

In the United States Court of Federal Claims

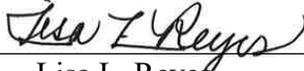
NOTICE OF PROPOSED AMENDMENTS TO RULES

Pursuant to 28 U.S.C. §§ 2071(b) and 2503(b), the United States Court of Federal Claims hereby provides notice that it proposes to amend its rules and invites public comment on the proposed amendments. The proposed amendments affect (i) RCFC 6, 15, 52.1, and new 87; (ii) Vaccine Rules 16, 18, and 21; (iii) Appendix A (“Case Management Procedure”); (iv) Supplement to Appendix B (“Electronic Filing Procedures in Vaccine Act Cases”); (v) Appendix C (“Procedure in Procurement Protest Cases”); and (vi) new Appendix K (“Procedure in Military Pay Cases”). All proposed changes are shown by strikethrough and red text and are explained in the accompanying Rules Committee notes.

Comments must be received by July 18, 2024, and addressed to:

Lisa L. Reyes
Clerk of Court
United States Court of Federal Claims
717 Madison Place, NW
Washington, DC 20439

Absent further notice, these amendments will take effect July 29, 2024.



Lisa L. Reyes
Clerk of Court

Issued: June 3, 2024

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Proposed 2024 Committee Note to RCFC 6

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.

* * *

(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, Juneteenth National Independence 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.

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(As revised and reissued May 1, 2002; as amended June 20, 2006, Nov. 3, 2008, Jan. 11, 2010, Aug. 1, 2017, **July 29, 2024.**)

Rules Committee Notes

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2024 Amendment

RCFC 6(a)(6) was updated in 2022 to include Juneteenth National Independence Day as a legal holiday, and the update was treated as an administrative amendment that did not require a committee note. That same change was subsequently made to FRCP 6(a)(6) and became effective December 1, 2023.

Proposed Amendments to RCFC 15

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~~no later than:

(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), (c), or (f), whichever is earlier.

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010, July 15, 2011, ~~July 29, 2024.~~)

Rules Committee Notes

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2024 Amendment

RCFC 15(a)(1) has been amended in accordance with the corresponding change to FRCP 15(a)(1) that became effective December 1, 2023.

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Proposed Amendment to Rule 52.1

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. Appendices to these rules govern the filing of the administrative record in particular categories of cases.
- (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, ~~July 29, 2024~~.)

Rules Committee Notes

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2024 Amendment

RCFC 52.1(a) has been amended to clarify that in certain types of cases, the filing of the administrative record is governed by the appendices to these rules.

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Proposed New Rule 87

Rule 87. Rules Emergency

(a) **Conditions for an Emergency.** The chief judge may declare a rules emergency if the court determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to the court, substantially impair the court's ability to perform its functions in compliance with these rules.

(b) Declaring an Emergency.

(1) **Content.** The declaration:

- (A) [not used];
- (B) adopts all the emergency rules in RCFC 87(c) unless it excepts one or more of them; and
- (C) must be limited to a stated period of no more than 90 days.

(2) **Early Termination.** The chief judge may terminate the declaration before the termination date.

(3) **Additional Declarations.** The chief judge may issue additional declarations under this rule.

(c) Emergency Rules.

(1) **Emergency Rules 4(e), (h)(1), (i), and (j)(2), and for serving a minor or incompetent person.** [Not used.]

(2) **Emergency RCFC 6(b)(2).**

(A) **Extension of Time to File Certain Motions.** The court may, by order, apply RCFC 6(b)(1)(A) to extend for a period of no more than 30 days after entry of the order the time to act under RCFC 52(b), 59(b), (d), and (e), and 60(b).

(B) **Effect on Time to Appeal.** Unless the time to appeal would otherwise be longer:

- (i) if the court denies an extension, the time to file an appeal runs for all parties from the date the order denying the motion to extend is entered;
- (ii) if the court grants an extension, a motion authorized by the court and filed within the extended period is, for purposes of Rule 4(a)(4)(A) of the Federal Rules of Appellate

Procedure, filed "within the time allowed by" these rules; and

(iii) if the court grants an extension and no motion authorized by the court is made within the extended period, the time to file an appeal runs for all parties from the expiration of the extended period.

