

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

**TABLE OF CONTENTS**

I. SCOPE OF RULES; COMMENCEMENT OF PROCEEDINGS. . . . .	<u>92</u>
Rule 1. Scope of Rules. . . . .	<u>92</u>
Rule 2. Commencement of Proceedings. . . . .	<u>92</u>
II. PROCEEDINGS BEFORE THE SPECIAL MASTER. . . . .	<u>93</u>
Rule 3. Role of the Special Master—Generally. . . . .	<u>93</u>
Rule 4. Respondent’s Review of Petitioner’s Records; Early Status Conference; Respondent’s Report. . . . .	<u>93</u>
Rule 5. Informal Review and Tentative Findings and Conclusions. . . . .	<u>94</u>
Rule 6. Status Conferences. . . . .	<u>94</u>
Rule 7. Discovery. . . . .	<u>94</u>
Rule 8. Taking of Evidence and Argument; Decision. . . . .	<u>94</u>
Rule 9. Suspension of Proceedings. . . . .	<u>95</u>
Rule 10. Special Master’s Decision. . . . .	<u>95</u>
III. JUDGMENT AND FURTHER PROCEEDINGS. . . . .	<u>96</u>
Rule 11. Judgment. . . . .	<u>96</u>
Rule 12. Election. . . . .	<u>96</u>
Rule 13. Attorneys’ Fees and Costs. . . . .	<u>96</u>
IV. GENERAL PROVISIONS. . . . .	<u>96</u>
Rule 14. Attorneys. . . . .	<u>96</u>
Rule 15. Third Parties. . . . .	<u>97</u>
Rule 16. Caption of All Filings. . . . .	<u>97</u>
Rule 17. Filing and Service of Papers After the Petition. . . . .	<u>97</u>
Rule 18. Availability of Filings. . . . .	<u>97</u>
Rule 19. Time. . . . .	<u>98</u>
Rule 20. Motions. . . . .	<u>98</u>
Rule 21. Dismissal of Petitions. . . . .	<u>98</u>
V. REVIEW OF DECISIONS OF SPECIAL MASTERS. . . . .	<u>99</u>
Rule 22. General. . . . .	<u>99</u>
Rule 23. Motion for Review and Objections. . . . .	<u>99</u>
Rule 24. Memorandum of Objections. . . . .	<u>99</u>
Rule 25. Response. . . . .	<u>99</u>
Rule 26. Assignment. . . . .	<u>99</u>
Rule 27. Review. . . . .	<u>99</u>
Rule 28. Time for Review. . . . .	<u>99</u>
Rule 28A. Remand Procedure. . . . .	<u>100</u>
Rule 29. Withdrawal of Petition. . . . .	<u>100</u>
Rule 30. Judgment. . . . .	<u>100</u>
Rule 31. Reconsideration. . . . .	<u>100</u>
Rule 32. Notice of Appeal. . . . .	<u>100</u>

Rule 33. Election. . . . .	<u>100</u>
Rule 34. Attorneys' Fees and Costs. . . . .	<u>101</u>
Rule 35. Availability of Filings. . . . .	<u>101</u>
VI. RELIEF FROM JUDGMENT. . . . .	<u>101</u>
Rule 36. Relief from Judgment. . . . .	<u>101</u>

## I. SCOPE OF RULES; COMMENCEMENT OF PROCEEDINGS

### Rule 1. Scope of Rules

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). These rules govern both the proceedings before the Office of Special Masters, as well as any subsequent proceedings before a judge of the Court of Federal Claims. These rules are to be cited as the Vaccine Rules. In all matters 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 cases promptly and efficiently. In proceedings before the Office of Special Masters, the RCFC apply only to the extent referenced in the Vaccine Rules. In proceedings before a judge, the RCFC will apply except to the extent that such rules are inconsistent with the Vaccine Rules.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

### Rule 2. Commencement of Proceedings

**(a) Petition.** A proceeding for compensation under the Vaccine Act shall be commenced by the filing of a petition, accompanied by the documents required under 42 U.S.C. § 300aa-11(c) and subdivision (e) of this rule, in the United States Court of Federal Claims. Petitioner shall forward an original and two copies of the petition, by mail or other delivery, to

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

**(b) Filing Fee.** The petition shall be accompanied by a filing fee. A copy of the applicable schedule of fees is posted on the court's website at [www.uscfc.uscourts.gov](http://www.uscfc.uscourts.gov). The current schedule of fees may also be obtained by calling the clerk's office.

