

# 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 30, 40.2, and 77; (ii) Vaccine Rules 2, 7, and 28; (iii) Appendix C (“Procedure in Procurement Protest Cases”); and (iv) Appendix F (“Procedure in Tax Partnership Cases”). All proposed changes are shown by strikethrough and either red text or yellow highlighting and are explained in the accompanying Rules Committee notes.

Comments must be received by June 24, 2021, 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 August 2, 2021.

  
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Lisa L. Reyes  
Clerk of Court

Issued: May 10, 2021

**TABLE OF CONTENTS**

RCFC 30 (addressing FRCP change that became effective December 1, 2020)..... 1

RCFC 40.2 (Related Cases) ..... 2

RCFC 77 (Clerk’s Authority) ..... 4

Vaccine Rule 2 (Commencing an Action)..... 5

Vaccine Rule 7 (Discovery)..... 6

Vaccine Rule 28 (Time for Review)..... 6

Appendix C (Procedure in Procurement Protest Cases) ..... 8

Appendix F (Procedure in Tax Partnership Cases)..... 9

# Proposed Amendment to Rule 30

## Rule 30. Depositions by Oral Examination

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

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

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(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Aug. 1, 2016, July 1, 2021.)

### Rules Committee Notes

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#### 2021 Amendment

RCFC 30(b)(6) has been amended in accordance with the corresponding changes to FRCP 30(b)(6) that became effective December 1, 2020.

## Proposed Amendments to Rule 40.2

### Rule 40.2. Related Cases

#### (a) Directly Related Cases.

(1) **In General.** If a party is aware of the existence of any directly related case(s), the party must file a Notice of Directly Related Case(s).

(2) **Definition.** For the purpose of this rule, cases are directly related when:

(A) they involve the same parties and are based on the same or similar claims; or

(B) they involve the same contract, property, or patent.

(3) **Notice.**

(A) **Contents.** The Notice of Directly Related Case(s):

(i) must identify the title and docket number of all directly related cases;

(ii) must explain why the cases qualify for treatment as directly related cases under RCFC 40.2(a)(2);

(iii) must state whether assigning the cases to a single judge can be expected to conserve judicial resources and promote the efficient administration of justice; and

(iv) if filed after the case has been assigned, may be accompanied by a motion to transfer pursuant to RCFC 40.1 or for consolidation pursuant to RCFC 42.1.

(B) **Filing.** A party must file the Notice of Directly Related Case(s):

(i) along with the complaint in a newly filed case; or

(ii) in the earliest-filed related case if the existence of directly related cases becomes apparent only after initial assignment. Counsel must also file copies of the notice in all of the directly related cases and may appear in those the earliest-filed cases solely for purposes of filing the notice.

TheIf a paper filing, the clerk must file copies of the notice in all of the directly related cases.

(C) **Service.** A party must serve the Notice of Directly Related Case(s) on all parties in the related cases.

(4) **Treatment of Directly Related Cases.**

(A) When a Notice of Directly Related Case(s) is filed with a complaint, the clerk will assign the case to the judge to whom the earliest-filed case is assigned. If the judge determines that the case is not in fact directly related to the earliest-filed case, the judge will return the case to the clerk for random reassignment.

(B) When a Notice of Directly Related Case(s) is filed after a case has been assigned and is accompanied by a motion to transfer or for consolidation, the judge in the earliest-filed case, after consultation with the judge(s) in the later-filed case(s), will grant or deny the motion to transfer or for consolidation.

(b) **Indirectly Related Cases.**

(1) **In General.** If a party is aware of the existence of any indirectly related case(s), the party may file a Notice of Indirectly Related Case(s).

(2) **Definition.** For the purpose of this rule, cases are indirectly related when:

(A) they present common issues of fact; and

(B) their consolidation for purposes of coordinated discovery can be expected significantly to promote the efficient administration of justice.

(3) **Notice.**

(A) **Contents.** The Notice of Indirectly Related Case(s):

(i) must identify the title and docket number of all indirectly related cases; and

(ii) must explain why the cases qualify for treatment as indirectly related cases under RCFC 40.2(b)(2).

**(B) Filing.** A party must file the Notice of Indirectly Related Case(s) in the earliest-filed related case. Counsel must also file copies of the notice in all of the indirectly related cases and may appear in the earliest-filed those cases solely for purposes of filing the notice or responding to the notice under RCFC 40.2(b)(3)(C). ~~If a paper filing, the clerk must file copies of the notice in all of the indirectly related cases and must provide a courtesy copy of the notice to the chief judge.~~

**(C) Service.** A party must serve the Notice of Indirectly Related Case(s) on all parties in the related cases.

**(D) Responding.** Any response to the notice must be filed in the earliest-filed case within 21 days after service of the notice and must be served on all parties in the related cases. Counsel must also file copies of the response in all of the related cases. ~~If a paper filing, the clerk must file copies of the response in all of the related cases and must provide a courtesy copy of the response to the chief judge.~~

**(4) Treatment of Indirectly Related Cases.** When a Notice of Indirectly Related Case(s) is filed, the judge in the earliest-filed case will call a meeting of all of the assigned judges to determine what action, if any, is appropriate. All parties in the related cases will be notified of the determination reached.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, July 1, 2021.)

#### Rules Committee Notes

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#### 2021 Amendment

RCFC 40.2(a)(3)(B), (b)(3)(B), and (b)(3)(D) have been amended to require counsel to file copies of the notice and any response to the notice in all of the related cases, and for paper filings, to require the clerk to file copies in all of the related cases.

