54(d). In addition, the subdivision, as rewritten departs from its FRCP counterpart in several respects:

First, because the allowance of attorneys' fees and costs in this court is almost always determined under the provisions of 28 U.S.C. § 2412(a), (d) (the Equal Access to Justice Act), it was deemed advisable to reflect this fact in subdivision (d)(2) rather than to retain the broader, but potentially misleading, language that appears in FRCP 54(d)(1). *See Neal & Co. v. United States*, 121 F.3d 683 (Fed. Cir. 1997).

Second, subdivision (d)(1) was enlarged beyond the scope of its FRCP counterpart by the incorporation of RCFC 77.4 ("Taxation of Costs").

Third, subdivision (d)(2) brings together relevant sections of its FRCP counterpart and former RCFC 81(e) ("Application for Attorneys' Fees").

Finally, the time periods for objecting to a Bill of Costs and for requesting review of the clerk's action were enlarged.

2004 Amendment

The final sentence of RCFC 54(d)(2)(D) was deleted in conformance with RCFC 53(a)(1).

2008 Amendment

The language of RCFC 54 has been amended to conform to the general restyling of the FRCP.

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.

Rule 55. Default; Default Judgment

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) Entering a Default Judgment.

(1) ***By the Clerk.*** [Not used.]

(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 7 days before the hearing. The court may conduct hearings or make referrals when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

(c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a default judgment under RCFC 60(b).

(d) Judgment Against the United States. [Not used.]

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes

2002 Revision

RCFC 55 recognizes the distinction between entry of default and entry of judgment for default. Substantial changes were made. The language in former subdivision (b)(1), permitting entry of default judgment by the clerk, is omitted. Additionally, the protection previously afforded only to the United States–prohibiting entry of default judgments absent a showing by the claimant of a right to relief by evidence satisfactory to the court–is expanded to include all parties. Judgment requires proof and involvement of the court.

2008 Amendment

The language of RCFC 55 has been amended to conform to the general restyling of the FRCP.

In addition, in further conformance with FRCP 55, former subdivision (d) ("Plaintiffs; Counterclaimants") has been omitted as incomplete and unnecessary.

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.

Rule 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) Procedures.

(1) ***Supporting Factual Positions.*** A party

asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) ***Objection That a Fact Is Not Supported by Admissible Evidence.*** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) ***Materials Not Cited.*** The court need consider only the cited materials, but it may consider other materials in the record.

(4) ***Affidavits or Declarations.*** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by RCFC 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

(As revised and reissued May 1, 2002; as amended June 20, 2006, Nov. 3, 2008, July 15, 2011.)

Rules Committee Notes

2002 Revision

The subdivision structure of RCFC 56 was re-ordered to more closely conform to FRCP 56. In addition, the subdivision outlining the procedures for filing a RCFC 56 motion was changed to eliminate the Statement of Genuine Issues and to require the parties to express their views on any particular fact by noting them on a single page, which may include a redraft of the challenged finding.

2006 Amendment

A clause was deleted from the opening portion of subdivision (h) to accord with the abrogation of RCFC 56.1.

2008 Amendment

The language of RCFC 56 has been amended to conform to the general restyling of the FRCP.

2011 Amendment

RCFC 56 has been rewritten in its entirety to reflect the corresponding revision of FRCP 56 that became effective December 1, 2010.

Rule 56.1 Review of a Decision on the Basis of the Administrative Record [Abrogated (eff. June 20, 2006).]

Rules Committee Notes
2002 Revision

RCFC 56.1 has no FRCP counterpart. In the interests of procedural clarity, the text of subdivision (a) was modified to reflect current practice with respect to supplementation of the administrative record, and subdivision (b)(2) was modified to make explicit an opposing party's right to file an opposition as well as a cross-motion. In addition, the rule was conformed to RCFC 56 practice, in that the statement of facts and counter-statement of facts are incorporated into a single document. In all other respects, RCFC 56.1 remains unchanged.

2006 Abrogation

RCFC 56.1 has been abrogated for the reasons described in the Rules Committee Note to RCFC 52.1.

Rule 56.2 Remanding a Case [Renumbered as RCFC 52.2 (eff. June 20, 2006).]

Rule 57. Declaratory Judgment

These rules govern the procedure for obtaining a declaratory judgment under 28 U.S.C. §§ 1491(b)(2) and 1507. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action.

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

Rules Committee Notes
2002 Revision

The former reference to 28 U.S.C. §1491(a) has been changed to reflect that the court's authority to render declaratory judgments in the context of procurement protests is now found in 28 U.S.C. §1491(b)(2).

2008 Amendment

The language of RCFC 57 has been amended to conform to the general restyling of the FRCP.

Rule 58. Entering Judgment

(a) Separate Document. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

- **(1)** [not used];
- **(2)** to amend or make additional findings under RCFC 52(b);
- **(3)** for attorney's fees under RCFC 54;
- **(4)** for a new trial, or to alter or amend the judgment, under RCFC 59; or
- **(5)** for relief under RCFC 60.

(b) Entering Judgment.

- **(1)** ***Without the Court's Direction.*** Subject to RCFC 54(b) and unless the court orders otherwise, the clerk must, without

awaiting the court's direction, promptly prepare, sign, and enter the judgment when:

(A) [not used];

(B) the court awards only costs or a sum certain; or

(C) the court denies all relief.

(2) ***Court's Approval Required.*** Subject to RCFC 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(A) [not used]; or

(B) the court grants other relief not described in this subdivision (b).

(c) Time of Entry. For purposes of these rules, judgement is entered at the following times:

(1) if a separate document is not required, when the judgment is entered in the civil docket under RCFC 79(a); or

(2) if a separate document is required, when the judgment is entered in the civil docket under RCFC 79(a) and the earlier of these events occurs:

(A) it is set out in a separate document; or

(B) 150 days have run from the entry in the civil docket.

(d) Request for Entry. A party may request that judgment be set out in a separate document as required by RCFC 58(a).

(e) Cost or Fee Awards. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under RCFC 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under RCFC 59.

(As revised and reissued May 1, 2002; as amended Sept. 15, 2003, Nov. 15, 2007, Nov. 3, 2008.)

Rules Committee Notes
2002 Revision

RCFC 58 is essentially identical to the text that was proposed in August 2000 by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, with the exception of any references to trial by jury.

2003 Amendment

The text of RCFC 58 has been amended in minor respects to conform to FRCP 58 as adopted December 1, 2002.

2007 Amendment

The time for the entry of judgment under RCFC 58(b)(2)(B) has been extended from 60 days to 150 days to correspond to the time period set forth in FRCP 58(b)(2)(B).

2008 Amendment

The language of RCFC 58 has been amended to conform to the general restyling of the FRCP.

Rule 58.1. Notice of Appeal

To appeal a decision of this court, a party must:

(a) except in an electronic case under Appendix E, file an original and 2 copies of the notice of appeal with the clerk within the time and in the manner prescribed for appeals in Rule 3 of the Federal Rules of Appellate Procedure; and

(b) pay the fee prescribed in 28 U.S.C. §§ 1913 and 1917.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, July 2, 2012.)

Rules Committee Notes
2002 Revision

Although the rule has no FRCP counterpart, it is a necessary component of the court's rules because it prescribes the time and manner for the filing of an appeal from a decision of this court.

2008 Amendment

The language of RCFC 58.1 has been amended to conform to the general restyling of the FRCP.

2012 Amendment

RCFC 58.1(a) has been amended to eliminate the requirement for the filing of a paper copy of a notice of appeal in an electronic case and to reduce the number of paper copies required in a non-electronic case from four to two.

In addition, RCFC 58.1(b) has been corrected to reflect that the fee for an appeal is prescribed by 28 U.S.C. §§ 1913 and 1917.

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

(a) In General.

(1) ***Grounds for New Trial or Reconsideration.*** The court may, on motion, grant a new trial or a motion for reconsideration on all or some of the issues—and to any party—as follows:

(A) for any reason for which a new trial has heretofore been granted in an action at law in federal court;

(B) for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court; or

(C) upon the showing of satisfactory evidence, cumulative or otherwise, that any fraud, wrong, or injustice has been done to the United States.

(2) ***Further Action After a Trial.*** The court may, on motion under this rule, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) Time to File a Motion for a New Trial or for Reconsideration.

(1) A motion for a new trial or for reconsideration under RCFC 59(a)(1)(A) or (B) must be filed no later than 28 days after the entry of judgment.

(2) A motion for a new trial or for reconsideration under RCFC 59(a)(1)(C) may be filed—and the payment of judgment stayed—at any time while the suit is pending, after review proceedings have been initiated, or within 2 years after the final disposition of the suit.

(c) Relying on Affidavits. When a motion for a new trial or for reconsideration is based on affidavits, they must be filed with the motion.

(d) New Trial on the Court's Initiative or for Reasons Not in the Motion. No later than 28 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 28 days after the entry of the judgment.

(f) Response. A response to any motion under this rule may be filed only at the court's request and within the time specified by the court. The court may not rule in favor of a motion under this rule without first requesting a response to the motion.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010, July 15, 2011.)

Rules Committee Notes
2002 Revision

Minor changes in wording have been made to more closely conform to FRCP 59. Subdivision (c) was deleted to reflect the difference in Court of Federal Claims practice, set out in subdivision (b), which directs that a response to a RCFC 59 motion is required only when directed by the court, even if the motion is accompanied by an affidavit. Other differences were retained, including the distinction between final and non-final orders, which can be the subject of motions for reconsideration at any time before final judgment.

2008 Amendment

The language of RCFC 59 has been amended to conform to the general restyling of the FRCP.

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.

2011 Amendment

RCFC 59(f) has been added to clarify that the restriction included in former paragraph (b)(3) permitting the filing of a "response to any motion under this rule . . . only at the court's request" extends to all motions under the rule, thus applying not only to a motion for a new trial or for reconsideration (the subject of subdivision (b)) but also to a motion to alter or amend a judgment (the subject of subdivision (e)).

In addition, subdivision (b) has been amended to include reference to a motion for reconsideration in clarification of the intended scope of the subdivision.

Finally, the period for filing post-judgment motions has been corrected to read 28 days in accordance with the final version of FRCP 59 that was adopted on December 1, 2009.

Rule 60. Relief From a Judgment or Order

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- **(1)** mistake, inadvertence, surprise, or excusable neglect;
- **(2)** newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under RCFC 59(b);
- **(3)** fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- **(4)** the judgment is void;
- **(5)** the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- **(6)** any other reason that justifies relief.

(c) Timing and Effect of the Motion.

- **(1)** ***Timing.*** A motion under RCFC 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.
- **(2)** ***Effect on Finality.*** The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

- **(1)** entertain an independent action to relieve a party from a judgment, order, or proceeding;
- **(2)** [not used]; or
- **(3)** set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

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

Rules Committee Notes
2002 Revision

Minor changes in wording have been made to more closely conform to FRCP 60. Necessary differences were retained.

2008 Amendment

The language of RCFC 60 has been amended to conform to the general restyling of the FRCP.

Rule 61. Harmless Error

Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

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

Rules Committee Notes
2002 Revision

RCFC 61 is identical to FRCP 61.

2008 Amendment

The language of RCFC 61 has been amended to conform to the general restyling of the FRCP.

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 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:

(1) an interlocutory or final judgment in an action for an injunction; or

(2) a judgment or order that directs an accounting in an action for patent infringement.

(b) Stay Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of any of the following motions:

(1) [not used];

(2) under RCFC 52(b), to amend the findings or for additional findings;

(3) under RCFC 59, for a new trial or to alter or amend a judgment; or

(4) under RCFC 60, for relief from a judgment or order.

(c) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

(d) Stay with Bond on Appeal. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in RCFC 62(a)(1) or (2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) Stay Without Bond on an Appeal by the United States, Its Officers, or Its Agencies. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government.

(f) Stay in Favor of a Judgment Debtor Under State Law. [Not used.]

(g) Appellate Court's Power Not Limited. This rule does not limit the power of the appellate court or one of its judges or justices:

(1) to stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) Stay with Multiple Claims or Parties. A court may stay the enforcement of a final judgment entered under RCFC 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit

of the stayed judgment for the party in whose favor it was entered.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes
2002 Revision

Minor changes have been made to subdivision (a) to more closely conform to FRCP 62. Necessary differences were retained.

2008 Amendment

The language of RCFC 62 has been amended to conform to the general restyling of the FRCP.

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.

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 Circuit Rule 12.1 if the court states that it would grant the motion or that the motion raises a substantial issue.

(c) Proceedings on Remand. The court may decide the motion if the court of appeals remands for further proceedings.

(Added Jan. 11, 2010.)

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.

Rule 63. Judge's Inability to Proceed

If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

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

Rules Committee Notes
2002 Revision

Subdivisions (b) and (c) of the court's prior rule were deleted as unnecessary. The substance of each of these former subdivisions is covered in 28 U.S.C. § 455 and in the Codes of Conduct for Judges and Judicial Employees. RCFC 63 as rewritten is essentially identical to FRCP 63.

2008 Amendment

The language of RCFC 63 has been amended to conform to the general restyling of the FRCP.

TITLE VIII. PROVISIONAL AND FINAL REMEDIES

Rule 64. Seizing a Person or Property [Not used.]

Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction.

(1) ***Notice.*** The court may issue a preliminary injunction only on notice to the adverse party.

(2) ***Consolidating the Hearing with the Trial on the Merits.*** Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

(b) Temporary Restraining Order.

(1) ***Issuing Without Notice.*** The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(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 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.

(3) ***Expediting the Preliminary-Injunction Hearing.*** If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) ***Motion to Dissolve.*** On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) Security. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) ***Contents.*** Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) ***Persons Bound.*** The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in RCFC 65(d)(2)(A) or (B).

(e) Other Laws Not Modified. These rules do not modify the following:

(1) any federal statute relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee;

(2) [not used]; or

(3) [not used].

(f) Copyright Impoundment. [Not used.]

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes
2002 Revision

Minor changes have been made to subdivision (b) to more closely conform to its FRCP counterpart. Additionally, former subdivision (f), titled "Procedures," has been relocated to Appendix C. (Appendix C supersedes former General Order No. 38, dated May 7, 1998, which described the court's standard practices in procurement protest cases filed pursuant to 28 U.S.C. § 1491(b).)

2008 Amendment

The language of RCFC 65 has been amended to conform to the general restyling of the FRCP.

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

Rule 65.1. Proceedings Against a Surety

(a) Proceedings. Whenever these rules require or allow a party to give security, and security is given through a bond or other undertaking with one or more sureties, each surety submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for receiving service of any papers that affect its liability on the bond or undertaking. The surety's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly mail a copy of each to every surety whose address is known.

(b) Acceptable Sureties. Acceptable sureties on bonds are those bonding companies holding certificates of authority from the Secretary of the Treasury. (See the latest U.S. Dep't of Treasury Circular 570.) When a court decision provides for the giving of security, the clerk will furnish counsel with the appropriate bond form.

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

Rules Committee Notes
2002 Revision*

Subdivision (a) is identical to FRCP 65.1 except for the omission of language extending the rule's coverage to "the Supplemental Rules for Certain Admiralty and Maritime Claims." Subdivision (b), titled "Sureties," although unique to this court, provides information useful to the court's practitioners and therefore was retained.

*As corrected November 15, 2007.

2008 Amendment

The language of RCFC 65.1 has been amended to conform to the general restyling of the FRCP.

Rule 66. Receivers [Not used.]

Rule 67. Deposit into Court [Not used.]

Rule 68. Offer of Judgment

(a) Making an Offer; Judgment on an Accepted Offer. At least 14 days before the date set for trial, 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 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.

(b) Unaccepted Offer. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(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 14 days—before the date set for a hearing to determine the extent of liability.

(d) Paying Costs After an Unaccepted Offer. If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010.)

Rules Committee Notes
2002 Revision

A minor change in wording has been made to more closely conform to FRCP 68.

2008 Amendment

The language of RCFC 68 has been amended to conform to the general restyling of the FRCP.

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.

Rule 69. Execution [Not used.]

Rule 70. Enforcing a Judgment for a Specific Act [Not used.]

Rule 71. Enforcing Relief For or Against a Nonparty

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

(Added Nov. 3, 2008.)

Rules Committee Note
2008 Adoption

RCFC 71 has been adopted to conform to the FRCP and to confirm the court's authority to issue orders enforceable for or against a nonparty, a circumstance that typically arises in conjunction with the issuance of a subpoena.

TITLE IX. SPECIAL PROCEEDINGS

Rule 71.1. Condemning Real or Personal Property [Not used.]

Rule 72. Magistrate Judges: Pretrial Order [Not used.]

Rule 73. Magistrate Judges: Trial by Consent; Appeal [Not used.]

Rules Committee Note
2002 Revision

Chapter IX of the FRCP, titled "Special Proceedings," (comprising FRCP 71A– 73) has not been included in the main body of the court's rules. Instead, rules relating to the court's special proceedings appear in the appendices to the rules.

2008 Amendment

Former RCFC 71A has been redesignated as RCFC 71.1 in accordance with the FRCP.

Rule 74. Method of Appeal From Magistrate Judge to District Judge Under Title 28 U.S.C. § 636(c)(4) and Rule 73(d) [Abrogated in FRCP.]

Rule 75. Proceedings On Appeal From Magistrate Judge to District Judge Under Rule 73(d) [Abrogated in FRCP.]

Rule 76. Judgment of the District Judge on the Appeal Under Rule 73(d) and Costs [Abrogated in FRCP.]

TITLE X. COURT AND CLERK: CONDUCTING BUSINESS; ISSUING ORDERS

Rule 77. Conducting Business; Clerk's Authority; Notice of an Order or Judgment

(a) When Court Is Open. The court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(b) Place for Trial and Other Proceedings.

(1) ***In General.*** Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom. Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, or at any other place designated by order.

(2) ***A Trial or Hearing in a Foreign Country.*** On motion or on the judge's own initiative, and upon a determination by the judge to whom the case is assigned that the interests of economy, efficiency, and justice will be served, the chief judge may issue an order authorizing the judge to conduct proceedings, including evidentiary hearings and trials, in a foreign country whose laws do not prohibit such proceedings.

(c) Clerk's Office Hours; Clerk's Orders.

(1) ***Hours.*** The clerk's office—with a clerk or deputy on duty—must be open during business hours every day except Saturdays, Sundays, and legal holidays as defined in RCFC 6(a)(6).

(2) ***Orders.*** Subject to the court's power to suspend, alter, or rescind the clerk's action for good cause, the clerk may:

(A) issue process;

(B) enter a default;

(C) enter a default judgment under RCFC 55(b)(1); and

(D) act on any other matter that does not require the court's action.

(d) Serving Notice of an Order or Judgment.

(1) ***Service.*** Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in RCFC 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in RCFC 5(b).

(2) ***Time to Appeal Not Affected by Lack of Notice.*** Lack of notice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by Federal Rule of Appellate Procedure 4(a).

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

Rules Committee Notes
2002 Revision

To more closely parallel the structure and content of FRCP 77, RCFC 77 has been modified as follows:

Former subdivisions (a) (referring to the court's "Name"), (b) (referring to the court's "Seal"), (d) (captioned "Citations"), and (e) (identifying the court's judicial power as being exercisable by a single judge, except in congressional reference cases), have been deleted as unnecessary.

Subdivision (b) (formerly subdivision (h) of this rule) has been changed in two respects. First, in order better to reflect its content, the subdivision has been retitled to read "Trials and Hearings; Proceedings in Chambers" (in lieu of "Trials and Hearings; Orders in Chambers"). Second, the subdivision has been divided into paragraphs (1) and (2). Paragraph (1), captioned "Proceedings Generally," retains the rule's earlier language; paragraph (2), captioned "Trials or Hearings in Foreign Countries," has been added to recognize the court's authority under 28 U.S.C. § 798(b) to conduct trials or hearings in foreign countries.

Former subdivision (f), titled "Assignment of Cases," was renumbered as RCFC 40.1.

Former subdivision (g), titled "Signing of Orders for Absent Judges," was renumbered as RCFC 77.2(b).

Former subdivisions (l) and (k), titled, respectively, "Scheduling Courtrooms" and "Fee Schedule," were renumbered as RCFC 77.1.

Finally, former subdivision (m) was deleted in order to recognize the right of certain court employees to participate in *pro bono* legal work under the guidelines prescribed for that purpose by the Codes of Conduct for Judicial Employees.

2008 Amendment

The language of RCFC 77 has been amended to conform to the general restyling of the FRCP.

Rule 77.1. Business Hours, Scheduling, and Court Fees

(a) Business Hours. The clerk's office is open from 8:45 a.m. to 5:15 p.m. on business days. A night box is provided for filing with the clerk's office between 5:15 p.m. and 12:00 midnight on any business day for any paper due that day. The night box is located inside the gate at the garage entrance on H Street. Counsel are advised to telephone the clerk's office, (202) 357-6400, by 9:30 a.m. the following business day to confirm receipt.

(b) Scheduling. The clerk will schedule the use of courtrooms in Washington, DC, and will be responsible for all arrangements for courtrooms and other facilities required by the court at locations outside Washington, DC. All conferences, oral arguments, trials, and other recorded court proceedings will be scheduled by the assigned judge by filing an order with the clerk.

(c) Court Fees.

(1) ***In General.*** Court fees are prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1926(a), as adjusted in the case of the fee for admission in accordance with RCFC 83.1(b)(4).

(2) ***Fee Schedule.*** A copy of the applicable schedule of fees is available on the court's website at www.uscfc.uscourts.gov or may be obtained by contacting the office of the Clerk of the United States Court of Federal Claims, 717 Madison Place, NW, Washington, DC 20439.

(3) ***Method of Payment.*** Fees for services rendered by the clerk must be paid in advance; all checks should be made payable to "Clerk, United States Court of Federal Claims."

(As revised and reissued May 1, 2002; as amended Mar. 15, 2005, Aug. 2, 2005, Nov. 3, 2008.)

Rules Committee Notes

2002 Revision

Former RCFC 77.1 was deleted in its entirety. Current RCFC 77.1 reflects portions of the text of former subdivision (c) as well as subdivisions (h) and (i) of RCFC 77.

2005 Amendments

Subdivision (c)(2) has been revised to conform more precisely to 28 U.S.C. § 1926(a) which provides that "[t]he Judicial Conference of the United States shall prescribe from time to time the fees and costs to be charged and collected in the United States Court of Federal Claims." This authorization for the Judicial Conference to prescribe fees for the court has a counterpart in 28 U.S.C. § 1914 which pertains to fees for district courts. Ordinarily, the Judicial Conference amends the fee schedules for both district courts and this court at the same time. In addition, subdivision (c)(2) recognizes the court's authority to include as an additional admission fee the amount provided for in RCFC 83.1(b)(4). Currently applicable fee schedules are obtainable on the court's website and through a variety of other published sources.

2008 Amendment

The language of RCFC 77.1 has been amended to conform to the general restyling of the FRCP.

Rule 77.2. Authorization to Act on Certain Motions

(a) Authority of the Clerk. The clerk may act on any motion for an enlargement of time to answer or respond to a complaint or for substitution of counsel if:

(1) the motion states that opposing counsel has no objection;

(2) no opposition to the motion has been timely filed; or

(3) opposing counsel files a consent.

The clerk may not allow enlargements that exceed 60 days in total.

(b) Signing an Order for an Absent Judge. If an order is required and the assigned judge is unavailable, an order may be presented to the chief judge or to another judge designated by the assigned judge for signature.

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

Rules Committee Notes
2002 Revision

RCFC 77.2 has no FRCP counterpart. The rule has been changed in several respects. First, former subdivisions (a) and (b) were combined into a new subdivision (a). Second, language in former subdivision (a) relating to the "permanent withdrawal of papers" was deleted to reflect corresponding changes in RCFC 77.3 that abolish the practice of permitting the withdrawal of papers from the clerk's office. Third, former subdivisions (c) and (d) were deleted as unnecessary. Finally, new subdivision (b) reflects text transferred from former subdivision (g) of RCFC 77.

2008 Amendment

The language of RCFC 77.2 has been amended to conform to the general restyling of the FRCP.

Rule 77.3. Withdrawing, Disposing of, and Unsealing Papers and Exhibits

(a) Withdrawing Papers and Exhibits.

(1) ***In General.*** A paper or exhibit filed with the court may not be withdrawn from the office or custody of the clerk except by order of the court, but such an order should be entered only in extraordinary circumstances. Any withdrawal of a paper or exhibit pursuant to a court order must be recorded through an appropriate docket entry.

(2) ***During Trial.*** The court reporter engaged to transcribe a trial proceeding may temporarily withdraw any paper or exhibit for use during that proceeding. All papers and exhibits admitted into evidence or designated to accompany the transcript of the proceeding must remain in the reporter's custody until the transcript is filed with the clerk.

