

and incidental powers). These rules may be cited as “RCFC.” Rule 1 has been revised to: (i) reflect the change in the court’s name; (ii) eliminate, as no longer necessary, the previous reference to proceedings pending in the court on October 1, 1982—the year of the court’s establishment; (iii) incorporate the 1993 revision to Rule 1 of the Federal Rules of Civil Procedure (FRCP) emphasizing that the rules are to be both construed and administered to ensure that civil litigation is resolved, not only fairly, but without undue cost and delay; (iv) delete (a)(3) for consistency with the federal rules (while retaining the substance of this provision in RCFC 83(b), which is modeled on FRCP 83(b)); and to move subdivision (b) to the preamble, because it is explanatory rather than prescriptive.

### Rule 2. One Form of Action

There shall be one form of action to be known as a “civil action.”

#### RULES COMMITTEE NOTE

RCFC 2 is identical to its FRCP counterpart.

## II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

### Rule 3. Commencement of Action

A civil action is commenced by filing a complaint with the court. See RCFC 40.2(a).

#### RULES COMMITTEE NOTE

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

#### Rule 3.1. Transfers and Referrals

##### (a) Transfers from Other Courts.

(1) **Filing and Fee.** When the transfer of a case from another court to this court is permitted by law, including compliance with 28 U.S.C. §1292(d)(4)(B), the case shall be filed in this court upon the receipt by the clerk of a certified copy of the record made in the other court, including the order of that court granting the transfer. The clerk shall serve a notice of this filing on the parties as provided in RCFC 5. Where all required fees in the other court are shown to have been paid, no filing fee will be required.

(2) **Complaint; Copies.** Eight copies of the complaint filed in the other court, containing the necessary changes in the caption and duplicated in conformity with RCFC 5.3, shall be filed with the clerk within 28 days after the filing required in subdivision (a)(1). In lieu thereof and within the same time period, an original and 7 copies of an amended complaint may be filed in conformity with the rules of this court setting forth the claim or claims transferred. Service shall be made on the United States as provided in RCFC 4.

(3) **Procedure.** After the filing and service as provided for in subdivision (a)(2), all further

proceedings shall be in accordance with the rules prescribed for cases filed in this court in the first instance.

##### (b) Referral of Cases by the Comptroller General.

(1) **Service of Notice; Time for Response.** Upon the filing of a case referred to the court by the Comptroller General, the clerk shall serve a notice, as provided in RCFC 5, on each person whose name and address are shown by the papers transmitted and who appears to be interested in the subject matter of the reference, which notice shall set forth the filing of the reference and state that the person notified appears to have an interest therein and that such person shall have 90 days after such service within which to appear and assert such person’s claim by filing a complaint. At the same time, the clerk shall forward a copy of each such notice to the Attorney General.

(2) **Procedure After Notice.** After the service of notice upon the interested person or persons, all further proceedings for the disposition of the case shall be in accordance with the rules prescribed herein for other cases.

(3) **Failure of Party to Appear.** If no interested plaintiff appears to file a complaint within the time specified in the notice served by the clerk, the case shall be submitted to the court upon the papers filed and upon such evidence, if any, as may be produced by the Attorney General.

#### RULES COMMITTEE NOTE

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

### Rule 4. Serving Complaints Upon the United States

(a) **Service upon the United States.** Service of the complaint upon the United States shall be made through the delivery by the clerk to the Attorney General, or to an agent designated by authority of the Attorney General, of copies of the complaint in numbers prescribed by subdivision (b).

(b) **Copies.** The clerk shall serve on the Attorney General or his designated agent 5 copies of the complaint.

(c) **Proof and Date of Service.** At the time the clerk serves a complaint, the clerk shall enter the fact of service on the docket, and such entry shall be prima facie evidence of service. For the purposes of this rule, the date of service shall be the date of filing with the clerk.

#### RULES COMMITTEE NOTE

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

#### Rule 4.1. Serving Orders in Contempt Proceedings

An order initiating a contempt proceeding directed at a person other than a party shall be