## Proposed Amendment to Rule 77

### **Rule 77. Conducting Business; Clerk's Authority; Notice of an Order or Judgment**

- (a) **When Court Is Open.** The court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.
- (b) **Place for Trial and Other Proceedings.**
- (1) ***In General.*** Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom. Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, or at any other place designated by order.
- (2) ***A Trial or Hearing in a Foreign Country.*** On motion or on the judge's own initiative, and upon a determination by the judge to whom the case is assigned that the interests of economy, efficiency, and justice will be served, the chief judge may issue an order authorizing the judge to conduct proceedings, including evidentiary hearings and trials, in a foreign country whose laws do not prohibit such proceedings.
- (c) **Clerk's Office Hours; Clerk's Orders.**
- (1) ***Hours.*** The clerk's office—with a clerk or deputy on duty—must be open during business hours every day except Saturdays, Sundays, and legal holidays. But the court may by order require that the office be open for specified hours on Saturday or a particular legal holiday other than one listed in RCFC 6(a)(6).
- (2) ***Orders.*** Subject to the court's power to suspend, alter, or rescind the clerk's action for good cause, the clerk may:
- (A) issue process;
- (B) enter a default;
- (C) ~~enter a default judgment under RCFC 55(b)(1)[not used]~~; and
- (D) act on any other matter that does not require the court's action.
- (d) **Serving Notice of an Order or Judgment.**
- (1) ***Service.*** Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in RCFC

5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in RCFC 5(b).

- (2) ***Time to Appeal Not Affected by Lack of Notice.*** Lack of notice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by Federal Rule of Appellate Procedure 4(a).

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Aug. 3, 2015, July 1, 2021.)

### **Rules Committee Notes**

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#### **2021 Amendment**

RCFC 77(c)(2)(C), providing that the clerk may enter a default judgment under RCFC 55(b)(1), has been amended to reflect "not used," consistent with RCFC 55(b)(1), which provides that the parallel provision of the FRCP is not used.

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

**TITLE I. SCOPE OF RULES;  
COMMENCING AN ACTION**

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**Rule 2. Commencing an Action**

**(a) In General.** A proceeding for compensation under the Vaccine Act is commenced by filing a petition with the United States Court of Federal Claims. Only one petition may be filed with respect to each administration of a vaccine.

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

**(1) Paper Form.** Petitioner must forward an original and 2 copies of the petition, 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.

**(2) Electronic Form.** If petitioner is not appearing pro se pursuant to Vaccine Rule 14, petitioner may file the petition electronically in compliance with the Supplement to the Vaccine Rules.

**(c) Contents of a Petition.**

**(1) The Petition.** The petition must set forth:

**(A)** a short and plain statement of the grounds for an award of compensation, including:

- (i)** the name of the individual to whom the vaccine was administered;
- (ii)** the date and place of the vaccination;
- (iii)** a specific description of the injury alleged; and

**(iv)** whether the injury claimed is contained within the Vaccine Injury Table (*see* "Guidelines for Practice Under the National Vaccine Injury Compensation Program," Attachment 8, posted on the court's website at [www.uscfc.uscourts.gov](http://www.uscfc.uscourts.gov)); and

**(B)** a specific demand for relief to which the petitioner asserts entitlement or a statement that such demand will be deferred pursuant to 42 U.S.C. § 300aa-11(e).

**(2) Required Attachments.** As required by 42 U.S.C. § 300aa-11(c), the petition must be accompanied by the following documents:

**(A) Medical Records.** ~~The~~ Petitioner must include a certified copy of all available medical records supporting the allegations in the petition, including physician and hospital records relating to:

- (i)** the vaccination itself;
- (ii)** the injury or death, including, if applicable, any autopsy reports or death certificate;
- (iii)** any post-vaccination treatment of the injured person, including all in-patient and out-patient records, provider notes, test results, and medication records; and

**(iv)** if the injured person was younger than five years when vaccinated, the mother's pregnancy and delivery records and the infant's lifetime records, including physicians' and nurses' notes, test results, and well-baby visit records, as well as growth charts, until the date of vaccination.

**(B) Affidavits.**

**(i)** If the required medical records are not submitted, the petitioner must include an affidavit

detailing the efforts made to obtain such records and the reasons for their unavailability.

- (ii) If petitioner’s claim does not rely on medical records alone but is also based in any part on the observations or testimony of any person, the petitioner should include the substance of each person’s proposed testimony in a detailed affidavit(s) supporting all elements of the allegations made in the petition.

(C) **Proof of Authority to File in a Representative Capacity.** If the petition is filed on behalf of a deceased person or is filed by an individual other than the injured person or the parent of an injured minor, the petition must also be accompanied by documents establishing the authority to file the petition in a representative capacity or a statement explaining when such documentation will be available.

(d) **Format.** All documents accompanying a petition filed in paper form must comply with RCFC 5.5(c) and be assembled into one or more bound volume(s) or three-ring notebook(s). Each bound volume or notebook must contain the caption of the case and a table of contents, and all pages of each bound volume or notebook must be numbered consecutively.

