

Rule 56.1. Judgment 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 on the basis of the record made before an agency, that party may move for judgment in its favor on all or any part of the agency determination.

(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 favor of an opposing party, it may enter judgment in favor of that party, 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, must include a statement setting out in separate numbered paragraphs:

(A) The administrative determination 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 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 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.

(d) Time to Respond. A response to a motion for judgment on an agency record must be served within 35 days after service of the motion. The movant must serve a reply within 21 days after service of the response to the motion. No other papers or briefs will be allowed, except by leave of court.

(e) Hearing. By motion of a party, or on its own, the court may direct oral argument on a motion for judgment 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 on the basis of a record made before an agency should 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 should 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; Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011; Mar. 20, 2018, eff. Apr. 23, 2018.)