#### **(c) Service Upon Respondent.**

**(1)** Petitioner shall serve one copy of the petition and accompanying documents upon the Secretary of Health and Human Services,

by first class or certified mail, c/o Director, Division of Vaccine Injury Compensation, Healthcare Systems Bureau, Parklawn Building, Room 11C-26, 5600 Fishers Lane, Rockville, MD 20857.

**(2)** The clerk shall serve one copy of the petition on the Attorney General.

#### **(d) Content of the Petition.**

**(1)** The petition shall set forth a short and plain statement of the grounds for an award of compensation. The petition shall set forth to whom, when, and where the vaccine in question was administered, and further shall describe specifically the alleged injury. If an injury within the applicable Vaccine Injury Table is claimed, the particular Table Injury shall be set forth. (For information about the Vaccine Injury Tables and related administrative changes, see [www.uscfc.uscourts.gov/OSMPage.htm](http://www.uscfc.uscourts.gov/OSMPage.htm), "Guidelines for Practice Under the National Vaccine Injury Compensation Program," Attachment 8.) The petition shall also contain a specific demand for relief to which petitioner asserts entitlement or a statement that such demand will be deferred pursuant to 42 U.S.C. § 300aa-11(e).

**(2)** Only one petition may be filed with respect to each administration of a vaccine.

#### **(e) Documents Required With the Petition.**

**(1)** As required by 42 U.S.C. § 300aa-11(c), every petition shall be accompanied by the following:

**(A)** medical records and detailed affidavit(s) supporting all elements of the allegations made in the petition. If petitioner's claim does not rely on medical records alone, but is based in any part on the observations or testimony of any persons, the substance of each person's proposed testimony in the form of an affidavit executed by the affiant must accompany the petition;

**(B)** all available 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 vaccinee 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 all well-baby visit records, as well as growth charts, until the date of vaccination; and

(C) if any records required by the rules are not submitted, an affidavit detailing the efforts made to obtain such records and the reasons for their unavailability.

(2) If filed on behalf of a deceased person, or if filed by someone other than the injured person or a parent of an injured minor, the petition shall 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.

(3) All documents accompanying the petition shall be assembled into one or more bound volumes or three-ring notebooks. Each bound volume or notebook must contain the caption of the case and a table of contents, and all pages of all documents shall be numbered consecutively.

(As revised and reissued May 1, 2002; as amended September 15, 2003, August 2, 2005. See Rules Committee Notes, infra.)

## II. PROCEEDINGS BEFORE THE SPECIAL MASTER

### Rule 3. Role of the Special Master—Generally

(a) **Assignment.** Once a petition has been filed by the clerk, the case shall be assigned by the chief special master to a special master to conduct proceedings in accordance with the Vaccine Rules. All proceedings prior to the issuance of the special master's decision are to be conducted exclusively by the special master.

(b) **Duties.** The special master shall be responsible for conducting all proceedings,

including requiring such evidence as may be appropriate, in order to prepare a decision, including findings of fact and conclusions of law, determining whether an award of compensation should be made under the Vaccine Act and the amount of any such award. The special master shall determine the nature of the proceedings with the goal of making 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; Reassignment.** In the absence of the special master to whom a case is assigned, the chief special master may act on behalf of the assigned special master, or designate another special master to act. When necessary for the efficient administration of justice, the chief special master may reassign a case to another special master.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

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

(a) **Respondent's Review of Completeness of Records.** Within 30 days after the filing of a petition, respondent shall review the accompanying records and other documents to determine whether all information necessary to enable respondent to evaluate the merits of the claim has been filed with the petition. If respondent concludes that relevant health records or other required documents are missing, respondent's counsel shall immediately notify petitioner's counsel regarding the perceived omissions. If the parties disagree about the completeness of the records filed or the relevance of requested records, 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. Following an early status conference, the special master shall issue an order scheduling further proceedings.