(e) **Service.**

- (1) The petition must include a certificate of service in accordance with RCFC 5.3 stating that one copy of the petition and accompanying documents has been served on the Secretary of Health and Human Services, by first class or certified mail, to:

Secretary, Health and Human Services  
Director, Division of Injury Compensation Programs  
Health Resources and Services Administration  
National Vaccine Injury Compensation Program (VICP)  
5600 Fishers Lane, 08N146B

Rockville, MD 20857.

- (2) The clerk must serve one copy of the petition and accompanying documents on the Attorney General.

**(f) Statement of Completion.**

- (1) Petitioner should file a “Statement of Completion,” indicating that a certified copy of all medical and other records relevant to the petition has been filed, as soon as possible after the petition is filed.
- (2) If additional medical records or other documents are necessary to complete the record, petitioner should delay filing the Statement of Completion until all necessary and relevant records have been filed.
- (3) The record certification requirement may be waived by order of the special master or the court.

(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, July 1, 2021.)

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**Rule 7. Discovery**

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(c) **Subpoena.** ~~On the request of a party, the special master may approve the issuance of a subpoena pursuant to~~ The special master’s approval is required before the clerk or counsel may issue a subpoena that is otherwise in compliance with RCFC 45. See RCFC Appendix of Forms, Form 7A.

(As revised and reissued May 1, 2002; as amended July 13, 2009, July 1, 2021.)

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**Rule 28. Time for Review**

(a) **In General.** The assigned judge must complete the review within 120 days after ~~the last date for~~ the filing of a response under Vaccine Rule 25, excluding any days the case is before a special master on remand. If no response is filed, the review must be completed within 120 days after the last date the response could have been filed.



**(b) Period of Remand.** If the judge remands the case to the special master, the total period of remand must not exceed 90 days.

(As revised and reissued May 1, 2002; as amended July 13, 2009, July 1, 2021.)

#### **Rules Committee Notes**

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#### **2021 Amendment**

**Rule 2.** Subparagraph (c)(2)(A) has been amended to require petitioner to certify all medical records.

In addition, new subdivision (f) has been added to direct petitioner to file a Statement of Completion as soon as possible after the petition is filed.

**Rule 7.** Subdivision (c) has been amended to clarify that the special master's approval is required before the clerk or counsel may issue a subpoena that is otherwise in compliance with RCFC 45.

**Rule 28.** Subdivision (a) has been amended to more closely conform to the wording of 42 U.S.C. § 300aa-12(c)(2).

**PROPOSED AMENDMENTS TO APPENDIX C  
PROCEDURE IN PROCUREMENT PROTEST CASES**

**I. INTRODUCTION**

1. This Appendix describes standard practices in protest cases filed pursuant to 28 U.S.C. § 1491(b) and supplements the Rules of the United States Court of Federal Claims, which are otherwise fully applicable to these cases.

**II. REQUIREMENT FOR  
PRE-FILING NOTIFICATION**

2. ~~In order to~~To expedite proceedings, plaintiff's counsel must (except in exceptional circumstances to be described in moving papers) provide ~~at least 24 hour~~ advance notice of filing a protest case to:

- (a) the Department of Justice, Commercial Litigation Branch, Civil Division;
- (b) the clerk, United States Court of Federal Claims;
- (c) the procuring agency's contracting officer; and
- (d) the apparently successful bidder/offeror (in cases where there has been an award and plaintiff has received notice of the identity of the awardee).

Such notice must be provided during clerk's office business hours as defined in RCFC 77.1 and at least 24 business hours—but no earlier than 7 business days—in advance of filing a protest case. (The contacts for the clerk and the Department of Justice are posted on the court's website—[www.uscfc.uscourts.gov](http://www.uscfc.uscourts.gov).) The pre-filing notice is intended to permit the Department of Justice to assign an attorney to the case who can address relevant issues on a timely basis and to permit the court to ensure the availability of appropriate court resources. Failure to provide pre-filing notification will delay 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 ~~apprise the~~ above entities ~~of highlighting~~ any material change in respect to the timing of or the intent to file a protest. ~~Plaintiff is encouraged to provide earlier notice if possible as a courtesy to~~

~~the court and to government counsel.~~ 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.

**Rules Committee Notes**

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**2021 Amendment**

Paragraph 2 has been amended to clarify that the pre-filing notice must be provided at least 24 business hours, but no earlier than 7 business 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.

**PROPOSED AMENDMENTS TO APPENDIX F  
PROCEDURE IN TAX PARTNERSHIP CASES**

**TITLE I. TEFRA PARTNERSHIP CASES**

*All tax code references cited in Title I of this Appendix are to the tax partnership provisions in effect prior to the amendments enacted by the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584. See Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 648.*

**Rule 1. General**

**(a) Applicability.** ~~This Title I of this~~ Appendix sets forth the special provisions that apply to actions for readjustment of partnership items under Section 6226 of the Internal Revenue Code (Code) and actions for adjustment of partnership items under Code Section 6228. Except as otherwise provided in Title I of this Appendix, the RCFC, to the extent pertinent, are applicable to such partnership actions.