(b) Disposing of Physical Exhibits. All trial exhibits, including models, diagrams, depositions, transcripts, briefs, tables, and charts, will be destroyed or otherwise disposed of by the clerk unless they are removed from the clerk's custody by the party who produced them either:

(1) within 60 days after the entry of final judgment by this court; or

(2) in the event of an appeal, within 90 days after the receipt and filing of a mandate or other process or certificate showing the disposition of the case by the appellate court.

(c) Unsealing Papers and Exhibits. Unless otherwise required by statute or order and absent a timely objection by any party, the clerk, upon notice to the parties, may unseal any paper or exhibit filed under seal either:

(1) 5 years after the entry of final judgment by this court; or

(2) in the event of an appeal, 5 years after the receipt and filing of a mandate or other process or certificate showing disposition of the case by the appellate court.

(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008, July 13, 2009.)

Rules Committee Notes
2002 Revision

RCFC 77.3 has no FRCP counterpart. The rule has been amended in several respects:

First, former subdivision (a) was deleted, thereby eliminating the practice of permitting temporary withdrawal of exhibits and papers by the parties. The need to accommodate the copying of extensive parts of a record shall be addressed directly through arrangements made by the clerk.

Subdivision (a), formerly subdivision (b), was amended to clarify that the reporter is to retain custody of the transcript and exhibits until they are filed with the clerk.

New subdivision (b), formerly subdivision (c), clarifies that no withdrawal of papers or exhibits from the clerk's office may occur in the absence of a court order, and then only in extraordinary circumstances. The fact of withdrawal shall be preserved in the court's docketing entries.

New subdivision (c), formerly subdivision (d), was rewritten to clarify the practice with respect to the disposition of physical exhibits and to make clear the parties' obligation to retrieve such exhibits, to avoid their loss through routine disposal. The reference to *in camera* materials was omitted, because such materials are not filed with the clerk's office.

New subdivision (d) establishes a procedure for handling materials filed under seal, requiring the parties affirmatively to indicate a desire to maintain filings in closed cases under seal.

2007 Amendment

Subdivision (d) of RCFC 77.3 has been amended by substituting the introductory words "unless otherwise required by statute or order" in place of the former text "unless otherwise specified by order." The amendment is intended to recognize that under certain statutes, materials originally filed under seal must be maintained under seal in perpetuity. *See, e.g.,* National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-12(d)(4)(A).

2008 Amendment

The language of RCFC 77.3 has been amended to conform to the general restyling of the FRCP.

2009 Amendment

The last sentence of subdivision (a)(1) has been amended to clarify that the withdrawal of a paper or exhibit filed with the clerk must be recorded through an appropriate docket entry.

Further, as an historical note, we add that the current structure of RCFC 77.3 relates back to the restyling of the rule in 2008 when former subdivisions (a) and (b) were combined into the new subdivision (a) and the remaining subdivisions renumbered as subdivisions (b) and (c).

Rule 78. Hearing Motions; Submission on Briefs [Not used.]

Rule 79. Records Kept by the Clerk

(a) Civil Docket.

(1) ***In General.*** The clerk must keep a record known as the "civil docket" in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States. The clerk must enter each civil action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.

(2) ***Items to be Entered.*** The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk;

(B) process issued, and proofs of service or other returns showing execution; and

(C) appearances, orders, verdicts, and judgments.

(3) ***Contents of Entries.*** Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the

substance and date of entry of each order and judgment.

(b) Civil Judgments and Orders. The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The clerk must keep these in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

(c) Indexes; Calendars. Under the court's direction, the clerk must:

(1) keep indexes of the docket and of the judgments and orders described in RCFC 79(b); and

(2) prepare calendars of all actions ready for trial.

(d) Other Records. The clerk must keep any other records required by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

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

Rules Committee Notes
2002 Revision

The word "civil" has been added to subdivision (a) to more closely conform to FRCP 79. RCFC 79 as it now reads is essentially identical to FRCP 79.

2008 Amendment

The language of RCFC 79 has been amended to conform to the general restyling of the FRCP.

Rule 80. Transcript or Recording as Evidence

If testimony reported at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript or recording certified by the person who reported it or by any other method authorized by the court (see Appendix of Forms, Forms 3B and 3C).

(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008, Aug. 30, 2013.)

Rules Committee Notes
2002 Revision

Former subdivisions (a), (b), and (c) were deleted and minor changes have been made to former subdivision (d) in order to more closely conform to FRCP 80.

2007 Amendment

RCFC 80, which previously limited certification of a trial record to "the person who reported the testimony," has been expanded to include certification "by any other method authorized by the court." This expansion addresses the certification requirement in cases where testimony at a trial or hearing is recorded electronically under court supervision without reporter assistance.

2008 Amendment

The language of RCFC 80 has been amended to conform to the general restyling of the FRCP.

2013 Amendment

RCFC 80 has been amended to reflect the changes adopted in RCFC 80.1.

Rule 80.1. Court Reporters

(a) In General. Trial proceedings will be recorded and, upon request of a party or the court, will be transcribed by a court reporter provided by the court who will be under the jurisdiction and control of the assigned judge.

(b) Official Record.

(1) ***Transcript.*** When a transcript is filed, the transcript is the official record of the proceeding.

(2) ***Recording.*** If no transcript is filed, the electronic sound recording is the official record of the proceeding.

(c) Transcripts.

(1) ***Costs.*** A transcript will be prepared at such charges as may be fixed or approved by the court.

(2) ***Form; Contents.*** A transcript must comply with the form, content, and style requirements established by the court (available on the court's website at www.uscfc.uscourts.gov).

(3) ***Filing.*** If a transcript is requested by a party or by the court, the court reporter must file the transcript of the proceeding within the time period specified by the court.

(d) Exhibits.

(1) ***Labeling.*** Unless the court otherwise directs the parties to designate their exhibits, the court reporter must label each exhibit with:

(A) the title and docket number of the case;

(B) the exhibit number;

(C) the party offering the exhibit, whether plaintiff, defendant, or any other party; and

(D) the number of pages in each exhibit.

(2) ***Submission.*** The court reporter must submit the exhibits admitted into evidence or designated to accompany the record of the proceeding at the conclusion of the proceeding as directed by the court.

(e) Indexes. The court reporter must file an index listing each witness testifying and each exhibit offered and received into evidence in accordance with the requirements established by the court (available on the court's website at www.uscfc.uscourts.gov).

(f) Certifications.

(1) ***Transcript.*** The court reporter must sign and append to the transcript a certificate certifying that the record is a correct transcript of the proceeding. See Appendix of Forms, Form 3C.

(2) ***Recording.*** The court reporter must certify the recordings and notes reported at the proceeding. See Appendix of Forms, Form 3B.

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, Nov. 3, 2008, Aug. 30, 2013.)

Rules Committee Notes

2002 Revision

RCFC 80.1 has no FRCP counterpart. The rule's principal text formerly appeared in these rules as Appendix A. The incorporation of former Appendix A into the main body of the rules reflects a more logical placement of its subject matter in the organizational structure of the court's rules. Additionally, as part of this rule's relocation, Forms A and B of former Appendix A (pertaining to reporter certifications) were assigned to the new Appendix of Forms. They appear there as Forms 3A and 3B.

Other changes introduced in this rule include the following:

Subdivision (a) formerly appeared in these rules as paragraph (b)(1) of RCFC 39. The changes introduced in new subdivision (a) were deemed necessary in order to eliminate uncertainty as to the court's authority to furnish a reporter for trials scheduled outside of the United States.

Subdivision (b) formerly appeared as paragraph (b)(2) of RCFC 39.

Subdivision (i) formerly appeared as paragraph (b)(3) of RCFC 39. Additionally, subdivision (i) reflects the change in the court's name.

2005 Amendment

Subdivision (d) has been amended to specify that the reporter shall show on each page of a trial transcript the name of the witness being questioned and the name of the examining counsel. This change is intended to aid both counsel and the court in working with transcripts during post-trial proceedings, especially where trials have been lengthy.

2008 Amendment

The language of RCFC 80.1 has been amended to conform to the general restyling of the FRCP.

2013 Amendment

RCFC 80.1 has been amended to allow a

transcript or an electronic sound recording to serve as the official record of a trial proceeding.

A new RCFC 80.1(b) ("Official Record") has been added to clarify what constitutes the official record of a proceeding.

Former RCFC 80.1(b) ("Transcripts") has been renumbered as subdivision (c) and amended to provide (i) that costs for a transcript will be fixed or approved by the court; (ii) that a transcript must be prepared in accordance with the form, content, and style requirements specified by the court; and (iii) that the court reporter must file the transcript, when one is requested, within the time period specified by the court. The language that formerly appeared in this subdivision addressing a transcript's form and content requirements has been stricken as unnecessary and the requirement for filing indexes has been included in renumbered RCFC 80.1(e) ("Indexes").

Former RCFC 80.1(c) ("Exhibits") has been renumbered as subdivision (d) and amended to include the requirement that the court reporter must submit exhibits at the conclusion of the trial proceeding as directed by the court.

The requirement for filing transcripts and exhibits contained in former RCFC 80.1(d) has been included in renumbered RCFC 80.1(c) and (d), respectively.

Finally, former RCFC 80.1(e) ("Certifications") has been renumbered as subdivision (f) and amended to clarify that certification is required for both the recording of the proceeding and any later prepared transcript.

TITLE XI. GENERAL PROVISIONS

Rule 81. Applicability of the Rules in General; Removed Actions [Not used.]

Rule 82. Jurisdiction and Venue Unaffected [Not used.]

Rule 83. Rules by Court of Federal Claims; Judge's Directives

(a) In General. After giving public notice and an opportunity for comment, the United States Court of Federal Claims, acting by a majority of its judges, may adopt and amend rules governing its practice. Such rules, to the extent permitted by this court's jurisdiction, must be consistent with the Federal Rules of Civil Procedure and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A rule takes effect on the date specified by the court and remains in effect unless amended by the court. Copies of rules and amendments must, on their adoption, be furnished to the Administrative Office of the United States Courts and be made available to the public.

(b) Procedure When There Is No Controlling Law. A judge may regulate practice in any manner consistent with federal law or rules adopted under 28 U.S.C. § 2072 or 2503(b). No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or these rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

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

Rules Committee Notes
2002 Revision

RCFC 83 is modeled after FRCP 83. The rule recognizes the court's rule-making authority as set forth at 28 U.S.C. § 2503, as well as the assigned judge's authority to regulate practice in an individual case, so long as that practice is consistent with federal law and rules.

2008 Amendment

The language of RCFC 83 has been amended to conform to the general restyling of the FRCP.

Rule 83.1. Attorneys

(a) Eligibility to Practice.

(1) ***In General.*** An attorney is eligible to practice before this court if the attorney:

(A) is a member in good standing of the bar of the highest court of any U.S. state, territory, or possession or the District of Columbia; and

(B) is a member in good standing of the bar of this court; or

(C) was a member in good standing of the bar of this court's predecessor, the United States Court of Claims.

(2) ***Pro Hac Vice.*** An attorney may participate *pro hac vice* in any proceeding before this court if:

(A) the attorney is admitted to practice before the highest court of any U.S. state, territory, or possession or the District of Columbia; and

(B) the attorney of record for any party has requested and is present for such participation and has received the court's approval.

(3) ***Pro Se Litigants.*** An individual who is not an attorney may represent oneself or a member of one's immediate family, but may not represent a corporation, an entity, or any other person in any proceeding before this court. The terms counsel, attorney, and attorney of record include such individuals appearing *pro se*.

(b) Admission to Practice.

(1) ***Qualifications.*** Any person of good moral character who is a member in good standing of the bar of 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 20439, at the times posted on the court's website at 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

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

(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;

(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.

(3) ***Oath.*** An applicant for admission to practice before this court must take the following oath, to be administered by the presiding judge or by the clerk:

> I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and that I will conduct myself in an upright manner as an attorney of this court.

(4) ***Fee.*** Unless the applicant is employed by this court or is an attorney representing the United States before this court, the applicant must pay the admission fee in accordance with the fee schedule posted on the court's website at www.uscfc.uscourts.gov. The admission fee includes $100.00 above the amount prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1926(a). The clerk will deposit this additional sum in a fund to be used by the court for the benefit of the members of the bench and the bar in the administration of justice.

(5) ***Notice to the Court.*** An attorney admitted to the bar of this court must provide the clerk with timely notice of:

(A) any change in the attorney's address; and

(B) any change in the status of the attorney's membership in the bar of the jurisdiction upon which the attorney's admission to the bar of this court was based.

(6) ***Foreign Attorneys.***

(A) ***In General.*** Any person qualified to practice in the highest court of any foreign state may be specially admitted to practice before this court but only for purposes limited to a particular case; such person may not serve as the attorney of record.

(B) ***Procedures.*** A member of the bar of this court must file with the clerk a written motion to admit the applicant at least 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.

(c) 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 RCFC 83.1(a)(3), must be represented by an attorney (not a firm) admitted to practice before this court. Any attorney assisting the attorney of record must be designated "of counsel."

(2) ***Signing Filings.*** All filings must be signed in the attorney of record's name. Any attorney who is admitted to practice before this court 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]." Such authorization to sign filings does not relieve the attorney of record from the provisions of RCFC 11.

(3) ***Entering an Appearance.***

(A) ***By Parties Other Than the United States.*** The attorney of record for any party other than the United States must include on the initial pleading or paper the attorney's name, address, electronic mail address, telephone number, and facsimile number.

(B) ***By the United States.*** After service of the complaint, the attorney of record for the United States must promptly file with the clerk and serve on all other parties a notice of appearance setting forth the attorney's name, address, electronic mail address, telephone number, and facsimile number.

(C) ***Changes in Contact Information.*** An attorney of record must promptly file with the clerk and serve on all other parties a notice of any change in the attorney's contact information.

(4) ***Substituting Counsel.***

(A) ***By Parties Other Than the United States.***

(i) ***In General.*** Any party other than the United States may seek leave of the court to substitute its attorney of record at any time by filing a motion signed by the party or by the newly designated attorney along with an affidavit of appointment by such attorney.

(I) ***With the Consent of the Previous Attorney.*** If the previous attorney's consent is annexed to or indicated in the motion, the clerk will automatically enter the substitution on the docket.

(II) ***Without the Consent of the Previous Attorney.*** If the motion is filed without the consent of the previous attorney, the previous attorney must be served with the motion and will have 14 days to show cause why the motion should not be allowed.

(ii) ***Death of the Previous Attorney.*** In the event of the death of the attorney of record, the party must promptly notify the court and move to substitute another attorney admitted to practice before this court.

(B) ***By the United States.*** The United States may substitute its attorney of record at any time by filing with the clerk and serving on all other parties a notice of appearance of

the new attorney.

(5) ***Withdrawing Counsel.*** An attorney of record for a party other than the United States may not withdraw the attorney's appearance except by leave of the court on motion and after notice is served on the attorney's client.

(d) Honorary Bar Membership. Upon nomination by the chief judge and with the approval of the other judges, the court may present an honorary membership in the bar of this court to a distinguished professional of the United States or of another nation who is knowledgeable in the affairs of law and government in his or her respective country. The candidate for honorary membership will be presented at the bar in person and will receive a certificate of honorary bar membership.

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, June 20, 2006, Nov. 3, 2008, Jan. 11, 2010, July 15, 2011.)

Rules Committee Notes

2002 Revision

RCFC 83.1 has no FRCP counterpart. Former RCFC 83.1, titled "Content of Briefs or Memoranda; Length of Briefs or Memoranda," has been renumbered as RCFC 5.2. The renumbering of RCFC 83.1 was intended to reflect its more logical placement in the organizational structure of this court's rules.

The substance of the rule reflects the text of former RCFC 81, as modified. Paragraph (2) of subdivision (c) (formerly paragraph (d)(2) of RCFC 81) was amended to formalize the court's practice of allowing joint filings to be signed by one counsel, on behalf of both counsel, when authorized to do so by opposing counsel. Also, subdivision (e) of former RCFC 81 (relating to attorneys' fees and expenses) was not retained as part of this rule but was, instead, incorporated into RCFC 54(d)(2).

In addition, former General Order No. 15, titled "Honorary Bar Membership," was slightly modified and moved to new subdivision 83.1(d).

2005 Amendment

RCFC 83.1(b)(4) (Fee for Admission) has been amended to set forth the practice, under guidelines approved by the Judicial Conference of the United States, of adding an amount to the admission fee set pursuant to 28 U.S.C. § 1926(a) for deposit into a fund to be used by the court for the benefit of the members of the bench and the bar in the administration of justice.

2006 Amendment

Subdivision 83.1(b)(2)(A) (Admission to Practice Upon Oral Motion) has been amended to provide some flexibility respecting when motions for admission to practice will be heard upon oral motion.

2008 Amendment

The language of RCFC 83.1 has been amended to conform to the general restyling of the FRCP.

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 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.

2011 Amendment

RCFC 83.1(a) has been amended to clarify that eligibility to practice before this court requires that an attorney be a member in good standing of the bar of the highest court of any U.S. state,

territory, or possession or the District of Columbia as well as a member in good standing of this court's own bar.

In addition, subdivision (b) has been amended by adding a new paragraph (5) requiring an attorney admitted to practice before this court to provide the clerk with timely notice of any change in the attorney's address and any change in the status of the attorney's membership in the bar of the jurisdiction upon which the attorney's admission to the bar of this court was based. To accommodate the addition of new paragraph (5), former paragraph (5) ("Foreign Attorneys") has been renumbered as paragraph (6).

Finally, subparagraphs (c)(3)(A) and (B) have been amended to require the inclusion of an electronic mail address by the attorney of record for any party.

Rule 83.2. Attorney Discipline

(a) In General. The United States Court of Federal Claims, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are members of its bar, promulgates the following rule for attorney discipline.

(b) Definitions. For purposes of this rule, the following definitions apply:

(1) ***Another Court.*** Another court is defined as any court of the United States, the District of Columbia, or any U.S. state, territory, possession, or commonwealth.

(2) ***Serious Crime.*** A serious crime is defined as:

(A) any felony; or

(B) any lesser crime whose necessary elements, as determined by the statutory or common law definition of the crime in the jurisdiction where the conviction occurred, include:

(i) interference with the administration of justice;

(ii) false swearing;

(iii) misrepresentation;

(iv) fraud;

(v) willful failure to file an income tax return;

(vi) deceit;

(vii) bribery;

(viii) extortion;

(ix) misappropriation;

(x) theft; or

(xi) an attempt, conspiracy, or solicitation of another to commit a serious crime.

(c) Grounds for Discipline. An attorney admitted to practice before this court, including an attorney admitted for the purpose of a particular proceeding pursuant to RCFC 83.1(a)(2) or (b)(5), may be disciplined under this rule on any of the following grounds:

(1) the conviction by another court of a serious crime as defined in RCFC 83.2(b)(1) and (2);

(2) an act or omission that results in the attorney's disbarment or suspension by another court;

(3) disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending;

(4) failure to comply with the terms of this rule, including failure to notify the court in accordance with RCFC 83.2(e); or

(5) any conduct before the court that is unbecoming a member of the bar of this court.

(d) Types of Discipline.

(1) ***In General.*** An attorney disciplined for conduct identified in RCFC 83.2(c) may be:

(A) disbarred from the court;

(B) suspended from practice before the court;

(C) publicly or privately reprimanded;

(D) required to provide restitution or pay monetary sanctions; or

(E) subjected to other such disciplinary action as the circumstances may warrant.

(2) ***Sanctions Under Other Provisions.*** Assessment of damages, costs, expenses,

or attorney fees under RCFC 11, 16, 37, or 45, 28 U.S.C. § 1927, or similar statutory provisions are not disciplinary sanctions within the meaning of this rule and are not governed by this rule.

(e) Attorney's Duty to Notify the Court of a Conviction or Discipline Imposed by Another Court.

(1) ***In General.*** An attorney admitted to practice before this court must notify the clerk in writing within 14 days of the attorney's:

(A) conviction by another court of a serious crime;

(B) disbarment or suspension by another court; or

(C) disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending.

(2) ***Contents of Notification.*** The notification must include:

(A) the name of the court imposing the conviction or discipline;

(B) the date of the court's action;

(C) the docket number;

(D) the offense committed; and

(E) the discipline imposed.

(f) Standing Panel on Attorney Discipline.

(1) ***In General.*** All disciplinary matters will be referred to a Standing Panel on Attorney Discipline.

(2) ***Members.***

(A) ***Appointment.*** The chief judge will appoint three judges to the standing panel to serve staggered three-year terms, with the initial appointments being for one-, two-, and three-year terms and all subsequent appointments being for three-year terms.

(B) ***Eligibility for Reappointment.*** A judge who has served on the standing panel for three years will not be eligible for appointment to another term until three years after the termination of his or her last appointment.

(C) ***Chairperson.*** The standing panel will designate one of its members to serve as the chairperson.

(3) ***Unavailability of a Standing Panel Member.***

(A) ***To Hear a Particular Matter.*** If a member of the standing panel is unable or unavailable to hear a particular matter, the chief judge will appoint another judge to be a member of the panel for that matter.

(B) ***To Complete the Member's Term.*** If a member of the standing panel is unable to complete the remainder of his or her term, the chief judge will appoint another judge to serve the remainder of the term.

(g) Initiating Disciplinary Proceedings.

(1) ***Docketing.*** Consistent with RCFC 83.2(*l*), the clerk will maintain an attorney disciplinary docket and will assign a number to each matter.

(2) ***Referring Matters to the Standing Panel.*** The clerk must refer to the standing panel:

(A) any information received from another court concerning a member of this court's bar involving disbarment, suspension, disbarment on consent, or resignation from the bar of another court while an investigation into an allegation of misconduct is pending; and

(B) any complaint regarding attorney misconduct received from a judge or special master of the court or a member of the public.

(3) ***Appointing Investigatory Counsel.***

(A) ***In General.*** The standing panel may appoint the court's staff attorney or other appropriate court personnel to investigate allegations of misconduct.

(B) ***Role of Investigatory Counsel.*** In conducting a disciplinary investigation, the investigatory counsel may:

(i) review the complaint and any relevant documents available at the court or provided by the complainant;

(ii) interview witnesses, including the complainant and the attorney subject to the proceeding;

(iii) provide to the standing panel, at the panel's request, a report detailing the investigatory counsel's findings; and

(iv) take any additional steps that are reasonably necessary to effectuate the investigation.

(C) ***Outside Counsel.*** In addition to, or as an alternative to, the procedure described in subparagraphs (A) and (B), in the event the court staff attorney or other appropriate court personnel is recused, at any stage of a proceeding the standing panel may appoint outside counsel to investigate and/or prosecute allegations of misconduct under this rule.

(4) ***Issuing and Serving a Show Cause Order.*** To initiate a disciplinary proceeding, the standing panel must:

(A) issue a show cause order describing the attorney's alleged misconduct and directing the attorney to show cause why a specific discipline should not be imposed or why a discipline to be determined at a later date should not be imposed; and

(B) serve the order on the attorney in accordance with RCFC 83.2(m).

(5) ***Presumed Discipline.*** Unless the standing panel concludes that a different discipline may be appropriate, the following discipline is presumed to apply and should be identified in the show cause order:

(A) ***For Conviction by Another Court of a Serious Crime.*** Disbarment is the presumed discipline for the conviction by another court of a serious crime.

(B) ***For Disbarment or Suspension by Another Court.*** Reciprocal disbarment or suspension is the presumed discipline for an act or omission that results in an attorney's disbarment or suspension by another court.

(C) ***For Disbarment on Consent or Resignation From the Bar of Another Court.*** Reciprocal disbarment is the presumed discipline for an attorney's disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending.

(D) ***For Conduct Unbecoming a Member of the Bar of this Court.*** There is no presumed discipline for conduct that is unbecoming a member of the bar of this court; the standing panel will determine the appropriate discipline.

(6) ***Responding to a Show Cause Order.*** Unless otherwise ordered, an attorney must file any response to a show cause order within 30 days after service of the order. Any request for a hearing must be included in the response.

(7) ***Dismissing a Matter Without Further Proceedings.*** The standing panel may dismiss a matter without further proceedings if the panel concludes that the allegation on its face is insufficient to warrant the imposition of any discipline.

(h) Proceedings Before the Standing Panel.

(1) ***Representation by Counsel.*** An attorney may be represented by counsel in any disciplinary proceeding before the standing panel.