(c) **Respondent's Report.** Within 90 days

after the filing of the petition, or in accordance with the schedule set by the special master after petitioner has satisfied all required documentary submissions, respondent shall file a report that shall set forth a full and complete statement of respondent's position as to why an award should or should not be granted. The report shall contain respondent's medical analysis of petitioner's claims. It shall also 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 August 2, 2005. See Rules Committee Notes, infra.)

#### **Rule 5. Informal Review and Tentative Findings and Conclusions**

The special master shall schedule a conference to be held within 30 days after the filing of respondent's report pursuant to Vaccine Rule 4(c). At this conference, after affording the parties an opportunity to address each other's positions, the special master will review the materials submitted, evaluate the respective positions, and orally present tentative findings and conclusions. At the conclusion of this conference, the special master may issue a scheduling order outlining the necessary proceedings for resolving the issues presented in the case.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

#### **Rule 6. Status Conferences**

The special master shall conduct periodic conferences in order to expedite the processing of the case. The conferences will be informal in nature and ordinarily will be conducted by telephone conference call. Either party may request a status conference at any time. At such conferences, counsel for both parties will have the opportunity to propose procedures by which to process the case in the least adversarial and most efficient way possible.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

#### **Rule 7. Discovery**

There shall be no discovery as a matter of right.

**(a) Informal Discovery Preferred.** The informal and cooperative exchange of information is the ordinary and preferred practice.

**(b) Formal Discovery.** If a party considers that informal discovery is not sufficient, that party may seek to utilize the discovery procedures provided by RCFC 26–37 by filing a motion indicating the discovery sought and stating with particularity the reasons therefor, including an explanation as to why informal techniques have not been sufficient. Such a motion may also be made orally at a status conference.

**(c) Subpoena.** When necessary, the special master, upon request of a party, may approve the issuance of a subpoena. In so doing, the procedures of RCFC 45 shall apply. See RCFC Appendix of Forms, Form 7A.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

#### **Rule 8. Taking of Evidence and Argument; Decision**

**(a) General.** The special master, based on the specific circumstances of each case, shall determine the format for taking evidence and hearing argument. The particular format for each case will be ordered after consultation with the parties.

**(b) Hearing.** When necessary, the special master may conduct an evidentiary hearing. The special master will determine the format for such a hearing. The special master may permit direct examination of a witness or may permit or require that the direct testimony be submitted in written form. The special master may question a witness and, on request, permit questioning by opposing counsel. Upon order by the special master, the clerk or counsel may issue a subpoena requiring the attendance of a witness at such hearing. A transcript of the hearing shall be prepared in conformity with RCFC 80.1 and RCFC Appendix of Forms (Forms 3A and 3B).

**(c) Evidence.** In receiving evidence, the special master will not be bound by common law

or statutory rules of evidence. The special master will consider all relevant and reliable evidence, governed by principles of fundamental fairness to both parties. Evidence may be taken in the form of documents, affidavits, or oral testimony which may be given in person or via telephone, videoconference, or videotape. Sworn written testimony may be submitted in lieu of oral testimony.

**(d) Decision Without Evidentiary Hearing.**

The special master may decide a case on the basis of written filings without an evidentiary hearing. In addition, the special master may decide a case on summary judgment, adopting procedures set forth in RCFC 56 modified to the needs of the case.

**(e) Argument.** Argument may be received by telephone conference call, at a hearing, or in written submissions. The special master may establish requirements for such filings, e.g., contents or page limitations, as appropriate.

**(f) Waiver of Argument.** Any fact or argument not raised specifically in the record before the special master shall be considered waived and cannot be raised by either party in proceedings on review of a special master's decision. This rule shall 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. See Rules Committee Notes, *infra*.)

### **Rule 9. Suspension of Proceedings**

**(a) General.** On the motion of a party and for good cause shown, the special master may suspend proceedings on the petition. The special master shall grant one such suspension for 30 days on the motion of either party. Further motions by either party for suspension may be granted, totaling not more than 150 additional days, in the special master's discretion.