**(b) Definitions.** As used in Title I of this Appendix,

(1) the term “partnership” means a partnership as defined in Code Section 6231(a)(1);

(2) a “partnership action” is either an “action for readjustment of partnership items” under Code Section 6226 or an action for “adjustment with respect to partnership items” under Code Section 6228;

(3) the term “partnership item” means any item described in Code Section 6231(a)(3);

(4) the term “tax matters partner” means the person who is the tax matters partner under Code Section 6231(a)(7) or appointed tax matters partner by the court under Rule 9 of Title I of this Appendix, and who under under Title I of this Appendix is responsible for keeping each partner fully informed of the partnership action (see Code Sections 6223(g) and 6230(f));

(5) a “notice of final partnership administrative adjustment” is the notice described in Code Section 6223(a)(2);

(6) the term “administrative adjustment request” means a request for an administrative adjustment of partnership items filed by the tax matters partner on behalf of the partnership under Code Section 6227(c);

(7) the term “partner” means a person who was a partner as defined in Code Section 6231(a)(2) at any time during any partnership taxable year at issue in a partnership action;

(8) the term “notice partner” means a person who is a notice partner under Code Section 6231(a)(8);

(9) the term “5-percent group” means a 5-percent group as defined in Code Section 6231(a)(11);

(10) the term “deposit” means the deposit required by Code Section 6226(e)(1); and

(11) the term “Notice of Assignment” means the notice mailed to the parties by the clerk after the filing of a complaint that advises the parties of the name of the judge to whom the proceeding is assigned.

**(c) Jurisdictional Requirements.** The court does not have jurisdiction over a partnership action under Title I of this Appendix unless the following conditions are satisfied:

**(1) Actions for Readjustment of Partnership Items.**

**(A)** The Commissioner of Internal Revenue (Commissioner) has issued a notice of final partnership administrative adjustment (see Code Sections 6226(a), (b)).

**(B)** A complaint for readjustment of partnership items is filed with the court by the tax matters partner within the period specified in Code Section 6226(a), or by a notice partner (or 5 percent group) subject to the conditions and within the period specified in Code Section 6226(b).

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(C) The partner or partners filing the complaint make a deposit as required by Code Section 6226(e).

**(2) Actions for Adjustment of Partnership Items.**

(A) The Commissioner has not allowed all or some of the adjustments requested in an administrative adjustment request (see Code Section 6228(a)).

(B) A complaint for adjustment of partnership items is filed with the court by the tax matters partner subject to the conditions and within the period specified in Code Sections 6228(a)(2) and (3).

**(d) Form and Style of Papers.** All papers filed in a partnership action ~~shall~~must be prepared in the form and style set forth in RCFC 5.5 and 10, except that the caption ~~shall~~must state the name of the partnership and the full name and surname of any partner filing the complaint and ~~shall~~must indicate whether such partner is the tax matters partner, as for example, “ABC Partnership, Mary Doe, Tax Matters Partner, Complainant” or “ABC Partnership, Richard Roe, A Partner Other Than the Tax Matters Partner, Complainant.”

**Rule 2. Commencement of Partnership Action**

**(a) Commencement of Action.** A partnership action ~~shall be~~is commenced by filing a complaint with the court. See RCFC 3, relating to commencement of case; and RCFC 5.5 and 10, relating to form of pleadings; ~~and RCFC 5.5(d)(1), relating to number of copies to be filed.~~

**(b) Contents of Complaint.** Each complaint ~~shall~~must be titled either “Complaint for Readjustment of Partnership Items under Code Section 6226” or “Complaint for Adjustment of Partnership Items under Code Section 6228.” Each such complaint ~~shall~~must contain the information described in subdivision (c) below and the allegations described in subdivision (d) or (e) below.

**(c) All Complaints.** All complaints in partnership actions ~~shall~~must contain:

(1) the name and address of the complainant;

(2) the name, employer identification number, and principal place of business of

the partnership and of each partner filing the complaint at the time the complaint is filed; and

(3) the city and state of the office of the Internal Revenue Service with which the partnership’s return for the period in controversy was filed.

A claim for reasonable litigation costs ~~shall~~must not be included in the complaint in a partnership action under Title I of this Appendix. For the requirements as to claims for reasonable litigation costs, see RCFC 54(d)(1).

**(d) Complaint for Readjustment of Partnership Items.** In addition to including the information specified in subdivision (c), ~~above~~, a complaint for readjustment of partnership items ~~shall~~must also contain the following:

**(1) All Complaints.** All complaints for readjustment of partnership items ~~shall~~must contain:

(A) the date of the notice of final partnership administrative adjustment and the city and state of the office of the Internal Revenue Service that issued the notice;

(B) the year or years or other periods for which the notice of final partnership administrative adjustment was issued;

(C) clear and concise statements of each and every error that the complainant alleges to have been committed by the Commissioner in the notice of final partnership administrative adjustment. The assignments of error ~~shall~~must include issues, if any, in respect to which the burden of proof is on the United States. Any issues not raised in the assignments of error, or in the assignments of error in any amendment to the complaint, ~~shall~~must be deemed to be conceded. Each assignment of error ~~shall~~must be set forth in a separately lettered subdivision;

(D) clear and concise lettered statements of the facts on which the complainant bases the assignments of error, except with respect to those assignments of error, if any, as to which the burden of proof is on the United States;

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Appendix F

(E) the amount of the deposit made by each partner filing the complaint;

(F) the date and place of the making of each deposit;

(G) a prayer setting forth relief sought by the complainant;

(H) the signature, mailing address, and telephone number of each complainant or of each complainant's counsel (*see* RCFC 83.1 regarding attorneys of record); and

(I) a copy of the notice of final partnership administrative adjustment, which ~~shall~~must be appended to the complaint and with which there ~~shall~~must be included so much of any statement accompanying the notice as is material to the issues raised by the assignments of error. If the notice of final partnership administrative adjustment or any accompanying statement incorporates by reference any prior notices, or other material furnished by the Internal Revenue Service, such parts thereof as are material to the assignments of error likewise ~~shall~~must be appended to the complaint.