(2) ***Suspending an Attorney.*** The standing panel will immediately suspend an attorney from practicing before the court upon notice that an attorney:

(A) has been convicted by another court of a serious crime; or

(B) has been disbarred, suspended, disbarred on consent, or resigned from the bar of another court while an

investigation into an allegation of misconduct is pending,

(3) ***Record of the Proceeding.***

(A) ***Content.*** The record will consist of the show cause order, the response to the order, all evidentiary materials, and all documents, briefs, and memoranda submitted to or considered by the standing panel or the court.

(B) ***Withholding Information.*** Information will be withheld from an attorney only in extraordinary circumstances, e.g., for national security or criminal investigation purposes.

(C) ***Copying and Responding to Documents.*** If the record includes documents in addition to the show cause order and the response, an attorney must be given the opportunity to inspect and copy the additional documents at his or her expense and, if the attorney contests the charge but has not requested a hearing, must be given the opportunity to file a supplemental response.

(4) ***Issuing a Final Order in an Uncontested Matter.*** If an attorney does not respond to a show cause order issued pursuant to RCFC 83.2(g)(4) or does not object to the imposition of discipline, the standing panel may issue a final order imposing such discipline.

(5) ***Conducting a Hearing in a Contested Matter.***

(A) ***In General.*** If an attorney requests a hearing in his or her response to a show cause order or in a supplemental response filed pursuant to RCFC 83.2(h)(3)(C), the standing panel will schedule a hearing and will determine whether the submission of evidence, including the calling of witnesses, is appropriate.

(B) ***Notice of Hearing.*** An attorney must be given at least 30 days' notice of the time, date, and place of the hearing.

(C) ***Presumptions.***

(i) ***For Conviction by Another Court of a Serious Crime.*** When an attorney has been convicted by another court of a serious crime, the standing panel:

(I) will treat the conviction as conclusive evidence of the commission of that crime, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal; and

(II) will limit further proceedings to a determination of the final discipline to be imposed.

(ii) ***For Disbarment, Suspension, Disbarment on Consent, or Resignation From the Bar of Another Court.*** The standing panel will treat an attorney's disbarment, suspension, disbarment on consent, or resignation from the bar of another court while an investigation into an allegation of misconduct is pending as conclusive evidence that the misconduct in fact occurred and that the discipline was appropriate unless the standing panel concludes that:

(I) the procedure was so lacking in notice or an opportunity to be heard that it constituted a deprivation of due process;

(II) there was such an

infirmity of proof establishing the misconduct that this court could not, consistent with its duty, accept as final the conclusion on the matter;

(III) the imposition of the same discipline by this court would result in grave injustice; or

(IV) the misconduct established is deemed to warrant substantially different discipline.

(D) ***Subpoena.*** The standing panel may compel by subpoena:

(i) the attendance of witnesses, including the attorney subject to the proceeding; and

(ii) the production of documents.

(E) ***Cross-Examining Witnesses.*** The attorney subject to the proceeding must be afforded an opportunity to cross-examine any witnesses called before the standing panel and to introduce evidence in defense or mitigation.

(F) ***Recording.*** A hearing will be digitally recorded unless an attorney arranges to have a reporting service present at his or her own expense.

(G) ***Post-Hearing Brief.*** The standing panel may order the filing of a post-hearing brief, which may include, at the panel's direction, either a statement of facts or proposed findings of fact. Post-hearing briefing is not a matter of right.

(H) ***Issuing a Final Order.*** Following the conclusion of the disciplinary proceeding, the standing panel will issue a final order.

(6) ***Reporting a Final Order.*** The standing panel may:

(A) direct the attorney or the clerk to send a copy of the final order to all other courts before which the attorney is admitted; and

(B) direct the clerk to notify the National Disciplinary Data Bank of the discipline imposed.

(i) Disbarment on Consent While Disciplinary Proceeding Is Pending.

(1) ***In General.*** At an attorney's request and upon receipt of the affidavit required under RCFC 83.2(i)(2), the standing panel may cease any investigation or proceeding being conducted under this rule and may enter an order disbarring the attorney on consent.

(2) ***Affidavit.*** To initiate a disbarment on consent, an attorney must file an affidavit stating that:

(A) the attorney is aware that an investigation or proceeding involving allegations of the attorney's misconduct is currently pending, along with a statement setting forth the specifics of those allegations;

(B) the attorney acknowledges that the material facts so alleged are true;

(C) the attorney consents to disbarment;

(D) the attorney is freely and voluntarily rendering consent, is not being subjected to coercion or duress, and is fully aware of the implications of such consent; and

(E) the attorney consents to disbarment because the attorney knows that if charges were brought on the matters under investigation, the attorney could not present a successful defense.

(j) Review of the Standing Panel's Final Order.

(1) ***A Petition for Rehearing.***

(A) ***In General.*** An attorney may seek review of the standing panel's final order either by:

(i) filing a petition for rehearing by the standing panel; or

(ii) filing a combined petition for rehearing by the standing panel

and suggestion for rehearing by the active judges of the court.

(B) ***Contents.*** The petition must state with particularity each point of law or fact that the petitioner believes the standing panel has overlooked or misapprehended.

(C) ***Time for Filing.*** Any petition for rehearing must be filed within 14 days after entry of the standing panel's final order.

(2) ***By Order of the Court.*** A majority of the active judges may order that a disciplinary matter be reheard by the active judges of the court.

(3) ***Limitations on Rehearing by the Active Judges of the Court.*** A rehearing by the active judges of the court is not favored and will generally not be ordered except when necessary to secure or maintain uniformity of the court's decisions or when the proceeding involves a question of exceptional importance.

(k) Reinstatement.

(1) ***A Petition for Reinstatement.***

(A) ***Contents.*** A petition for reinstatement must demonstrate by clear and convincing evidence that:

(i) the petitioner has the necessary moral qualifications, competency, and learning in the law required for readmission; and

(ii) the petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest.

If a hearing is requested, such request must be included in the petition.

(B) ***Time for Filing.***

(i) ***After Conviction by Another Court of a Serious Crime.*** If disbarment by this court was imposed based on an attorney's conviction by another court of a serious crime, the attorney may file a petition for reinstatement only when the conviction is vacated or reversed.

(ii) ***After Disbarment or Suspension by Another Court.*** If disbarment or suspension by this court was imposed reciprocally based on an attorney's disbarment or suspension by another court, the attorney may file a petition for reinstatement only when the original discipline is lifted or expires.

(iii) ***After Disbarment.*** An attorney who has been disbarred as a result of conduct that is unbecoming a member of the bar of this court may file a petition for reinstatement any time after the expiration of three years from the effective date of the disbarment.

(iv) ***After Suspension.***

(I) ***When Reinstatement Is Not Automatic.*** If the order suspending an attorney for conduct that is unbecoming a member of the bar of this court does not include an automatic right of reinstatement, such attorney may file a petition for reinstatement after the suspension period expires.

(II) ***When Reinstatement Is Automatic.*** If the original suspension order directs that reinstatement be automatic, the standing panel will issue an order reinstating the attorney within 14 days after

receiving the attorney's affidavit of compliance with the suspension order.

(v) ***Successive Petitions.*** An attorney may not file a successive petition for reinstatement until the expiration of at least one year from the date of an adverse judgment on an earlier petition.

(C) ***Fees and Costs.*** The standing panel may direct that the petitioner provide an advance cost deposit in an amount set by the panel to cover anticipated costs of the reinstatement proceeding.

(2) ***Conducting a Hearing.*** The standing panel will conduct a hearing on a petition for reinstatement if:

(A) the petitioner requests such a hearing; and

(B) the panel is not satisfied based on the petition alone that reinstatement is appropriate.

(3) ***Issuing a Final Order.*** The standing panel will issue a final order, with or without a hearing, either:

(A) denying the petition for reinstatement; or

(B) granting the petition if the panel determines that the petitioner is fit to resume the practice of law and concludes, upon a showing of good cause, that it would be in the interest of justice to reinstate the petitioner.

(4) ***Conditions of Reinstatement.***

(A) ***In General.*** Reinstatement may be conditioned on the payment of all or part of the costs of the reinstatement proceeding and on the making of partial or complete restitution to any parties harmed by the conduct that led to the petitioner's suspension or disbarment.

(B) ***For Disbarment or Suspension of Five Years or More.*** If the petitioner has been disbarred or suspended for five years or more, reinstatement may, in the discretion of the standing panel, additionally be conditioned on the furnishing of proof of competency and learning in law, including a certification by the bar examiners of a state or other jurisdiction of the petitioner's successful completion of an examination for admission to practice subsequent to the date of disbarment or suspension.

(*l*) Access to Information.

(1) ***Confidentiality of an Ongoing Disciplinary Proceeding.*** An ongoing disciplinary proceeding must be kept confidential unless:

(A) the attorney subject to the proceeding requests that the proceeding, including any hearing before the standing panel and the record compiled in the matter pursuant to RCFC 83.2(h)(3), be open to the public; or

(B) the standing panel determines that it is appropriate to disclose the subject matter and status of a proceeding where:

(i) the proceeding is based on the conviction by another court of a serious crime;

(ii) the proceeding is based on an allegation that has become generally known to the public; or

(iii) there is a need to notify a person or entity to protect the public, the legal profession, or the administration of justice.

(2) ***Confidentiality After Issuance of a Final Order.***

(A) ***When No Discipline or a Private Reprimand Is Imposed.*** If the final order imposes no discipline or imposes a private reprimand, the record of the proceeding compiled pursuant to RCFC 83.2(h)(3) must be kept confidential unless the attorney

subject to the proceeding requests that it be made part of the public record.

(B) ***When an Attorney Is Disbarred on Consent.*** An order disbarring an attorney on consent must be made part of the public record, but the affidavit required under RCFC 83.2(i)(2) may not be publicly disclosed or made available for use in any other proceeding except on order of the standing panel.

(C) ***All Other Cases.*** If other discipline is imposed, the final order and the record of the proceeding must be made part of the public record at the time the final order is issued. The standing panel may, however, issue a permanent protective order prohibiting the disclosure of any part of the record to protect the interest of a complainant, a witness, a third party or nonparty, or the attorney subject to the proceeding.

(m) Service.

(1) ***Show Cause Order.*** A show cause order must be served in person or by registered or certified mail addressed to the attorney at the attorney's last known address. If service by registered or certified mail is ineffective, the standing panel must enter an order as appropriate to effect service.

(2) ***All Other Papers and Notices.*** Any other paper or notice is served by mailing the paper or notice to the attorney's last known address.

(n) Retention of Authority. Nothing contained in this rule should be construed to deny an individual judge the authority to maintain control over court proceedings, such as proceedings for contempt, issuance of public reprimands, or the imposition of fines of not more than $1,000.00.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, July 13, 2009, July 15, 2011.)

Rules Committee Notes

2002 Revision

Former RCFC 83.2 has been renumbered as RCFC 7.1. New RCFC 83.2 formerly appeared in these rules as Appendix F. The incorporation of former Appendix F into the main body of the court's rules reflects a more logical placement of its subject matter in the organizational structure of the court's rules.

2008 Amendment

The language of RCFC 83.2 has been amended to conform to the general restyling of the FRCP.

2009 Amendment

RCFC 83.2 has been rewritten in its entirety. The new rule is intended to simplify the court's procedures for the disposition of attorney discipline matters by providing for the appointment, by the chief judge, of a three-member standing panel of the court's judges to address all aspects of the disciplinary process, from the investigation of charges, to the conduct of hearings, to the determination of appropriate discipline.

2011 Amendment

RCFC 83.2(g)(3) has been expanded to include a subparagraph (C) authorizing the standing panel "in the event the court staff attorney or other appropriate court personnel is recused" to appoint outside counsel to investigate and/or prosecute allegations of misconduct.

In addition, subparagraph (h)(5)(E) has been clarified by changing the phrase "witnesses called by the standing panel" to read "witnesses called before the standing panel."

Rule 83.3. Legal Assistance by a Law Student

(a) In General. A law student qualified under RCFC 83.3(b) may enter an appearance in this court on behalf of any party in a case provided that:

(1) the party on whose behalf the student appears has consented in writing;

(2) a supervising attorney, as defined in RCFC 83.3(d), has indicated approval in writing; and

(3) the written consent and approval have been filed with the clerk.

(b) Eligibility. To make an appearance under this rule, a law student must:

(1) be a student in good standing at a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters, or the equivalent thereof if the school operates on some basis other than a semester basis;

(3) have knowledge of the Rules of the United States Court of Federal Claims, the Federal Rules of Evidence, and the American Bar Association Model Rules of Professional Conduct;

(4) be enrolled for credit in a clinical program at an accredited law school that maintains malpractice insurance for its activities and conducts its activities under the direction of a faculty member of the law school;

(5) be certified by the dean of the law school as being of good character and of sufficient legal ability, and as being adequately trained in accordance with RCFC 83.3(b)(1)–(4) to fulfill the responsibilities of a legal intern to both the client and the court. Such certification must be filed with the clerk and may be withdrawn at any time by the dean upon written notice to the clerk;

(6) be certified by the chief judge to practice pursuant to this rule. Such certification may be withdrawn at any time by the chief judge or, in a given case, by the judge or special master before whom the law student has entered an appearance, without notice of hearing and without any showing of cause; and

(7) neither ask for nor receive any fee or compensation of any kind from the client on whose behalf service is rendered. This rule does not, however, prevent a lawyer, a legal aid bureau, a law school, or the government from paying compensation to an eligible law student or from making such charges for their services as may otherwise be proper, nor does it prevent any clinical program from receiving otherwise proper fees and expenses under RCFC 54(d)(2).

(c) Scope of Appearance. A law student who has entered an appearance in a case may:

(1) appear on the brief(s) and other written pleadings filed with the court, provided that the supervising attorney has read, approved, and co-signed all such documents;

(2) participate in all proceedings ordered by a judge or special master, including the taking of depositions, provided that the supervising attorney is present at all such proceedings;

(3) engage in all other activities on behalf of the client in all ways that a licensed attorney may, subject to the general direction of the supervising attorney; and

(4) make a binding commitment on behalf of the client provided that both the client and the supervising attorney have approved of such commitment.

(d) Supervising Attorney. A supervising attorney under this rule will be deemed the attorney of record pursuant to RCFC 83.1(c) and must:

(1) be a member in good standing of the bar of this court;

(2) be approved for such service by the dean of the law school at which the law student is enrolled;

(3) be certified by this court as a student supervisor;

(4) assist and counsel the student in activities allowed under this rule and review such activities with the student, to the extent appropriate under the circumstances, for the proper practical training of the student and the protection of the client;

(5) assist the student in the preparation of the case to the extent the supervising attorney considers necessary and be available for consultation with the client;

(6) be present with the student in all

proceedings before a judge or special master;

(7) co-sign all pleadings and other documents filed with the court;

(8) supplement oral or written work of the student as necessary to ensure proper representation of the client;

(9) assume full professional responsibility for any guidance relating to any work undertaken by the student and for the quality of the student's work; and

(10) notify the dean of the law school at which the student is enrolled of any alleged failure on the part of the student to abide by the letter and spirit of this rule.

(e) Retention of Authority. Nothing in this rule should be construed to prevent a judge from establishing exceptions to the activities set forth in RCFC 83.3(c), or from limiting a student's participation in a particular case.

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

Rules Committee Notes
2002 Revision

RCFC 83.3 replaces former General Order No. 35, adopted on September 3, 1993. The only changes are stylistic or correct cross-references.

2008 Amendment

The language of RCFC 83.3 has been amended to conform to the general restyling of the FRCP.

Rule 83.4. Advisory Council

(a) In General. The United States Court of Federal Claims Advisory Council will advise the court on matters referred to it by the court or deemed relevant by the council's members pertaining to the administration of the court and the court's relationship to the bar and to the public.

(b) Membership. The council will consist of no fewer than 20 members of the bar of the court, appointed by the chief judge to three-year terms, and must include representatives of all of the court's practice areas. The chief judge will designate one of these members as the chairperson and will additionally appoint one or more of the judges of the court as a liaison between the court and the council.

(c) Organization. The council will meet at such times and places as agreed to by its members. (The chief judge will provide facilities at the court to accommodate such meetings if necessary.) All members of the council, including the chief judge and the court's liaison judge[s], may attend meetings and participate in discussions, but only council members may vote on matters before the council. Council members may designate officers and committees and take any other steps appropriate to conduct the council's business.

(d) Recommendations. The council may transmit its recommendations to the court informally or formally by letter to the chief judge. The court may consider any recommendation of the council and take such action as the court deems appropriate.

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

Rules Committee Notes
2002 Revision

New RCFC 83.4 replaces General Order No. 7, which established the Advisory Council on April 5, 1983. In addition to minor stylistic and formatting changes, the new rule has increased the number of members allowed on the Council and makes the chief judge responsible for designating the chairperson.

2008 Amendment

The language of RCFC 83.4 has been amended to conform to the general restyling of the FRCP.

Rule 84. Forms

Forms referenced in these rules are set forth in the Appendix of Forms.

(As revised and reissued May 1, 2002.)

Rules Committee Note
2002 Revision

RCFC 84 parallels in content its FRCP counterpart.

Rule 85. Title

These rules may be cited as the Rules of the United States Court of Federal Claims.

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

Rules Committee Notes
2002 Revision

RCFC 85 has been changed to reflect the change in the court's name.

2008 Amendment

The language of RCFC 85 has been amended to conform to the general restyling of the FRCP.

Rule 86. Effective Date

These rules and any subsequent amendments are applicable to all proceedings pending at the time of the adoption of the revision or amendment or thereafter filed, except to the extent that the court determines that their application to a pending action would not be feasible or would work injustice, in which event the former procedure applies.

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

Rules Committee Notes
2002 Revision

RCFC 86 reflects the effective date of the most recent revision to the court's rules. In addition, the rule adopts the practice of the FRCP to presume application of rule changes to pending cases.

Future revisions to these rules will be posted on the court's website at www.uscfc.uscourts.gov.

2006 Amendment

The second sentence of RCFC 86 has been rewritten to clarify the rule's essential purpose: that amendments to the court's rules apply to all pending proceedings unless the application of such amendments would not be feasible or would work injustice.

2008 Amendment

The language of RCFC 86 has been amended to conform to the general restyling of the FRCP.

APPENDIX A
CASE MANAGEMENT PROCEDURE

I. PURPOSE

1. These case management procedures are intended to promote cooperation among counsel, assist in the early identification of issues, minimize the cost and delay of litigation, and enhance the potential for settlement. (As used in this appendix, "counsel" shall be construed to include unrepresented parties.)

2. Uniformity of practice within the court also is an important goal of these procedures. For the purpose of promoting the efficient administration of justice, a judge may modify these procedures as appropriate, or the parties may suggest modification of these procedures to meet the needs of a particular case.

II. EARLY MEETING OF COUNSEL

3. Subsequent to the filing of defendant's answer or, if applicable, a reply to a counterclaim, and, in any event, within sufficient time to permit the parties to file a Joint Preliminary Status Report in accordance with paragraph 4, below, plaintiff's counsel shall communicate with defense counsel, and counsel shall confer:

(a) to initiate preparation of the Joint Preliminary Status Report pursuant to paragraphs 4–6;

(b) to identify each party's factual and legal contentions;

(c) to make or arrange for the disclosures required by RCFC 26(a)(1);

(d) to discuss any issues relating to preserving discoverable information, and to develop a proposed discovery plan that indicates the parties' views and proposals concerning:

(1) what changes should be made in the timing, form, or requirement for disclosures under RCFC 26(a), including a statement as to when disclosures under RCFC 26(a)(1) were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) any issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(4) any issues relating to claims of privilege or of protection as trial-preparation material, including—if the parties agree on a procedure to assert such claims after production—whether to ask the court to include their agreement in an order;

(5) what changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed; and

(6) any other orders that should be entered by the court under RCFC 26(c) or under RCFC 16(b) and (c).

(e) to discuss the expected means of resolving the dispute, i.e., whether by trial or dispositive motion; and

(f) to discuss settlement of the action, including use of alternative dispute resolution. See Appendix H.

Participating counsel shall be counsel of record and such other attorneys as necessary so that participating counsel for each party are knowledgeable about the case, the identity of witnesses, and the location of documents.

III. JOINT PRELIMINARY STATUS REPORT

4. No later than 49 days after defendant's answer or plaintiff's reply to a counterclaim is served, the parties shall file with the clerk a Joint Preliminary Status Report, signed by both parties,

setting forth answers to the following questions (separate views may be set forth on any point on which the parties cannot agree):

(a) Does the court have jurisdiction over the action?

(b) Should the case be consolidated with any other case and, if so, why?

(c) Should trial of liability and damages be bifurcated and, if so, why?

(d) Should further proceedings in the case be deferred pending consideration of another case before this court or any other tribunal and, if so, why?

(e) In cases other than tax refund actions, will a remand or suspension be sought and, if so, why and for how long?

(f) Will additional parties be joined? If so, the parties shall provide a statement describing such parties, their relationship to the case, the efforts to effect joinder, and the schedule proposed to effect joinder.

(g) Does either party intend to file a motion pursuant to RCFC 12(b), 12(c), or 56 and, if so, what is the schedule for the intended filing?

(h) What are the relevant factual and legal issues?

(i) What is the likelihood of settlement? Is alternative dispute resolution contemplated?

(j) Do the parties anticipate proceeding to trial? Does either party, or do the parties jointly, request expedited trial scheduling and, if so, why? A request for expedited trial scheduling is generally appropriate when the parties anticipate that discovery, if any, can be completed within a 90-day period, the case can be tried within 3 days, no dispositive motion is anticipated, and a bench ruling is sought. The requested place of trial shall be stated. Before such a request is made, the parties shall confer specifically on this subject.

(k) Are there special issues regarding electronic case management needs?

(l) Is there other information of which the court should be aware at this time?

5. If discovery is required, the Joint Preliminary Status Report shall set forth a proposed discovery plan, including proposed deadlines. The parties shall propose a deadline for fact discovery, for the disclosure of any experts' reports, and for depositions or other discovery of experts. See RCFC 26(a)(2) concerning disclosure of experts and discovery planning. The parties may indicate in the Joint Preliminary Status Report whether they anticipate seeking a Fed. R. Evid. 502(d) court order incorporating a non-waiver agreement. A sample order implementing Fed. R. Evid. 502(d) is provided in Appendix of Forms, Form 14.

6. Unless otherwise ordered, the Joint Preliminary Status Report shall be deferred indefinitely if on or before the date the Joint Preliminary Status Report is due a dispositive motion addressing all issues is filed.

IV. PRELIMINARY SCHEDULING CONFERENCE AND SCHEDULING ORDER

7. Preliminary Scheduling Conference. After the filing of the Joint Preliminary Status Report, the judge will ordinarily conduct the preliminary scheduling conference contemplated by RCFC 16 to acquaint the court with the issues in the case, to discuss any special problems that may exist, and to establish a schedule for further proceedings. In the interest of justice and judicial economy, a preliminary scheduling conference will not be held if, in the court's assessment, further discussion of the matters presented in the Joint Preliminary Status Report would not be useful.

8. Scheduling Order. After the preliminary scheduling conference or, if none is held, after the filing of the Joint Preliminary Status Report, the judge shall promptly enter the scheduling order called for by RCFC 16(b).

V. DISCOVERY

9. Interrogatories, Requests for Admission,

Responses. A party shall number interrogatories and requests for admission sequentially without repeating the numbers it has used in any prior set of interrogatories or requests for admission. By counsel's signature to the answers and pursuant to RCFC 11, counsel for the responding party shall certify that counsel has made a diligent effort to provide answers to all portions of interrogatories or requests for admission to which it does not specifically object.

10. Discovery Motions. A motion to compel or to protect from discovery shall contain a statement that the movant has in good faith conferred or attempted to confer to resolve the matters in dispute.

VI. POST-DISCOVERY PROCEEDINGS

11. Post-Discovery Conference. Upon completion of all discovery (including discovery of any experts), the court shall hold a post-discovery conference to determine how the case will proceed. The attorneys appearing at the post-discovery conference shall be the attorneys who are expected to try the case and are thoroughly familiar with it. At the conference, counsel will be called upon to (i) address the factual and legal issues in dispute, (ii) discuss the evidence and decisional law that each side offers in support of its position, and (iii) identify the best means of resolving the dispute, i.e., whether by summary judgment, trial, or an alternative method of dispute resolution.

12. Scheduling Order. See generally RCFC 16 and 56. Promptly after the post-discovery conference, the judge shall enter a scheduling order to address further proceedings. For cases that will proceed by summary judgment in accordance with RCFC 56, the order shall establish a schedule for the filing of summary judgment motions and briefs. For cases to be resolved by trial, the order shall set (1) the time and place of trial, (2) the time and place of the final pretrial conference, and (3) the date by which the memoranda and disclosures called for by paragraphs 14–18 are due.

