

# In the United States Court of Federal Claims

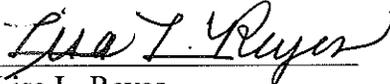
## NOTICE OF PROPOSED AMENDMENTS TO RULES

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 5, 5.5, 23, 62, and 65.1; (ii) Vaccine Rules 2, 17, and 32; (iii) Supplement to Appendix B (“Electronic Case Filing Procedure in Vaccine Act Cases”); and (iv) Appendix E (“Electronic Case Filing Procedure”). All proposed changes are shown by strikethrough and yellow highlighting.

Comments must be received by May 23, 2019, 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 1, 2019.

  
\_\_\_\_\_  
Lisa L. Reyes  
Clerk of Court

Issued: April 8, 2019

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# Proposed Amendment to Rule 5

## Rule 5. Serving and Filing Pleadings and Other Papers

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### (b) Service: How Made.

\* \* \*

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

(A) handing it to the person;

\* \* \*

(E) sending it to a registered user by filing it with the court's electronic-filing system or sending it by other electronic means that if the person consented to in writing—in either of which events service is complete upon filing or sending transmission, but is not effective if the filer or sender serving party learns that it did not reach the person to be served; or

\* \* \*

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

\* \* \*

### (d) Filing.

(1) *Required Filings; Certificate of Service.*

(A) *Papers after the Complaint.* Any paper after the complaint that is required to be served—~~together with a certificate of service~~—must be filed no later than ~~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.

(B) *Certificate of Service.* No certificate of service is required when a paper is served by filing it with the court's

electronic-filing system. When a paper that is required to be served is served by other means:

(i) if the paper is filed, a certificate of service must be filed with it or within a reasonable time after service; and

(ii) if the paper is not filed, a certificate of service need not be filed unless filing is required by court order.

(2) *Nonelectronic Filing How Filing Is Made—In General.* A paper not filed electronically 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 and Signing.* 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.

(A) *By a Represented Person—Generally Required; Exceptions.* A person represented by an attorney must file electronically, unless non-electronic filing is allowed by the court for good cause or is otherwise allowed under Appendix E.

(B) *By an Unrepresented Person—When Allowed or Required.* A person not represented by an attorney:

(i) may file electronically only if allowed by court order; and

(ii) may be required to file electronically only by court order.

(C) *Signing.* A filing made through a person's electronic-filing account and authorized by that person,

together with that person's name on a signature block, constitutes the person's signature.

**(D) Same as a Written Paper.** A paper filed electronically is a written paper for purposes of these rules.

(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008, July 1, 2019.)

**Rules Committee Notes**

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**2019 Amendment**

RCFC 5 has been amended in accordance with the corresponding changes to FRCP 5 that became effective December 1, 2018.

# Proposed Amendment to Rule 23

## Rule 23. Class Actions

\* \* \*

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

\* \* \*

#### (2) Notice.

\* \* \*

(B) For any class certified under RCFC 23(b)—or upon ordering notice under RCFC 23(e)(1) to a class proposed to be certified for purposes of settlement 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 may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language:

\* \* \*

(e) **Settlement, Voluntary Dismissal, or Compromise.** The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—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) Notice to the Class.

(A) **Information That Parties Must Provide to the Court.** The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

(B) **Grounds for a Decision to Give Notice.** The court must direct notice in a reasonable manner to all class

members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:

(i) approve the proposal under RCFC 23(e)(2); and

(ii) certify the class for purposes of judgment on the proposal.

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

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under RCFC 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

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

(4) ~~[Not used.]~~ **Opportunity to Withdraw.** If the class action was previously certified under RCFC 23(b), the court may refuse to approve a settlement unless it affords an opportunity to request withdrawal to

individual class members who had earlier elected to join the class.

**(5) Class-Member Objections.**

**(A) In General.** 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.~~ The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.

**(B) Court Approval Required for Payment in Connection with an Objection.** Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:

- (i)** forgoing or withdrawing an objection, or
- (ii)** forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

**(C) Procedure for Approval After an Appeal.** [Not used.]

**(f) Appeals.** [Not used.]  
\* \* \*

(As revised and reissued May 1, 2002; as amended July 1, 2004, Nov. 3, 2008, Jan. 11, 2010, July 2, 2018, July 1, 2019.)

**Rules Committee Notes**

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**2019 Amendment**

RCFC 23 has been amended in accordance with the corresponding changes to FRCP 23 that became effective December 1, 2018.

# Proposed Amendment to Rule 62

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

### (a) Automatic Stay; ~~Exceptions for Injunctions and Patent Accountings.~~

Except as provided in RCFC 62(c) and (d), ~~stated in this rule, no execution may issue on a judgment and, nor may proceedings be taken to enforce it, until 14 days have passed~~ are stayed for 30 days after its entry, unless the court orders otherwise. ~~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.~~

### (b) Stay by Bond or Other Security. At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

### (c) Stay of an Injunction, Receivership, or Patent Accounting Order. 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 receivership; or
- (2) a judgment or order that directs an accounting in an action for patent infringement.

~~(d)~~ **(e) Injunction Pending an Appeal.** While an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or refuses to dissolve or modify ~~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.

\* \* \*

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010, July 1, 2019.)

### Rules Committee Notes

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### 2019 Amendment

RCFC 62 has been amended in accordance with the corresponding changes to FRCP 62 that became effective December 1, 2018.

