Rules of the

U.S. Court of International Trade

Effective November 1, 1980

(As amended, Sept. 21, 2016, eff. Oct. 3, 2016)

P R E F A C E

This volume contains the rules prescribing the practice and procedure in the United States Court of International Trade, successor to the United States Customs Court.

The Rules of the United States Court of International Trade, necessary to implement the Customs Court Acts of 1980, are styled, numbered and arranged to the maximum extent practicable in conformity with the Federal Rules of Civil Procedures. Additions, deletions and modifications to and from the Federal Rules of Civil Procedure have been made where required.
Pursuant to Title 28 U.S.C. § 2641, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade except as provided in section 2639 or in section 2641(b) of that Title, or in the Rules of the Court.

The principal statutory provisions pertaining to the United States Court of International Trade are contained in the following sections of Title 28 of the United States Code:

Organization	Chapter 11	Sections 251 to 257
Jurisdiction	Chapter 95	Sections 1581 to 1585
Procedure	Chapter 169	Sections 2631 to 2647

Practice comments are included following certain rules to which they relate. The practice comments, prepared by the clerk of the court, are intended solely to provide information about the content and processing of papers filed in the office of the clerk. They do not represent, nor can they be used as, official interpretations of the rules.

TINA POTUTO KIMBLE
Clerk of the Court

UNITED STATES COURT

OF

INTERNATIONAL TRADE

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JUDGES

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CLERK OF THE COURT

TINA POTUTO KIMBLE

CLERK'S OFFICE BUSINESS HOURS

8:30 a.m. to 5:00 p.m.
Monday through Friday, except legal holidays
(See Rule 6(a) for legal holidays)

MAILING ADDRESS

Office of the Clerk of the Court
United States Court of International Trade
One Federal Plaza
New York, N.Y. 10278-0001

TELEPHONE NUMBER

(212) 264-2800

FAX NUMBER

(212) 264-1085

TITLE I. SCOPE OF RULES; FORM OF ACTION

Rule 1. Scope and Purpose

These rules govern the procedure in the United States Court of International Trade. They should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding. When a procedural question arises that is not covered by these rules, the court may prescribe the procedure to be followed in any manner not inconsistent with these rules. The court may refer for guidance to the rules of other courts. The rules are not to be construed to extend or limit the jurisdiction of the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 2. One Form of Action

There is one form of action – the civil action.

(As amended, Nov. 25, 2008, eff. Jan. 1, 2009.)

TITLE II. COMMENCING AN ACTION; AMENDING A SUMMONS; SERVICE OF SUMMONS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencing an Action

(a) Commencement.

A civil action is commenced by filing with the clerk of the court:

(1) A summons in an action described in 28 U.S.C. § 1581(a) or (b);

(2) A summons, and within 30 days thereafter a complaint, in an action described in 28 U.S.C. § 1581(c) to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930; or

(3) A summons and complaint concurrently in all other actions.

(b) Filing Fee. When an action is commenced, the plaintiff must pay a $400 filing fee to the clerk of the court, except that:

(1) the plaintiff must pay a $175 filing fee when the action is one described in 28 U.S.C. § 1581(a); and

(2) the plaintiff must pay a $35 filing fee when the action is one described in 28 U.S.C. § 1581(d)(1).

(c) Complaint Fee. When filing a complaint in an action described in 28 U.S.C. § 1581(a), the plaintiff must pay a $200 fee to the clerk of the court.

(d) Information Statement. When an action is commenced, the plaintiff must file a completed Information Statement on the form shown in Form 5 in the Appendix of Forms.

(e) Amending a Summons. The court may allow a summons to be amended at any time on such terms as it deems just, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the amendment is allowed.

(f) Notice to Interested Parties. In an action described in 28 U.S.C. § 1581(c), the plaintiff, as provided in section 516A(d) of the Tariff Act of 1930, must notify every interested party who was a party to the administrative proceeding of the commencement of the action, by mailing a copy of the summons at the time the action is commenced, or promptly thereafter, by certified or registered mail, return receipt requested, to each such party at the address last known in the administrative proceeding.

When filing a complaint in an action described in 28 U.S.C. § 1581(c), the plaintiff must promptly serve a copy of the complaint, by certified or registered mail, return receipt requested, on every interested party who was a party to the administrative proceeding at the address last known in that proceeding.

(g) Precedence of Action. On motion for good cause or on its own the court may expedite the following actions and give them precedence over other pending actions:

(1) An action involving the exclusion of perishable merchandise or redelivery of such merchandise;

(2) An action described in 28 U.S.C. § 1581(c) to contest a determination under section 516A of the Tariff Act of 1930;

(3) An action described in 28 U.S.C. § 1581(a) to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930, involving the exclusion or redelivery of merchandise;

(4) An action described in 28 U.S.C. § 1581(b) to contest a decision of the Secretary of the Treasury under section 516 of the Tariff Act of 1930;

(5) Any other action that the court determines, based on motion and for good cause shown, warrants expedited treatment.

(h) Special Rule for Actions Described in 28 U.S.C. §1581(c). When an action is commenced under 28 U.S.C. § 1581(c) to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930 by the administering authority and such a determination by the Commission, a party must file a separate summons and complaint with respect to each agency. Also, in an action described in 28 U.S.C. § 1581(c), when the plaintiff files the summons, attorneys for the plaintiff are required to comply with the procedures set forth in Rule 73.2(c) by filing of a Business Proprietary Information Certification where appropriate.

(i) Disclosure Statement. A disclosure statement as provided by Form 13 must be filed by every party to an action, including parties seeking or permitted to intervene, and for each *amicus curiae*. The disclosure statement must be filed with the entry of appearance (or with the summons if no separate notice of appearance is required). If any of the information required changes after the disclosure statement is filed, and before a final judgment is issued, the party or *amicus curiae* must promptly file an amended disclosure statement.