(C) **Declaration Ends.** An act authorized by an order under this emergency rule may be completed under the order after the emergency declaration ends.

(Added July 29, 2024.)

Rules Committee Note 2024 Adoption

New RCFC 87 has been added to correspond to the adoption of the equivalent rule in the FRCP that became effective December 1, 2023.

**PROPOSED AMENDMENTS TO APPENDIX B
VACCINE RULES OF THE UNITED STATES
COURT OF FEDERAL CLAIMS**

* * *

TITLE IV. GENERAL PROVISIONS

* * *

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 ~~must~~ ~~may~~ include only the minor's initials.

(As revised and reissued May 1, 2002; as amended July 13, 2009, July 15, 2011, **July 29, 2024**.)

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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.~~

- (c) Motion to Redact.** A party objecting to the public disclosure of information contained in a decision must file a motion to redact within 14 days after service of the decision. The motion must be accompanied by a proposed redacted version of the decision.
- (1) Evidence in Support of a Motion to Redact.** A motion to redact must be supported by evidence demonstrating that the decision contains information meeting the criteria set forth in subdivision (b) of this rule. Evidence meeting these criteria includes, but is not limited to, the following:
- (A)** documentation that the objecting party's career and/or employment would be adversely affected by the release of medical information contained within the decision; and/or
 - (B)** documentation that the objecting party's personal safety or well-being would be adversely affected by the release of medical information contained within the decision.
- (2) Ruling on the Motion.** A motion to redact will be denied if the motion:
- (A)** is untimely filed; or
 - (B)** is not supported by evidence, does not meet the criteria set forth in subdivision (b) of this rule, and/or contains a general objection to the disclosure of a party's name or the amount of an award.
- (d) Absence of a Motion to Redact.** In the absence of a motion to redact, the entire decision will be made public within a reasonable time after the 14-day redaction period has expired.

(As revised and reissued May 1, 2002; as amended July 13, 2009, **July 29, 2024**.)

* * *

Rule 21. Dismissal of Petitions

(a) Voluntary Dismissal without Entry of Judgment.

(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) Voluntary Dismissal with Entry of Judgment.

(1) *In General.* The special master or the court may dismiss a petition or any claim therein at the petitioner’s request on terms that the special master or the court considers proper by issuance of a decision pursuant to 42 U.S.C. § 300aa-12(d)(3).

(2) *Effect.* Unless the decision states otherwise, a dismissal under this subdivision (b) is with prejudice. 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).

(c) 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.* Unless the decision states otherwise, a dismissal under this subdivision (c) is with prejudice. A petition dismissed under this subdivision (c) 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, July 29, 2024.)

Rules Committee Notes

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2024 Amendment

Rule 16. Subdivision (b) has been amended to require that case captions involving minors must include only the minor’s initials.

Rule 18. Subdivisions (c) and (d) have been added to provide more explicit requirements concerning motions to redact.

Rule 21. Subdivision (a) has been amended to clarify that dismissals under this provision do not result in entry of judgment.

New subdivision (b) has been added to allow petitioners an explicit avenue to choose to exit the vaccine program, while preserving their right to file a civil action, aside from the 240-day opt-out period provided in Vaccine Rule 10.

Paragraph (c)(2) has been amended to clarify that unless otherwise ordered, a dismissal under subdivision (c) is with prejudice.

Proposed Amendments to Appendix A Case Management Procedure

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VI. POST-DISCOVERY PROCEEDINGS

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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, provided that if a party was required to exchange or disclose an exhibit at an earlier time and failed to do so, that party may not list the exhibit unless the failure was substantially justified or is harmless. 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, provided that if a party was required to disclose the witness at an earlier time and failed to do so, that party may not list the witness unless the failure was substantially justified or is harmless. As to each witness, the party shall indicate the specific topics to be addressed in the expected testimony.

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Rules Committee Notes

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2024 Amendment

Paragraph 13 has been amended to clarify that paragraphs (a) and (b) do not extend the disclosure deadlines identified in RCFC 26(a) and (e).

