

Rule 24. Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

In an action described in 28 U.S.C. § 1581(c), a timely application shall be made no later than 30 days after the date of service of the complaint as provided for in Rule 3(f), unless for good cause shown at such later time for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; or (2) under circumstances in which by due diligence a motion to intervene under this subsection could not have been made within the 30-day period. Also, in an action described in 28 U.S.C. § 1581(c), at the time a party's application for intervention is made, attorneys for that party are required to comply with the procedures set forth in Rule 73.2 (c) by filing of a Business Proprietary Information Certification where appropriate.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. Except in an action described in 28 U.S.C. § 1581(c), a person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action in which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C. § 2403. A party challenging the constitutionality of legislation should call the attention of the court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

In an action described in 28 U.S.C. § 1581(c), an interested party who was a party to the proceeding in connection with which the matter arose and who desires to intervene pursuant to subparagraph (a) shall, after consultation in accordance with Rule 7(b), serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state (1) whether the application for intervention has been consented to by the parties, and (2) the grounds in support of the motion. When the applicant for intervention seeks to intervene on the side of the plaintiff, the motion shall state the applicant's standing, and shall state the administrative determination to be reviewed and the issues that the intervenor desires to litigate. When the applicant for intervention seeks to intervene on the side of the defendant, the motion shall state the applicant's standing. If no objection has been filed within 10 days after service of the motion, or if the motion has been consented to by all of the parties, the clerk of the court may order the requested relief.

PRACTICE COMMENT: To provide information to assist a judge in determining whether there is reason for disqualification upon the grounds of a financial interest, under 28 U.S.C. § 455, a completed "Disclosure Statement" form, available upon request from the office of the clerk, must be filed by certain corporations, trade associations, and others appearing as parties, intervenors,

or *amicus curiae*. A copy of the "Disclosure Statement" form is shown in Form 13 of the Appendix of Forms.

PRACTICE COMMENT: Intervention in this court, whether as of right or permissive, is subject to the statutory provisions of 28 U.S.C. § 2631(j). See Jazz Photo Corporation v. United States, 439 F.3d 1344 (Fed. Cir. 2006); Ontario Forest Industries Assoc. v. United States, 30 CIT __, 444 F. Supp. 2d 1309 (2006).

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 71 now will be identified as Rule 73.2.

(As amended, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Jan. 25, 2000, eff. May 1, 2000; Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 27, 2007; eff. Jan. 1, 2008.)