13. Meeting of Counsel. For cases to be resolved by trial, counsel for the parties shall meet no later than 63 days before the pretrial conference and accomplish the following:

(a) Exhibits. Exchange a list of all exhibits (including summaries, see Fed. R. Evid.1006) to be used at trial for case-in-chief or rebuttal purposes, except those to be used exclusively for impeachment. Each exhibit listed shall be identified by an exhibit number and description. Unless previously exchanged, counsel for the parties shall exchange a copy of each exhibit listed. In the case of exhibits to be offered as summaries under Fed. R. Evid. 1006, the offering party shall provide opposing counsel with a statement with respect to each summary exhibit describing the source(s) for the items or figures listed (e.g., ledgers, journals, payrolls, invoices, checks, time cards, etc.), the location(s) of the source(s), a time when the source(s) may be examined or audited by the opposing party, the name and address of the person(s) who prepared each summary and who will be made available to the opposing party during any examination or audit of the source material to provide information, and explanations necessary for verification of the information in the summary. Failure to list an exhibit shall result in exclusion of the exhibit at trial absent agreement of the parties to the contrary or a showing of a compelling reason for the failure. See also RCFC 26(a)(1), (2).

(b) Witnesses. Exchange a list of names, addresses, and telephone numbers of witnesses, including expert witnesses, who may be called at trial for case-in-chief or rebuttal purposes, except those to be used exclusively for impeachment. Failure of a party to list a witness shall result in the exclusion of the witness's testimony at trial absent agreement of the parties to the contrary or a showing of a compelling reason for the failure. Any witness whose identity has not been previously disclosed shall be subject to discovery. As to each witness, the party shall indicate the specific topics to be addressed in

the expected testimony.

(c) Conference.

(1) Disclose to opposing counsel the intention to file a motion for leave to file a transcript of deposition for introduction at trial.

(2) Resolve, if possible, any objections to the admission of testimony (including deposition testimony) or exhibits.

(3) Disclose to opposing counsel all contentions as to applicable facts and law, unless previously disclosed.

(4) Engage in good-faith, diligent efforts to stipulate and agree to facts about which the parties know, or have reason to know, there can be no dispute for the purpose of simplifying the issues at trial.

(5) Consider agreement to submitting the case to the court for resolution (including any factual disputes) on the basis of a documentary record submitted by the parties. See also RCFC 43(c).

(6) Exhaust all possibilities of settlement.

(d) Certification. Within 7 days after the meeting, counsel shall file a Joint Certification verifying that they met and accomplished all matters required by this paragraph.

14. Memorandum of Contentions of Fact and Law.

(a) Plaintiff's Memorandum. No later than 49 days before the pretrial conference, plaintiff shall file a Memorandum of Contentions of Fact and Law. The memorandum shall contain the following:

(1) a full but concise statement of the facts plaintiff expects to prove and a discussion of plaintiff's position with respect to the facts on which defendant is expected to rely;

(2) a statement of the issues of fact and law to be resolved by the court. The issues should be set forth in sufficient detail to enable the court to resolve the case in its entirety by addressing each of the issues listed;

(3) a discussion of the legal principles plaintiff contends are applicable, as well as plaintiff's response to defendant's anticipated legal position. Any objection to a witness or exhibit listed under paragraph 13 shall be made in the Memorandum of Contentions of Fact and Law or in a separate motion filed on the same date; and

(4) if plaintiff believes that bifurcation of the issues for trial is appropriate, the memorandum shall contain a request therefor, together with a statement of reasons.

(b) Defendant's Memorandum. No later than 21 days before the pretrial conference, defendant shall file its responsive memorandum in the same form and content as plaintiff's.

(c) Responses. The parties shall cooperate in the exchanges specified in paragraph 13. Consequently, any responses to matters expected to be raised by the opposing party shall be included in each party's Memorandum of Contentions of Fact and Law. However, if anything new or unexpected is discovered, it may be addressed in a brief response which must be filed under cover of a motion for leave immediately upon learning of it.

(d) Proposed Findings of Fact and Conclusions of Law. The judge may, in lieu of the Memoranda of Contentions of Fact and Law, order the filing of Proposed Findings of Fact and Conclusions of Law, including, at the judge's direction, annotations to the exhibits or witnesses on which the party will rely to prove the findings.

15. Witness List.

(**a**) Each party shall file, together with the Memorandum of Contentions of Fact and Law, a separate statement setting forth a list

of witnesses to be called at trial for case-in-chief or rebuttal purposes, except those to be used exclusively for impeachment. The witness list shall separately identify those whom the party expects to present and those whom the party may call if the need arises. As to each witness, the party shall indicate the specific topics to be addressed in the expected testimony and the time needed for direct examination.

(b) Any party intending to present substantive evidence by way of deposition testimony, other than as provided by Fed. R. Evid. 801(d), shall serve and file a separate motion for leave to file the transcript of such testimony. The motion shall show cause why the deposition testimony should be admitted and identify specifically the portions of the transcript(s) the party intends to use at trial. See RCFC 32(a). If the motion is granted, only those identified portions of the transcript may be filed.

16. Exhibit List. Each party shall file, together with the Memorandum of Contentions of Fact and Law, a separate statement setting forth a list of exhibits it expects to offer at trial for case-in-chief or rebuttal purposes (including summaries to be offered pursuant to Fed. R. Evid. 1006), other than those to be used exclusively for impeachment. The exhibit list shall separately identify those exhibits that the party expects to offer and those that the party may offer if the need arises.

17. Stipulations. The parties shall file, either before or after the pretrial conference, a stipulation setting forth all factual matters as to which they agree.

VII. OTHER MATTERS

18. Joint Exhibits. Prior to the final pretrial conference, the parties shall review the exhibit lists filed with the court and consolidate as many exhibits as possible into a set of joint exhibits for use at trial. All joint exhibits shall be identified in a joint exhibit list that identifies each exhibit by a joint exhibit number and description.

19. Post-Trial Briefing. The judge may order the filing of post-trial briefs, which may include, at the judge's direction, either a statement of facts or proposed findings of fact, together with citations to the record. Post-trial briefing is not a matter of right.

Rules Committee Notes
2002 Revision

Appendix A represents the court's standard pretrial order. The case management procedures contained in Appendix A reflect those procedures that are considered, in the collective experience of the court and the members of its bar, to be most beneficial in securing the prompt and expeditious resolution of claims and disputes. Some important changes have been introduced. Chief among these are procedures calling for a preliminary scheduling conference to be set following the filing of the Joint Preliminary Status Report, and a post-discovery conference following the completion of discovery. The expectation reflected in these conference procedures is that early and ongoing involvement of the court during the pretrial development of a case can contribute both to a prompt identification of the issues and to a narrowing of the scope of the dispute.

The promulgation of Appendix A as a synthesis of the views of the bench and the bar is intended to encourage standardization in pretrial practice procedures. Appendix A recognizes, however, that the pretrial procedures to be followed in any particular case ultimately depend upon the needs of that case. Hence, Appendix A permits modification of its procedures, either at a judge's initiative or at the parties' suggestion, when such modification will promote the efficient administration of justice.

2005 Amendment

Subparagraph (d) has been added to paragraph 13 (Meeting of Counsel) to provide the court with timely confirmation that counsel have exchanged exhibit and witness lists and have conferred regarding: (i) intentions to seek introduction of deposition transcripts; (ii) resolution of objections to the admission of

testimony or exhibits; (iii) disclosure of applicable fact and law contentions; (iv) good-faith efforts to stipulate facts and to simplify trial; (v) agreement for submission on the basis of a documentary record; and (vi) exhaustion of settlement efforts. In addition, paragraph 17 (Stipulations) has been amended to emphasize the importance of stipulations in the pretrial process.

2007 Amendment

Paragraph 3, describing requirements relating to the early meeting of counsel, has been amended to include the requirements added by the December 1, 2006, amendment to the essentially comparable provision set forth in FRCP 26(f) ("Conference of Parties; Planning for Discovery").

2011 Amendment

Paragraph 5, directing the inclusion in the Joint Preliminary Status Report of a plan addressing the parties' anticipated discovery needs, has been expanded to include, at the parties' option, an indication of their intention to seek a court order pursuant to Fed. R. Evid. 502(d) authorizing discovery to proceed on a voluntary basis without waiver of any claim of attorney-client privilege or work-product protection. A sample order implementing Fed. R. Evid. 502(d) is provided in Appendix of Forms, Form 14.

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 20439.

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.*** The hearing will be recorded and, upon request of a party or the special master, will be transcribed in accordance 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, Aug. 30, 2013.)

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 26, 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 26, 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.

2013 Amendment

Rule 8. Paragraph (c)(3) ("Transcript") has been amended to reflect the changes adopted in RCFC 80.1.

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.

APPENDIX C
PROCEDURE IN PROCUREMENT PROTEST CASES PURSUANT TO 28 U.S.C. § 1491(b)

I. INTRODUCTION

1. This Appendix describes standard practices in protest cases filed pursuant to 28 U.S.C. § 1491(b) and supplements the Rules of the United States Court of Federal Claims, which are otherwise fully applicable to these cases.

II. REQUIREMENT FOR PRE-FILING NOTIFICATION

2. In order to expedite proceedings, plaintiff's counsel must (except in exceptional circumstances to be described in moving papers) provide at least 24-hour advance notice of filing a protest case to:

(a) the Department of Justice, Commercial Litigation Branch, Civil Division;

(b) the Clerk, United States Court of Federal Claims;

(c) the procuring agency's contracting officer by facsimile transmission only; and

(d) the apparently successful bidder/offeror (in cases where there has been an award and plaintiff has received notice of the identity of the awardee).

Such notice must be provided by e-mail or by facsimile transmission during conventional business hours. (The contacts for the clerk of court and the Department of Justice are posted on the court's website—http://www.uscfc.uscourts.gov.) The pre-filing notice is intended to permit the Department of Justice to assign an attorney to the case who can address relevant issues on a timely basis and to permit the court to ensure the availability of appropriate court resources. Failure to provide pre-filing notification will not preclude the filing of the case but is likely to delay the initial processing of the case, including the scheduling of the initial status conference. See paragraph 8, below. Plaintiff's counsel must apprise the above entities of any material change in respect to the timing of or the intent to file a protest. Plaintiff is encouraged to provide earlier notice if possible as a courtesy to the court and to government counsel.

3. The pre-filing notice must include:

(a) a statement consistent with the disclosure requirements called for in RCFC 7.1(a); and

(b) the following additional information:

(1) the name of the procuring agency and the number of the solicitation in the contested procurement;

(2) the name and telephone number of the contracting officer responsible for the procurement;

(3) the name and telephone number of the principal agency attorney, if known, who represented the agency in any prior protest of the same procurement;

(4) whether plaintiff contemplates requesting temporary or preliminary injunctive relief pursuant to RCFC 65;

(5) whether plaintiff has discussed the need for temporary or preliminary injunctive relief with Department of Justice counsel and the response, if any;

(6) whether the action was preceded by the filing of a protest before the Government Accountability Office (GAO) and if so, the "B-" number of the protest and whether a decision was issued; and

(7) whether plaintiff contemplates the need for the court to enter a protective order.

III. FILING UNDER SEAL

4. In the event plaintiff believes its complaint, or any related material filed at the same time, contains confidential or proprietary information and plaintiff seeks to protect that information from

public scrutiny, plaintiff must file a motion together with the complaint for leave to file the complaint under seal. When a complaint or any related material is filed with an accompanying motion for leave to file under seal, the complaint or related material will be treated as though filed under seal while the motion is pending.

5. When filing documents under seal, a party must follow the procedures described in RCFC 5.5(d).

6. A complaint or any related material filed together with the complaint that is to be filed under seal must be marked or highlighted in such a way that confidential or proprietary information is indicated and must be accompanied by a redacted version of the pleading (i.e., a version that omits confidential or proprietary information), which will be available to the public. Failure to file a redacted copy may result in denial of the motion for leave to file under seal.

7. To the extent the complaint or any related material filed together with the complaint contains classified information, the filing must conform to the requirements of the classifying agency.

IV. INITIAL STATUS CONFERENCE

8. The court will schedule an initial status conference with the parties to address relevant issues including, but not limited to, the following:

(a) identification of interested parties;

(b) admission of any successful offeror as an intervenor;

(c) any request for temporary or preliminary injunctive relief (see paragraph 15, below);

(d) the content of a protective order, if requested by one or more of the parties, and the requirement for redacted copies;

(e) the content of and time for filing the administrative record;

(f) whether it may be appropriate to supplement the administrative record; and

(g) the nature of and schedule for further proceedings.

This initial status conference will be held as soon as practicable after the filing of the complaint.

V. INJUNCTIVE RELIEF

9. The court's practice is to expedite protest cases to the extent practicable and to conduct hearings on motions for preliminary injunctions at the earliest practicable time. Accordingly, when a plaintiff seeks a preliminary injunction, it may not need to request a temporary restraining order.

10. An application for a temporary restraining order and/or preliminary injunction must be filed together with the complaint with the clerk, unless the complaint has been previously filed. The application must be accompanied by affidavits, supporting memoranda, and any other documents upon which plaintiff intends to rely. The application also must be accompanied by a statement that plaintiff's counsel has provided, by hand delivery, overnight mail, or electronic means, copies of the foregoing documents to the Department of Justice, Commercial Litigation Branch, 8th Floor, 1100 L St. NW, Washington, DC 20530.

11. If the name of the apparently successful bidder/offeror is known (in cases where there has been an award and plaintiff has received notice of the identity of the awardee), plaintiff must state in the application that copies of the foregoing documents have been provided, by hand delivery, overnight mail, or electronic means, to the apparently successful bidder/offeror. If the name of the awardee is unknown, plaintiff must so state.

12. The apparently successful bidder/offeror may enter a notice of appearance at any hearing on the application for a temporary restraining order/preliminary injunction if it advises the court of its intention to move to intervene pursuant to RCFC 24(a)(2) or has moved to intervene before the hearing.

13. The clerk will promptly inform the parties of the judge to whom the case has been assigned and the time and place of any hearing.

14. Except in an emergency, the court will not consider *ex parte* applications for a temporary restraining order.

15. In cases in which plaintiff seeks temporary or preliminary injunctive relief, counsel must be prepared to discuss the following matters at the initial status conference:

(a) whether and to what extent, absent temporary or preliminary injunctive relief, the court's ability to afford effective final relief is likely to be prejudiced;

(b) whether plaintiff has discussed any request it has made for a temporary restraining order in advance with Department of Justice counsel and, if so, defendant's response;

(c) whether the government will agree to withhold award or suspend performance pending a hearing on the motion for preliminary injunction;

(d) whether the government will agree to withhold award or suspend performance pending a final decision on the merits;

(e) an appropriate schedule for completion of the briefing on any motion for a preliminary injunction;

(f) the security requirements of RCFC 65(c) (See Appendix of Forms, Forms 11–13); and

(g) whether the hearing on the preliminary injunction should be consolidated with a final hearing on the merits.

VI. PROTECTIVE ORDERS

16. Preliminary Matters.

(a) The principal vehicle relied upon by the court to ensure protection of sensitive information is the protective order. The protective order defines the procedures to be followed to identify protected information, to prepare redacted versions of such information, and to dispose of protected information at the conclusion of the case.

(b) Information a party identifies as protected may be disclosed only to the court and to individuals who have been admitted to the protective order.

(c) Once a protective order is issued by the court, individuals who seek access to protected information must file an appropriate application. If admitted to the protective order, an individual becomes subject to the terms of the order. It is the responsibility of those admitted to the protective order to take the necessary steps to ensure that the information is protected, consistent with the terms of the protective order, while it is under their control (including oversight of support personnel who may have access to protected information).

(d) Court, procuring agency, and Department of Justice personnel are automatically admitted to protective orders when issued and are subject to their terms.

17. Issuance of a Protective Order.

(a) Motions for protective orders must meet the requirements of RCFC 10. The court may issue a protective order at its discretion.

(b) A sample protective order is found at Appendix of Forms, Form 8. The parties are cautioned that individual judges and the parties themselves may want to amend the sample protective order to meet the needs of a specific case or their individual preferences. The specific protective order issued in a case governs the treatment of protected information in that case.

18. Application for Admission to the Protective Order.

(a) Each party seeking access to protected information on behalf of an individual must file with the court an appropriate "Application for Access to Information Under Protective Order" (see Appendix of Forms, Forms 9 and 10). The application may also be amended by the court in response to individual case needs.

(b) Objections to an application for access must be filed with the court within 2 days after a party's receipt of the application.

(c) In considering objections to an application for access, the court will consider such factors as the nature and sensitivity of the information at issue, the party's need for access to the information in order to effectively represent its position, the overall number of applications received, and any other concerns that may affect the risk of inadvertent disclosure.

(d) If the court receives objections to an

application, access will only be granted by court order.

19. Designation of Protected Information and Preparation of Redacted Pleadings.

After a protective order is entered, the designation of protected information and the preparation and filing of redacted documents will be governed by the terms of the protective order.

20. Disposition of Material Containing Protected Information.

The specific procedures to be followed in disposing of protected information at the conclusion of the case will be as described in the protective order.

VII. THE CONTENT AND FILING OF THE ADMINISTRATIVE RECORD

21. The United States will be required to identify and provide (or make available for inspection) the administrative record in a protest case by the date(s) established at the initial status conference. The filing of all or a part of the administrative record must be accompanied by a Notice of Filing.

22. Early production of relevant core documents may expedite final resolution of the case. The core documents relevant to a protest case may include, as appropriate,

(a) the agency's procurement request, purchase request, or statement of requirements;

(b) the agency's source selection plan;

(c) the bid abstract or prospectus of bid;

(d) the Commerce Business Daily or other public announcement of the procurement;

(e) the solicitation, including any instructions to offerors, evaluation factors, solicitation amendments, and requests for best and final offers;

(f) documents and information provided to bidders during any pre-bid or pre-proposal conference;

(g) the agency's responses to any questions about or requests for clarification of the solicitation;

(h) the agency's estimates of the cost of performance;

(i) correspondence between the agency and the protester, awardee, or other interested parties relating to the procurement;

(j) records of any discussions, meetings, or telephone conferences between the agency and the protester, awardee, or other interested parties relating to the procurement;

(k) records of the results of any bid opening or oral motion auction in which the protester, awardee, or other interested parties participated;

(*l*) the protester's, awardee's, or other interested parties' offers, proposals, or other responses to the solicitation;

(m) the agency's competitive range determination, including supporting documentation;

(n) the agency's evaluations of the protester's, awardee's, or other interested parties' offers, proposals, or other responses to the solicitation, including supporting documentation;

(o) the agency's source selection decision, including supporting documentation;

(p) pre-award audits, if any, or surveys of the offerors;

(q) notification of contract award and the executed contract;

(r) documents relating to any pre- or post-award debriefing;

(s) documents relating to any stay, suspension, or termination of award or performance pending resolution of the bid protest;

(t) justifications, approvals, determinations, and findings, if any, prepared for the procurement by the agency pursuant to statute or regulation; and

(u) the record of any previous administrative or judicial proceedings relating to the procurement, including the record of any other protest of the procurement.

23. Because a protest case cannot be efficiently processed until production of the administrative record, the court expects the United States to produce the core documents and the remainder of the administrative record as promptly as circumstances will permit. (See RCFC 5.5(d) which is applicable to administrative records, unless waived by the court.) Materials that otherwise qualify as part of the administrative record may not be excluded from the record merely because they are available in electronic form only.

24. Any additional documents within the administrative record must be produced at such time as may be agreed to by the parties or ordered by the court.

VIII. ADMISSION OF COUNSEL

25. In procurement protest cases in which plaintiff's counsel is not a member of the bar of the court and does not have sufficient time to gain admission prior to the filing of the action, the clerk will accept for filing any proper complaint and accompanying pleadings under 28 U.S.C. § 1491(b) from such counsel, conditioned upon counsel's prompt pursuit of admission to practice before the United States Court of Federal Claims pursuant to RCFC 83.1. Failure to pursue such admission within 30 days after the initiation of the action may result in dismissal of the action and possible referral for disciplinary action.

Rules Committee Notes

2002 Revision

This appendix sets forth the procedures applicable to the court's procurement protest jurisdiction. In the main, these procedures reflect those that formerly appeared as General Order No. 38, issued on May 7, 1998. In addition, however, Appendix C now incorporates—in paragraphs 10 through 14—those provisions of former RCFC 65(f) (titled "Procedures") which enumerated requirements particular to applications for temporary restraining orders and/or motions for preliminary injunction.

Papers and exhibits are often filed under seal in procurement protests. Procedures for unsealing are addressed at RCFC 77.3(d). The standards for granting access to protected information are addressed in decisions such as *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), and *Matsushita Elec. Indus. Co. v. United States*, 929 F.2d 1577 (Fed. Cir. 1991).

2005 Amendment

Paragraphs 16(a) and 20 of this appendix address the disposition of material containing protected information after a case has been concluded. Both paragraphs contemplate that a protective order entered in a case involving protected information will set out the obligations of the parties in this regard. Form 8 in the Appendix of Forms, the sample protective order suggested for use in procurement protest cases, has been modified to include a new paragraph 8 which concerns the court's retention and disposition of protected materials filed by the parties. The new paragraph provides that the original version of the administrative record and any other materials filed under seal in such a case will be retained by the court pursuant to RCFC 77.3(d). Copies of such materials filed with the court in addition to the original version may be returned by the court to the parties for appropriate disposition. In a particular case, the parties may propose to the court that other provisions be substituted for this portion of the model protective order.

2007 Amendment

Paragraph 18(a) has been reworded and paragraph 18(b) has been deleted as unnecessary. In addition, paragraph 18(e) has been amended to clarify that issuance of a court order granting access to protected information is required only in those cases where objections to the application have been raised. This clarification confirms the practice spelled out in the court's sample protective order (Appendix of Forms, Form 8). Finally, minor changes (primarily grammatical) have been introduced throughout the Appendix.

2011 Amendment

The information that is to be provided as part of the pre-filing notice required under paragraph 3

has been expanded to include the disclosure statement regarding corporate relationships that must be filed pursuant to RCFC 7.1.

APPENDIX D
PROCEDURE IN CONGRESSIONAL REFERENCE CASES

1. Purpose. The Federal Courts Improvement Act of 1982 amended 28 U.S.C. §§1492 and 2509 to authorize either house of Congress to refer bills to the chief judge of the United States Court of Federal Claims for investigation and report to the appropriate house. Procedures promulgated by the chief judge applicable to such congressional reference cases are specified herein. The RCFC, to the extent feasible, are to be applied in congressional reference cases.

2. Service of Notice. Upon referral of a bill to the chief judge by either house of Congress, the clerk shall docket the reference and serve a notice, as provided in RCFC 5, on each person whose name and address is shown by the papers transmitted and who appears to have an interest in the subject matter of the reference. The notice shall set forth the filing of the reference and state that the person notified appears to have an interest therein and that such person shall have 90 days within which to file a complaint. The clerk shall forward a copy of each such notice to the Attorney General.

3. Complaint. Any person served with notice who desires to assert a claim may do so by filing a complaint in accordance with RCFC 5.5(d)(1), 8, and 9.

4. Failure of a Party to Appear. If no interested person files a complaint within the time specified in the notice served by the clerk, the case may be reported upon the papers filed and upon such evidence, if any, as may be produced by the Attorney General.

5. Hearing Officer; Review Panel. Upon the filing of a complaint, the chief judge will designate by order a judge of the court to serve as the hearing officer and a panel of three judges to serve as the reviewing body. One of the review panel members will be designated by the chief judge as the presiding officer of the panel. Each hearing officer and each review panel, acting by majority vote, shall have authority to perform any acts which may be necessary or proper for the efficient performance of their duties, including the power of subpoena and the power to administer oaths and affirmations. Subpoenas requiring travel of more than 100 miles to the place of trial must have attached thereto an order of approval by the hearing officer.

6. Hearing Officer Report. The hearing officer shall conduct such proceedings and utilize such Rules of the United States Court of Federal Claims as may be required to determine the facts, including facts relating to delay or laches, facts bearing upon the question of whether the bar of any statute of limitation should be removed, or facts claimed to excuse the claimant for not having resorted to any established legal remedy. The hearing officer shall find the facts specially. The hearing officer shall append to the findings of fact conclusions sufficient to inform Congress whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant. The report shall be filed with the clerk, and served by the clerk on the parties.

7. Acceptance or Exceptions. Within 30 days after service of the report, each party shall file either (a) a notice of intention to except to the report or (b) a notice accepting the report.