**PROPOSED AMENDMENTS TO SUPPLEMENT TO APPENDIX B
ELECTRONIC FILING PROCEDURES
IN VACCINE ACT CASES**

* * *

**V. FILING REQUIREMENTS IN ECF
CASES**

10. Filings.

(a) Initial Filings.

(i) The Petition. The filing of a Vaccine Act petition and the payment of the initial filing fee may be accomplished in accordance with Vaccine Rule 2.

(ii) Required Attachments. The petition must be accompanied by the medical records and other documents (including affidavits) pertaining to the petition as set forth in Vaccine Rule 2(c)(2). (*See* paragraph 13 of this Supplement, discussing the alternative method of filing voluminous medical records via a portable storage disc or drive.)

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

(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 via the ECF System 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.

11. Technical Requirements.

(a) Format.

(i) In General. Documents filed via the ECF System must be:

(A) converted into PDF; and

(B) text searchable.

The ECF System will not accept PDF files containing tracking tags, embedded system commands, password protections, access restrictions, or other security features, special tags, or dynamic features.

(ii) Scanned Documents.

(A) Documents filed via the ECF System must not be scanned prior to filing unless the original documents are unavailable in electronic form.

(B) A Filing User is responsible for ensuring the accuracy and readability of a scanned document.

(b) Size Limitations.

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

(ii) Number of Files. Counsel must endeavor to limit the total number of PDF files that constitute a single filing. All files, however, must comply with the requirements of paragraph 12(a) below.

(iii) Size of Files.

(A) Unless otherwise ordered by the court, each PDF file must not exceed the size limitation established by the court.

(B) The current size limitation is posted on the court's website or may be obtained by calling the clerk's office.

(iv) Exceeding the Size Limitation. For files that exceed the size limitation and cannot be divided into multiple PDF files, the Filing User may:

- (A) use a portable storage disc or drive; or
 - (B) seek leave of the court to file in some other electronic format.
- (c) **Events.** Events are used in the ECF System for filing documents and creating docket entries on the docket sheet. A Filing User:
- (i) must select an event or events for each filed document based on the purpose of the document or relief requested; and
 - (ii) should use the most specific event available rather than a more generic event.
- (d) **Linking Filings.** A document filed via the ECF System—such as a response or reply—that pertains to a motion or other filing must be linked properly in the ECF System to the filing to which it pertains.

12. 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.”

13. Filings Via Portable Storage Discs and Drives.

- ~~(a) **In General.** Filing documents on a portable storage disc or drive is accomplished by:

 - ~~(i) filing via the ECF System a “Notice of Intent to File” containing:

 - ~~(A) an index of the exhibits included on the disc or drive;~~
 - ~~(B) a statement certifying that the contents of the disc or drive have been scanned using anti-virus software with up-to-date anti-virus definitions; and~~
 - ~~(C) a certificate stating when copies of the disc or drive were mailed or delivered to the clerk’s office;~~~~
 - ~~(ii) providing the clerk’s office with one copy of the disc or drive along with a printed copy of the “Notice of Intent to File”; and~~
 - ~~(iii) serving one copy of the disc or drive on opposing counsel.~~~~
- ~~(b) **Date of Filing.** The disc or drive is deemed filed on the date it is received in the clerk’s office.~~
- ~~(c) **Striking a Notice of Intent to File.** If the disc or drive is not received in the clerk’s office within 5 days after the “Notice of Intent to File” is docketed via the ECF System, 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 or drive 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 or drive might be labeled “EX01_University_Hospital_98-0000.pdf.”~~~~
- ~~(e) **Format.** Before filing a disc or drive, the Filing User should:

 - ~~(i) “close” or finalize the disc or drive so that additional material cannot be written onto the disc or drive; and~~~~

- ~~(ii) scan the disc or drive using appropriate anti-virus software after its creation and closure.~~
- ~~(f) **Packaging and Labeling.** The Filing User should package the disc or drive 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 or drive contains (e.g., Exhibits 01-20).~~

