

Proposed Amendments to Rule 56.2

Rule 56.2 is amended as follows:

Rule 56.2. Judgment on an Agency Record for an Action Described in 28 U.S.C. § 1581(c)

* * * * *

(c) Briefs.

(1) In addition to the other requirements of these rules, the briefs submitted on the motion, either contesting or supporting the agency determination, must include a statement setting out in 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 or may not have considered facts which, as a matter of law, should have been properly considered.

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

(3) ~~Within~~ Unless ordered by the court to follow the alternative procedure prescribed in (4) of this subsection, within 14 days of the date of filing of the reply briefs, the plaintiffs and plaintiff-intervenors must file a single joint appendix containing a copy of those portions of the administrative record cited in the briefs filed by all parties.

~~(3)~~**(4) If so ordered by the court, within** 7 days of the date of filing of a brief, the submitting party must file an appendix containing a copy of those portions of the administrative record cited in the brief.

* * * * *

(h) Comments after Remand. Where an action has been remanded to the agency, unless the court's remand order otherwise provides:

(1) Within 14 days of the date of filing of the agency's remand determination, the agency must file an index of any new administrative record documents;

(2) Parties may file and serve comments in opposition to the agency's remand determination within 30 days after the date of filing of the remand determination;

(3) The defendant and other parties supporting the agency's determination may file and serve responsive comments in support of the agency's remand determination within 30 days after the filing of the comments in opposition to the agency's remand determination. Where two or more parties file comments in opposition to the agency's remand determination, the due date for responsive comments in support of the

agency's determination will be governed by the latest filing date of comments in opposition to the agency's remand determination;

(4) ~~Within~~ Unless ordered by the court to follow the alternative procedure prescribed in (5) of this subsection, within 14 days of the date of filing of responsive comments in support of the agency's determination, the parties submitting comments in opposition to the agency's remand determination must file a single joint appendix containing a copy of those portions of the administrative record cited in the comments filed by all parties;

(4)(5) If so ordered by the court, within 7 days of the date of filing of comments, the submitting party must file an appendix containing a copy of those portions of the administrative record cited in the comments and not previously provided to the court in an appendix filed by another party in support of its comments; and

(5)(6) No other comments or papers are allowed, except by leave of court.

PRACTICE COMMENT: Provided its requirements are followed, Rule 5(g) allows for the filing of a non-confidential version of a brief provided for in this rule, and a confidential version correcting the designation of business proprietary information in the original submission, one business day after the original filings under this rule.

PRACTICE COMMENT: Under subpart (h), if a party opposes certain aspects of the agency's remand determination, but supports other aspects of the agency's remand determination, that party may file opposition comments under subpart (h)(2), as well as responsive comments under subpart (h)(3). These filings cumulatively are subject to the word limitations set out for remand submissions in the Standard Chambers Procedures.

(Added Sept. 25, 1992, eff. Jan. 1, 1993; and amended Oct. 5, 1994, eff. Jan. 1, 1995; May 27, 1998, eff. Sept, 1998; Jan. 25, 2000, eff. May 1, 2000; May 25, 2004, eff. Sept. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 6, 2011, eff. Jan. 1, 2012; Dec. 4, 2012, eff. Jan. 1, 2013; June 5, 2015, eff. July 1, 2015; _____, **2016, eff. _____, 2016.**)

Advisory Committee Note

Rule 56.2 and the Standard Chambers Procedures have been amended to provide a default option for the filing of a single joint appendix containing the portions of the administrative record cited by all parties after all briefs have been filed in an action described in 28 U.S.C. § 1581(c) and after all comments have been filed with respect to a remand determination issued by an agency. An alternative option preserves the requirement for a separate appendix to be filed each time a party files a brief or comments on a remand determination and does not require a joint appendix after all briefs have been filed.