8. Review Panel Consideration and Report.

(a) The clerk shall transmit the findings and conclusions of the hearing officer, together with the record of the case, to the review panel.

(b) If either party files a notice of intention to except, the presiding officer shall establish by order a schedule for the parties to file briefs on exceptions to the hearing officer's findings and conclusions and any requests for oral argument before the panel.

(c) If neither party files a notice of intention to except, the review panel shall nevertheless review the report. If the review panel is considering a material modification of the findings or conclusions of the hearing officer, the presiding

officer by order shall so notify the parties and shall establish a schedule for the parties to file briefs and any requests for oral argument before the panel.

(d) The hearing officer's findings shall not be set aside unless they are found to be clearly erroneous, and due regard shall be given to the hearing officer to judge the credibility of witnesses. The hearing officer's conclusions shall not be set aside unless justice shall so require. No case shall be returned to the hearing officer unless so ordered by the review panel.

(e) After conclusion of its review, including any briefing and argument, the review panel, by majority vote, shall adopt or modify the findings and conclusions of the hearing officer and file its report with the clerk for service on the parties.

9. Rehearing. Within 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 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.

10. Transmittal to Congress. When all proceedings are concluded, the report of the review panel shall be transmitted by the chief judge to the appropriate house of Congress.

11. Admission to Practice. Any attorney representing a claimant in a congressional reference case may file and appear as attorney of record in the proceeding if such attorney is a member of the bar of the United States Court of Federal Claims or, if not, upon certification to the clerk that such attorney is a member in good standing of the bar of the highest court of any state in the Union or the District of Columbia. Any claimant, except a corporation, in a congressional reference case may proceed *pro se.*

12. Filing Fees. Filing fees set forth on the court's website at http://www.uscfc.uscourts.gov are required in congressional reference cases.

Rules Committee Notes
2002 Revision

Appendix D provides the procedures applicable to congressional reference cases. Revisions effective May 1, 2002 include the deletion from former paragraph 3 of authority for the filing of a "preliminary complaint" (a change that reflects the corresponding deletion of such authority from the court's basic rules) and the deletion, as unnecessary, of former paragraph 6, titled "Captions."

Paragraph 8 (former paragraph 9) has been reorganized into five subparagraphs. Subparagraph (c) clarifies the review panel's responsibility in the absence of exceptions to a hearing officer's report and identifies the procedures required where modification of such a report is being considered by the review panel. Subparagraph (d) sets out standards for review applicable whether or not exceptions have been taken, including language formerly appearing in paragraph 7. The restriction on the role of the chief judge in the appeal and review process has been relocated to the end of paragraph 9.

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.

APPENDIX E
ELECTRONIC CASE FILING PROCEDURE

I. INTRODUCTION

1. In General. This Appendix sets forth the procedures governing electronic filings in the United States Court of Federal Claims. A Case Management/Electronic Case Files (CM/ECF) User Manual is available on the court's website—http://www.uscfc.uscourts.gov. For procedures governing electronic filings in Vaccine Act cases, see Appendix B to these rules ("Vaccine Rules of the United States Court of Federal Claims"), Supplement ("Electronic Case Filing Procedure in Vaccine Act Cases").

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

- **(a)** "ECF System" means the court's system for electronic case filing;
- **(b)** "ECF case" means any 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, where appropriate, the assigned special master.

II. ELECTRONIC CASE DESIGNATION AND NOTICE

3. Scope.

- **(a) Newly Filed Cases.** All newly filed 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 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.** The filing of initial papers, including the complaint, and the payment of the initial filing fee must be accomplished in the

traditional manner in accordance with the court's rules rather than electronically.

(b) Subsequent Filings. Once a case has been designated an ECF case, all subsequent filings must be made electronically, except as provided in this Appendix 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 only those excerpts of the referenced exhibit or attachment that are directly germane to the matter under consideration by the court;

(iii) must clearly and prominently identify the excerpted material; and

(iv) may seek leave to file additional excerpts or the complete document.

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, particularly when filing appendices and administrative records.

(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 must seek appropriate relief from the court, which may, for example, authorize a filing in some other electronic format (e.g., a CD-ROM) or in paper form.

10. Courtesy Copies in Paper Form. Unless otherwise ordered by the court, if a document, including exhibits and attachments, exceeds 50 pages when printed, the Filing User must supply chambers with a courtesy copy of the document in paper form in accordance with RCFC 5.5(c). The court may order the parties to supply courtesy copies in paper form of any ECF filing.

11. Filing Under Seal. In all cases except cases filed under the National Vaccine Injury Compensation Program, a party:

(a) must seek leave of the court to file documents electronically under seal; and

(b) may not attach the documents to be filed under seal to the motion for leave but rather may file the documents electronically only after the motion is granted.

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 Appendix, 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 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 Appendix 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, including those under RCFC 11.

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 Appendix.

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

(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 must be filed in the traditional manner in accordance with the court's rules or may be filed electronically in an ECF case.

VIII. PRIVACY

26. Personal Information.

(a) In General. Filing Users are advised that any personal information in an ECF filing that is not otherwise protected will be made available over the Internet through PACER (Public Access to Court Electronic Records).

(b) Including Personal Information in a Filing. In compliance with the E-Government Act of 2002, Filing Users should not include personal information in any ECF filing unless such inclusion is necessary and relevant to the filing.

(c) Excluding or Redacting Personal Information in a Filing. The following personal identifiers should be excluded, or redacted when inclusion is necessary, from all ECF filings, unless otherwise ordered by the court:

(i) Social Security numbers—if an individual's Social Security number must be included in a filing, only the last four digits of the number should be used;

(ii) names of minor children—if the name of a minor child must be mentioned in a filing, only the initials of the child should be used;

(iii) dates of birth—if an individual's date of birth must be included in a filing, only the year should be used; and

(iv) financial account numbers—if a financial account number is relevant to a filing, only the last four digits of the number should be used.

(d) Using Caution When Including Other Sensitive Information. Filing Users should exercise caution when filing documents containing:

(i) a personal identifying number, such as a driver's license number;

(ii) medical records;

(iii) employment history;

(iv) individual financial information; or

(v) proprietary or trade secret information.

27. Deciding When to Include, Redact, or Exclude Personal Information. Counsel are strongly urged to discuss with all clients the use of personal information so that an informed decision about including, redacting, or excluding such information may be made.

28. Responsibility to Protect Personal Information. It is the sole responsibility of counsel and the parties to protect any personal information included in a filing; the clerk's office will not review filings to ensure that personal information has been adequately protected.

IX. RETENTION, TECHNICAL FAILURE, AND PUBLIC ACCESS

29. 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.

30. 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.

31. Reviewing ECF Filings. The public may review ECF filings in the clerk's office. A person may also access filings in the ECF System by obtaining a PACER log-in and password (see http://pacer.psc.uscourts.gov).

Rules Committee Notes
2007 Adoption

Appendix E replaces former General Order No. 42A ("Interim Procedures for Electronic Case Filing"), issued on November 4, 2004, and establishes electronic case filing as a mandatory procedure applicable to all new cases filed in the court except for those cases involving *pro se* litigants. For supplemental procedures governing electronic filings in cases under the National Vaccine Injury Compensation Program, counsel shall refer to the Office of Special Masters General Orders, which can be found on the court's website.

Former Appendix E ("Procedure in Carrier Cases") has been redesignated in these rules as Appendix I.

2011 Amendment

Paragraph 1 has been amended to include a cross reference to the separate procedures governing electronic filings in Vaccine Act cases set forth in the Supplement to Appendix B ("Vaccine Rules of the United States Court of Federal Claims").

2012 Amendment

Paragraph 25 has been amended to eliminate the requirement that parties file paper copies of notices of appeal in electronic cases.

APPENDIX F
PROCEDURE IN TAX PARTNERSHIP CASES

Rule 1. General

(a) Applicability. This Appendix sets forth the special provisions that apply to actions for readjustment of partnership items under Section 6226 of the Internal Revenue Code (Code) and actions for adjustment of partnership items under Code Section 6228. Except as otherwise provided in this Appendix, the RCFC, to the extent pertinent, are applicable to such partnership actions.

(b) Definitions. As used in this Appendix,

(1) the term "partnership" means a partnership as defined in Code Section 6231(a)(1);

(2) a "partnership action" is either an "action for readjustment of partnership items" under Code Section 6226 or an action for "adjustment with respect to partnership items" under Code Section 6228;

(3) the term "partnership item" means any item described in Code Section 6231(a)(3);

(4) the term "tax matters partner" means the person who is the tax matters partner under Code Section 6231(a)(7) or appointed tax matters partner by the court under Rule 9 of this Appendix, and who under this Appendix is responsible for keeping each partner fully informed of the partnership action (see Code Sections 6223(g) and 6230(f));

(5) a "notice of final partnership administrative adjustment" is the notice described in Code Section 6223(a)(2);

(6) the term "administrative adjustment request" means a request for an administrative adjustment of partnership items filed by the tax matters partner on behalf of the partnership under Code Section 6227(c);

(7) the term "partner" means a person who was a partner as defined in Code Section 6231(a)(2) at any time during any partnership taxable year at issue in a partnership action;

(8) the term "notice partner" means a person who is a notice partner under Code Section 6231(a)(8);

(9) the term "5-percent group" means a 5-percent group as defined in Code Section 6231(a)(11);

(10) the term "deposit" means the deposit required by Code Section 6226(e)(1); and

(11) the term "Notice of Assignment" means the notice mailed to the parties by the clerk of the court after the filing of a complaint that advises the parties of the name of the judge to whom the proceeding is assigned.

(c) Jurisdictional Requirements. The court does not have jurisdiction over a partnership action under this Appendix unless the following conditions are satisfied:

(1) ***Actions for Readjustment of Partnership Items.***

(A) The Commissioner of Internal Revenue (Commissioner) has issued a notice of final partnership administrative adjustment (see Code Sections 6226(a), (b)).

(B) A complaint for readjustment of partnership items is filed with the court by the tax matters partner within the period specified in Code Section 6226(a), or by a notice partner (or 5 percent group) subject to the conditions and within the period specified in Code Section 6226(b).

(C) The partner or partners filing the complaint make a deposit as required by Code Section 6226(e).

(2) ***Actions for Adjustment of Partnership Items.***

(A) The Commissioner has not allowed all or some of the adjustments

requested in an administrative adjustment request (see Code Section 6228(a)).

(B) A complaint for adjustment of partnership items is filed with the court by the tax matters partner subject to the conditions and within the period specified in Code Sections 6228(a)(2) and (3).

(d) Form and Style of Papers. All papers filed in a partnership action shall be prepared in the form and style set forth in RCFC 5.5 and l0, except that the caption shall state the name of the partnership and the full name and surname of any partner filing the complaint and shall indicate whether such partner is the tax matters partner, as for example, "ABC Partnership, Mary Doe, Tax Matters Partner, Complainant" or "ABC Partnership, Richard Roe, A Partner Other Than the Tax Matters Partner, Complainant."

Rule 2. Commencement of Partnership Action

(a) Commencement of Action. A partnership action shall be commenced by filing a complaint with the court. See RCFC 3, relating to commencement of case; RCFC 5.5 and 10, relating to form of pleadings; and RCFC 5.5(d)(1), relating to number of copies to be filed.

(b) Contents of Complaint. Each complaint shall be titled either "Complaint for Readjustment of Partnership Items under Code Section 6226" or "Complaint for Adjustment of Partnership Items under Code Section 6228." Each such complaint shall contain the information described in subdivision (c) below and the allegations described in subdivision (d) or (e) below.

(c) All Complaints. All complaints in partnership actions shall contain:

(1) the name and address of the complainant;

(2) the name, employer identification number, and principal place of business of the partnership and of each partner filing the complaint at the time the complaint is filed; and

(3) the city and state of the office of the Internal Revenue Service with which the partnership's return for the period in controversy was filed.

A claim for reasonable litigation costs shall not be included in the complaint in a partnership action. For the requirements as to claims for reasonable litigation costs, see RCFC 54(d)(1).

(d) Complaint for Readjustment of Partnership Items. In addition to including the information specified in subdivision (c), a complaint for readjustment of partnership items shall also contain the following:

(1) ***All Complaints.*** All complaints for readjustment of partnership items shall contain:

(A) the date of the notice of final partnership administrative adjustment and the city and state of the office of the Internal Revenue Service that issued the notice;

(B) the year or years or other periods for which the notice of final partnership administrative adjustment was issued;

(C) clear and concise statements of each and every error that the complainant alleges to have been committed by the Commissioner in the notice of final partnership administrative adjustment. The assignments of error shall include issues, if any, in respect to which the burden of proof is on the United States. Any issues not raised in the assignments of error, or in the assignments of error in any amendment to the complaint, shall be deemed to be conceded. Each assignment of error shall be set forth in a separately lettered subdivision;

(D) clear and concise lettered statements of the facts on which the complainant bases the assignments of error, except with respect to those assignments of error, if any, as to which the burden of proof is on the United States;

(E) the amount of the deposit made by each partner filing the complaint;

(F) the date and place of the making of each deposit;

(G) a prayer setting forth relief sought by the complainant;

(H) the signature, mailing address, and telephone number of each complainant or of each complainant's counsel (see RCFC 83.1 regarding attorneys of record); and

(I) a copy of the notice of final partnership administrative adjustment, which shall be appended to the complaint and with which there shall be included so much of any statement accompanying the notice as is material to the issues raised by the assignments of error. If the notice of final partnership administrative adjustment or any accompanying statement incorporates by reference any prior notices, or other material furnished by the Internal Revenue Service, such parts thereof as are material to the assignments of error likewise shall be appended to the complaint.

(2) ***Complaints by Tax Matters Partner.*** In addition to including the information specified in paragraph (1) of this subdivision, a complaint filed by the tax matters partner during the time period specified in Code Section 6226(b) shall also contain a separate numbered paragraph stating that the complainant is the tax matters partner.

(3) ***Complaints by Other Partners.*** In addition to including the information specified in paragraph (1) of this subdivision, a complaint filed by a notice partner or by a 5-percent group during the time period specified in Code Section 6226(b) shall also contain:

(A) a separate numbered paragraph stating that the complainant is a notice partner or a representative of a 5-percent group (see Code Section 6226(b)(1));

(B) a separate numbered paragraph setting forth facts establishing that the complainant satisfies the requirements of Code Section 6226(d);

(C) a separate numbered paragraph stating the name and current address of the tax matters partner; and

(D) a separate numbered paragraph stating that the tax matters partner has not filed a complaint for readjustment of partnership items within the period specified in Code Section 6226(a).

Under subdivision (d)(1)(H) above, the representative of a 5 percent group may sign a complaint on behalf of all members of the group. In such circumstances, the complaint shall contain a separate numbered paragraph stating that the representative has been duly authorized to sign on behalf of all members of the group.

(e) Complaint for Adjustment of Partnership Items. In addition to including the information specified in subdivision (c) above, a complaint for adjustment of partnership items shall also contain:

(1) a statement that the complainant is the tax matters partner;

(2) the date that the administrative adjustment request was filed and any other proper allegations showing jurisdiction in the court in accordance with the requirements of Code Sections 6228(a)(1) and (2);

(3) the year or years or other periods to which the administrative adjustment relates;

(4) the city and state of the office of the Internal Revenue Service with which the administrative adjustment request was filed;

(5) a clear and concise statement describing each partnership item on the partnership return that is sought to be changed, and the basis for each such requested change. Each such statement shall be set forth in a separately lettered paragraph;

(6) clear and concise lettered statements of the facts on which the complainant relies

in support of such requested changes in treatment of partnership items;

(7) a prayer setting forth relief sought by the complainant;

(8) the signature, mailing address, and telephone number of the complainant or the complainant's counsel (see RCFC 83.1 regarding attorneys of record); and

(9) a copy of the administrative adjustment request appended to the complaint.

(f) Notice of Filing.

(1) ***Complaints by the Tax Matters Partner.*** Within 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 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 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 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.

(h) Joinder of Parties.

(1) ***Permissive Joinder.*** A separate complaint shall be filed with respect to each notice of final partnership administrative adjustment or each administrative adjustment request issued to separate partnerships. However, a single complaint for readjustment of partnership items or complaint for adjustment of partnership items may be filed seeking readjustments or adjustments of partnership items with respect to more than one final partnership administrative adjustment or administrative adjustment request if the notices or requests pertain to the same partnership. A complaint may include a request that the proceeding be assigned to the judge to whom one or more pending cases (whether relating to the same partnership or to another partnership) are assigned, if the other case or cases present common or related issues of law or fact. For the procedures to be followed by partners who wish to intervene or participate in a partnership proceeding, see Rule 4 below.

(2) ***Severance or Other Orders.*** With respect to a case based upon multiple notices of final partnership administrative adjustment or administrative adjustment requests, the court may order a severance and a separate case to be maintained with respect to one or more of such notices or requests whenever it appears to the court that proceeding separately is in furtherance of convenience, or will avoid prejudice, or when separate trials will be conducive to expedition or economy.

Rule 3. Other Pleadings

(a) Answer. The United States shall file an answer or shall move with respect to the complaint within the periods specified in and in accordance with the provisions of RCFC 12.

(b) Reply. For provisions relating to the filing of a reply, see RCFC 7(a).

Rule 4. Intervention and Participation

(a) Tax Matters Partner. The tax matters partner may intervene in an action for readjustment of partnership items brought by another partner or partners by filing a notice of election to intervene with the court. Such notice shall state that the intervenor is the tax matters partner and shall be filed within 45 days after the date of the Notice of Assignment (see Code Section 6226(b)(6) and Rule 2(d)(2) of this Appendix).

(b) Other Partners. Any other partner who satisfies the requirements of Code Section 6226(d) or 6228(a)(4)(B) may participate in the action by filing a notice of election to participate with the court. Such notice shall set forth facts establishing that such partner satisfies the requirements of Code Section 6226(d) in the case of an action for readjustment of partnership items, or Code Section 6228(a)(4)(B) in the case of an action for adjustment of partnership items, and shall be filed within 45 days after the date of the Notice of Assignment. A single notice may be filed by two or more partners; however, each such partner must satisfy all requirements of this paragraph in order for the notice to be treated as filed by or for that partner.

(c) Enlargement of Time. The court may grant leave to file a notice of election to intervene or a notice of election to participate out of time upon a showing of sufficient cause.

(d) Pleading. No assignment of error, allegation of fact, or other statement in the nature of a pleading shall be included in the notice of election to intervene or notice of election to participate.

(e) Amendments to the Complaint. A party other than the complainant who is authorized to raise issues not raised in the complaint may do so by filing an amendment to the complaint. Such an amendment may be filed, without leave of court, at any time before service of the response to the complaint by the United States. Otherwise, such an amendment may be filed only by leave of court. See RCFC 15(a) for the timing for filing responses to amendments to the complaint.

Rule 5. Service of Papers

(a) Complaints. All complaints shall be served by the clerk on the United States.

(b) Papers Issued by the Court. All papers issued by the court shall be served by the clerk on the United States, the tax matters partner (whether or not the tax matters partner is a participating partner), and all other participating partners.

(c) All Other Papers. All other papers required to be served (see RCFC 5) shall be served by the parties filing such papers. Whenever a paper (other than the complaint) is required to be filed with the court, the original paper shall be filed with the court with certificates by the filing party or the filing party's counsel that service of the paper has been made on each of the parties set forth in subdivision (b) above or on such other parties' counsel.

Rule 6. Parties

(a) In General. For purposes of this Appendix, the United States, the partner who filed the complaint, the tax matters partner, and each person who satisfies the requirements of Code Sections 6226(c) and (d) or Section 6228(a)(4) shall be treated as parties to the action.

(b) Participating Partners. Participating partners include the partner who filed the complaint and such other partners who have filed either a notice of election to intervene or a notice of election to participate in accordance with the provisions of RCFC 4. See Code Sections 6226(c), 6228(a)(4)(A). For purposes of the court's procedural rules other than those set forth in this Appendix, only participating partners, as defined in this subdivision, and the United States shall be considered to be parties.

Rule 7. Settlement Agreements

(a) Consent by the Tax Matters Partner to Entry of Decision. A stipulation consenting to entry of decision executed by the tax matters partner and filed with the court shall bind all parties. The signature of the tax matters partner constitutes a certificate by the tax matters partner that no party objects to entry of the decision. See

Rule 10 below.

(b) Settlement Agreements Entered Into by All Participating Partners or No Objection by Participating Partners.

(1) After expiration of the time within which to file a notice of election to intervene or to participate under Rule 4(a) or (b) above, the United States shall move for entry of decision and shall submit a proposed form of decision with such motion, if

(A) all of the participating partners have entered into a settlement agreement with defendant, or all of such partners do not object to the granting of defendant's motion for entry of decision, and

(B) the tax matters partner (if a participating partner) agrees to the proposed decision in the case but does not certify that no party objects to the granting of defendant's motion for entry of decision.

(2) Within 3 days after the date on which the defendant's motion for entry of decision is filed with the court, defendant shall serve on the tax matters partner a certificate showing the date on which the defendant's motion was filed with the court.

(3) Within 3 days after receiving defendant's certificate, the tax matters partner shall serve on all other parties to the action, other than the participating partners, copies of defendant's motion for entry of decision, the proposed decision, and defendant's certificate showing the date on which defendant's motion was filed with the court, as well as a copy of this paragraph of Rule 7.

(4) If any party objects to the granting of the defendant's motion for entry of decision, then that party shall, within 60 days after the date on which defendant's motion was filed with the court, file a motion for leave to file a notice of election to intervene or to participate, accompanied by a separate notice of election to intervene or to participate, as the case may be. If no such motion is filed with the court within such period, or if the court should deny such motion, then the court may enter the proposed decision as its decision in the partnership action. See Code Sections 6226(f) and 6228(a)(5).

(c) Other Settlement Agreements. If a settlement agreement is not within the scope of subdivision (b) above, then

(1) in the case of a participating partner, defendant shall promptly file with the court a notice of settlement agreement that identifies the participating partner or partners who have entered into the settlement agreement; and

(2) in the case of any partner who enters into a settlement agreement, defendant shall, within 7 days after the settlement agreement is executed by both the partner and defendant, serve on the tax matters partner a statement which sets forth:

(A) the identity of the party or parties to the settlement agreement and the date of the agreement;

(B) the year or years to which the settlement agreement relates; and

(C) the terms of settlement as to each partnership item and the allocation of such items among the partners.

Within 7 days after receiving the statement required by this subdivision, the tax matters partner shall serve a copy of the statement on all parties to the action.

Rule 8. Action for Adjustment of Partnership Items Treated as Action for Readjustment of Partnership Items

(a) Amendment of Complaint. If, after the filing of a complaint for adjustment of partnership items (see Code Section 6228(a) and Rule 2(a) above), but before hearing of such complaint, the Commissioner mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which the complaint relates, such complaint shall be treated as a complaint in an action for

readjustment of the partnership items to which such notice relates. The complainant, within 90 days after the date on which the notice of final partnership administrative adjustment is mailed to the tax matters partner, shall file an amendment to the complaint, setting forth every error the complainant alleges to have been committed by the Commissioner in the notice of final partnership administrative adjustment, and the facts on which the complainant bases the assignments of error. A copy of the notice of final partnership administrative adjustment shall be appended to the amendment to the complaint. On or before the date the amendment to the complaint is delivered to the court, or, if the amendment is mailed to the court, on or before the date of mailing, the tax matters partner shall serve notice of the filing of the amendment to the complaint on each partner in the partnership as required by Code Section 6223(g).

(b) Participation. Any partner who has filed a timely notice of election to participate in the action for adjustment of partnership items shall be deemed to have elected to participate in the action for readjustment of partnership items and need not file another notice of election to do so. Any other partner may participate in the action by filing a notice of election to participate within 45 days after the date of filing of the amendment to complaint. See Rule 4 above.

Rule 9. Appointment and Removal of Tax Matters Partner

(a) Appointment of Tax Matters Partner. If, at the time of commencement of a partnership action by a partner other than the tax matters partner, the tax matters partner is not identified in the complaint, the court will take such action as may be necessary to establish the identity of the tax matters partner or to effect the appointment of a tax matters partner.

(b) Removal of Tax Matters Partner. After notice and opportunity to be heard, the court may for cause remove a partner as the tax matters partner. If the tax matters partner is removed by the court, or if a partner's status as tax matters partner is terminated for reason other than removal by the court, the court may appoint another partner as the tax matters partner if the partnership fails to designate a successor tax matters partner within such period as the court may direct.

Rule 10. Decisions

A decision entered by the court in a partnership action shall be binding on all parties. For the definition of parties, see Rule 6 above.