**(2) Complaints by Tax Matters Partner.**

In addition to including the information specified in paragraph (1) of this subdivision, a complaint filed by the tax matters partner during the time period specified in Code Section 6226(b) ~~shall~~must also contain a separate numbered paragraph stating that the complainant is the tax matters partner.

**(3) Complaints by Other Partners.** In addition to including the information specified in paragraph (1) of this subdivision, a complaint filed by a notice partner or by a 5-percent group during the time period specified in Code Section 6226(b) ~~shall~~must also contain:

(A) a separate numbered paragraph stating that the complainant is a notice partner or a representative of a 5-percent group (*see* Code Section 6226(b)(1));

(B) a separate numbered paragraph setting forth facts establishing that the complainant satisfies the requirements of Code Section 6226(d);

(C) a separate numbered paragraph stating the name and current address of the tax matters partner; and

(D) a separate numbered paragraph stating that the tax matters partner has not filed a complaint for readjustment of partnership items within the period specified in Code Section 6226(a).

Under subdivision (d)(1)(H) above, the representative of a 5-percent group may sign a complaint on behalf of all members of the group. In such circumstances, the complaint ~~shall~~must contain a separate numbered paragraph stating that the representative has been duly authorized to sign on behalf of all members of the group.

**(c) Complaint for Adjustment of Partnership Items.** In addition to including the information specified in subdivision (c) above, a complaint for adjustment of partnership items ~~shall~~must also contain:

(1) a statement that the complainant is the tax matters partner;

(2) the date that the administrative adjustment request was filed and any other proper allegations showing jurisdiction in the court in accordance with the requirements of Code Sections 6228(a)(1) and (2);

(3) the year or years or other periods to which the administrative adjustment relates;

(4) the city and state of the office of the Internal Revenue Service with which the administrative adjustment request was filed;

(5) a clear and concise statement describing each partnership item on the partnership return that is sought to be changed, and the basis for each such requested change. Each such statement ~~shall~~must be set forth in a separately lettered paragraph;

(6) clear and concise lettered statements of the facts on which the complainant relies in support of such requested changes in treatment of partnership items;

(7) a prayer setting forth relief sought by the complainant;

(8) the signature, mailing address, and telephone number of the complainant or the complainant's counsel (*see* RCFC 83.1 regarding attorneys of record); and

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Appendix F

(9) a copy of the administrative adjustment request appended to the complaint.

**(f) Notice of Filing.**

**(1) *Complaints by the Tax Matters Partner.*** Within 7 days after receiving the Notice of Assignment from the clerk, the tax matters partner ~~shall~~must serve notice of the filing of the complaint on each partner in the partnership as required by Code Section 6223(g). Said notice ~~shall~~must include the docket number assigned to the case by the court and the date of the Notice of Assignment.

**(2) *Complaints by Other Partners.*** Within 7 days after receiving the Notice of Assignment from the clerk, the complainant ~~shall~~must serve a copy of the complaint on the tax matters partner and at the same time notify the tax matters partner of the docket number assigned to the case by the court and of the date of the Notice of Assignment. Within 7 days after receiving a copy of the complaint and of the aforementioned notification from the complainant, the tax matters partner ~~shall~~must serve notice of the filing of the complaint on each partner in the partnership as required by Code Section 6223(g). Said notice ~~shall~~must include the docket number assigned to the case by the court and the date of the Notice of Assignment.

**(g) A Copy of the Complaint to Be Provided to All Partners.** Upon request by any partner in the partnership as referred to in Code Section 6231(a)(2)(A), the tax matters partner ~~shall~~must, within 14 days after receipt of such request, make available to such partner a copy of any complaint filed by the tax matters partner or by any other partner.

**(h) Joinder of Parties.**

**(1) *Permissive Joinder.*** A separate complaint ~~shall~~must be filed with respect to each notice of final partnership administrative adjustment or each administrative adjustment request issued to separate partnerships. However, a single complaint for readjustment of partnership items or complaint for adjustment of partnership items may be filed seeking

readjustments or adjustments of partnership items with respect to more than one final partnership administrative adjustment or administrative adjustment request if the notices or requests pertain to the same partnership. A complaint may include a request that the proceeding be assigned to the judge to whom one or more pending cases (whether relating to the same partnership or to another partnership) are assigned, if the other case or cases present common or related issues of law or fact. For the procedures to be followed by partners who wish to intervene or participate in a partnership proceeding, see Rule 4 below.

**(2) *Severance or Other Orders.*** With respect to a case based ~~upon~~on multiple notices of final partnership administrative adjustment or administrative adjustment requests, the court may order a severance and a separate case to be maintained with respect to one or more of such notices or requests whenever it appears to the court that proceeding separately is in furtherance of convenience, or will avoid prejudice, or when separate trials will be conducive to expedition or economy.

**Rule 3. Other Pleadings**

**(a) Answer.** The United States ~~shall~~must file an answer or ~~shall~~otherwise move with respect to the complaint within the periods specified in and in accordance with the provisions of RCFC 12.