PRACTICE COMMENT: For the appropriate summons form and number of copies to be filed, refer to Forms 1 to 4 of the Appendix of Forms. Information Statement forms, as shown in Form 5, are available on request from the office of the clerk.

PRACTICE COMMENT: As provided in Section 516A(a)(2) and (3) of the Tariff Act of 1930, a complaint must be filed within 30 days after the filing of the summons. *See Georgetown Steel v. United States*, 801 F.2d 1308 (*Fed*. Cir. 1986).

Nevertheless, counsel are encouraged to commence any action described in Section 516A(a)(2) or (3) of the Tariff Act of 1930 and 28 U.S.C. § 1581(c) by the concurrent filing of a summons and complaint. This will serve to expedite the prosecution of the action.

When an action is commenced by manual filing, counsel should contact the Clerk's Office not more than 24 hours prior to filing to obtain a court number and must endorse that court number on the summons and complaint. Counsel for plaintiff will be responsible for service of the summons and complaint as prescribed in Rules 4(b), (c), and (d). Under these circumstances, the clerk of the court will not make service of the summons as prescribed in Rule 4(a)(4).

PRACTICE COMMENT: As prescribed by Rule 5(d), a summons or a summons and complaint may be filed by delivery, by mailing, or electronically. The filing is completed when received, except that when the method of mailing prescribed by Rule 5(e) is used, the summons or summons and complaint are deemed filed as of the date of mailing.

PRACTICE COMMENT: Internal inconsistencies exist within the provisions of the Customs Courts Act of 1980 with respect to the method of commencing customhouse broker license actions, the kind of action described in 28 U.S.C. § 1581(g). These actions are included among those actions which, pursuant to 28 U.S.C. § 2632(a), are to be commenced by filing concurrently a summons and complaint with the clerk of the court as prescribed by the rules of the court. The rules of the court require the plaintiff to

cause concurrent service of the summons and complaint to be made. (See Rules 3(a) and 4(b).)

The inconsistency pertaining to customhouse broker license actions appears in 19 U.S.C. § 1641(e), which provides that an action is commenced by filing "a written petition" in the court and further provides that a copy of the petition is to be "transmitted by the clerk of the court to the Secretary [of the Treasury] or his designee."

Until such time as the matter is resolved, the preferred procedure to achieve uniformity and consistency and to minimize the ambiguity created by these inconsistent statutory provisions is to follow the provisions in Title 28. (In one unreported case, *James A. Barnhart v. United States*, Court No. 81-3-00328, the court directed plaintiff to comply with the requirements of 28 U.S.C. § 2632(a) by filing a summons and complaint notwithstanding the fact that plaintiff had complied with the requirements of 19 U.S.C. § 1641(e) by filing a petition.)

PRACTICE COMMENT: Although this rule requires that the two agencies subject to suit under 28 U.S.C. § 1581(c) are in the first instance the subject of separate summonses and complaints, it does not prohibit consolidation of actions against the two agencies on an adequate showing of grounds for consolidation.

PRACTICE COMMENT: A party seeking to commence judicial review of an antidumping, countervailing duty, or injury determination regarding a class or kind of merchandise from a signatory to the North American Free Trade Agreement should be aware of the additional notice and timing requirements of 19 U.S.C. §1516a(g)(3) and the separate filing and timing requirements of 19 U.S.C. §1516a(a)(5) and (g)(4).

PRACTICE COMMENT: Rule 3(g) lists four types of actions to which the court may give precedence over other actions, and allows the court to give precedence to any other action when a party can demonstrate, on motion and a showing of good cause, that expedited treatment is warranted. In addition to Rule 3(g), other rules that may bear on scheduling include Rule 16 (Post Assignment Conferences; Scheduling; Management), Rule 40 (Request for Trial), Rule 56.2 (Judgment on an Agency Record for an Action Described in 28 U.S.C. § 1581(c)), Rule 65 (Injunctions and Restraining Orders), and Rule 78 (Motion Part).

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; July 21, 1986, eff. Oct. 1, 1986; Dec. 3, 1986, eff. Mar. 1, 1987; Sept. 25, 1992, eff. Jan. 1, 1993, Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 1997, eff. Nov. 1, 1997; May 27, 1998, eff. Sept. 1, 1998; Jan. 25, 2000, eff. May 1, 2000; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Sept. 28, 2004, eff. Jan. 1, 2005; Mar. 29, 2005, eff. Oct. 1, 2005; Nov. 29, 2005, eff. Jan. 1, 2006; Mar. 21, 2006, eff. Apr. 10, 2006; Nov. 25, 2008, eff. Jan. 1, 2009; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 4, 2012, eff. Jan. 1, 2013; Mar. 19, 2013, eff. May 1, 2013; Dec. 22, 2014, eff. Jan. 28, 2015.)

Rule 3.1. Actions Transferred to the Court of International Trade from a Binational Panel or Committee Pursuant to 19 U.S.C. § 1516a(g)(12)(B) or (D)

(a) Filing of Request for Transfer.

(1) A copy of the request for transfer to the court under 19 U.S.C. § 1516a(g)(12)(B) or (D) must be filed with the clerk of the court simultaneously with the filing of the request for transfer with the United States Secretary (as defined in 19 U.S.C. § 1516a(f)(6)).

(2) When the filing of the request for transfer is made by mail, the mailing must be by certified or registered mail, return receipt requested, properly addressed to the clerk of the court, with the proper postage affixed.

(b) Notice to Interested Parties. On the same day as the filing of a request for transfer, the party requesting transfer must serve a copy of the request, by certified or registered mail, return receipt requested, on every interested party who was a party to the panel or committee review, except if the time period for filing the Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 has not expired, then service must be on every interested party who was a party to the administrative proceeding.

(c) Intervention of Right.

(1) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12), any person who filed a Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 will be treated as an intervenor in the action if otherwise entitled to intervene as of right under Rule 24 of these rules.