**(b) Effect.** Such periods of suspension shall be excluded for purposes of the time limitations of 42 U.S.C. § 300aa-12(d)(3) and Vaccine Rules 4(c) and 10.

(As revised and reissued May 1, 2002; as amended June 20, 2006. See Rules Committee Notes, *infra*.)

### **Rule 10. Special Master's Decision**

**(a) General.** A special master's decision pursuant to 42 U.S.C. § 300aa-12(d)(3)(A) determines whether or not an award of compensation is made and, if so, the amount thereof. A special master's decision shall conclude the proceedings on a petition, except for any ancillary proceedings pursuant to Vaccine Rules 12(b) or 13. A special master's decision shall be filed within 240 days after the date the petition was filed, exclusive of periods of suspension pursuant to Vaccine Rule 9 and any remand periods. If a special master's decision is not filed within such time, the special master shall file the notice required by 42 U.S.C. § 300aa-12(g)(1). Within 30 days after the date of filing of the special master's notice, the petitioner may file the notice specified in 42 U.S.C. § 300aa-21(b) to continue or withdraw the petition. If the petitioner elects to withdraw the petition, the special master shall, for the court's administrative purposes, issue an order concluding the proceedings, which order, upon entry, shall be deemed a judgment for purposes of 42 U.S.C. § 300aa-15(e)(1).

**(b) Certain Retrospective Cases.**  
[Abrogated, effective August 2, 2005.]

**(c) Reconsideration.** Within 21 days after the issuance of the special master's decision, if neither a judgment nor a motion for review of the special master's decision has yet been filed, either party may file a motion for reconsideration of the special master's decision. The special master may seek the non-moving party's response to such a motion, determining the method of and time schedule for any such response. The special master shall have discretion to grant or deny such motion, in the interest of justice.

**(1) If Granted.** If the special master elects to grant the motion for reconsideration, the special master shall do so by filing an order withdrawing the decision in question. The withdrawn decision then becomes void for all purposes, and the special master must subsequently enter a superseding decision. An order withdrawing the decision may be filed only if neither a judgment nor a motion for review has been filed. The special master shall not file a superseding decision reaching a result different from the original decision

without affording the non-moving party an opportunity to respond to the moving party's arguments.

**(2) If Not Granted.** The filing of a motion for reconsideration will not toll the running of the 30-day period for filing a motion for review of the special master's decision. If the special master denies a motion for reconsideration, or during any period in which the special master has not yet acted upon such a motion, the 30-day period for the filing of a motion for review of the special master's decision shall continue to run and either party may file a motion for review.

(As revised and reissued May 1, 2002; as amended August 2, 2005. See Rules Committee Notes, infra.)

### III. JUDGMENT AND FURTHER PROCEEDINGS

#### Rule 11. Judgment

**(a) In the Absence of a Motion for Review.**

In the absence of the filing of a motion for review pursuant to Vaccine Rule 23 within 30 days after the filing of the special master's decision pursuant to Vaccine Rule 10 or order of dismissal pursuant to Vaccine Rule 21(b), or if prior to the expiration of such period each party files a notice stating that it will not seek such review, the clerk shall forthwith enter judgment in accordance with the special master's decision or order.

**(b) Stipulation for Judgment.** Any stipulation for a money judgment shall 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. See Rules Committee Notes, infra.)

#### Rule 12. Election

**(a) General.** When no motion for review of a decision pursuant to Vaccine Rule 10 or order of dismissal pursuant to Vaccine Rule 21(b) is filed by either party pursuant to Vaccine Rule 23, petitioner shall, within 90 days after the entry of judgment, file with the clerk an election in writing

either (1) to accept the judgment or (2) to file a civil action for damages for the alleged injury or death. Upon failure to file an election within the time prescribed, petitioner shall be deemed to have filed an election to accept the judgment.

**(b) Declining Award.** An election to decline an award of compensation may be accompanied by a motion for the limited compensation provided by 42 U.S.C. § 300aa-15(f)(2). Such motion shall be forwarded to the special master for a decision thereon. The decision of the special master on the motion shall be considered a separate "decision" for purposes of Vaccine Rules 11, 18, and 23. If such a motion has not been filed by the time the election is filed, petitioner will be deemed to have waived that limited compensation.