Rules Committee Notes
2002 Adoption

This appendix is new. Section 6226 of the Internal Revenue Code grants this court jurisdiction, along with the United States Tax Court and the United States district courts, to consider petitions for readjustment of partnership items as set forth in a final partnership administrative adjustment. Appendix F provides the procedural rules for such cases. In the interests of uniformity, the rules contained in Appendix F parallel the rules applicable to these cases in the United States Tax Court.

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.

APPENDIX G
PROCEDURE IN INDIAN CLAIMS COMMISSION CASES

[Abrogated, effective November 15, 2007.]

Rules Committee Notes
2002 Revision

Appendix G formerly appeared in these rules as General Order No. 4 issued December 29, 1982. Although Appendix G remains the same in substance as General Order No. 4, some of the earlier language was deleted as unnecessary.

2007 Abrogation

Former Appendix G specified the procedure for the recovery of attorney's fees and expenses in cases transferred to the former United States Court of Claims from the Indian Claims Commission pursuant to 25 U.S.C. § 70v (1976) (amended 1977) and thereafter assigned to this court pursuant to Pub. L. No. 97-164, § 149, 96 Stat. 25, 46. Because proceedings in all such transferred cases have been concluded, the retention of Appendix G has become unnecessary and therefore it has been abrogated.

APPENDIX H
PROCEDURE FOR ALTERNATIVE DISPUTE RESOLUTION

1. General. The United States Court of Federal Claims recognizes a variety of voluntary, non-binding alternative dispute resolution (ADR) tools for use in appropriate cases. ADR techniques include but are not limited to mediation, mini-trials, early neutral evaluation, and non-binding arbitration. These processes may be conducted either by a settlement judge or a third-party neutral.

2. Terms.

(a) Settlement Judge. A judge of the court, other than the assigned judge. Appointment of a settlement judge permits the parties to engage in a frank, in-depth discussion of the strengths and weaknesses of each party's case before a judicial officer without the inhibitions that might exist before the assigned judge. A settlement judge may act both as a mediator and as a neutral evaluator. This process should be employed early enough in the litigation to avoid needless expense and delay. Use of a settlement judge permits the parties to gain the benefit of a judicial perspective without jeopardizing their ability to gain a resolution of their case by the assigned judge should settlement efforts fail.

(b) Assigned Judge. The judge regularly assigned to the case.

(c) Third-Party Neutrals. In consultation with the bar, the court will maintain a list of qualified individuals who have indicated their willingness and demonstrated their ability to serve as neutral evaluators and mediators. Parties may select a third-party neutral who is not on the court's list.

(d) Mediation. A flexible and voluntary dispute-resolution procedure in which a settlement judge or a third-party neutral, acting as the mediator, facilitates negotiations to reach a mutually agreeable resolution. The mediation process involves one or more sessions in which counsel, litigants, and the mediator participate and may continue over a period of time. The mediator can help the parties improve communication, clarify interests, and probe the strengths and weaknesses of their own and their opponents' positions. The mediator can also identify areas of agreement and help generate options that lead to settlement.

(e) Early Neutral Evaluation. Using the services of a third-party neutral or a settlement judge knowledgeable in the subject matter of the litigation to assess the strengths and weaknesses of the parties' positions. In this manner, the parties may gain a more realistic view of their prospects for success, thus narrowing the issues and facilitating settlement.

(f) Mini-Trials. A flexible, abbreviated procedure in which the parties present their case, or a portion of it, to a third-party neutral or a settlement judge.

3. Procedures. RCFC 16 and Appendix A, paragraphs 3(f) and 4(i), set out the parties' obligations with respect to consideration of ADR. At any point in the litigation, however, the parties may notify the court of their desire to pursue ADR. There is no single format for ADR. Any procedures agreed to by the parties and adopted by the settlement judge or third-party neutral may be used. Certain basic ground rules will be observed, however, as follows:

(a) ADR is voluntary. A party's good-faith determination that ADR is not appropriate in a particular case should be respected by other parties and by the court.

(b) When the parties have indicated their agreement to ADR to the assigned judge, the assigned judge, if in agreement, will forward the request to the clerk of the court for assignment to a settlement judge or a third-party neutral as selected by the parties.

(c) In the event the parties agree to use

ADR, the settlement judge or third-party neutral and the parties will develop procedures appropriate to that case. The settlement judge or third-party neutral and the parties will develop a written statement, to be executed by the settlement judge or neutral, outlining the terms of the settlement process, including an indication of assent to confidentiality by all parties. Neither this statement nor any other materials developed for use solely within the ADR process will be filed with the court.

(d) There will be no transcript of any ADR proceeding. All ADR proceedings, including documents generated solely for the proceedings and communications within the scope of the proceedings, are confidential and will not be provided to a judge of the court who is not the settlement judge in the dispute. Information that is otherwise discoverable or admissible does not lose that characteristic merely because of its use in the ADR proceedings.

(e) Participation in ADR constitutes agreement by the parties not to subpoena or seek in any way the testimony of the settlement judge in any subsequent proceeding.

(f) During the ADR process, the matter will remain on the docket of the assigned judge. At the conclusion of the ADR process, the settlement judge or the third-party neutral will notify the assigned judge and the clerk of the court only of the outcome, i.e., whether the matter has been settled.

Rules Committee Note
2002 Revision

Appendix H formerly appeared as General Order No. 13, dated April 15, 1987, and later amended through Amended General Order No. 13, dated November 8, 1996. The adoption of the ADR process as an appendix to the rules reflects the court's recognition of the increasing usefulness of ADR procedures in the resolution of claims against the United States.

APPENDIX I
PROCEDURE IN CARRIER CASES

Rule 1. Carrier's Request for Admission of Facts

(a) Time for Filing Request. In every suit filed by a carrier for the recovery of freight and/or passenger transportation charges, the carrier shall, at the time the complaint is filed or within 30 days thereafter, file with the clerk a request for admission by the defendant of the genuineness of any relevant documents described in and exhibited with the request, and of the truth of the material matters of fact relied on by the carrier for recovery in the action.

(b) Form and Content of Request. The request shall conform to the following requirements:

(1) ***Duplication.*** The request, with accompanying schedules and documents, may be typewritten, printed, or otherwise mechanically reproduced from a typewritten original, provided that all copies filed with the clerk are legible and the words and figures shown therein are large enough type to be read without difficulty.

(2) ***Copies; Filing; Service.*** If the request accompanies the complaint, copies and service of such request shall be as provided in RCFC 4(a) and 5.5(d). If the request is filed subsequent to the filing of the complaint, copies and service of such request shall be as provided in RCFC 5, except that 5 copies shall be served on the defendant in lieu of one copy.

(3) ***Signature of Attorney.*** The request shall be signed by the attorney of record for plaintiff.

(4) ***Numbered Paragraphs; Material Facts.*** The statements contained in the request shall be properly separated and numbered and shall consist of specific statements of material facts which plaintiff expects to prove as opposed to general allegations of the kind used in pleadings.

(5) ***Attachments.*** There shall be attached to the request copies of any contracts, letters, or other documents, excluding tariffs and other documents referred to in the schedules required by subdivisions 7 and 8, below, that plaintiff proposes to offer into evidence, in order that the genuineness of such documents may be admitted by defendant without having to call a witness to identify the same.

(6) ***Nature of Dispute; Statement of Issues.*** The statement in the request shall be sufficiently explicit to show the nature of the dispute and the specific reason or reasons why plaintiff believes it is entitled to recover higher rates or charges than those allowed by the government. The word "dispute" as used in the preceding sentence, means the shipment or shipments with respect to which the General Services Administration (GSA) or another agency of the government determined that the carrier's charges had been overpaid or refused to pay the carrier's supplemental bills covering such shipments, rather than subsequent shipments which are not in dispute except for the fact that the overpayments determined as to the shipments in dispute have been deducted from the amount of the carrier's bills covering such subsequent shipments. In order to show the nature of the dispute, there shall be attached to or included in plaintiff's request a statement of the issues which, with respect to each group of the carrier's bills involving the same issue, shall consist of a brief narrative statement of such issue with a reference to (A) court decisions involving the same issue, or (B) the tariffs, contract terms, or other authority relied upon by plaintiff, and the tariffs or other authority that plaintiff believes defendant relied upon in making deductions for claimed overpayments to the carrier or in refusing to pay the carrier's supplemental bills for claimed undercharges.

(7) ***Schedule; Claim for Transportation of Property.*** Where the claim is for the

recovery of charges for the transportation of property for the government, there shall be attached to the request a detailed schedule, prepared by or under the supervision of the general auditor, comptroller, or other principal accounting officer of the carrier. The schedule shall contain the following factual information:

(A) ***List of Carrier's Bills in Dispute.*** The number of each of the carrier's bills for the shipments in dispute, as distinguished from the number of a subsequent bill from which GSA made a deduction following its determination of an overpayment on the bill in dispute.

(B) ***Detail for Each Bill of Lading.*** For each bill of lading in dispute, covered by each bill referred to in paragraph (A), above, the following facts:

(i) the number and symbol of each bill of lading;

(ii) the date of the shipment;

(iii) the origin and the destination of the shipment;

(iv) a description of the commodity or commodities shipped, including a description of the packing where this affects the rate;

(v) the car number and initial;

(vi) the weight of the shipment, including the minimum carload weight when greater than the actual weight;

(vii) when the shipment in dispute consists of one or more carloads of mixed commodities, a description of the different commodities and the respective weights thereof loaded in each car, including minimum carload weights where such weights affect the rates;

(viii) the rates claimed for each article in the shipment and for any accessorial services;

(ix) the total freight charges on each bill of lading;

(x) the amounts refunded by the carrier, if any, and the dates thereof;

(xi) if the overpayment determined by GSA or other agency has been deducted from the carrier's subsequent bill or bills, the number of such subsequent bill or bills, the amount deducted, and the date thereof;

(xii) the total amount paid to the carrier;

(xiii) the balance due;

(xiv) a specific reference to the item or items in designated tariffs authorizing the charges claimed, including the classification rating, if necessary, and authorization for any accessorial charges claimed; or a specific reference to a government rate quotation;

(xv) the government file reference number as obtained from the GSA notice of overcharge, the Certificate of Indebtedness, or any other document issued by GSA, or, in the event there is no GSA reference number, the name of the government paying agency and bureau, the disbursing office voucher number, and the date of payment;

(xvi) if the shipment in dispute consists in whole or in part of a through transit movement, (a) the through assessable charges from the original point of shipment to the final destination, including a description of the commodity, the transited weight, the through rate, the tariff or special authority for the through rate used, and, if local tonnage is involved, the weight

thereof, the points between which local tonnage moved, and the rates and charges assessed against such tonnage, (b) details of the net amounts paid to and beyond the transit station, including references to the "inbound" and "outbound" shipments by bill of lading number and symbol, (c) the date of shipment, origin and destination, weight rate, and the net amounts paid to the respective "inbound" and "outbound" carriers, naming them and identifying the bill numbers on which such payments were made, and (d) the balance due, i.e., the difference between the through assessable charges, including the charges on local tonnage, if any, and the respective net amounts paid on the inbound and outbound shipments; and

(xvii) a brief statement as to the basis for the claim or other brief statement that the carrier deems necessary to explain the peculiarities of the shipment

(C) ***Computation for Typical Bill of Lading.*** Following the listing of the information required above with respect to each group of a carrier's bills involving the same issue or basis of freight charge computation, the carrier shall either (i) include in the schedule a computation of the freight charges for that bill of lading, setting forth the basis or formula used and referring to the specific items in particular tariffs or other authority upon which it relied for that purpose, or (ii) attach a worksheet showing such computation and information with respect to each typical bill of lading.

(8) ***Certification and Signature of Carrier; Property.*** The schedule shall be certified by the general auditor, comptroller, or principal accounting officer of the carrier, as follows:

(Name)(Title)

(Name of Carrier)

I do hereby certify that the above and foregoing schedule has been prepared from the books and records of said company for use in a suit in the United States Court of Federal Claims, entitled _____ v. United States, No. ____, and that to the best of my knowledge, information, and belief the matters contained therein are true and correct. To certify which, witness my hand at _____ this ____ day of _____, 20__.

(Signature of auditor, comptroller, or principal accounting officer.)

(9) ***Schedule; Claim for Transportation of Passengers.*** Where the claim is for the recovery of charges for the transportation of passengers for account of the government, there shall be attached to the request a schedule, prepared by or under the supervision of the general auditor, comptroller, or other principal accounting officer of the carrier, containing the following factual information:

(A) ***List of Carrier's Bills in Dispute.*** The number of each of the carrier's bills in dispute, as distinguished from the number of a subsequent bill from which GSA made a deduction following its determination of an overpayment on the bill in dispute.

(B) ***Detail for Each Transportation Request or Warrant.*** For each transportation request or warrant in dispute, covered by each bill referred to in paragraph (A), above, the following facts:

(i) the symbol and number of each transportation request or warrant in dispute;

(ii) the date of service;

(iii) the origin and destination of the travel;

(iv) the class or type of

service;

(v) whether the travel was one way or round trip;

(vi) the number of the special movement, if any;

(vii) the route of travel;

(viii) the number of persons that traveled;

(ix) the gross per capita fare;

(x) the assessable passenger charges;

(xi) the amount paid, and by which government office and the location of that office;

(xii) the amounts, if any, refunded by the carrier, the dates of such refund, and the government office to which the refund was made and the location of that office;

(xiii) where an overpayment was determined by the government and deducted from the carrier's subsequent bill, the number of such subsequent bill, the amount of the deduction, and the date thereof;

(xiv) the total amount paid and by which government office and the location of that office;

(xv) the balance due;

(xvi) the tariff reference and item or special rate authority;

(xvii) the government file reference; and

(xviii) a brief statement as to the basis for the claim, including, where appropriate, a brief explanation showing the extent to which the ticket issued by the carrier was not used and the value of the unused part of the ticket.

(10) ***Certification and Signature of Carrier; Passengers.*** The schedule covering the transportation of passengers shall be certified in the same manner as provided in Rule 1(b)(8), above, except that where a request includes schedules pertaining to claims for the transportation of both passengers and freight, one certification shall suffice for all schedules.

(c) Carrier's Noncompliance; Consequences. In the event the carrier fails or refuses to comply with the provisions of these rules, the judge may (1) refuse to allow it to support designated claims or prohibit it from introducing in evidence designated documents or items of testimony, or (2) take other appropriate action, which may include a dismissal of the complaint or any part thereof.

Rule 2. Defendant's Response

(a) Time for Filing; Order. Promptly after the filing of plaintiff's request, the judge to whom the case is assigned shall, by order filed with the clerk, fix a reasonable time within which defendant shall file its response to the request. A copy of such order shall be served on the parties as provided in RCFC 5.

(b) Copies; Service; Signature. Defendant's response shall consist of an original and two copies to be filed with the clerk and with service to be made on plaintiff as provided in RCFC 5. The response shall be signed by defendant's attorney of record and shall comply with the terms of Rule 1(b)(1), above.

(c) Agreement; Modification; Denial. Defendant shall file such response within the time fixed by the court's order, agreeing to the separate items of fact, modifying the same in accordance with the facts known by defendant, specifically denying the same or setting forth in detail the reasons why it cannot truthfully admit or deny designated portions of the request.

(d) Defendant's Statement of Issues. If defendant does not agree with plaintiff's statement of the issues, it shall attach to or include in its response a statement of the issues, which, with respect to each group of the carrier's bills involving the same issue, shall consist of a brief narrative statement of the issue, as defendant contends, with reference to (1) a court decision involving the same issue, or (2) the tariffs or other authority relied upon by defendant.

(e) Verification of Carrier's Computations. If defendant finds that the schedule attached to plaintiff's request, or any portion thereof affecting the amount claimed, is incorrect on the basis of the tariffs, government rate quotations, or other authority relied on by plaintiff in its request, there shall be attached to the response a schedule prepared by defendant, setting forth the facts and figures as to the amount of freight charges defendant asserts would be due on each carrier's bill if the court holds that the tariffs or other authorities relied on by plaintiff in its request are applicable, and showing how defendant arrived at any changes or corrections in the amounts claimed by plaintiff.

(f) Schedule; Defendant's Basis for Applicable Charges. If defendant claims that the tariffs, government rate quotations, or other authority relied on by plaintiff are inapplicable with respect to any of the carrier's bills listed in plaintiff's request, there shall be attached to the response a schedule prepared by defendant setting forth the facts and figures in detail as to the amount of freight or passenger charges defendant claims is due on each disputed carrier's bill, and containing a specific reference to the item or items in designated tariffs, government rate quotations, or other authority relied on by defendant in support of its contention. The schedule shall also comply with the terms of subdivision (b)(7)(C), above.

(g) Failure to Deny or Respond Within Specified Time; Consequences. Except where the response details the reasons why defendant cannot admit or deny a particular statement in the request, any fact not so modified or denied in the response shall be deemed admitted, and the failure of defendant to file its response within the time specified by the court's order shall be taken as an admission of all of the facts as set forth in the request.

(h) Qualified Denial of Facts Available to Defendant; Consequences. Where the request sets forth any facts that are within the knowledge of GSA or of the department or agency of defendant for which the transportation was performed and these facts specifically include but are not limited to the facts and figures that plaintiff, by this order, is directed to include in its schedules, a response stating that defendant cannot truthfully admit or deny such facts, or a denial based on a lack of knowledge by defendant's attorney of record, shall be deemed an admission thereof, provided that such a response shall not be deemed an admission if accompanied by the sworn statement of the official in charge of the records that a search has been made for the necessary documents or information and that the documents or information cannot be found.

(i) Relation to Pleadings; Time for Filing Answer or Counterclaim. In all cases to which this procedure applies, the time for filing defendant's answer and any counterclaim may, without regard to the provisions of RCFC 12 and 13, be contemporaneous with the date fixed by the judge for filing defendant's response to plaintiff's request, provided, however, that the period of limitations provided by 49 U.S.C. §§ 11705 and 14705 within which defendant may file a counterclaim is not extended by any rule set forth in this Appendix or by any order. At its option, defendant may include the response in its answer or counterclaim, which pleadings, nevertheless, shall otherwise comply with the rules applicable to them.

Rule 3. Acceptance of Response; Pretrial; Judgment

(a) Plaintiff's Acceptance of Response. If a plaintiff is willing to accept the amount shown to be due it in defendant's response, or, where a counterclaim has been filed, is willing to accept the net amount shown to be due plaintiff in the response after deducting the amount of defendant's counterclaim, plaintiff's attorney of record shall sign and file with the clerk within 30 days after the filing of the response an original and two copies of a typewritten statement titled "Plaintiff's Acceptance of the Amount Defendant Admits is Due," indicating that the response shows that a specified sum is due plaintiff or, where a counterclaim has been filed, that the response shows that the net amount of the counterclaim is a specified sum, and that plaintiff consents to the entry of judgment in the amount specified in favor

of plaintiff in full settlement and satisfaction of all claims asserted in the complaint and request for admission of facts.

(b) Pretrial Conference; Fixing Amount of Recovery. When plaintiff does not file an acceptance of the amount shown to be due in the response, a pretrial conference shall be held for the purpose of (1) resolving all issues and recording an agreement for the entry of judgment or for dismissal of the complaint or any part thereof, or (2) segregating the carrier's bills in dispute from those not in controversy and fixing the amount that either party would be entitled to recover in the event of a decision in its favor, and/or (3) taking any other action that may aid in the prompt disposition of the suit.

(c) Entry of Judgment. Where all material issues are disposed of through the filing by plaintiff of its acceptance of the amount shown to be due in defendant's response or at the pretrial conference, or by defendant's failure to file its response within the time fixed by the judge, judgment may be entered without further proceedings.

Rule 4. Cases Within Primary Jurisdiction of the Surface Transportation Board

(a) Referral to the Surface Transportation Board. In any suit subject to the terms of this Appendix, if defendant contends, whether on the basis of the freight charge computations used by plaintiff or on the basis of the freight charge computations used by defendant, that any of the carrier's bills listed in the request raise issues within the primary jurisdiction of the Surface Transportation Board, and if defendant intends to move the court to refer such issues to that agency, defendant shall file its motion with the clerk at the time fixed for the filing of its response under this order. The motion shall contain:

(1) an identification of the carrier's bills involved unless all the bills in suit are included in the motion;

(2) a description of the commodities shipped and a statement respecting any other factors that are pertinent to the issues covered by the motion;

(3) a reference to the applicable tariffs and a copy of the pertinent provisions thereof;

(4) a precise statement of the issue or issues to be referred; and

(5) a statement as to whether the Surface Transportation Board has construed the cited tariffs in prior decisions or has clarified the facts underlying them, citing the pertinent decisions, if any.

(b) Plaintiff's Response to Defendant's Motion for Referral. Plaintiff's response to the motion shall be filed within 30 days after service of the motion and shall state whether plaintiff concurs in the motion. If plaintiff contends that the Surface Transportation Board has construed the tariffs referred to in defendant's motion or has clarified the factors underlying them in previous decisions, the response shall cite such decision.

(c) Referral to Surface Transportation Board—Plaintiff's Motion. In any suit subject to the terms of this Appendix, if plaintiff contends that any of the carrier's bills in suit raise issues within the primary jurisdiction of the Surface Transportation Board and if plaintiff intends to move the court to refer such issues to that agency, plaintiff shall file its motion within 30 days after the date defendant's response is filed and shall conform such motion to the requirements of Rule 4(a), above.

(d) Defendant's Response to Plaintiff's Motion for Referral. Defendant's response to plaintiff's motion shall conform to the requirements of Rule 4(b), above.

(e) Effect of Filing a Referral Motion. The trial of any case subject to the terms of this Appendix in which a motion for referral is filed shall be deferred until final action on the motion.

(f) Failure to File a Referral Motion Within the Specified Time. The failure of either party to file, within the time prescribed above, a motion requesting the court to refer a pending case or any part thereof to the Surface Transportation Board may be deemed good cause for denying any such motion thereafter filed.

Rules Committee Notes
2002 Revision

Appendix E formerly appeared in these rules as Appendix C. Additionally, substantive changes have been made.

First, the word "common" has been stricken from the term "common carrier." The term "common carrier" is no longer used in the Interstate Commerce Act, 49 U.S.C. § 13102. As a result of industry deregulation, see ICC Termination Act of 1995, Pub. L. No. 104-88, §103, 109 Stat. 803, 852, carriers are no longer required to file tariffs other than for household goods and noncontiguous domestic trade. Additionally, Certificates of Public Convenience and Necessity are no longer required and thus there are no "common carriers" in the sense in which that term formerly was used, i.e., to describe a public utility occupying fully regulated status.

Second, in Rule 1(b)(6), titled "Nature of Dispute; Statement of Issues," the term "General Accounting Office" was replaced with "General Services Administration." The GSA Board of Contract Appeals replaced the General Accounting Office as reviewing authority in GSA transportation audit billing appeals pursuant to the Legislative Branch Appropriations Act of 1996, effective June 30, 1996, and delegations of authority granted thereunder. Also, in Rule 1(b)(6), the term "contract terms" was added as authority relied upon by plaintiffs in their statement of issues because, with no tariff filing requirement, individual movements by contract are more common.

Third, all references to a "§ 22 quotation" were replaced with "government rate quotation." Section 22 (49 U.S.C. § 22 (1887)) rates were replaced by "government rates" under 49 U.S.C. § 10721 (rail) and § 13712 (all other modes), and as such, lower rates are not limited strictly for the use of the government.

Fourth, in Rule 1(b)(9)(B), the word "government" was struck in reference to a transportation request or warrant in dispute. Under the provisions of 41 CFR § 102-118.175, Government Bills of Lading will no longer be used for domestic traffic and under 41 CFR § 102-118.180, Government Transportation Requests will no longer be mandatory.

Fifth, in Rule 2(i), titled "Relation to Pleadings; Time for Filing Answer or Counterclaim," the statutory reference was updated.

Finally, in Rule 4, all references to the "Interstate Commerce Commission" were stricken and replaced with the "Surface Transportation Board." While carriers are no longer subject to full regulation, the "reasonableness requirement" on "through routes," "divisions of joint rates," and rates "made collectively by [any group of] carriers under agreements approved by the Surface Transportation Board," remains intact and is subject to that body's review.

2007 Redesignation

Appendix I formerly appeared in these rules as Appendix E.

