

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

(a) Proposed Briefing Schedule and Joint Status Report. The judge may modify the following procedures as appropriate in the circumstances of the action, or the parties may suggest modification of these procedures. Retention of or access to business proprietary information in the administrative record is governed by Rule 73.2(c).

Any motion to intervene as of right must be filed within the time and in the manner prescribed by Rule 24. Any motion for a preliminary injunction to enjoin the liquidation of entries that are the subject of the action must be filed by a party to the action within 30 days after service of the complaint, or at such later time, for good cause shown. Motions seeking preliminary injunctive relief will be given precedence over other matters pending before the court, and expedited in every way. Notwithstanding the first sentence of this paragraph, an intervenor must file a motion for a preliminary injunction no earlier than the date of filing of its motion to intervene and no later than 30 days after the date of service of the order granting intervention, or at such later time, but only for good cause shown. Prior to the filing of the motion, the movant must consult with all other parties to the action in accordance with Rule 7(b). No later than 30 days after the filing of the record with the court, the parties, including proposed intervenors, must file with the clerk (1) a Joint Status Report, and (2) a proposed briefing schedule. The Joint Status Report must be signed by counsel for all parties and set out answers to the following questions, although separate views may be set out on any point on which the parties cannot agree:

1. Does the court have jurisdiction over the action?

2. Should the case be consolidated with any other case, or should any portion of the case be severed, and the reasons for such severance?

3. Should further proceedings in this case be deferred pending consideration of another case before the court or any other tribunal and the reasons for such deferral?

4. Should the court be aware of any other information at this time?

The proposed briefing schedule must indicate whether the parties (1) agree to the time periods set out in Rule 56.2(d), (2) agree to time periods other than the periods set out in Rule 56.2(d), or (3) cannot agree on a time period. If the parties cannot agree on a time period, the parties indicate the areas of disagreement and set out the reasons for their positions. After the Joint Status Report and proposed briefing schedule are filed, the judge promptly should enter a scheduling order.

(b) Cross-Motions. When a motion for judgment on an agency record is filed by a party, an opposing party may not file a cross-motion for judgment on an agency record. If the court determines that judgment should be entered in an opposing party's favor, it may enter judgment in that party's favor, notwithstanding the absence of a cross-motion.

(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) 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.

(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.

(d) Time to Respond. Unless the scheduling order otherwise provides, a motion for judgment on an agency record must be served within 60 days after the date of service of the scheduling order. Responsive briefs must be served within 60 days after the date of service of the brief of the movant. The movant has 28 days after service of

the response to the motion to serve a reply. No other papers or briefs are allowed, except by leave of court.

(e) Hearing. On motion of a party, the court may direct oral argument on a motion for judgment on an agency record at a time and place designated in Rule 77(c). A motion for oral argument must be filed no later than 21 days after service of the reply brief, or 21 days after the expiration of the period of time allowed for service of a reply brief.

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

(g) Voluntary Dismissal -- Time Limitation. In an action described in 28 U.S.C. § 1581(c), a plaintiff desiring to voluntarily dismiss its action under Rule 41(a)(1)(A)(i), must file a notice of dismissal within 30 days after the date of service of the complaint. If the plaintiff desires to dismiss its action more than 30 days after the date of service of the complaint, a stipulation of dismissal must be filed in accordance with Rule 41(a)(1)(A)(ii), or if circumstances warrant intervention by the court, in accordance with Rule 41(a)(2).

(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) 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;

(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

(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; Sept. 21, 2016, eff. Oct. 3, 2016.)