(As revised and reissued May 1, 2002; as amended June 20, 2006. See Rules Committee Notes, infra.)

#### Rule 13. Attorneys' Fees and Costs

Any request for attorneys' fees and costs pursuant to 42 U.S.C. § 300aa-15(e) shall be filed no later than 180 days after the entry of judgment or the filing of an order concluding proceedings under Vaccine Rule 10(a) or 29. The clerk shall forward the fee request to the special master to whom the case was assigned for consideration and decision. The decision of the special master on the fee request shall be considered a separate decision for purposes of Vaccine Rules 11, 18, and 23.

(As revised and reissued May 1, 2002; as amended August 2, 2005. See Rules Committee Notes, infra.)

### IV. GENERAL PROVISIONS

#### Rule 14. Attorneys

**(a) Attorneys Eligible to Practice.** Only attorneys who are members of the bar of the United States Court of Federal Claims and who comply with the Vaccine Rules may enter an appearance, file pleadings, and practice before the Office of Special Masters and the court. The clerk's office will not accept for filing any pleading, motion, or other paper that is not signed by the attorney of record in the case or by a member of this bar authorized to sign the attorney of record's name on

the attorney of record's behalf. For admission to the bar of the court, RCFC 83.1(b) shall apply.

**(b) Attorneys of Record.** There shall be only one attorney of record for a party in any case at any one time, and such attorney of record shall be an individual, not a firm, who has been admitted to practice before the Court of Federal Claims. Any other attorneys assisting the attorney of record shall be designated as of counsel. The attorney of record shall include on all filings the attorney's name, address, and telephone number. The attorney of record shall promptly file with the clerk a notice of any change in address.

**(c) Change of Attorneys.** RCFC 83.1(c) shall apply.

**(d) Unrepresented Party.** An individual may represent himself or herself or a member of the individual's immediate family as a party. Any other party, however, must be represented by an attorney who is admitted to practice before the Court of Federal Claims. The term "counsel" or "attorney" in the Vaccine Rules shall include unrepresented parties.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

### **Rule 15. Third Parties**

No person may intervene in a vaccine injury compensation proceeding. However, the special master shall afford all interested persons an opportunity to submit relevant written information. Such information may be submitted 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. See Rules Committee Notes, infra.)

### **Rule 16. Caption of All Filings**

The petition and all other filings shall be captioned with the appropriate title (the petition should leave blank the spaces for the special master's name and the case number; all filings thereafter must include the case number and the name of the assigned special master). See Appendix of Forms, Form 7.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

### **Rule 17. Filing and Service of Papers After the Petition**

**(a) Filing With the Clerk Defined.** All pleadings and other papers required to be filed with the clerk by the Vaccine Rules or by order of the special master or the court shall be forwarded to the clerk of the court at the address noted in Vaccine Rule 2. A document is filed when actually received and marked filed by the clerk, not when mailed. All matters shall be brought to the attention of the special master or the court through formal filings with the clerk rather than by correspondence.

**(b) Service.** A copy of every document filed with the clerk shall be served on opposing counsel, or the opposing unrepresented party if no appearance of attorney has been entered. A certificate of service showing the date of service shall be appended to the original and copies thereof. See RCFC 5.

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

**(d) Number of Copies.** The parties shall file an original and two copies of each paper to be filed with the clerk, except that for filings of 50 pages or more, an original and one copy will suffice.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

### **Rule 18. Availability of Filings**

**(a) General.** All filings with the clerk pursuant to the Vaccine Rules are to be made available only to the special master, judge, and 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(b) shall be considered a filing for purposes of this rule.

**(b) Decisions of Special Masters and Judges.** When a decision of a special master or of the court is filed with the clerk, each party will be afforded 14 days in which to object to the public disclosure of any information furnished by that party



(1) that is 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.

If the party furnishing information objects to disclosure, that information shall be redacted prior to public disclosure of the decision. In the absence of an objection, the entire decision will be made public.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

#### **Rule 19. Time**

(a) **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the clerk's office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. For legal holidays, see RCFC 6(a).

