

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)

(a) ~~Proposed Briefing Schedule and Joint Status Report.~~ **Preliminary Matters.**

(1) **Modification of Procedures.** The judge may modify the following procedures as appropriate in the circumstances of the action, or the parties may suggest modification of these procedures.

(2) **Access to Business Proprietary Information.** Retention of or access to business proprietary information in the administrative record is governed by Rule 73.2(c), except in an action contesting a determination under section 517(g) of the Tariff Act of 1930.

(3) **Intervention.** Any motion to intervene as of right must be filed within the time and in the manner prescribed by Rule 24.

(4) **Statutory Injunctions.**

(A) Any motion for a statutory injunction, or a Form 24 proposed order for a statutory injunction upon consent, 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. Any motion for a statutory injunction, or Form 24 proposed order for a statutory injunction upon consent, will be given precedence over other matters pending before the court, and expedited in every way.

~~Notwithstanding the second sentence of this paragraph, an intervenor must~~

~~file a motion for a statutory injunction, or a Form 24 proposed order for a statutory injunction upon consent, 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). A proposed order for a statutory injunction upon consent should be made pursuant to Form 24 in lieu of a motion.

(B) An intervenor must file a motion for a statutory injunction, or a Form 24 proposed order for a statutory injunction upon consent, no earlier than the date of filing of its Rule 24 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.

(5) Proposed Briefing Schedule and Joint Status Report.

(A) 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?

(B) 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 **must** indicate the areas of disagreement and set out the reasons for their positions. The judge must enter a scheduling order as soon as practicable.

(b) Cross-Motions. Cross-motions for judgment on the agency record are prohibited. 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) **The motion for judgment on the agency record and the brief in support thereof must be submitted in a single document.** 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; **and (C) the request for court order and relief sought.**

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(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; Sept. 19, 2017, eff. Oct. 23, 2017; Mar. 20, 2018, eff. Apr. 23, 2018; Sept. 18, 2018, eff. Oct. 15, 2018; Oct. 1, 2020, eff. Dec. 1, 2020; **_____**, eff. **_____**.)

Advisory Committee Note

Rule 56.2 is amended by modifying subpart (a) to break it into various subparagraphs with appropriate headings, and to reorganize it to reflect the actual sequence of events that occur in the beginning stages of an action under 19 U.S.C. §1581(c). Subpart (c) is amended to clarify the applicability of the single document rule (that is, the motion and brief in a single document) to Rule 56.2 proceedings, and to require a statement regarding the request for court order and relief sought.