APPENDIX OF FORMS

FORM 1
ADMISSION INSTRUCTIONS

The accompanying form shall be used in applying for admission to the bar of this court pursuant to RCFC 83.1. This form should be duly executed and returned to the clerk of the court along with the following items:

(1) a certificate issued within the last 30 days by the clerk of the highest court of any U.S. state, territory, or possession, or the District of Columbia, attesting to your admission to the bar of that court and your good standing therein **(Note: a letter from the bar of your state is NOT acceptable)**;

(2) two letters or signed statements from attorneys stating the following:

a. they are members of the bar of this court, or the bar of the Supreme Court of the United States;
b. they are not related to you;
c. you are personally known to them;
d. you possess all of the qualifications required for admission here;
e. they have examined your application; and
f. they affirm that your personal and professional character and standing are good; and

(3) a check, made payable to "Clerk, United States Court of Federal Claims," in the amount required by the fee schedule posted on the court's website at www.uscfc.uscourts.gov/fee-schedule.

Applications (including letters and fee) must be complete when submitted; ***incomplete applications will be returned.***

Admission under this procedure does not require your appearance in person. A certificate will be forwarded to you upon the granting of your application.

IN THE MATTER OF THE PETITION OF

_____

(Please print/type your full name on the above line)

FOR ADMISSION TO PRACTICE IN
THE UNITED STATES COURT OF FEDERAL CLAIMS

***TO THE CHIEF JUDGE AND JUDGES OF THE UNITED STATES COURT OF FEDERAL CLAIMS*:**

The petitioner,_____, respectfully shows this court:

That he/she is a resident of the city of_____, the state of_____, and that petitioner on the date of_____was duly licensed and admitted to practice as an attorney at law in the _____(highest state court), and is now a member of the bar thereof and in good standing.

WHEREFORE, said petitioner herein prays that he/she may be admitted to practice in the United States Court of Federal Claims in accordance with the laws and rules applicable thereto.

I, _____ DO SOLEMNLY SWEAR (OR AFFIRM) THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES AND THAT I WILL CONDUCT MYSELF IN AN UPRIGHT MANNER AS AN ATTORNEY OF THIS COURT.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date) _____. (28 U.S.C. §1746)

_____
Signature

Address (including firm if applicable):

_____

_____

_____

_____

Phone: _____ Fax: _____

E-mail address: _____

Attorney Pro Bono Appointment Registration Form for Pro Se Cases:

☐ I am willing to be appointed counsel for *pro se* plaintiffs on a *pro bono* basis.

FORM 2
COVER SHEET

In The United States Court of Federal Claims

Cover Sheet

Plaintiff(s) or Petitioner(s)

_____

_____

If this is a multi-plaintiff case, pursuant to RCFC 20(a), please attach an alphabetized, numbered list of all plaintiffs.

Name of the attorney of record (See RCFC 83.1(c)): _____

Firm Name: _____

Post Office Box: _____

Street Address: _____

City-State-Zip: _____

Telephone & Facsimile Numbers: _____

E-mail Address: _____

Is the attorney of record admitted to the Court of Federal Claims Bar? ☐ Yes ☐ No
Does the attorney of record have a Court of Federal Claims ECF account? ☐ Yes ☐ No
If not admitted to the court or enrolled in the court's ECF system, please call (202) 357-6402 for admission papers and/or enrollment instructions.

Nature of Suit Code: ☐☐☐

Select only one (three digit) nature-of-suit code from the attached sheet.
If number 213 is used, please identify partnership or partnership group. If numbers 118, 134, 226, 312, 356, or 528 are used, please explain.

_____

Agency Identification Code: ☐☐☐

See attached sheet for three-digit codes.

Amount Claimed: $_____
Use estimate if specific amount is not pleaded.

Disclosure Statement:
Is a RCFC 7.1 Disclosure Statement required? ☐ Yes ☐ No
If yes, please note that two copies are necessary.

Bid Protest:
Indicate approximate dollar amount of procurement at issue: $_____
Is plaintiff a small business? ☐ Yes ☐ No

Vaccine Case:
Date of Vaccination: _____

Related Cases:
Is this case directly related to any pending or previous case? ☐ Yes ☐ No
If yes, you are required to file a separate notice of directly related case(s). See RCFC 40.2.

Nature-of-Suit Codes for General Jurisdiction Cases

100 Contract - Construction - (CDA)
102 Contract - Fail to Award - (CDA)
104 Contract - Lease - (CDA)
106 Contract - Maintenance - (CDA)
108 Contract - Renovation - (CDA)
110 Contract - Repair - (CDA)
112 Contract - Sale - (CDA)
114 Contract - Service - (CDA)
116 Contract - Supply - (CDA)
118 Contract - Other - (CDA)

120 Contract - Bailment
122 Contract - Bid Preparation Costs
124 Contract - Medicare Act
126 Contract - Realty Sale
128 Contract - Subsidy
130 Contract - Surety
132 Contract - Timber Sale
134 Contract - Other

136 Contract - Other - Wunderlich

138 Contract - Injunctions (Pre Award)
140 Contract - Injunction (Post Award)

200 Tax - Allowance of Interest
202 Tax - Declaratory Judgment - 28:1507
204 Tax - Estate
206 Tax - Excise
208 Tax - Gift
210 Tax - Income, Corporate
212 Tax - Income, Individual
213 Tax - Income, Individual (Partnership)
214 Tax - Informer's Fees
216 Tax - Preparer's Penalty
218 Tax - Railroad Retirement/Unemployment Tax Act
220 Tax - TEFRA Partnership - 28:1508
222 Tax - Windfall Profit Overpayment - Interest
224 Tax - 100% Penalty - 26:6672 - Withholding
226 Tax - Other

300 Civilian Pay - Back Pay
302 Civilian Pay - COLA
303 Civilian Pay - Disability Annuity
304 Civilian Pay - FLSA
306 Civilian Pay - Overtime Compensation
308 Civilian Pay - Relocation Expenses
310 Civilian Pay - Suggestion Award
312 Civilian Pay - Other

340 Military Pay - Back Pay
342 Military Pay - CHAMPUS
344 Military Pay - Correct records
346 Military Pay - Correct/Reinstate
348 Military Pay - Reinstatement
350 Military Pay - Relocation Expenses
352 Military Pay - Retirement
354 Military Pay - SBP
356 Military Pay - Other

500 Carrier - transportation
502 Copyright
504 Native American
506 Oil Spill Clean Up
508 Patent
510 Taking - Personalty
511 Taking - FIRREA
512 Taking - Realty
513 Taking - Rails to Trails
514 Taking - Other
515 Unjust Conviction and Imprisonment
516 Miscellaneous - Damages
518 Miscellaneous - Lease
520 Miscellaneous - Mineral Leasing Act
522 Miscellaneous - Oyster Growers Damages
524 Miscellaneous - Safety Off. Ben. Act
526 Miscellaneous - Royalty/Penalty Gas Production
528 Miscellaneous - Other
529 TRIS
532 CLA Review - Japanese Internment
534 Indian Claims Commission
535 Informer's Reward
536 Spent Nuclear Fuel

Nature-of-Suit Codes for Vaccine Cases

449 Injury - Hepatitis A
453 Injury - Pneumococcal Conjugate
456 Injury - DPT & Polio
457 Injury - D/T
458 Injury - DTP/DPT
459 Injury - Measles
460 Injury - M/M/R
461 Injury - Measles/Rubella
462 Injury - Mumps
463 Injury - Pertussis
464 Injury - Polio - inactive
465 Injury - Polio - other
466 Injury - Rubella
467 Injury - Tetanus & Diphtheria
468 Injury - Tetanus & Tox.
469 Injury - Other
484 Injury - Hepatitis B
485 Injury - Hemophilus Influenzae Type B
486 Injury - Varicella
490 Injury - Rotavirus
492 Injury - Thimerosal
494 Injury - Seasonal Influenza
496 Injury - Meningococcal
498 Injury - Human Papillomavirus

452 Death - Hepatitis A
454 Death - Pneumococcal Conjugate
470 Death - DPT & Polio
471 Death - D/T
472 Death - DTP/DPT
473 Death - Measles
474 Death - M/M/R
475 Death - Measles/Rubella
476 Death - Mumps
477 Death - Pertussis
478 Death - Polio - inactive
479 Death - Polio - other
480 Death - Rubella
481 Death - Tetanus & Diphtheria
482 Death - Tetanus & Tox.
483 Death - Other
487 Death - Hepatitus B
488 Death - Hemophilus Influenzae Type B
489 Death - Varicella
491 Death - Rotavirus
493 Death - Thimerosal
495 Death - Seasonal Influenza
497 Death - Meningococcal
499 Death - Human Papillomavirus

AGENCY CODES

AGR Agriculture

AF Air Force

ARM Army

AEC Atomic Energy Commission

COM Department of Commerce

DOD Department of Defense

DOE Department of Energy

ED Department of Education

EPA Environmental Protection Agency

GPO Government Printing Office

GSA General Services Administration

HHS Health and Human Services

HLS Homeland Security

HUD Housing and Urban Development

DOI Department of the Interior

ICC Interstate Commerce Commission

DOJ Department of Justice

LAB Department of Labor

MC Marine Corps

NAS National Aeronautical Space Agency

NAV Navy

NRC Nuclear Regulatory Commission

PS Postal Service

STA State Department

SBA Small Business Administration

TRN Department of Transportation

TRE Department of Treasury

VA Department of Veterans Affairs

VAR Various Agencies

O Other

FORM 3A
REPORTER FORM

Caption Page

[Withdrawn (eff. Nov. 3, 2008).]

FORM 3B
CERTIFICATE OF REPORTER

(Recording)

DOCKET NO.: _____

CASE TITLE: _____

HEARING DATE: _____

LOCATION: _____

I hereby certify that the proceedings and evidence are contained fully and accurately on the recordings and notes reported by me at the proceeding in the above case before the United States Court of Federal Claims.

Date: _____

Signature: _____

Printed Name: _____

Reporter Address: _____

_____

_____

FORM 3C
CERTIFICATE OF REPORTER

(Transcript)

DOCKET NO.: _____

CASE TITLE: _____

HEARING DATE: _____

LOCATION: _____

I hereby certify that the foregoing is a true and correct transcript made to the best of my ability from a copy of the official recording of proceedings and, if applicable, from a real-time transcription of proceedings in the above-captioned matter.

Date: _____

Signature: _____

Printed Name: _____

Reporter Address: _____

_____

_____

FORM 4
BILL OF COSTS

In The United States Court of Federal Claims

BILL OF COSTS

_____ No._____

vs.

THE UNITED STATES

Judgment with costs having been entered in the above-captioned case on the ____ day of _____, 20___, against _____, the clerk is requested to tax the following as costs:

Fees of the clerk ..... $_____

Fees of the reporter for all or any part of the trial or hearing transcript necessarily obtained for use in the case..... _____

Fees for witnesses; for statutory fees, see 28 U.S.C. §1821 (attach itemized listing)..... _____

Costs for certification or duplication of papers necessarily obtained for use in case, provide number of copies, total pages and cost per page *..... _____

Costs incident to taking of depositions (if not of record, then attach statement as to need)..... _____

Costs pursuant to FRAP 39(e)..... _____

Other costs (itemize on attachment)..... _____

Total ..... $_____

*Allowable duplication costs are restricted to briefs on dispositive matters for a total of 5 copies; additional copies are allowable where third parties are present.

CERTIFICATION

State/District of _____.

County of _____.

I certify under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed and that a copy hereof was this day mailed to _____ with postage fully prepaid thereon. Executed on (Date). (28 U.S.C. §1746)

_____
(Signature of Attorney of Record)

_____

_____

_____

_____
(Address, Telephone, Facsimile, E-mail)

FORM 5
EQUAL ACCESS TO JUSTICE ACT FORM

APPLICATION
FOR FEES AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT
Title 28 U.S.C. §2412(d), Title II of Public Law 96-481, 94 STAT 2325

1. COURT	2. DATE FILED	3. DOCKET NO.
United States Court of Federal Claims		
4. NAME OF APPLICANT (One per form)	5. GOVERNMENT AGENCY INVOLVED IN CLAIM (Use agency code on reverse side)	
6. NATURE OF APPLICATION	7. APPEAL FROM:	
A. ☐ Original application under 28 U.S.C. §2412(d)(1)(A) after judgment in civil action against U.S. B. ☐ Appeal of fees and expenses awarded by Lower Court (If Item 6B is checked go to Item 7.) C. ☐ Original application under 28 U.S.C. §2412(d)(3) after review of agency decision. D. ☐ Petition for leave to appeal an administrative agency fee determination under 5 U.S.C. §504(c)(2).	☐ DISTRICT COURT ☐BANKRUPTCY COURT ☐ OTHER:_____ **7A. DATE FILED IN LOWER COURT**	**7B. DOCKET NO.**
8. ADMINISTRATIVE AGENCY DOCKET NO.	9. DATE FILED IN ADMINISTRATIVE AGENCY	

10. SHOWING OF "PREVAILING PARTY" STATUS (28 U.S.C. §2412(d)(1)(B)):

Is agency order, court order, or other relevant document attached?☐ YES ☐ NO

11. SHOWING OF ELIGIBILITY (28 U.S.C. §2412(d)(2)(B)):

Is net worth information attached?☐ YES ☐ NO

12. ENTER ALLEGATION THAT GOVERNMENT POSITION WAS NOT SUBSTANTIALLY JUSTIFIED (28 U.S.C. §2412(d)(1)(B)):

13. FOR EACH AMOUNT CLAIMED, PLEASE ATTACH ITEMIZATION INDICATING SERVICE PROVIDED, DATE, HOURS, AND RATE (28 U.S.C. §2412(d)(2)(A)):

AMOUNT CLAIMED

A. ATTORNEY FEES..... $_____
B. STUDY..... $_____
C. ANALYSIS..... $_____
D. ENGINEERING REPORT..... $_____
E. TEST..... $_____
F. PROJECT..... $_____
G. EXPERT WITNESS FEES..... $_____
H. OTHER FEES AND EXPENSES - SPECIFY
(1)_____ $_____
(2)_____ $_____
(3)_____ $_____

I. TOTAL FEES AND EXPENSES..... $_____

14. SIGNATURE	15. DATE

NOTE: THIS FORM SHOULD ACCOMPANY YOUR CLAIM WHEN FILED WITH THE CLERK OF COURT

EAJA ADMINISTRATIVE AGENCY CODES

(Use the following abbreviations for the U.S. Government Agency involved in claim (Item 5))

BENEFITS REVIEW BOARD . . . . . (BRB)
CIVIL AERONAUTICS BOARD . . . . . (CAB)
CIVIL SERVICE COMMISSION (U.S.) . . . . . (CSC)
CONSUMER PRODUCTS SAFETY COMMISSION . . . . . (CPSC)
COPYRIGHT ROYALTY TRIBUNAL . . . . . (CRT)
DEPARTMENT OF AGRICULTURE . . . . . (AGRI)
DEPARTMENT OF COMMERCE . . . . . (COMM)
DEPARTMENT OF DEFENSE. . . . . (DOD)
DEPARTMENT OF EDUCATION . . . . . (EDUC)
DEPARTMENT OF ENERGY. . . . . (DOE)
DEPARTMENT OF HEALTH, EDUCATION & WELFARE . . . . . (HEW)
DEPARTMENT OF HEALTH & HUMAN SERVICES . . . . . (HHS)
DEPARTMENT OF HOMELAND SECURITY . . . . . (HLS)
DEPARTMENT OF HOUSING & URBAN DEVELOPMENT . . . . . (HUD)
DEPARTMENT OF INTERIOR . . . . . (DOI)
DEPARTMENT OF JUSTICE . . . . . (DOJ)
DEPARTMENT OF LABOR (Except OSHA). . . . . (LABR)
DEPARTMENT OF TRANSPORTATION SAFETY BOARD. . . . . (TRAN)
DEPARTMENT OF THE TREASURY (Except IRS). . . . . (TREA)
DRUG ENFORCEMENT AGENCY. . . . . (DEA)
ENVIRONMENTAL PROTECTION AGENCY. . . . . (EPA)
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. . . . . (EEOC)
FEDERAL AVIATION AGENCY. . . . . (FAA)
FEDERAL COAL MINE SAFETY BOARD. . . . . (FCMS)
FEDERAL COMMUNICATIONS COMMISSION. . . . . (FCC)
FEDERAL DEPOSIT INSURANCE CORPORATION. . . . . (FDIC)
FEDERAL ELECTION COMMISSION. . . . . (FEC)
FEDERAL ENERGY AGENCY. . . . . (FEA)
FEDERAL ENERGY REGULATORY COMMISSION. . . . . (FERC)
FEDERAL HOME LOAN BANK BOARD. . . . . (FHLB)
FEDERAL LABOR RELATIONS AUTHORITY. . . . . (FLRA)
FEDERAL MARITIME BOARD. . . . . (FMBD)
FEDERAL MARITIME COMMISSION. . . . . (FMC)
FEDERAL MINE SAFETY & HEALTH ADMINISTRATION. . . . . (MSHA)
FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION. . . . . (MSHR)
FEDERAL RESERVE SYSTEM. . . . . (FRS)
FEDERAL TRADE COMMISSION. . . . . (FTC)
FOOD & DRUG ADMINISTRATION. . . . . (FDA)
GENERAL SERVICES ADMINISTRATION. . . . . (GSA)
IMMIGRATION & NATURALIZATION SERVICE. . . . . (INS)
INTERNAL REVENUE SERVICE (Except TAX COURT). . . . . (IRS)
INTERSTATE COMMERCE COMMISSION. . . . . (ICC)
MERIT SYSTEMS PROTECTION BOARD. . . . . (MSPB)
NATIONAL LABOR RELATIONS BOARD. . . . . (NLRB)
NUCLEAR REGULATORY COMMISSION. . . . . (NRC)
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION. . . . . (OSHA)
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION. . . . . (OSHC)
OFFICE OF MANAGEMENT & BUDGET. . . . . (OMB)
OFFICE OF PERSONNEL MANAGEMENT. . . . . (OPM)
OFFICE OF WORKERS COMPENSATION PROGRAM. . . . . (OWCP)
PATENT OFFICE. . . . . (PATO)
POSTAL RATE COMMISSION (U.S.). . . . . (PRC)
POSTAL SERVICE (U.S.). . . . . (USPS)
RR RETIREMENT BOARD. . . . . (RRRB)
SECURITIES & EXCHANGE COMMISSION. . . . . (SEC)
SMALL BUSINESS ADMINISTRATION. . . . . (SBA)
TAX COURT, INTERNAL REVENUE SERVICE. . . . . (TXC)

FORM 6A
SUBPOENA TO APPEAR AND TESTIFY AT A HEARING OR TRIAL

United States Court of Federal Claims

_____
_____
_____

vs. *No.*_____

THE UNITED STATES

SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL

To:_____
_____
_____

YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a hearing or trial in the above-captioned case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Courtroom No.:
	Date and Time:

You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

The provisions of RCFC 45(d), relating to your protection as a person subject to a subpoena, and RCFC 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date:_____

CLERK OF COURT

OR

_____ _____
Signature of Clerk or Deputy Clerk *Attorney's signature*

NOTE - If the person served is neither a party nor a party's officer and the place of travel is more than 100 miles (by the shortest usual means of travel) from the place where the subpoena is served, or if the place of the hearing or trial is more than 100 miles from the place where the person served resides, is employed, or transacts business in person, the person served may file a motion to quash the subpoena pursuant to RCFC 45(d)(3) unless there is attached to the subpoena an order of the court requiring his/her appearance notwithstanding the distance of travel. In any event, response to the subpoena will entitle the person to the fees and mileage allowed by law. (28 U.S.C. §1821)

The name, address, telephone number, and e-mail of the attorney representing (*name of party*)_____
_____, w ho issues or requests this subpoena, are:_____
_____
_____

PROOF OF SERVICE

This subpoena for (*name of individual and title, if any*)_____ was received by me on (*date*)_____.

❒ I personally served the subpoena on the individual at (*place*)_____ _____ on (*date*)_____; or

❒ I left the subpoena at the individual's residence or usual place of abode with (*name*)_____ _____, a person of suitable age and discretion who resides there, on (*date*)_____, and mailed a copy to the individual's last known address; or

❒ I served the subpoena on (*name of individual*)_____ who is designated by law to accept service of process on behalf of (*name of organization*)_____ _____ on (*date*)_____; or

❒ I returned the subpoena unexecuted because_____; or

❒ Other (*specify*):

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $_____.

My fees are $_____ for travel and $_____ for services, for a total of $_____.

I declare under penalty of perjury that this information is true.

Date:_____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding service, etc:

RCFC 45.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) ***Appearance Not Required.*** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) ***Objections.*** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) ***When Required.*** On timely motion, the court must quash

or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to comply beyond the limitations specified in RCFC 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception of waiver applies; or

(iv) subjects a person to undue burden.

(B) ***When Permitted.*** To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) ***Specifying Conditions as an Alternative.*** In the circumstances described in RCFC 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) ***Documents.*** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) ***Form for Producing Electronically Stored Information Not Specified.*** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) ***Electronically Stored Information Produced in Only One Form.*** The person responding need not produce the same electronically stored information in more than one form.

(D) ***Inaccessible Electronically Stored Information.*** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) ***Information Withheld.*** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) ***Information Produced.*** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

* * * * *

(g) Contempt. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

FORM 6B
SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS

United States Court of Federal Claims

_____
_____
_____

vs. *No.*_____

THE UNITED STATES

SUBPOENA TO TESTIFY AT A DEPOSITION
AND TO PRODUCE DOCUMENTS

To:_____
_____
_____

❒ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in the above-captioned case. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:

The deposition will be recorded by this method:_____

❒ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of RCFC 45(d), relating to your protection as a person subject to a subpoena, and RCFC 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date:_____

CLERK OF COURT

OR

_____ _____
Signature of Clerk or Deputy Clerk *Attorney's signature*

NOTE - If the person served is neither a party nor a party's officer and the place of travel is more than 100 miles (by the shortest usual means of travel) from the place where the subpoena is served, or if the place of the hearing or trial is more than 100 miles from the place where the person served resides, is employed, or transacts business in person, the person served may file a motion to quash the subpoena pursuant to RCFC 45(d)(3) unless there is attached to the subpoena an order of the court requiring his/her appearance notwithstanding the distance of travel. In any event, response to the subpoena will entitle the person to the fees and mileage allowed by law. (28 U.S.C. §1821)

The name, address, telephone number, and e-mail of the attorney representing (*name of party*)_____
_____, w ho issues or requests this subpoena, are:_____
_____
_____

PROOF OF SERVICE

This subpoena for (*name of individual and title, if any*)_____
was received by me on (*date*)_____.

❒ I personally served the subpoena on the individual at (*place*)_____
_____o n (*date*)_____; o r

❒ I left the subpoena at the individual's residence or usual place of abode with (*name*)_____
_____, a p erson of suitable age and discretion who resides there,
on (*date*)_____, and mailed a copy to the individual's last known address; or

❒ I served the subpoena on (*name of individual*)_____ who is designated by law to accept service of process on behalf of (*name of organization*)_____
_____o n (*date*)_____; o r

❒ I returned the subpoena unexecuted because_____; o r

❒ Other (*specify*):

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $_____.

My fees are $_____ for travel and $_____ for services, for a total of $_____.

I declare under penalty of perjury that this information is true.

Date:_____ _____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding service, etc:

RCFC 45.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) ***Appearance Not Required.*** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) ***Objections.*** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the

earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) ***When Required.*** On timely motion, the court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to comply beyond the limitations specified in RCFC 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception of waiver applies; or

(iv) subjects a person to undue burden.

(B) ***When Permitted.*** To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) ***Specifying Conditions as an Alternative.*** In the circumstances described in RCFC 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) ***Documents.*** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) ***Form for Producing Electronically Stored Information Not Specified.*** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) ***Electronically Stored Information Produced in Only One Form.*** The person responding need not produce the same electronically stored information in more than one form.

(D) ***Inaccessible Electronically Stored Information.*** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) ***Information Withheld.*** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) ***Information Produced.*** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

* * * * *

(g) Contempt. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

FORM 6C
SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES

United States Court of Federal Claims

_____
_____
_____

vs. *No.*_____

THE UNITED STATES

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES

To:_____
_____
_____

❒ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

Place:	Date and Time:

❒ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The provisions of RCFC 45(d), relating to your protection as a person subject to a subpoena, and RCFC 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date:_____

CLERK OF COURT

OR

_____ _____
Signature of Clerk or Deputy Clerk *Attorney's signature*

NOTE - If the person served is neither a party nor a party's officer and the place of travel is more than 100 miles (by the shortest usual means of travel) from the place where the subpoena is served, or if the place of the hearing or trial is more than 100 miles from the place where the person served resides, is employed, or transacts business in person, the person served may file a motion to quash the subpoena pursuant to RCFC 45(d)(3) unless there is attached to the subpoena an order of the court requiring his/her appearance notwithstanding the distance of travel. In any event, response to the subpoena will entitle the person to the fees and mileage allowed by law. (28 U.S.C. §1821)

The name, address, telephone number, and e-mail of the attorney representing (*name of party*)_____
_____, who issues or requests this subpoena, are:_____
_____
_____

PROOF OF SERVICE

This subpoena for (*name of individual and title, if any*)_____
was received by me on (*date*)_____.