(b) **Enlargement.** Motions for enlargement of time may be granted for good cause shown. A motion shall set forth the reason or reasons upon which the motion is based. Such motion must contain a representation that the moving party has discussed the motion with opposing counsel and a statement whether an opposition will be filed or, if opposing counsel cannot be consulted, an explanation of the efforts made to do so.

(c) **Additional Time After Service By Mail.** Whenever a party has the right or is required to do some act within a prescribed period after the service of a paper, and the service is made by mail, 3 calendar days shall be added to the prescribed period, unless the special master or the court orders otherwise.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

#### **Rule 20. Motions**

(a) **Motions.** A motion, unless made orally, shall be made in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be filed with the clerk. Any motion, objection, or response may be accompanied by a memorandum, and, if necessary, by supporting affidavits. Any motion may be accompanied by a proposed order.

(b) **Responses and Replies.** Unless otherwise provided by the special master or the court, any response or objection to a written motion shall be filed within 14 days after service of the motion, and any reply shall be filed within 7 days after service of the response or objection.

(c) **Oral Argument.** Oral argument on a motion may be scheduled. A party desiring oral argument on a motion shall so request in the motion or response.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

#### **Rule 21. Dismissal of Petitions**

(a) **Voluntary Dismissal; Effect Thereof.** A petition may be dismissed without order of the special master or the court (1) by petitioner's filing of a notice of dismissal at any time before service of respondent's report, or (2) by the filing of a stipulation of dismissal signed by all parties who have appeared in the proceeding. Unless otherwise stated in the notice of dismissal or stipulation, 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 upon the merits when filed by a petitioner who has previously dismissed the same claim. A petition dismissed under this subsection 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; Effect Thereof.** For failure of the petitioner to prosecute or comply with the Vaccine Rules or any order, the special

master or the court may dismiss a petition or any claim therein. A petition dismissed under this subsection 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 August 2, 2005, June 20, 2006. See Rules Committee Notes, infra.)

## **V. REVIEW OF DECISIONS OF SPECIAL MASTERS**

**Rule 22. General** [Abrogated, effective January 2, 2001; abrogation published as part of revisions dated May 1, 2002.]

### **Rule 23. Motion for Review and Objections**

To obtain review of a special master's decision, within 30 days after the date on which the decision is filed, a party must file with the clerk a motion for review of the decision. No extensions of time under this rule will be permitted, and the failure of a party to timely file such a motion shall constitute a waiver of the right to obtain review.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

### **Rule 24. Memorandum of Objections**

A motion for review must be accompanied by a memorandum of numbered objections to the decision. This memorandum must fully and specifically state and support each objection to the decision. The memorandum shall cite specifically to the record created by the special master, e.g., to specific page numbers of the transcript, exhibits, etc., and shall also fully set forth any legal argument the party desires to present to the reviewing judge. The memorandum shall be limited to 20 pages and must conform to the provisions of RCFC 5.3.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

### **Rule 25. Response**

(a) If a motion for review is filed, the other party may file a response thereto within 30 days

after the filing of the motion. No extensions of time under this rule will be permitted, and the failure of a party to timely file such a response shall constitute a waiver of the right to respond. The response shall be in memorandum form and shall fully respond to each numbered objection. The memorandum shall cite specifically to the record created by the special master, e.g., to specific page numbers of the transcript, exhibits, etc., and shall also fully set forth any legal argument the party desires to present to the reviewing judge. The memorandum shall be limited to 20 pages and must conform to the provisions of RCFC 5.3.

(b) If both parties file motions for review, each party may file a response to the other party's motion.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

### **Rule 26. Assignment**

When a motion for review is filed with the clerk, the case will be assigned to a Court of Federal Claims judge to conduct the review. The assignment shall be made pursuant to RCFC 40.1.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

### **Rule 27. Review**

The assigned judge shall undertake a review of the objections raised and may thereafter

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

(b) set aside any finding of fact or conclusion of law found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and issue the judge's own decision; or

(c) remand the case to the special master for further action in accordance with the judge's direction.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

### **Rule 28. Time for Review**

The assigned judge shall 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. If the judge remands the case to the special master, the total period of any remand shall not exceed 90 days.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

