

Proposed Amendments to Rule 56.1

Rule 56.1 is amended as follows:

Rule 56.1. Judgment [~~Upon~~]**On** an Agency Record for an Action Other Than That Described in 28 U.S.C. § 1581(c)

(a) Motion for Judgment. After issue is joined in any action in which a party believes that the determination of the court is to be made solely [~~upon~~]**on** the basis of the record made before an agency, that party may move for judgment in its favor [~~upon~~]**on** all or any part of the agency determination.

(b) Cross-Motions. When a motion for judgment [~~upon~~]**on** an agency record is filed by a party, an opposing party [~~shall~~]**may** not file a cross-motion for judgment [~~upon~~]**on** an agency record. If the court determines that judgment [~~ought to~~]**should** be entered in favor of an opposing party, it may enter judgment in favor of that party, [~~notwithstanding the absence of~~]**even without** a cross-motion.

(c) Briefs.

(1) In addition to the other requirements prescribed by these rules, the briefs submitted on the motion, either contesting or supporting the agency determination, [~~shall~~]**must** include a statement setting [~~forth~~]**out** in separate numbered paragraphs:

(A) The administrative determination [~~sought~~] to be reviewed with appropriate reference to the Federal Register; and

(B) The issues of law presented together with the reasons for contesting or supporting the administrative determination, specifying how the determination may be arbitrary, capricious, an abuse of discretion, not otherwise in accordance with law, unsupported by substantial evidence; or,

how the determination may be unwarranted by the facts to the extent that the agency may not have considered facts which, as a matter of law, should or should not have been properly considered.

(2) The brief ~~[shall]~~**must** include the authorities relied ~~[upon]~~**on** and the conclusions of law deemed warranted by the authorities. All references to the administrative record ~~[shall]~~**must** be made by citing the portions of the record to the factual or legal issues raised. Citations ~~[shall]~~**must** be by page number of the transcript, if any, and by specific identification of exhibits together with the relevant page number.

(d) Time to Respond. A response to a motion for judgment ~~[upon]~~**on** an agency record ~~[shall]~~**must** be served within 30 days after service of the motion. The ~~[moving party shall have]~~**movant must serve a reply within** 10 days after service of the response to the motion ~~[to serve a reply]~~. No other papers or briefs ~~[shall]~~**will** be allowed, except by leave of court.

(e) Hearing. ~~[Upon]~~**By** motion of a party, or ~~[upon]~~**on** its own ~~[initiative]~~, the court may direct oral argument on a motion for judgment ~~[upon]~~**on** an agency record at a time and place designated as prescribed in Rule 77(c).

(f) Partial Judgment. After considering a motion filed under this rule, the court may grant judgment in whole or in part in favor of any party.

PRACTICE COMMENT: An action in which the determination of the court is to be made solely upon the basis of a record made before an agency shall be submitted for determination pursuant to this rule unless the court otherwise directs.

PRACTICE COMMENT: As required by Rule 81(l), a reply brief in an action submitted for determination pursuant to this rule shall be confined to rebutting matters contained in the brief of the responding party.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993; _____, **2008, eff. _____, 2009.**)

Advisory Committee Note

Although unique to the Court of International Trade, CIT Rule 56.1 has been amended to conform stylistically to the types of changes embodied in the 2007 amendments to the Fed. R. Civ. P.