❒ I personally served the subpoena on the individual at (*place*)_____
_____on (*date*)_____; or

❒ I left the subpoena at the individual's residence or usual place of abode with (*name*)_____
_____, a person of suitable age and discretion who resides there,
on (*date*)_____, and mailed a copy to the individual's last known address; or

❒ I served the subpoena on (*name of individual*)_____ who is designated by law to accept service of process on behalf of (*name of organization*)_____
_____on (*date*)_____; or

❒ I returned the subpoena unexecuted because_____; or

❒ Other (*specify*):

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $_____.

My fees are $_____for travel and $_____for services, for a total of $_____.

I declare under penalty of perjury that this information is true.

Date:_____ _____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding service, etc:

RCFC 45.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) ***Appearance Not Required.*** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) ***Objections.*** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to

producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) ***When Required.*** On timely motion, the court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to comply beyond the limitations specified in RCFC 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception of waiver applies; or

(iv) subjects a person to undue burden.

(B) ***When Permitted.*** To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) ***Specifying Conditions as an Alternative.*** In the circumstances described in RCFC 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) ***Documents.*** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) ***Form for Producing Electronically Stored Information Not Specified.*** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) ***Electronically Stored Information Produced in Only One Form.*** The person responding need not produce the same electronically stored information in more than one form.

(D) ***Inaccessible Electronically Stored Information.*** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) ***Information Withheld.*** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) ***Information Produced.*** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

* * * * *

(g) Contempt. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

FORM 7
CAPTION OF ALL FILINGS IN VACCINE CASES

United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

_____,	)	
	)	
Petitioner[s],	)	No. _____V
	)	
v.	)	Special Master_____
	)	
SECRETARY OF HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

[TITLE OF FILING]

FORM 7A
SUBPOENA IN VACCINE CASES

United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

_____,	)	
Petitioner[s],	)	No. _____V
v.	)	Special Master_____
SECRETARY OF HEALTH AND HUMAN SERVICES,	)	
Respondent.	)	

SUBPOENA

To: _____
_____
_____

1. YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the above-captioned case.
   Place of Testimony: _____
   Date and Time:_____
2. YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above-captioned case.
   Place of Deposition:_____
   Date and Time:_____
3. YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):
   Place:_____
   Date and Time:_____
4. YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.
   Premises:_____
   Date and Time:_____

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify.

_____
ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE

_____
ISSUING OFFICER'S NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL

NOTE - If the person served is neither a party nor a party's officer and the place of travel is more than 100 miles (by the shortest usual means of travel) from the place where the subpoena is served, or if the place of the hearing or trial is more than 100 miles from the place where the person served resides, is employed, or transacts business in person, the person served may file a motion to quash the subpoena pursuant to RCFC 45(d)(3) unless there is attached to the subpoena an order of the court requiring his/her appearance notwithstanding the distance of travel. In any event, response to the subpoena will entitle the person to the fees and mileage allowed by law. (28 U.S.C. §1821)

PROOF OF SERVICE

DATE PLACE

SERVED

SERVED ON (PRINT NAME) MANNER OF SERVICE

□ Fees tendered for one day's attendance and mileage allowed by law. (Fees and mileage need not be tendered when the subpoena is issued on behalf of the United States or an officer or agency thereof.)

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ _____

DATE SIGNATURE OF SERVER

_____

ADDRESS OF SERVER

RCFC 45.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) ***Appearance Not Required.*** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) ***Objections.*** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) ***When Required.*** On timely motion, the court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to comply beyond the limitations specified in RCFC 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception of waiver applies; or

(iv) subjects a person to undue burden.

(B) ***When Permitted.*** To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) ***Specifying Conditions as an Alternative.*** In the circumstances described in RCFC 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) ***Documents.*** A person responding to a subpoena to produce documents must produce them as they are kept in

the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) ***Form for Producing Electronically Stored Information Not Specified.*** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) ***Electronically Stored Information Produced in Only One Form.*** The person responding need not produce the same electronically stored information in more than one form.

(D) ***Inaccessible Electronically Stored Information.*** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) ***Information Withheld.*** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) ***Information Produced.*** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

* * * * *

(g) **Contempt.** The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

FORM 8
PROTECTIVE ORDER IN PROCUREMENT PROTEST CASES

United States Court of Federal Claims

_____,	)	
	)	No. _____
Plaintiff,	)	
	)	Judge_____
v.	)	
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

PROTECTIVE ORDER

The court finds that certain information likely to be disclosed orally or in writing during the course of this litigation may be competition-sensitive or otherwise protectable and that entry of a Protective Order is necessary to safeguard the confidentiality of that information. Accordingly, the parties shall comply with the terms and conditions of this Protective Order.

I.

1. Protected Information Defined. "Protected information" as used in this order means information that must be protected to safeguard the competitive process, including source selection information, proprietary information, and confidential information contained in:
   (a) any document (e.g., a pleading, motion, brief, notice, or discovery request or response) produced, filed, or served by a party to this litigation; or
   (b) any deposition, sealed testimony or argument, declaration, or affidavit taken or provided during this litigation.

2. Restrictions on the Use of Protected Information. Protected information may be used solely for the purposes of this litigation and may not be given, shown, made available, discussed, or otherwise conveyed in any form except as provided herein or as otherwise required by federal statutory law.

II.

3. Individuals Permitted Access to Protected Information. Except as provided in paragraphs 7 and 8 below, the only individuals who may be given access to protected information are counsel for a party and independent consultants and experts assisting such counsel in connection with this litigation.

4. Applying for Access to Protected Information. An individual seeking access to protected information pursuant to Appendix C, Section VI of this court's rules must read this Protective Order; must complete the appropriate application form (Form 9—"Application for Access to Information Under Protective Order by Outside or Inside Counsel," or Form 10—"Application for Access to Information Under Protective Order by Expert Consultant or Witness"); and must file the executed application with the court.

5. Objecting to an Application for Admission. Any objection to an application for access must be filed with the court within two (2) business days of the objecting party's receipt of the application.

6. Receiving Access to Protected Information. If no objections have been filed by the close of the second business day after the other parties have received the application, the applicant will be granted access to protected information without further action by the court. If any party files an objection to an application, access will only be granted by court order.

7. Access to Protected Information by Court, Department of Justice, and Agency Personnel. Personnel of the court, the procuring agency, and the Department of Justice are automatically subject to the terms of this Protective Order and are entitled to access to protected information without further action.

8. Access to Protected Information by Support Personnel. Paralegal, clerical, and administrative support personnel assisting any counsel who has been admitted under this Protective Order may be given access to protected information by such counsel if those personnel have first been informed by counsel of the obligations imposed by this Protective Order.

III.

9. Identifying Protected Information. Protected information may be provided only to the court and to individuals admitted under this Protective Order and must be identified as follows:
   (a) if provided in electronic form, the subject line of the electronic transmission shall read "**CONTAINS PROTECTED INFORMATION**"; or
   (b) if provided in paper form, the document must be sealed in a parcel containing the legend **"PROTECTED INFORMATION ENCLOSED"** conspicuously marked on the outside.

   The first page of each document containing protected information, including courtesy copies for use by the judge, must contain a banner stating "**Protected Information to Be Disclosed Only in Accordance With the U.S. Court of Federal Claims Protective Order"** and the portions of any document containing protected information must be clearly identified.

10. Filing Protected Information. Pursuant to this order, a document containing protected information may be filed electronically under the court's electronic case filing system using the appropriate activity listed

in the **"SEALED"** documents menu. If filed in paper form, a document containing protected information must be sealed in the manner prescribed in paragraph 9(b) and must include as an attachment to the front of the parcel a copy of the certificate of service identifying the document being filed.

11. Protecting Documents Not Previously Sealed. If a party determines that a previously produced or filed document contains protected information, the party may give notice in writing to the court and the other parties that the document is to be treated as protected, and thereafter the designated document must be treated in accordance with this Protective Order.

IV.

12. Redacting Protected Documents For the Public Record.
    (a) Initial Redactions. After filing a document containing protected information in accordance with paragraph 10, or after later sealing a document pursuant to paragraph 11, a party must promptly serve on the other parties a proposed redacted version marked **"Proposed Redacted Version"** in the upper right-hand corner of the first page with the claimed protected information deleted.
    (b) Additional Redactions. If a party seeks to include additional redactions, it must advise the filing party of its proposed redactions within two (2) business days after receipt of the proposed redacted version, or such other time as agreed upon by the parties. The filing party must then provide the other parties with a second redacted version of the document clearly marked **"Agreed-Upon Redacted Version"** in the upper right-hand corner of the page with the additional information deleted.
    (c) Final Version. At the expiration of the period noted in (b) above, or after an agreement between the parties has been reached regarding additional redactions, the filing party must file with the court the final redacted version of the document clearly marked **"Redacted Version"** in the upper right-hand corner of the first page. This document will be available to the public.

    (d) Objecting to Redactions. Any party at any time may object to another party's designation of certain information as protected. If the parties are unable to reach an agreement regarding redactions, the objecting party may submit the matter to the court for resolution. Until the court resolves the matter, the disputed information must be treated as protected.

V.

13. Copying Protected Information. No party, other than the United States, may for its own use make more than three (3) copies of a protected document received from another party, except with the consent of all other parties. A party may make additional copies of such documents, however, for filing with the court, service on the parties, or use in discovery and may also incorporate limited amounts of protected information into its own documents or pleadings. All copies of such documents must be clearly labeled in the manner required by paragraph 9.

14. Waiving Protection of Information. A party may at any time waive the protection of this order with respect to any information it has designated as protected by advising the court and the other parties in writing and identifying with specificity the information to which this Protective Order will no longer apply.

15. Safeguarding Protected Information. Any individual admitted under this Protective Order must take all necessary precautions to prevent disclosure of protected information, including but not limited to physically securing, safeguarding, and restricting access to the protected information.

16. Breach of the Protective Order. If a party discovers any breach of any provision of this Protective Order, the party must promptly report the breach to the other parties and immediately take appropriate action to cure the violation and retrieve any protected information that may have been disclosed to individuals not admitted under this Protective Order. The parties must reasonably cooperate in determining the reasons for any such breach.

17. Seeking Relief From the Protective Order. Nothing contained in this order shall preclude a party from seeking relief from this Protective Order through the filing of an appropriate motion with the court setting forth the basis for the relief sought.

VI.

18. Maintaining Filed Documents Under Seal. The court will maintain properly marked protected documents under seal throughout this litigation.

19. Retaining Protected Information After the Termination of Litigation. Upon conclusion of this action (including any appeals and remands), the original version of the administrative record and any other materials that have been filed with the court under seal will be retained by the court pursuant to RCFC 77.3(c). Copies of such materials may be returned by the court to the filing parties for disposition in accordance with paragraph 20 of this Protective Order.

20. Disposing of Protected Information. Within thirty (30) days after the conclusion of this action (including any appeals and remands), each party must destroy all protected information received pursuant to this litigation and certify in writing to each other party that such destruction has occurred or must return the protected information to the parties from which the information was received. With respect to protected electronically stored information (ESI) stored on counsel's computer network(s), destruction of such ESI for purposes of compliance with this paragraph shall be complete when counsel takes reasonable steps to delete all such ESI from the active email system (such as, but not limited to, the "Inbox," "Sent Items," and "Deleted Items" folders) of admitted counsel and of any personnel who received or sent emails with protected information while working under the direction and supervision of such counsel, and by deleting any protected ESI from databases under counsel's control. Compliance with this paragraph does not require counsel to search for and remove ESI from any computer network back-up tapes, disaster recovery systems, or archival systems. Each party may retain one copy of such documents, except when the retention of additional copies is required by federal law or regulation, provided those documents are properly marked and secured.

IT IS SO ORDERED.

_____

Judge

FORM 9
APPLICATION FOR ACCESS TO INFORMATION UNDER PROTECTIVE ORDER BY OUTSIDE OR INSIDE COUNSEL

United States Court of Federal Claims

_____,	)	
	)	No. _____
Plaintiff,	)	
	)	Judge_____
v.	)	
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

APPLICATION FOR ACCESS TO INFORMATION UNDER
PROTECTIVE ORDER BY OUTSIDE OR INSIDE COUNSEL

1. I, _____, hereby apply for access to protected information covered by the Protective Order issued in connection with this proceeding.

2. a. I [outside counsel only] am an attorney with the law firm of _____ and have been retained to represent _____, a party to this proceeding.

   b. I [inside counsel] am in-house counsel (my title is: _____) for _____, a party to this proceeding.

3. I am [ ] am not [ ] a member of the bar of the United States Court of Federal Claims (the court).

4. My professional relationship with the party I represent in this proceeding and its personnel is strictly one of legal counsel. I am not involved in competitive decision making as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for or on behalf of the party I represent, any entity that is an interested party to this proceeding, or any other firm that might gain a competitive advantage from access to the information disclosed under the Protective Order. I do not provide advice or participate in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means that I do not, for example, provide advice concerning, or participate in decisions about, marketing or advertising strategies, product research and development, product design or competitive structuring and composition of bids, offers, or proposals with respect to which the use of protected information could provide a competitive advantage.

5. I [outside counsel only] identify here (by writing "none" or listing names and relevant circumstances) those attorneys in my firm who, to the best of my knowledge, cannot make the representations set forth in the preceding paragraph:

6. I identify here (by writing "none" or listing names, position, and responsibilities) any member of my immediate family who is an officer or holds a management position with an interested party in the

proceeding or with any other firm that might gain a competitive advantage from access to the information disclosed under the Protective Order.

_____

7. I identify here (by writing "none" or identifying the name of the forum, case number, date, and circumstances) instances in which I have been denied admission to a protective order, had admission revoked, or have been found to have violated a protective order issued by any administrative or judicial tribunal:

_____

8. I [inside counsel] have attached a detailed narrative providing the following information:

a. my position and responsibilities as in-house counsel, including my role in providing advice in procurement-related matters;

b. the person(s) to whom I report and their position(s) and responsibilities;

c. the number of in-house counsel at the office in which I work and their involvement, if any, in competitive decision making and in providing advice in procurement-related matters.

d. my relationship to the nearest person involved in competitive decision making (both in terms of physical proximity and corporate structure); and

e. measures taken to isolate me from competitive decision making and to protect against the inadvertent disclosure of protected information to persons not admitted under the Protective Order.

9. I have read the Protective Order issued by the court in this proceeding. I will comply in all respects with that order and will abide by its terms and conditions in handling any protected information produced in connection with the proceeding.

10. I acknowledge that a violation of the terms of the Protective Order may result in the imposition of such sanctions as may be deemed appropriate by the court and in possible civil and criminal liability.

* * *

By my signature, I certify that, to the best of my knowledge, the representations set forth above (including attached statements) are true and correct.

_____ _____

Signature Date Executed

_____

Typed Name and Title

_____

Telephone & Facsimile Numbers

_____

E-mail Address

_____ _____

Signature of Attorney of Record Date Executed

_____

Typed Name and Title

_____

Telephone & Facsimile Numbers

_____

E-mail Address

FORM 10
APPLICATION FOR ACCESS TO INFORMATION UNDER PROTECTIVE ORDER BY EXPERT CONSULTANT OR WITNESS

United States Court of Federal Claims

_____,	)	
	)	No. _____
Plaintiff,	)	
	)	Judge_____
v.	)	
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

APPLICATION FOR ACCESS TO INFORMATION UNDER
PROTECTIVE ORDER BY EXPERT CONSULTANT OR WITNESS

1. I, the undersigned, am a _____ with _____ and hereby apply for access to protected information covered by the Protective Order issued in connection with this proceeding.

2. I have been retained by _____ and will, under the direction and control of _____, assist in the representation of _____in this proceeding.

3. I hereby certify that I am not involved in competitive decision making as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for or on behalf of any party to this proceeding or any other firm that might gain a competitive advantage from access to the information disclosed under the protective order. Neither I nor my employer provides advice or participates in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means, for example, that neither I nor my employer provides advice concerning, or participates in decisions about, marketing or advertising strategies, product research and development, product design or competitive structuring and composition of bids, offers, or proposals with respect to which the use of protected information could provide a competitive advantage.

4. My professional relationship with the party for whom I am retained in this proceeding and its personnel is strictly as a consultant on issues relevant to the proceeding. Neither I nor any member of my immediate family holds office or a management position in any company that is a party in this proceeding or in any competitor or potential competitor of a party.

5. I have attached the following information:
   a. a current resume describing my education and employment experience to date;
   b. a list of all clients for whom I have performed work within the two years prior to the date of this application and a brief description of the work performed;
   c. a statement of the services I am expected to perform in connection with this proceeding;

d. a description of the financial interests that I, my spouse, and/or my family has in any entity that is an interested party in this proceeding or whose protected information will be reviewed; if none, I have so stated;

e. a list identifying by name of forum, case number, date, and circumstances all instances in which I have been granted admission or been denied admission to a protective order, had a protective order admission revoked, or have been found to have violated a protective order issued by an administrative or judicial tribunal; if none, I have so stated; and

f. a list of the professional associations to which I belong, including my identification numbers.

6. I have read a copy of the Protective Order issued by the court in this proceeding. I will comply in all respects with all terms and conditions of that order in handling any protected information produced in connection with the proceeding. I will not disclose any protected information to any individual who has not been admitted under the Protective Order by the court.

7. For a period of two years after the date this application is granted, I will not engage or assist in the preparation of a proposal to be submitted to any agency of the United States government for _____ when I know or have reason to know that any party to this proceeding, or any successor entity, will be a competitor, subcontractor, or teaming member.

8. For a period of two years after the date this application is granted, I will not engage or assist in the preparation of a proposal or submission to_____ nor will I have any personal involvement in any such activity.

9. I acknowledge that a violation of the terms of the Protective Order may result in the imposition of such sanctions as may be deemed appropriate by the court and in possible civil and criminal liability.

* * *

By my signature, I certify that, to the best of my knowledge, the representations set forth above (including attached statements) are true and correct.

_____ _____
Signature Date Executed

_____
Typed Name and Title

_____
Telephone & Facsimile Numbers

_____
E-mail Address

_____ _____
Signature of Attorney of Record Date Executed

_____
Typed Name and Title

_____
Telephone & Facsimile Numbers

_____
E-mail Address

FORM 11
SURETY BOND FOR TEMPORARY RESTRAINING ORDER
OR PRELIMINARY INJUNCTION

United States Court of Federal Claims

_____,	)	
	)	No. _____
Plaintiff,	)	
	)	Judge_____
v.	)	
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

SURETY BOND
FOR TEMPORARY RESTRAINING ORDER
OR
PRELIMINARY INJUNCTION

Recitals

1. _____[name of plaintiff] has obtained from the United States Court of Federal Claims a [Temporary Restraining Order or Preliminary Injunction] against the United States.

2. The _____[Temporary Restraining Order or Preliminary Injunction] was issued on condition that _____[name of plaintiff] execute and file a good and sufficient bond in the amount of $_____ for the payment of any costs and damages that may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Promise to Pay

As a result of the facts just recited:

_____[name of plaintiff] and _____[names(s) of corporate surety or sureties], which has an office and usual place of business at _____[street address], _____[city, state, zip code], each undertakes and promises to pay up to the sum of $_____ for any damages incurred as a result of the _____[Temporary Restraining Order or Preliminary Injunction] if it is determined that defendant was wrongfully enjoined or restrained. Plaintiff and surety(ies) stipulate that the damages may be ascertained

in such manner as the court shall direct. See RCFC 65.1.

Dated:_____

For the principal:

_____[signature of plaintiff]

_____[typed name of plaintiff]

For the _____ [surety or sureties]:

_____[typed or printed name of surety]

By _____[signature]
_____[typed name of signer]
_____[title of signer]
_____[street address]
_____[city, state, zip code]
_____[telephone & facsimile numbers]
_____[e-mail address]

[Repeat signature block for each additional surety.]

APPROVED: _____, 20___

_____, Clerk, United States Court of Federal Claims

FORM 12
SUPERSEDEAS BOND (SURETY)

United States Court of Federal Claims

_____,	)	
	)	No. _____
Plaintiff,	)	
	)	Judge_____
v.	)	
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

SUPERSEDEAS BOND (SURETY)

Recitals

1. A judgment was entered in the above-captioned case on _____ [date] in the United States Court of Federal Claims against Appellant, _____ [name of appellant] and in favor of _____ [name(s) of appellee(s)].

2. _____[name of appellant] has filed a timely notice of appeal of this judgment to the United States Court of Appeals for the Federal Circuit and desires to suspend enforcement of the judgment pending determination of the appeal.

Promise to Pay

As a result of the facts just recited:

_____[name of appellant] and _____[names of corporate surety or sureties], which has an office and usual place of business at _____[street address], _____[city, state, zip code], each undertakes and promises to pay to _____[name(s) of appellee(s)] all damages, costs, and interest that may be awarded to _____[him or her or it or them] following the appeal of this matter up to the sum of $_____ if:

a. the judgment so appealed is affirmed:

b. the appeal is dismissed; or

c. _____[name of appellant] fails to pay promptly all sums awarded against _____[him or her or it or them] in or following the appeal in this action, including any costs that the court of appeals

may award if the judgment is modified.

If _____[name of appellant] fulfills the obligations on appeal set forth above, then this obligation will become void. Otherwise, the obligation will remain in full force and effect.

Dated:_____

For the principal:

_____[signature of plaintiff]

_____[typed name of plaintiff]

For the _____ [surety or sureties]:

_____[typed or printed name of surety]

By _____[signature]
_____[typed name of signer]
_____[title of signer]
_____[street address]
_____[city, state, zip code]
_____[telephone & facsimile numbers]
_____[e-mail address]

[Repeat signature block for each additional surety.]

APPROVED: _____, 20___

_____, Clerk, United States Court of Federal Claims

FORM 13
BOND WITH COLLATERAL FOR
TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

United States Court of Federal Claims

_____,	)	
	)	No. _____
Plaintiff,	)	
	)	Judge_____
v.	)	
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

BOND WITH COLLATERAL FOR
TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

Recitals

1. The above-named plaintiff(s) has commenced an action in the above-entitled court against the defendant and has made application to the court for a Temporary Restraining Order or Preliminary Injunction against the defendant, enjoining and restraining the defendant, as well as the defendant's agents or employees, from the commission of certain acts, particularly set forth and described in the complaint, and

2. The plaintiff(s) desires to give an undertaking in an amount deemed proper by the court, that is, $_____, to secure the payment of any costs and damages, including reasonable attorney's fees to be fixed by the court that may be incurred or suffered by the defendant if the restraining order or preliminary injunction should prove to have been improvidently issued.

Promise to Pay

The undersigned surety (jointly and severally, if more than one) obligates itself to the defendant as provided in RCFC 65 and 65.1, in the sum of $_____ on the condition that if the defendant ultimately prevails in this action and suffers damages on account of the Temporary Restraining Order or Preliminary Injunction, they will pay those damages up to and including the maximum amount of this Bond if the court determines that the Temporary Restraining Order or Preliminary Injunction was improperly or improvidently granted, or the defendant was improperly or wrongfully restrained by that Order. The undersigned stipulates

that the damages may be ascertained in such manner as the court shall direct and that, on dissolving the injunction, the court may give judgment thereon against the plaintiff for said damages in the order dissolving the injunction, or in a further order after ascertainment of the amount of said damages.

The above-named plaintiff(s) as security for the Bond hereby deposits with the clerk of said court, the sum of $_____ (either cash or certified check made payable to the U.S. Treasury),[1] which sum may be utilized in payment of any damages which by court order may be levied against the plaintiff in this action.

DATED:_____, 20__

By: _____[SEAL]

_____[SEAL]

(Plaintiffs)

APPROVED: _____, 20__

_____, Clerk, United States Court of Federal Claims

[1] Marketable public securities of the United States payable to the bearer may also be utilized as collateral, but the Bond must be accompanied by the appropriate power of attorney.

FORM 14
ORDER IMPLEMENTING FED. R. EVID. 502(d)

United States Court of Federal Claims

_____,	)	
	)	No. _____
Plaintiff,	)	
	)	Judge_____
v.	)	
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

ORDER

Pursuant to the agreement of the parties and the authority granted this court under Fed. R. Evid. 502(d), it is hereby ordered that a party's disclosure, in connection with this litigation, of any communication or information covered by the attorney-client privilege or entitled to work-product protection shall not constitute a waiver of such privilege or protection either in this litigation or in any other federal or state proceeding.

IT IS SO ORDERED.

_____
Judge