#### **Rule 28A. Remand Procedure**

If the assigned judge remands a case to the special master, the special master, after completing the remand assignment, shall file a Decision on Remand resolving the case, unless the order of remand directs otherwise. The clerk shall promptly notify the judge who remanded the case of the filing of this decision on remand. Unless specified otherwise in the judge's order remanding the case, this decision shall be considered 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 unless a new motion for review is filed pursuant to Vaccine Rule 23. If a party seeks review of such decision, the clerk shall assign the case to the judge who remanded the case.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

#### **Rule 29. Withdrawal of Petition**

If the judge fails to direct entry of judgment within 420 days after the date on which a petition was filed, excluding any periods of remand or suspension pursuant to Vaccine Rule 9, the judge shall file the notice required by 42 U.S.C. § 300aa-12(g)(2). Within 30 days after the date of filing of the judge's notice, the petitioner may file the notice specified in 42 U.S.C. § 300aa-21(b) to continue or withdraw the petition. If the petitioner elects to withdraw the petition, the judge shall, for the court's administrative purposes, issue an order concluding the proceedings, which order, upon entry, shall be deemed a judgment for purposes of 42 U.S.C. § 300aa-15(e)(1).

(As revised and reissued May 1, 2002; as amended August 2, 2005. See Rules Committee Notes,

infra.)

#### **Rule 30. Judgment**

**(a) After Review.** After review and decision by the assigned judge, the clerk shall forthwith enter judgment in accordance with the judge's decision.

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

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

#### **Rule 31. Reconsideration**

If a party files a motion for reconsideration of the assigned judge's decision within 10 days after entry of judgment, RCFC 59 shall apply.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

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

Review of a Court of Federal Claims judgment by the United States Court of Appeals for the Federal Circuit may be obtained by filing with the clerk of the Federal Circuit a notice of appeal (petition for review) within 60 days after the date of the entry of judgment.

(As revised and reissued May 1, 2002. See Rules Committee Notes, infra.)

#### **Rule 33. Election**

Within 90 days after the entry of judgment, the petitioner shall make an election as described in Vaccine Rule 12. However, if an appeal is taken to the United States Court of Appeals for the Federal Circuit pursuant to Vaccine Rule 32, the 90-day period for the election shall not run from the original date of judgment but rather 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. See Rules Committee Notes, infra.)

#### **Rule 34. Attorneys' Fees and Costs**

Any request for attorneys' fees and costs, in a case where judgment followed review by a judge, will be processed pursuant to Vaccine Rule 13.

(As revised and reissued May 1, 2002. See Rules Committee Notes, *infra*.)

**Rule 35. Availability of Filings** [Abrogated, effective January 2, 2001; abrogation published as part of revisions dated May 1, 2002.]

### **VI. RELIEF FROM JUDGMENT**

#### **Rule 36. Relief from Judgment**

**(a) General.** Following the entry of judgment by the Court of Federal Claims, if a party files a motion pursuant to RCFC 59 or 60, the clerk of the court shall refer such motion as follows: If the petition has previously been before a judge of the court upon review pursuant to Vaccine Rule 23, then the motion shall be referred to that judge. If the petition has not previously been before a judge of the court upon review pursuant to Vaccine Rule 23, then the motion shall be referred to the Office of Special Masters.

**(b) Review of a Special Master's Ruling.** When a motion pursuant to RCFC 59 or 60 is referred to a special master pursuant to subdivision (a) of this rule, the special master shall file a written ruling upon such motion. That ruling shall become the final ruling of the court on the motion, unless a party files a motion for review of that ruling, accompanied by a memorandum of objections to the ruling, within 30 days after the date of the ruling. If such a review motion is filed, the case will be submitted to a judge of the court who will review the special master's ruling and set aside such ruling only if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. The non-moving party may file a memorandum response within 30 days after the filing of the review motion. The motion and response of each party shall be limited to 20 pages and must conform to the provisions of RCFC 5.3.

**(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 shall be calculated based upon the date of the original judgment, unless the ruling of the special master or court directs otherwise.

(As revised and reissued May 1, 2002. See Rules Committee Notes, *infra*.)

### **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 Amendments**

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 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).