# Proposed Amendment to Rule 65.1

## **Rule 65.1. Proceedings Against a Security Provider 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 security providers sureties, each provider 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 security bond or undertaking. The security provider's 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 send mail a copy of each to every security provider surety whose address is known.

(b) **Acceptable Security Providers Sureties.** Acceptable security providers include 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, and the security to be given is a bond, the clerk will furnish counsel with the appropriate bond form.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, July 1, 2019.)

### **Rules Committee Notes**

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#### **2019 Amendment**

RCFC 65.1 has been amended in accordance with the corresponding changes to FRCP 65.1 that became effective December 1, 2018.

# Proposed Amendment to Rule 5.5

## Rule 5.5. Format of Filings and Required Information

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

\* \* \*

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

(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, Aug. 3, 2015, July 1, 2019.)

### Rules Committee Notes

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#### 2019 Amendment

RCFC 5.5(d) has been amended to remove the requirement that when a complaint exceeds 20 pages, a copy must also be filed in electronic form using a disc in CD-ROM format.

Subdivision (f) has also been amended to eliminate the reference to facsimile numbers.

# Proposed Amendment to Vaccine Rule 2

## Rule 2. Commencing an Action

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### (b) Method of Filing; Filing Fee.

(1) *Paper Form.* Petitioner must forward an original and 2 copies of the petition, attaching a completed cover sheet to the original (shown in Form 2 of the Appendix of Forms), 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](http://www.uscfc.uscourts.gov) or may be obtained by contacting the clerk's office.

~~If the petition exceeds 20 pages and petitioner is not appearing pro se pursuant to Vaccine Rule 14, petitioner must also submit one copy of the petition in electronic form using a disc in CD-ROM format.~~

\* \* \*

(As revised and reissued May 1, 2002; as amended Sept. 15, 2003, Aug. 2, 2005, July 13, 2009, July 15, 2011, Aug. 3, 2015, Aug. 1, 2016, Aug. 1, 2017, **July 1, 2019**.)

### Rules Committee Notes

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#### **2019 Amendment**

**Rule 2.** Subdivision (b) has been amended to remove the requirement that when a petition exceeds 20 pages, a copy must also be filed in electronic form using a disc in CD-ROM format.

# Proposed Amendment to Vaccine Rule 17

## Rule 17. Serving and Filing Papers After the Petition

\* \* \*

### (b) Filing a Document.

\* \* \*

(2) ~~*Nonelectronic Filing How Filing Is Made In General.*~~ A paper not filed electronically is filed by delivering it to the clerk at the address provided in Vaccine Rule 2.

(3) ~~*Electronic Filing and Signing.*~~ 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.

(A) ~~*By a Represented Person—Generally Required; Exceptions.*~~ A person represented by an attorney must file electronically, unless non-electronic filing is allowed by the court for good cause or is otherwise allowed under the Supplement to the Vaccine Rules.

(B) ~~*By an Unrepresented Person—When Allowed or Required.*~~ A person not represented by an attorney:

(i) may file electronically only if allowed by court order; and

(ii) may be required to file electronically only by court order.

(C) ~~*Signing.*~~ A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(D) ~~*Same as a Written Paper.*~~ A paper filed electronically is a written paper for purposes of these rules.

\* \* \*

(As revised and reissued May 1, 2002; as amended July 13, 2009, July 15, 2011, July 1, 2019.)

### Rules Committee Notes

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#### 2019 Amendment

**Rule 17.** Rule 17 has been amended to reflect the changes adopted in RCFC 5.

# Proposed Amendment to Vaccine Rule 32

## **Rule 32. Notice of Appeal**

To appeal a decision of the Court of Federal Claims, a party must file a petition pursuant to 42 U.S.C. § 300aa-12(f) 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, July 1, 2019.)

### **Rules Committee Notes**

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#### **2019 Amendment**

**Rule 32.** Rule 32 has been amended to parallel the language of the statute and reflect that to appeal a decision of this court, a party must file a petition—not a notice of appeal—with the Court of Appeals for the Federal Circuit.

# Proposed Amendment to Supplement to Appendix B (Electronic Case Filing Procedure in Vaccine Cases)

## VI. SIGNATURES AND RELATED MATTERS

\* \* \*

**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; or
- (b) by submitting a document containing an electronic signature for each party (“s/[name of party]”) and the filing attorney’s representation that the other parties have reviewed the document and consent to its filing. ~~by representing the consent of the other parties on the document; or~~
- ~~(c) in any other manner approved by the court.~~

\* \* \*

### Rules Committee Notes

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#### 2019 Amendment

Paragraph 20 has been amended to clarify that a document requiring the signature of more than one party must contain either a scanned written signature of each party or an electronic signature of each party along with the filing attorney’s representation that the other parties have reviewed the document and consent to its filing.

# Proposed Amendment to Appendix E (Electronic Case Filing Procedure)

## VI. SIGNATURES AND RELATED MATTERS

\* \* \*

**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; or
- (b) by submitting a document containing an electronic signature for each party (“s/[name of party]”) and the filing attorney’s representation that the other parties have reviewed the document and consent to its filing. ~~by representing the consent of the other parties on the document; or~~
- ~~(c) in any other manner approved by the court.~~

\* \* \*

### Rules Committee Notes

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#### 2019 Amendment

Paragraph 20 has been amended to clarify that a document requiring the signature of more than one party must contain either a scanned written signature of each party or an electronic signature of each party along with the filing attorney’s representation that the other parties have reviewed the document and consent to its filing.