**(b) Reply.** For provisions relating to the filing of a reply, see RCFC 7(a).

**Rule 4. Intervention and Participation**

**(a) Tax Matters Partner.** The tax matters partner may intervene in an action for readjustment of partnership items brought by another partner or partners by filing a notice of election to intervene with the court. Such notice ~~shall~~must state that the intervenor is the tax matters partner and ~~shall~~must be filed within 45 days after the date of the Notice of Assignment (see Code Section 6226(b)(6) and Rule 2(d)(2) of Title I of this Appendix).

**(b) Other Partners.** Any other partner who satisfies the requirements of Code Section 6226(d) or 6228(a)(4)(B) may participate in the action by filing a notice of election to participate

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Appendix F

with the court. Such notice ~~shall~~must set forth facts establishing that such partner satisfies the requirements of Code Section 6226(d) in the case of an action for readjustment of partnership items, or Code Section 6228(a)(4)(B) in the case of an action for adjustment of partnership items, and ~~shall~~must be filed within 45 days after the date of the Notice of Assignment. A single notice may be filed by two or more partners; however, each such partner must satisfy all requirements of this paragraph ~~in order~~ for the notice to be treated as filed by or for that partner.

**(c) Enlargement of Time.** The court may grant leave to file a notice of election to intervene or a notice of election to participate out of time upon a showing of sufficient cause.

**(d) Pleading.** No assignment of error, allegation of fact, or other statement in the nature of a pleading ~~shall~~may be included in the notice of election to intervene or notice of election to participate.

**(e) Amendments to the Complaint.** A party other than the complainant who is authorized to raise issues not raised in the complaint may do so by filing an amendment to the complaint. Such an amendment may be filed, without leave of court, at any time before service of the response to the complaint by the United States. Otherwise, such an amendment may be filed only by leave of court. *See* RCFC 15(a) for the timing for filing responses to amendments to the complaint.

#### **Rule 5. Service of Papers**

**(a) Complaints.** All complaints ~~shall~~must be served by the clerk on the United States.

**(b) Papers Issued by the Court.** All papers issued by the court ~~shall~~must be served by the clerk on the United States, the tax matters partner (whether or not the tax matters partner is a participating partner), and all other participating partners.

**(c) All Other Papers.** All other papers required to be served (*see* RCFC 5) ~~shall~~must be served by the parties filing such papers. Whenever a paper (other than the complaint) is required to be filed with the court, the original paper ~~shall~~must be filed with the court with certificates by the filing party or the filing party's counsel that service of the paper has been made on each of the parties set forth in subdivision (b) above or on such other parties' counsel.

#### **Rule 6. Parties**

**(a) In General.** For purposes of Title I of this Appendix, the United States, the partner who filed the complaint, the tax matters partner, and each person who satisfies the requirements of Code Sections 6226(c) and (d) or Section 6228(a)(4) ~~shall~~will be treated as parties to the action.

**(b) Participating Partners.** Participating partners include the partner who filed the complaint and such other partners who have filed either a notice of election to intervene or a notice of election to participate in accordance with the provisions of RCFC 4. *See* Code Sections 6226(c), 6228(a)(4)(A). For purposes of the court's procedural rules other than those set forth in Title I of this Appendix, only participating partners, as defined in this subdivision, and the United States ~~shall~~will be considered to be parties.

#### **Rule 7. Settlement Agreements**

**(a) Consent by the Tax Matters Partner to Entry of Decision.** A stipulation consenting to entry of decision executed by the tax matters partner and filed with the court ~~shall~~will bind all parties. The signature of the tax matters partner constitutes a certificate by the tax matters partner that no party objects to entry of the decision. *See* Rule 10 below.

**(b) Settlement Agreements Entered Into by All Participating Partners or No Objection by Participating Partners.**

**(1)** After expiration of the time within which to file a notice of election to intervene or to participate under Rule 4(a) or (b) above, the United States ~~shall~~must move for entry of decision and ~~shall~~ submit a proposed form of decision with such motion, if:

**(A)** all of the participating partners have entered into a settlement agreement with defendant, or all of such partners do not object to the granting of defendant's motion for entry of decision; and

**(B)** the tax matters partner (if a participating partner) agrees to the proposed decision in the case but does not certify that no party objects to the granting of defendant's motion for entry of decision.

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Appendix F

(2) Within 3 days after the date on which the defendant's motion for entry of decision is filed with the court, defendant ~~shall~~must serve on the tax matters partner a certificate showing the date on which the defendant's motion was filed with the court.

(3) Within 3 days after receiving defendant's certificate, the tax matters partner ~~shall~~must serve on all other parties to the action, other than the participating partners, copies of defendant's motion for entry of decision, the proposed decision, and defendant's certificate showing the date on which defendant's motion was filed with the court, as well as a copy of this paragraph of Rule 7.

(4) If any party objects to the granting of ~~the~~ defendant's motion for entry of decision, then that party ~~shall~~must, within 60 days after the date on which defendant's motion was filed with the court, file a motion for leave to file a notice of election to intervene or to participate, accompanied by a separate notice of election to intervene or to participate, as the case may be. If no such motion is filed with the court within such period, or if the court should deny such motion, then the court may enter the proposed decision as its decision in the partnership action. *See* Code Sections 6226(f) and 6228(a)(5).