VI. FILING PROCEDURES

13. Filings Via Portable Storage Discs and Drives.

- (a) **In General.** Filing documents on a portable storage disc or drive is accomplished by:
 - (i) filing via the ECF System a “Notice of Intent to File” containing:
 - (A) an index of the exhibits included on the disc or drive;
 - (B) a statement certifying that the contents of the disc or drive have been scanned using anti-virus software with up-to-date anti-virus definitions; and
 - (C) a certificate stating when a copy of the disc or drive was ~~were~~ mailed or delivered to the clerk’s office;
 - (ii) providing the clerk’s office with one copy of the disc or drive along with a printed copy of the “Notice of Intent to File”; and
 - (iii) serving one copy of the disc or drive on opposing counsel.
- (b) **Date of Filing.** The disc or drive is deemed filed on the date it is received in the clerk’s office.
- (c) **Striking a Notice of Intent to File.** If the disc or drive is not received in the clerk’s office within 5 days after the “Notice of Intent to File” is docketed via the ECF System, 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 or drive 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 or drive might be labeled “EX01_University_Hospital_98-0000.pdf.”
- (e) **Format.** Before filing a disc or drive, the filing party ~~Filing User~~ should:
 - (i) “close” or finalize the disc or drive so that additional material cannot be written onto the disc or drive; and
 - (ii) scan the disc or drive using appropriate anti-virus software after its creation and closure.
- (f) **Packaging and Labeling.** The ~~Filing User~~ should package the disc or drive should be packaged in a paper, plastic, or waxed paper envelope and labeled with:
 - (i) the case caption, including the case number;
 - (ii) the date of filing; and
 - (iii) the range of exhibits the disc or drive contains (e.g., Exhibits 01-20).

14. Notice of Filing; Service.

- (a) **ECF Cases.**
 - (i) **Notifying the Parties.** 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 parties.
 - (ii) **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.
- (b) **Non-ECF Cases.**
 - (i) **Notification of Filings.** A *pro se* litigant may consent to receive notice of all filings via e-mail by filing an E-Notification Consent Form in each active Vaccine Act case before the court (*see* Appendix of Forms, Form 15B).
 - (ii) **Service.**

(A) Service by *Pro Se* Litigants. A *pro se* litigant filing in paper form or via e-mail need not separately serve his or her filings on opposing counsel. Opposing counsel will be served when a filing is entered by the clerk in the ECF System.

(B) Service by E-Mail on *Pro Se* Litigants. If a *pro se* litigant has filed an E-Notification Consent Form:

(I) the *pro se* litigant consents to having his or her e-mail address entered into the ECF System to receive notice of electronic filings;

(II) because of the restricted nature of Vaccine Act cases, to satisfy the service requirement of RCFC 5, the clerk and opposing counsel must serve the *pro se* litigant via separate e-mail with a PDF copy of each filing;

(III) to satisfy the proof of service requirement of RCFC 5.3, opposing counsel must attach to each filing, or file within a reasonable time after service, a certificate of service pursuant to RCFC 5(d)(1)(B) and Vaccine Rule 17(a)(2); and

(IV) the *pro se* litigant waives service by first class mail.

(C) Service by First Class Mail on *Pro Se* Litigants. If a *pro se* litigant has not consented to electronic service by filing an E-Notification Consent Form:

(I) the clerk will serve the litigant with all court-issued filings by first class mail; and

(II) opposing counsel must serve the litigant with all of opposing counsel's filings in a manner listed in RCFC 5(b) and attach to each

filing, or file within a reasonable time after service, a certificate of service pursuant to RCFC 5(d)(1)(B) and Vaccine Rule 17(a)(2).

15. Effect of Filing.

(a) ECF Cases. A filing by a party via the ECF System, 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.

(b) Non-ECF Cases. A document submitted by a *pro se* litigant via e-mail or in paper form constitutes a filing under RCFC 5 once entered by the clerk in the ECF System.

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

17. Date of Filing.

(a) ECF Cases. A document filed in an ECF case is deemed filed on the date and time stated in the "Notice of Electronic Filing."

(b) Non-ECF Cases. A document submitted by a *pro se* litigant via e-mail or in paper form is deemed filed on the date and time received by the clerk or, if not in compliance with the court's rules, on the date and time filed by leave of the judge or special master.

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

19. Date Stamp. The filing date of each filing in the ECF System will appear at the top of the first page in an automatically generated banner stating the case number, the document number, and the date filed.