(2) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12) in which a complaint or a Request for an Extraordinary Challenge Committee was filed under NAFTA Article 1904 Panel Rule 39 or NAFTA Extraordinary Challenge Committee Rule 5 and in which the time for filing a Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 has not expired, anyone otherwise entitled to intervene under Rule 24 of these rules will be permitted to intervene. Any motion to intervene must be filed within the amount of unexpired time that remained for filing a Notice of Appearance in the panel or committee proceedings, or 14 days after the date of filing of the request for transfer, whichever is later. Any time periods in which the panel or committee proceedings were stayed should not be counted in computing the time for filing a motion to intervene.

(d) Documents in an Action Transferred under 19 U.S.C. § 1516a(g)(12).

(1) Within 30 days after the date of filing of the request for transfer, the United States Secretary must transfer to the clerk of the court copies of all documents filed in the binational panel review or extraordinary challenge committee review and of all orders and decisions issued by the panel or committee.

(2) If the request for transfer is filed before the Record for Review under NAFTA Article 1904 Panel Rule 41 is filed, the administering authority or the International Trade Commission must, within 40 days after the date of filing of the request for transfer, file with the clerk of the court the items described in either subdivision (a) or (b) of Rule 73.2 of these rules.

(3) The transfer and filing of documents under paragraphs (1) and (2) of this subdivision (d) must be in accordance with subdivision (c) of Rule 73.2 of these rules. Any documents that were filed under seal pursuant to NAFTA Article 1904 Panel Rule 56 of NAFTA Extraordinary Challenge Committee Rule 30 will be treated in the same manner as a document, comment, or information that is accorded confidential or privileged status by the agency whose action is being contested.

(e) Pleadings. Notwithstanding Rule 7(a) of these rules, in an action transferred to the court under 19 U.S.C. § 1516a(g)(12) in which the plaintiff has filed a complaint under NAFTA Article 1904 Panel Rule 39, the plaintiff should not file a new complaint in the action before the court, except that:

(1) if the time for amending a complaint in the panel proceedings had not expired or was stayed prior to the filing of the request for transfer, the plaintiff may file an amended complaint within the additional time that remained for filing an amended complaint in the panel proceedings, and

(2) in all actions, the plaintiff may amend the complaint within 14 days of the date of filing of the request for transfer to allege counts or requests for relief that could not have been alleged before the panel.

(f) Additional Provisions Governing Judgment on an Agency Record.

(1) Except as otherwise provided in this subdivision, the provisions of Rule 56.2 of these rules will govern actions transferred under 19 U.S.C. § 1516a(g)(12).

(2) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12) in which a complaint was filed under NAFTA Article 1904 Panel Rule 39, any proposed judicial protective order must be filed within 21 days after the date of filing of the request for transfer. The procedure for filing the proposed judicial protective order will be in accordance with Rule 56.2(a) of these rules.

(3) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12), the proposed briefing schedule filed under Rule 56.2(a) of these rules must indicate whether briefs were filed in the panel or extraordinary challenge committee proceedings.

(A) If briefs were filed in the panel or extraordinary challenge committee proceedings, the proposed briefing schedule must indicate whether the parties (i) agree that those briefs should be treated as the equivalent of the motion and briefs provided for in Rule 56.2(d) of these rules, (ii) see any reason for the filing of additional briefs, and (iii) agree to time periods for filing any additional briefs.

(B) If briefs were not filed in the panel or extraordinary challenge proceedings, or if the briefs were filed but the parties agree that new briefs should be filed in the court, the proposed briefing schedule must indicate

whether the parties (i) agree to the time periods set forth in Rule 56.2(d) of these rules, (ii) agree to time periods other than the periods set forth in Rule 56.2(d) of these rules, or (iii) cannot agree on a time period. If the parties agree that new briefs should be filed, the proposed briefing schedule must indicate the parties' views as to whether any briefs originally submitted to the panel or extraordinary challenge committee should be stricken from the record.

In the event the parties cannot agree on any of the matters covered by subparagraphs (A) and (B), the parties must indicate the areas of disagreement and set forth the reasons for their respective positions.

(g) Applicability of Other Court Rules. Unless a provision of this rule or an order of the court otherwise provides, the rules of this court govern actions transferred under 19 U.S.C. § 1516a(g)(12).

(Added Nov. 29, 1995, eff. March 31, 1996; as amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009; March 24, 2009, eff. May 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 4. Service of Summons and Complaint

(a) Summons; Service by the Clerk. In any action required to be commenced by filing a summons only, service of the summons must be made by the clerk of the court as follows:

(1) On the United States, by serving the Attorney General of the United States, by delivering or by mailing a copy of the summons to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.

(2) When the action is described in 28 U.S.C. § 1581(a) or (b), the clerk must, in addition to the service prescribed in paragraph (1) of this subdivision (a), also serve the Secretary of the Treasury by mailing a copy of the summons to the director for the customs port in which the protest was denied or in which the liquidation of an entry is contested and to the Assistant Chief Counsel for International Trade Litigation, United States Customs and Border Protection.

(3) When the action is described in 28 U.S.C. § 1581(b), the clerk must, in addition to the service prescribed in paragraphs (1) and (2) of this subdivision (a), also mail a copy of the summons to the consignee or agent of the consignee involved in each entry included in the action.

(4) When the action is described in 28 U.S.C. § 1581(c) and contests a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930, the clerk must, in addition to the service prescribed in paragraph (1) of this subdivision (a), also mail a copy of the summons: to the Secretary, United States International Trade Commission, when a determination of that Commission is contested; and to

the General Counsel, Department of Commerce, when a determination of that Department is contested.

(5) After making service as prescribed in this subdivision (a), the clerk must return a copy of the summons, together with proof of service and a receipt for payment of the filing fee, to the person who filed the summons.

(b) Summons and Complaint; Service by the Plaintiff.

(1) In General. In any action required to be commenced by the concurrent filing of a summons and complaint, the plaintiff must cause service of the summons and complaint to be made in accordance with this rule.