(c) **Other Settlement Agreements.** If a settlement agreement is not within the scope of subdivision (b) above, then

(1) in the case of a participating partner, defendant ~~shall~~must promptly file with the court a notice of settlement agreement that identifies the participating partner or partners who have entered into the settlement agreement; and

(2) in the case of any partner who enters into a settlement agreement, defendant ~~shall~~must, within 7 days after the settlement agreement is executed by both the partner and defendant, serve on the tax matters partner a statement which sets forth:

(A) the identity of the party or parties to the settlement agreement and the date of the agreement;

(B) the year or years to which the settlement agreement relates; and

(C) the terms of settlement as to each partnership item and the allocation of such items among the partners.

Within 7 days after receiving the statement required by this subdivision, the tax matters partner ~~shall~~must serve a copy of the statement on all parties to the action.

**Rule 8. Action for Adjustment of Partnership Items Treated as Action for Readjustment of Partnership Items**

(a) **Amendment of Complaint.** If, after the filing of a complaint for adjustment of partnership items (*see* Code Section 6228(a) and Rule 2(a) above), but before the hearing of such complaint, the Commissioner mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which the complaint relates, such complaint ~~shall~~will be treated as a complaint in an action for readjustment of the partnership items to which such notice relates. The complainant, within 90 days after the date on which the notice of final partnership administrative adjustment is mailed to the tax matters partner, ~~shall~~must file an amendment to the complaint, setting forth every error the complainant alleges to have been committed by the Commissioner in the notice of final partnership administrative adjustment, and the facts on which the complainant bases the assignments of error. A copy of the notice of final partnership administrative adjustment ~~shall~~must be appended to the amendment to the complaint. On or before the date the amendment to the complaint is delivered to the court, or, if the amendment is mailed to the court, on or before the date of mailing, the tax matters partner ~~shall~~must serve notice of the filing of the amendment to the complaint on each partner in the partnership as required by Code Section 6223(g).

(b) **Participation.** Any partner who has filed a timely notice of election to participate in the action for adjustment of partnership items ~~shall~~will be deemed to have elected to participate in the action for readjustment of partnership items and need not file another notice of election to do so. Any other partner may participate in the action by filing a notice of election to participate within

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Appendix F



45 days after the date of filing of the amendment to complaint. See Rule 4 above.

**Rule 9. Appointment and Removal of Tax Matters Partner**

**(a) Appointment of Tax Matters Partner.**

If, at the time of commencement of a partnership action by a partner other than the tax matters partner, the tax matters partner is not identified in the complaint, the court will take such action as may be necessary to establish the identity of the tax matters partner or to effect the appointment of a tax matters partner.

**(b) Removal of Tax Matters Partner.**

After notice and opportunity to be heard, the court may for cause remove a partner as the tax matters partner. If the tax matters partner is removed by the court, or if a partner's status as tax matters partner is terminated for reason other than removal by the court, the court may appoint another partner as the tax matters partner if the partnership fails to designate a successor tax matters partner within such period as the court may direct.

**Rule 10. Decisions**

A decision entered by the court in a partnership action shall will be binding on all parties. For the definition of parties, see Rule 6 above.

**TITLE II. PARTNERSHIP CASES UNDER BBA SECTION 1101**

*The provisions of Title II of this Appendix apply to partnership proceedings concerning partnership taxable years beginning after December 31, 2017, and to prior years beginning after November 2, 2015, and before January 1, 2018, for which a partnership has made an election under Section 1101(g)(4) of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584, 638.*

**Rule 11. General**

**(a) Applicability.** Title II of this Appendix sets forth the provisions that apply to a partnership proceeding commenced pursuant to Code Section 6234(a)(3). Except as otherwise provided in Title II of this Appendix, the RCFC, to the extent pertinent, are applicable to the action.

**(b) Definitions.** As used in Title II of this Appendix,

**(1)** the term "partnership" means a partnership as defined in Code Section 6241(1);

**(2)** a "partnership action" is an action for readjustment of final partnership adjustments under Code Section 6234(a)(3);

**(3)** the term "partnership representative" means the partner (or other person) designated by the partnership or selected by the Secretary pursuant to Code Section 6223(a), or designated pursuant to Rule 14 below;

**(4)** a "notice of final partnership adjustment" is the notice described in Code Section 6231(a)(3); and

**(5)** the term "deposit" means the deposit required by Code Section 6234(b)(1).

**(c) Jurisdictional Requirements.** The court does not have jurisdiction over a partnership action under Title II of this Appendix unless the following conditions are satisfied:

**(1)** The Commissioner has mailed a notice of final partnership adjustment with respect to the partnership's taxable year(s).

**(2)** The partnership through the partnership representative files a complaint containing a petition for readjustment with respect to the year(s) within 90 days after the date on which the notice of final partnership adjustment is mailed.

**(3)** The partnership filing the complaint makes a deposit as required by Code Section 6234(b)(1). The court may by order provide that the deposit requirement is satisfied when there has been a good faith attempt to satisfy the requirement and any shortfall of the amount required to be deposited is corrected in a timely manner.

**(d) Form and Style of Papers.** All papers filed in a partnership action must be prepared in the form and style set forth in RCFC 5.5 and 10, except that the caption must state the name of the partnership and the name of the partnership representative.

**Rule 12. Commencement of Partnership Action**

**(a) Commencement of Action.** A partnership action under Title II of this Appendix

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Appendix F

is commenced by filing a complaint with the court. See RCFC 3, relating to commencement of case; and RCFC 5.5 and 10, relating to form of pleadings.