Rules Committee Notes

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2024 Amendment

Paragraph 13 ("Filings Via Portable Storage Discs and Drives") has been moved from

Section V (“Filing Requirements in ECF Cases”) to Section VI (“Filing Procedures”) because its provisions are applicable in both ECF and non-ECF cases.

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. To expedite proceedings, plaintiff's counsel must (except in exceptional circumstances to be described in moving papers) provide 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; and

(d) the apparently successful bidder/offeree (in cases where there has been an award and plaintiff has received notice of the identity of the awardee).

Such notice must be provided at least 1 day—but no earlier than 5 days—in advance of filing a protest case, not including Saturdays, Sundays, and legal holidays as defined in RCFC 6(a)(6). (The contacts for the clerk and the Department of Justice are posted on the court's website—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 timely pre-filing notification will impede both the clerk's ability to notify the judges of an incoming protest case and the assigned judge's ability to initiate proceedings in the case, including the scheduling of the initial status conference. See paragraph 8, below. Plaintiff's counsel must provide an updated notice to the above entities highlighting any material change in respect to the timing of or the intent to file a protest. If, after filing a pre-filing notice, plaintiff's counsel determines that

the protest case will not be filed, counsel must notify the above entities that the notice is withdrawn.

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:

(a) marked or highlighted in such a way that confidential or proprietary information is indicated; and

(b) accompanied by a proposed redacted version of the pleading (i.e., a version that omits confidential or proprietary information). The proposed redacted version will be made available to the public subsequent to the completion of the procedures specified in paragraph 12 of the sample protective order found at Appendix of Forms, Form 8. Failure to file a proposed redacted version 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 service of the administrative record, and the filing of the joint appendix, as set forth in paragraphs 23–28 below;

(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/offeree 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/offeree. If the name of the awardee is unknown, plaintiff must so state.

12. The apparently successful bidder/offeree 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,

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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) A motion for a protective order must meet the requirements of paragraph 10 above. 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 business 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. On a date ordered by the court at the initial status conference, the United States must transmit or make available the complete administrative record to all parties and to the court via a designated form of electronic transfer (or other means if so ordered). No later than that same date, the United States must file with the court:~~

~~(a) a certified index of the contents of the administrative record; and~~

~~(b) a certificate of service in accordance with RCFC 5.3 stating that the administrative record has been served on the parties. The certificate of service must contain the contracting officer's certification attesting to the completeness of the administrative record.~~

~~24. Any additional documents within the administrative record must be produced formatted as follows:~~

~~(a) The file names of documents in the administrative record must include tab numbers corresponding with the tab numbers in the certified index.~~

~~(b) The United States must undertake reasonable efforts to convert all documents to PDF files, paginate the entire record sequentially, and produce the documents in a text-searchable format.~~

~~(c) Excel spreadsheets and other files that cannot be converted to legible or usable PDF files must be provided to all parties and to the court in their native format and assigned tab numbers (both listed in the index and contained within the file name).~~

~~25. To the extent either party identifies any omissions, errors, or other concerns regarding the administrative record, the parties must meet and confer to address the issue(s) and, upon agreement of the parties, the United States must file a motion for leave:~~

~~(a) to produce the corrected record to all parties and to the court; and~~

~~(b) to file a corrected certified index to the administrative record and certificate of service, including a new contracting officer's certification.~~

~~If the parties are unable to reach an agreement regarding the contents of the administrative record or any related issues—including any~~

~~identified omissions, errors, or other concerns—any party may file a motion to resolve the disagreement.~~

~~26. The United States must file a joint appendix, including an index, at such time as may be agreed to by the parties or ordered by the court, generally after the close of briefing under RCFC 52.1(c). The court may order the parties to provide the court with one or more paper copies of the joint appendix. In compiling the joint appendix, the parties must confer and, at a minimum, include those portions of the administrative record that the parties have cited in their respective briefs, along with sufficient context for the court to understand the information. Core documents (as agreed upon by the parties), see paragraph 22 above, must be included in their entirety.~~

~~27. Absent agreement among the parties regarding the contents of the joint appendix, the plaintiff must serve on all parties an initial designation and provide all other parties the opportunity to designate additional portions of the administrative record. Excel spreadsheets and other electronic files that cannot be filed via the court's electronic filing system must not be filed as part of the joint appendix but must be noted in the index to the joint appendix.~~

~~28. Within 7 days after the entry of final judgment, the United States must file with the clerk the complete administrative record either via the court's electronic-filing system or via a portable storage disc or drive.~~

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~~VIII. ADMISSION OF COUNSEL~~

~~29. 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.~~

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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.