(2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) By a Marshal or Someone Specially Appointed. At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal, or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915.

(4) Pro Se Actions. If the plaintiff has failed to make service in a pro se action commenced under 28 U.S.C. § 1581(d), the court may serve the summons and complaint.

(c) Waiving Service.

(1) Requesting a Waiver. An individual, corporation, or association that is subject to service under Rule 4(d), (e), or (g) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that

an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(g), to an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, two copies of the waiver form, and a prepaid means for returning the form;

(D) inform the defendant, using text substantially in the form prescribed in Forms 1A and 1B of the Appendix of Forms, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent – or at least 60 days if sent to the defendant outside any judicial district of the United States – to return the waiver; and

(G) be sent by first-class mail or other reliable means.

(2) Failure to Waive. If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) Time to Answer After a Waiver. A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent – or until 90 days after it was sent to the defendant outside any judicial district of the United States.

(4) Results of Filing a Waiver. When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(5) Jurisdiction and Venue Not Waived. Waiving service of a summons does not waive any objection to personal jurisdiction or venue.

(d) Serving an Individual Within a Judicial District of the United States.

Unless federal law provides otherwise, an individual – other than a minor, an incompetent person, or a person whose waiver has been filed – may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(e) Serving an Individual in a Foreign Country.

Unless federal law provides otherwise, an individual – other than a minor, an incompetent person, or a person whose waiver has been filed – may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction; or

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(f) Serving a Minor or an Incompetent Person.

A minor or an incompetent person in a judicial district of the United States must be served by following state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within any judicial district of the United States must be served in the manner prescribed by Rule 4(e)(2)(A), (e)(2)(B), or (e)(3).

(g) Serving a Corporation, Partnership, or Association.

Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(d)(1) for serving an individual; or

(B) by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and – if the agent is one authorized by statute and the statute so requires – by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(e) for serving an individual, except personal delivery under (e)(2)(C)(i).

(h) Serving the United States and its Agencies, Corporations, Officers, or Employees.

(1) United States. To serve the United States, a party must serve the Attorney General of the United States by:

(A) delivering a copy of the summons and complaint to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice; or

(B) sending a copy of each by registered or certified mail, return receipt requested, to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.

(2) Agency; Corporation; Officer; or Employee. To serve a United States agency or corporation, or United States officer or employee, a party must serve the United States and also send a copy of the summons and complaint by registered or certified mail, return receipt requested, to the agency, corporation, or officer or employee.

(i) Serving a Foreign, State, or Local Government.

(1) Foreign State. A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. § 1608.

(2) State or Local Government. A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(j) Territorial Limits of Effective Service.

(1) In General. Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where service is made;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States; or

(C) when authorized by a federal statute.

(2) Federal Claim Outside State-Court Jurisdiction. For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any of the state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

(k) Proving Service.

(1) Affidavit Required. Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(2) Service Outside the United States. Service not within any judicial district of the United States must be proved as follows:

(A) if made under Rule 4(e)(1), as provided in the applicable treaty or convention, or

(B) if made under Rules 4(e)(2) or (e)(3) by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) Validity of Service; Amending Proof. Failure to prove service does not affect the validity of the service. The court may permit proof of service to be amended.

(l) Time Limit for Service.

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (l) does not apply to service in a foreign country under Rule 4(e) or 4(i)(1).

PRACTICE COMMENT: The clerk is authorized by Rule 4(a) to make service of the summons only in those actions commenced by a summons, i.e., actions described in 28 U.S.C. § 1581(a) or (b), and only those actions described in 28 U.S.C. § 1581(c) which contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930. In all other actions, including those actions described in 28 U.S.C. § 1581(c) which contest a determination listed in section 516A(a)(1) of the Tariff Act of 1930, the plaintiff is required by Rule 4(b) to effect concurrent service of the summons and complaint.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. April 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 4.1. Serving Other Process

Process – other than a summons under Rule 4 or a subpoena under Rule 45 – must be served by a United States marshal or deputy marshal or by a person specially appointed for that purpose. Proof of service must be made under Rule 4(k).

(Added Oct. 5, 1994, eff. Jan. 1, 1995; amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required.

Unless these rules provide otherwise, or by order of the court, all pleadings and other papers must be served on every party:

(b) Service: How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service in General. A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's house or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address – in which event service is complete upon mailing;

(D) delivering it by overnight delivery service to the last known address of the person served – in which event service is complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery

service for overnight delivery, prior to the latest time designated by such service for overnight delivery. "Overnight delivery service" means any delivery service that regularly accepts items for overnight delivery. "Overnight delivery service" does not include any service provided by the U.S. Postal Service (including express, priority or other expedited service), which is to be considered "mail" under subparagraph (B);

(E) leaving it with the clerk of the court if the person has no known address;

(F) sending it by electronic means – in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(G) delivering it by any other means by which the person consented in writing – in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) Using Court Facilities: A party may use the court's transmission facilities to make service under Rule 5(b)(2) (F).

(c) Serving Numerous Defendants.

(1) In General. If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading on all parties.

(2) Notifying Parties. A copy of every such order must be served on the parties as the court directs.

(d) Filing.

(1) Required Filings; Certificate of Service. Any paper that is required to be served – together with a certificate of service – must be filed immediately after service, unless otherwise prescribed by these rules or by order of the court. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry on land, and requests for admission.

(2) How Filing is Made – In General. A paper is filed by delivering it:

(A) to the clerk, by:

(i) delivering or sending it to the Clerk of the Court, United States Court of International Trade, One Federal Plaza, New York, New York 10278-0001; or

(ii) by delivering it to the clerk at places other than New York City when the papers pertain to an action being tried or heard at that place; or

(iii) by electronic filing as provided by Rule 5(h); or

(B) to the judge to whom an action is assigned, or a matter referred, if that judge agrees to accept it for filing. The judge must then note the filing date on the paper and promptly send it to the clerk.