**(b) Contents of Complaint.** Each complaint must be titled “Petition for Readjustment Under Code Section 6234” and must contain the following:

**(1)** the partnership representative’s name (or, in the case of an entity partnership representative, the name, type of entity, and the individual designated to act on behalf of the entity) and mailing address, and a separate numbered paragraph stating that the partnership designated or that the Secretary selected the partnership representative as its partnership representative;

**(2)** the partnership’s name, employer identification number, and principal place of business as of the time the complaint is filed;

**(3)** the city and state of the office of the Internal Revenue Service with which the partnership’s return(s) for the year(s) in controversy was (were) filed;

**(4)** the date of the notice of final partnership adjustment;

**(5)** the amount of the imputed underpayment, determined by the Secretary, the nature of the tax, the year or years or other periods for which the determination was made; and, if different from the Secretary’s determination, the approximate amount of the imputed underpayment in controversy, including any proposed modification of the imputed underpayment that was not approved by the Secretary;

**(6)** clear and concise statements of each and every error that the partnership alleges the Commissioner committed in the notice of final partnership adjustment and each and every proposed modification of the imputed underpayment to which the Commissioner did not consent. The assignments of error must include issues in respect of which the United States has the burden of proof. Any issue not raised in the assignments of error, including any amendment thereto, will be deemed to be conceded. Each assignment of error must be set forth in a separately lettered subparagraph;

**(7)** clear and concise lettered statements of the facts on which the partnership bases the assignments of error and the proposed modifications, except with respect to the assignments of error as to which the United States has the burden of proof;

**(8)** the amount of the deposit made by the partnership;

**(9)** the date and place of the making of each deposit;

**(10)** a prayer setting forth the relief that the partnership seeks;

**(11)** the signature, mailing address, email address (if any) and telephone number of the partnership’s counsel (see RCFC 83.1 regarding attorneys of record); and

**(12)** a copy of the notice of final partnership adjustment, as well as any statement accompanying the notice that is material to the issues that the assignments of error raise. If the notice of final partnership adjustment or any accompanying statement incorporates by reference a prior notice or other material that the Internal Revenue Service furnished, the parts thereof that are material to the assignments of error must also be appended to the complaint.

A claim for reasonable litigation costs must not be included in the complaint in a partnership action under Title II of this Appendix. For the requirements as to claims for reasonable litigation costs, see RCFC 54(d)(1).

**(c) Joinder of Parties.**

**(1) Permissive Joinder.** A separate complaint must be filed with respect to each notice of final partnership adjustment issued to separate partnerships. A single complaint for readjustment, however, may be filed seeking readjustments of partnership-related items with respect to more than one notice of final partnership adjustment if the notices pertain to the same partnership.

**(2) Severance or Other Orders.** With respect to a case based on multiple notices of final partnership adjustment, the court may order a severance and a separate case to be maintained with respect to one or more of the notices whenever it appears to the court that proceeding separately furthers convenience, or avoids prejudice, or when separate trials will be conducive to expedition or economy.

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Appendix F

**Rule 13. Other Pleadings**

(a) Answer. The United States must file an answer or otherwise move with respect to the complaint within the periods specified in and in accordance with the provisions of RCFC 12.

(b) Reply. For provisions relating to the filing of a reply, see RCFC 7(a) and 12(a)(1)(B)-(C).

**Rule 14. Identification and Removal of Partnership Representative**

(a) At the Commencement of a Case. If, at the time of commencement of a partnership action under Title II of this Appendix, the partnership representative is not identified in the complaint, then the court will enter an order to the person filing the complaint requiring the identification of the partnership representative in accordance with Rule 12(b)(1) of Title II of this Appendix, and directing that the complaint will be dismissed, without prejudice, if a response is not filed within 60 days. The court may also take such alternative actions as may be necessary to establish the identity of the partnership representative.

(b) After the Commencement of a Case. After notice and opportunity to be heard:

(1) the court may for cause remove a partnership representative for purposes of the partnership action; and

(2) if a partnership representative's status is terminated for any reason, including removal by the court, the partnership must then designate a successor partnership representative in accordance with the requirements of Code Section 6223 within such period as the court may direct.

**Rule 15. Decisions**

A decision that the court enters in a partnership action will be binding on the partnership and on all of its partners.

**Rules Committee Notes**

**2002 Adoption**

This appendix is new. Section 6226 of the Internal Revenue Code grants this court jurisdiction, along with the United States Tax Court and the United States district courts, to consider petitions for readjustment of partnership

items as set forth in a final partnership administrative adjustment. Appendix F provides the procedural rules for such cases. In the interests of uniformity, the rules contained in Appendix F parallel the rules applicable to these cases in the United States Tax Court.

**2010 Amendment**

The time periods of 5 and 10 days formerly set forth in Rule 2 have been changed to 7 and 14 days, respectively, in accordance with the FRCP's general guidelines for time computation that became effective December 1, 2009.

**2021 Amendment**

Appendix F has been divided into two Titles—Title I, which covers Rules 1-10, retains the provisions that apply to partnership actions brought pursuant to former Code Sections 6226 and 6228 (repealed in 2015); and Title II, which covers new Rules 11–15, sets forth the provisions that apply to partnership actions brought pursuant to Code Section 6234(a)(3), as added to the Code by Section 1101(g)(4) of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584, 638. In the interest of uniformity, the rules contained in Title II parallel the rules applicable to these cases in the United States Tax Court. See Rules of the United States Tax Court, Title XXIVV.A, Rules 255.1–255.7.

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Appendix F