2016 Amendment

Paragraph 2 has been amended to specify that the pre-filing notice must be provided to the listed entities during clerk's office business hours as defined in RCFC 77.1.

Paragraph 6 has been amended to clarify that a proposed redacted version of a pleading is subject to the redaction procedures specified in Form 8 (“Protective Order”) in the Appendix of Forms.

2018 Amendment

In the interest of internal consistency, Paragraph 18 has been amended to clarify that objections must be filed with the court within 2 *business* days after a party's receipt of an application for access.

2019 Amendment

Paragraph 2 has been amended to eliminate the references to facsimile transmission.

2021 Amendment

Paragraph 2 has been amended to clarify that the 1-day advance notice requirement does not include weekend and holiday hours and that notice must be provided no earlier than 5 days in advance of filing a protest case. In addition, a requirement has been added for counsel to provide further notice if it is determined that the protest case will not be filed.

2024 Amendment

Paragraph 8(e) has been amended to cross reference paragraphs 23–28 in amended Section VII.

Section VII has been amended to require the United States to provide a complete copy of the administrative record to all parties and to the court via electronic transfer in lieu of filing the record via ECF, and then, within 7 days after the entry of final judgment, to file with the clerk the complete administrative record.

In addition, a requirement has been added in paragraph 26 that the United States, upon agreement of the parties, file a joint appendix that includes, at a minimum, the core documents specified in paragraph 22 of this Appendix and those portions of the administrative record that the parties have cited in their respective briefs.

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APPENDIX K PROCEDURE IN MILITARY PAY CASES

I. INTRODUCTION

1. This Appendix describes standard practices for cases involving claims under the Military Pay Act, 37 U.S.C. § 204, and supplements the Rules of the United States Court of Federal Claims, which are otherwise fully applicable to these cases.

II. SCHEDULING

2. In lieu of the United States filing an answer to the complaint under RCFC 12(a)(1), the parties must file a joint motion for entry of a scheduling order within 60 days after service of the complaint.

3. If the United States has filed a motion pursuant to RCFC 12(b), 12(c), or 52.2 and such motion is denied, the joint motion for entry of a scheduling order must be filed within 14 days after denial of the motion filed pursuant to RCFC 12(b), 12(c), or 52.2.

4. The joint motion for entry of a scheduling order must include proposed deadlines for the United States to file the administrative record and the appendix described in paragraph 6(d) below, as well as deadlines for the filing of any motions pursuant to RCFC 52.1(c).

III. THE ADMINISTRATIVE RECORD

5. **In General.** The administrative record concerning the challenged administrative action or decision must be certified by the agency and filed with the clerk.

6. Duty to Confer Concerning Contents.

(a) At least 7 days before filing the administrative record, the United States must provide the plaintiff(s) with a copy of the record, and the parties must confer as needed to resolve any disputes concerning the

record's completeness and any redactions of personal information that might be appropriate.

(b) If the parties cannot agree on the contents of the record, the United States must file the administrative record, and the plaintiff(s) may file a motion to complete or supplement the record.

(c) If the parties cannot agree on redactions of personal information, in lieu of filing the administrative record, the parties must file a joint status report setting forth each party's position regarding redactions.

(d) The parties must also confer to identify any agency-specific rules, instructions, policies, and regulations not codified in the current version of the Code of Federal Regulations cited or otherwise relevant to the issues before the court. The United States must compile copies of such rules, instructions, policies, and regulations in a paginated appendix that includes a table of contents.

IV. FILING THE ADMINISTRATIVE RECORD AND RELATED APPENDIX

7. The United States must file the administrative record and the appendix required by paragraph 6(d) by the deadlines set forth in the court's scheduling order.

Rules Committee Notes 2024 Adoption

Appendix K sets forth the procedures applicable to military pay cases filed pursuant to 37 U.S.C. § 204.