(3) Electronic Filing, Signing, or Verification. As provided for in these rules or by court order, the court may allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. Any rule or order requiring electronic filing must allow reasonable exceptions. A paper filed electronically in compliance with these rules is a written paper for purposes of these rules.

(4) Completion of Filing. Filing is completed when received, except that a paper mailed by certified or registered mail properly addressed to the clerk of the court, with the proper postage affixed and return receipt requested will be filed as of the date of mailing.

(5) Receipt and Acceptance by the Clerk. On receipt, the clerk will, as appropriate, date-stamp or otherwise record the date that any paper is submitted for filing, whether or not that paper is accepted for filing. The

clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or practice.

A party aggrieved by the clerk's refusal to accept a paper for filing may move to compel acceptance. If a paper initially rejected by the clerk later is accepted for filing, the date on which the paper initially was stamped will be considered the date of filing, although the date may be subject to amendment pursuant to this rule.

(e) Filing of Summons and Complaint by Mail. When an action is commenced by the filing of a summons only, or the concurrent filing of a summons and complaint, and the filing is made by mail as prescribed by these rules, the mailing must be by certified or registered mail, return receipt requested, properly addressed to the clerk of the court, with the proper postage affixed.

(f) Proof of Service. Unless these rules or court order otherwise prescribe, papers presented for filing must contain an acknowledgment of service by the person served, or proof of service in the form of a statement of the date and manner of service and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the paper filed. The clerk may, for good cause shown, permit papers to be filed without acknowledgment or proof of service but must require proof to be filed promptly thereafter.

(g) Filings Containing Confidential or Business Proprietary Information. Any paper containing confidential or business proprietary information must identify that information by enclosing it in brackets. A party must file and serve

such paper in accordance with any deadline established by these rules or by court order. A non-confidential version in which the confidential or business proprietary information is deleted must accompany a confidential version of a paper. However, when the original paper includes the statement "Bracketing of {Confidential} Proprietary Information Not Final for One Business Day after Date of Filing" on the cover of every document containing confidential or business proprietary information and on each page containing confidential or business proprietary information, then a party may file and serve the non-confidential version within one day of the filing of that paper, together with a complete revision of the original filing, if necessary, that is identical to the original in all respects except for any bracketing corrections. When the original states that the bracketing is not final for one business day after the date of filing, recipients of the paper may not, until the bracketing is finalized, disclose the contents of the paper to anyone not authorized to receive confidential or business proprietary information in the action.

(h) Electronic Filing. Papers include both tangible documents as well as any electronically generated medium according to technical specifications that may be adopted by the court. Unless elsewhere exempted from electronic filing, all papers, including papers that contain confidential or business proprietary information, must be electronically filed in accordance with the specifications adopted by the court.

PRACTICE COMMENT: When a party is represented in an action by more than one attorney of record, the party must designate only one attorney of record to serve, file and receive service of pleadings and other papers on behalf of the party.

PRACTICE COMMENT: When service is to be made upon a party represented by an attorney, service must be made upon the attorney of record, unless otherwise ordered by the court.

PRACTICE COMMENT: When proof of service is made in the form of a statement, as prescribed in Rule 5(f), and the person served is an attorney, the statement must identify the name of the party represented by the attorney served.

PRACTICE COMMENT: Rule 5(g) applies a "one-day lag rule" to a submission containing confidential or business proprietary information. Practitioners should note that this rule does not act to extend any deadline set forth in these rules or by court order. Its only effect on the timing of a submission is to provide one day for a party to prepare a non-confidential version of its submission and to prepare any correction of bracketing of confidential or business proprietary information. This rule does not excuse those filings from other requirements, such as those in Rule 81(h), applicable to a submission containing confidential information. It also requires that all confidential information be contained in brackets.

PRACTICE COMMENT: Included among, but not limited to, the kinds of papers the clerk may refuse to accept for filing are: a reply to a response to a non-dispositive motion without leave of court; a pleading that is not accompanied by the appropriate filing fee; discovery documents presented contrary to Rule 5(d); papers that are not signed as required by Rule 11; papers presented by an attorney who is not the attorney of record; and papers presented after the running of periods prescribed by the rules or orders of the court.

PRACTICE COMMENT: The Court's Administrative Order No. 02-01, *In re Electronic Filing Procedures*, provides additional specifications for filings.

PRACTICE COMMENT: USCIT Rule 80(h) provides the requirements for filing or serving physical exhibits or items.

(As amended, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Nov. 29, 1995, eff. Mar. 31, 1996; Nov. 14, 1997, eff. Jan. 1, 1998; May 27, 1998, eff. Sept. 1, 1998; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Sept. 28, 2004, eff. Jan. 1, 2005; Nov. 29, 2005, eff. Jan. 1, 2006; Nov. 25, 2008, eff. Jan. 1, 2009; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 6, 2011, eff. Jan. 1, 2012; Dec. 4, 2012, eff. Jan. 1, 2013; May 20, 2014, eff. July 1, 2014; Dec. 22, 2014, eff. Jan. 28, 2015; June 5, 2015, eff. July 1, 2015; Sept. 21, 2016, eff. Oct. 3, 2016.)

(Rule 5.1: Reserved)

Rule 5.2. Privacy Protection for Filings Made with the Court

(a) Redacted Filings.

Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials; and

(4) the last four digits of the financial-account number.

(b) Filings Made under Seal.

The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(c) Protective Orders.

For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(d) Option for Additional Unredacted Filing under Seal.

A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(e) Option for Filing a Reference List.

A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(f) Waiver of Protection of Identifiers.

A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

PRACTICE COMMENT: For transcript redaction procedures and deadlines, please refer to Administrative Order 08-01.

(Added Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 6. Computing and Extending Time; Time for Motion Papers

(a) Computing Time. The following rules apply in computing any time period specified in these rules, any court order, or any statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) Period Stated in Hours. When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) Inaccessibility of the Clerk's Office. Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) ‘‘Last Day’’ Defined. Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing, at midnight in the court’s time zone; and

(B) for filing by other means, when the clerk’s office is scheduled to close.

(5) ‘‘Next Day’’ Defined. The ‘‘next day’’ is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) ‘‘Legal Holiday’’ Defined. ‘‘Legal holiday’’ means:

(A) the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day; and

(B) any day declared a holiday by the President or Congress.

(b) Extending Time.

(1) In General: When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect or circumstances beyond the control of the party.

(2) Exceptions: The court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d) and (e), and 60(c).

(c) Motions.

(1) Contents. The motion for extension of time must set forth:

(A) the specific number of additional days requested;

(B) the date to which the extension is to run;

(C) the extent to which the time for the performance of the particular act has been previously extended; and

(D) the reason or reasons on which the motion is based.

(2) Effect. No disposition of the underlying matter will be made until the court acts on the motion for extension of time.

(d) Additional Time after Certain Kinds of Service. When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D) (E) (F), or (G), 5 days are added after the period would otherwise expire under Rule 6(a).

(As amended, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; Apr. 28, 1987, eff. June 1, 1987; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Nov. 29, 2005, eff. Jan. 1, 2006; Nov. 27, 2007, eff. Jan. 1, 2008; Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 22, 2014, eff. Jan. 28, 2015.)

TITLE III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Consultation; Oral Argument; Response Time; Show Cause Order; Form of Motions and Other Papers

(a) Pleadings. Only these pleadings are allowed:

(1) a complaint;

(2) except for an action described in 28 U.S.C. § 1581(c), an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) if the court orders one, a reply to an answer.

(b) Form of Motions and Other Papers.

(1) In General. A request for a court order must be made by motion. The motion must:

(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for seeking the order;

(C) for motions that require consultation between counsel before being made as prescribed by subdivision (f) of this rule, describe the reasonable effort made to reach agreement on the issues involved in the motion through consultation with opposing counsel, without the intervention of the court, and recite the date and time of such consultation, as well as the names of all persons participating;

(D) state the relief sought; and

(E) be accompanied by a proposed order.

(2) Form. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(c) Oral Argument. On motion of a party, or on its own, the court may direct oral argument on a motion at a time and place designated as prescribed in Rule 77(c). A motion for oral argument on a motion must be filed no later than 21 days after service of the last permitted response or reply to the motion, or 21 days after the expiration of the period of time allowed for service of the last permitted response or reply.

(d) Time To Respond. Unless otherwise prescribed by these rules, or by order of the court, a response to a motion must be served within 14 days after service of such motion, except that a response to a dispositive motion must be served within 30 days after service of such motion. The movant has 14 days after service of the response to a dispositive motion to serve a reply.

(e) Order To Show Cause. No order to show cause to bring on a motion may be granted except on a clear and specific showing by affidavit of good and specific reasons why procedure other than regular motion is necessary or why the time to respond should be shortened.

(f) Motions; Consultation. Before a motion for an extension of time as prescribed in Rule 6(b), a motion for intervention as prescribed in Rule 24(a), a motion for a preliminary injunction to enjoin the liquidation of entries, a motion for a hearing as prescribed in Rule 56.2(e), a motion for the designation of a test case or suspension as prescribed in Rule 84, or a motion for an order compelling disclosure or discovery as prescribed in Rule 37(a), is

made, the movant must consult with all other parties to the action to attempt to reach agreement, in good faith, on the issues involved in the motion. If the court finds that a party willfully refused to consult, or, having consulted, willfully refused to attempt to reach agreement in good faith, the court may impose such sanctions as it deems proper.

(g) Dispositive Motions Defined. Dispositive motions include: motions for judgment on the pleadings; motions for summary judgment; motions for judgment on an agency record; motions to dismiss an action; and any other motion for a final determination of an action.

PRACTICE COMMENT: A schedule, agreed to by the parties, suitable for attachment to a decision of the court, should be filed at the time an action is submitted to the court for final determination on a dispositive motion or on the conclusion of a trial. The schedule should indicate (1) when one action is involved, the ports of entry, protest and entry numbers, (2) when consolidated actions are involved, the ports of entry, court numbers, protest and entry numbers, and (3) when joined actions are involved, the ports of entry, court numbers, plaintiffs, protest and entry numbers. Cases should be arranged according to port of entry, in numerical order.

PRACTICE COMMENT: When a preliminary injunction ("PI"), temporary restraining order ("TRO"), or show cause order requiring action within a time period shorter than provided for under the Court's Rules is sought in conjunction with the filing of a new action, as practicable, counsel should, at least 24 hours prior to the filing of motion papers, notify the Case Management Section of the Clerk's Office at 212-264-2971, and, before making service of the pleadings and the motion, obtain a court number from the Case Management Section and endorse it on the pleadings and the motion.

Further, in all other situations when a party is seeking a PI, TRO, or show cause order requiring action within a time period shorter than provided for under the Court's Rules, as practicable, counsel should, at least 24 hours prior to the filing of motion papers, notify the Case Management Section of the Clerk's Office at 212-264-2971.

Further, when notifying the Clerk's Office that a party is seeking a PI, TRO, or show cause order requiring action within a time period shorter than provided for under the Court's Rules, counsel are also encouraged simultaneously, if not sooner, to provide courtesy notice of the intended application to all other parties to the litigation; if any captioned party has not yet appeared through counsel, counsel are encouraged to provide courtesy notice to all relevant parties as identified in USCIT R. 4(a).

PRACTICE COMMENT: Consistent with 28 U.S.C. § 2632(d) and the Federal Rules of Civil Procedure, Rule 7(a) does not list a summons as a pleading. Practitioners should note, however, that in DaimlerChrysler Corp. v. United States, 442 F.3d 1313, 1317-18

(Fed. Cir. 2006), the United States Court of Appeals for the Federal Circuit determined that the summons acts as the initial pleading in an action commenced under 28 U.S.C. § 1581(a).

(As amended, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007; Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 8. General Rules of Pleading

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) New Grounds. A party who wishes the court to consider any new ground in support of a civil action described in 28 U.S.C. § 1581(a) must allege the new ground in accordance with this rule, and, as provided in 28 U.S.C. § 2638, must also allege that the new ground: (1) applies to the same merchandise that was the subject of the protest; and (2) is related to the same administrative decision that was contested in the protest.

(c) Defenses; Admissions and Denials.

(1) In General. In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) Denials – Responding to the Substance. A denial must fairly respond to the substance of the allegation.

(3) General and Specific Denials. A party that intends in good faith to deny all the allegations of a pleading — including the jurisdictional grounds — may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) Denying Part of an Allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of Failing to Deny. An allegation — other than one relating to the amount of damages — is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(d) Affirmative Defenses.

(1) In General. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- duress;
- estoppel;
- fraud;
- illegality;
- laches;

- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) Mistaken Designation. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(e) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) In General. Each allegation must be simple, concise, and direct. No technical form is required.

(2) Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of a claim or defense alternately or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) Inconsistent Claims or Defenses. A party may state as many separate claims or defenses as it has, regardless of consistency.

(f) Construing Pleadings. Pleadings must be construed so as to do justice.

PRACTICE COMMENT: For an action described in 28 U.S.C. § 1581(c), the complaint shall contain: (1) a citation to the administrative determination to be reviewed; (2) a statement of the issues presented by the action and (3) a demand for judgment.

PRACTICE COMMENT: Under 11 U.S.C. § 524(a), a discharge in bankruptcy voids a judgment to the extent it determines a personal liability of the debtor with respect to a discharged debt. The discharge also operates as an injunction against commencement or continuation of an action to collect, recover, or offset a discharged debt. These consequences of discharge cannot be waived. To avoid needless expense and effort, parties subject to a claim that has been discharged and, therefore, not subject to remedy in this court, should notify the claimant and the court as soon as the consequence of discharge is known.

(As amended, July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1883; Dec. 18, 2001, eff. Apr. 1, 2002; eff. Apr. 1, 2002; November 25, 2008, eff. January 1, 2009**;** Dec. 6, 2011**,** eff. Jan. 1, 2012.)

Rule 9. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) In General. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) Raising Those Issues. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) Conditions Precedent**.** In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) Official Document or Act. In pleading an official document or official act it suffices to allege that the document was legally issued or the act legally done.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or of a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) Time and Place. An allegation of time or place is material when testing the sufficiency of a pleading.

(g) Special Damages. If an item of special damage is claimed, it must be specifically stated.

(As amended, July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 10. Form of Pleadings

(a) Caption; Names of Parties**.** Every pleading must have a caption with the court's name, a title**,** a court number, and a Rule 7(a) designation. The caption of the summons and the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence – and each defense other than a denial – must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(As amended, Dec. 18, 2001, eff. Apr. 1, 2002; Nov. 25, 2008, eff. Jan. 1, 2009; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name – or by a party personally if the party is unrepresented. Every pleading, written motion, or other paper of the United States must be signed by an attorney authorized to do so on behalf of the Assistant Attorney General, Civil Division, Department of Justice. A pleading, written motion, or other paper of an agency of the United States, authorized by statute to represent itself in judicial proceedings, must be signed by an attorney authorized to do so on behalf of the agency. Each paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, pleadings or other papers need not be verified or accompanied by affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper – whether by signing, filing, submitting, or later advocating it – an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after any inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) Requirements for an Order. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 28, 2004, eff. January 1, 2005; Nov. 25, 2008, eff. Jan. 1, 2009; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 12. Defenses and Objections; When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) Time to Serve a Responsive Pleading.

(1) In General. Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) the United States, or an officer or agency thereof, must serve an answer to the complaint, or to a crossclaim, or a reply to a counterclaim, within 60 days after the service on the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, of the pleading in which the claim is asserted; except that,

(i) in an action described in 28 U.S.C. § 1581(c), no answer must be served or filed, and

(ii) in an action described in 28 U.S.C. § 1581(f), involving an application for an order to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the answer must be served within 14 days after being served with the summons and complaint. For good cause shown, the court in any action may order a different period of time.

(B) Any other defendant must serve an answer

(i) within 21 days after being served with the summons and complaint, or

(ii) if service of the summons has been timely waived under Rule 4(d), the defendant must serve an answer within 60 days after

the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(C) A party other than the United States or an officer or agency thereof must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(D) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) [RESERVED];

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not

obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining Motions.

(1) Right to Join. A motion under this rule may be joined with any other motion allowed by this rule.

(2) Limitation on Further Motions. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) When Some Are Waived. A party waives any defense listed in Rule 12(b)(2)(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) When to Raise Others. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) Lack of Subject-Matter Jurisdiction. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)-(7) – whether made in a pleading or by motion – and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

PRACTICE COMMENT: Prior to July 1, 2015, current CIT Rules 12(b)(4)-(b)(7) were designated CIT Rules 12(b)(3)-(b)(6) even though they directly corresponded to Rules 12(b)(4)-(b)(7) of the Federal Rules of Civil Procedure. This asymmetry was rectified effective July 1, 2015 by reserving CIT Rule 12(b)(3) and by renumbering former parts (b)(3) through (6) as (b)(4) through (7), respectively. Conforming changes were also made to Rule 12 internal cross-references. Practitioners must take this renumbering into account when researching cases involving Rule 12.

(As amended Nov. 4, 1981, 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; Oct. 5, 1994, eff. Jan. 1, 1995; Dec. 18, 2001, eff. Apr. 1, 2002; Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011; June 5, 2015, eff. July 1, 2015.)

Rule 13. Counterclaim and Crossclaim

(a) Counterclaims. A pleading must state as a counterclaim any claim that – at the time of its service – the pleader has against an opposing party if the claim: (1) involves the imported merchandise that is the subject matter of the civil action, or (2) is to recover on a bond or customs duties relating to such merchandise.

(b) Relief Sought in a Counterclaim. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(c) Counterclaim Against the United States. These rules do not expand the right to assert a counterclaim – or to claim a credit – against the United States or a United States officer or agency.

(d) Counterclaim Maturing or Acquired After Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(e) Crossclaim Against A Coparty. A pleading may state as a crossclaim any claim by one party against a coparty, if (1) the claim involves the imported merchandise that is the subject matter of the civil action, or (2) the claim is to recover on a bond or customs duties relating to such merchandise. The crossclaim may include a claim that the coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(f) Joining Additional Parties. Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(g) Separate Trials--Separate Judgments. If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction so to do, even if the opposing party's claims have been dismissed or otherwise resolved.

(h) Demand for a Complaint.

(1) Regardless of whether a civil action is pending on a Reserve or Suspension Calendar, in a civil action under 28 U.S.C. § 1581(a) or (b), for good cause shown, a defendant who wishes to proceed expeditiously in the action may file a motion demanding that the plaintiff file a complaint.

(2) The motion should include, among other information, (A) the movant's reasons for wanting to proceed at this time, (B) if the movant seeks a time different from that provided in this rule, a proposed timetable within which the plaintiff should file a complaint and the reasons for a different time, and, in a suspended action, other scheduling information that the movant believes necessary to enable the court to issue an order removing a suspended action from a Suspension Calendar, and (C) a description of any counterclaim known to the movant at the time of its motion that the movant intends to assert in its answer.

(3) If the court grants a motion for a demand for a complaint, plaintiff must file its complaint within 30 days after the date of service of the order if plaintiff wishes to continue the action.

(4) If the court enters an order granting a motion for a demand for a complaint and plaintiff does not voluntarily dismiss the action or fails to file a complaint, the clerk will enter an order of dismissal without further direction from the court.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 14. Third-Party Practice

(a) When Defendant May Bring in Third Party.

(1) Timing of the Summons and Complaint. A defending party may, as a third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must obtain, by motion, the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

(2) Third-Party Defendant's Claims and Defenses. The person served with the summons and third-party complaint – the "third-party defendant":

(A) will assert any defense against the third-party plaintiff's claim under Rule 12;

(B) will assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any crossclaim against another third party defendant under Rule 13(f);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert any claim against the plaintiff, if (1) the claim involves the imported merchandise that is the subject matter of the civil action, or (2) the claim is to recover on a bond or customs duties relating to such merchandise.

(3) Plaintiff's Claims Against a Third-Party Defendant. The plaintiff may assert against the third-party defendant any claim if (1) the claim involves the imported merchandise that is the subject matter of the civil action, or (2) the claim

is to recover on a bond or customs duties relating to such merchandise. The third-party defendant must then assert any defenses under Rule 12 and any counterclaim under Rule 13(a), and may assert any crossclaim under Rule 13(f).

(4) Motion to Strike, Sever, or Try Separately. Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) Third-Party Defendant's Claim Against a Nonparty. A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(b) When a Plaintiff May Bring in a Third Party. When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 15. Amended and Supplemental Pleadings

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading will be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) Amendments During and After Trial.

(1) Based on an Objection at Trial. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) For Issues Tried by Consent. When an issue not raised by the pleadings is tried by the parties' express or implied consent it will be treated in all respects as if it had been raised in the pleadings. A party may move – at any time – to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4 for serving the summons and complaint, the party to be brought in by amendment: (i) received such notice of action that it will not be prejudiced in defending on the merits; and (ii) knew or should have known that, the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) Notice to the United States. When the United States or a United States officer or agency is added as a defendant by amendment, the notice

requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was mailed or delivered to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, or to the agency or officer.

(d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

(As amended, eff. Jan. 1, 1982; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011.)

RULE 16. Postassignment Conferences; Scheduling; Management

(a) Purposes of a Postassignment Conference. In any action, the court may order the attorneys and any unrepresented parties to appear for one or more postassignment conferences for such purposes as:

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful activities;

(4) improving the quality of the proceedings for the final disposition of the action through more thorough preparation; and

(5) facilitating settlement.

(b) Scheduling

(1) Scheduling Order. Except as provided in Rule 56.2 or when a judge so orders and provides a statement of reasons and facts on which the order is based, the judge must issue a scheduling order:

(A) after receiving the parties' report under Rule 26(f); or

(B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means.

(2) Time to Issue. The judge must issue the scheduling order as soon as practicable, but in no event more than 90 days after the action is assigned.

(3) Contents of the Order.

(A) Required Contents. The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file and hear motions.

(B) Permitted Contents. The scheduling order may:

(i) modify the timing of disclosures under Rules 26(a) and 26(e)(1);

(ii) modify the extent of discovery;

(iii) provide for disclosure or discovery of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(v) set dates for conferences before submission of the action for final disposition, a final postassignment conference, and trial or submission of a dispositive motion; and

(vi) include other appropriate matters.

(4) Modifying a Schedule. A schedule may be modified only for good cause and with the judge's consent.

(c) Attendance and Matters for Consideration at a Postassignment Conference.

(1) Attendance. A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a postassignment conference. If

appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) Matters for Consideration. At any postassignment conference, the court may consider and take appropriate action on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Federal Rule of Evidence 702;

(E) determining the appropriateness and timing of summary adjudication under Rule 56;

(F) controlling and scheduling discovery, including orders affecting disclosures and discovery under Rule 26 and Rules 29 through 37;

(G) identifying witnesses and documents, scheduling the filing and exchange of any briefs, and setting dates for further conferences and for submission of the action for final disposition;

(H) referring matters to a master;

(I) settling or using extrajudicial procedures to resolve the dispute;

(J) determining the form and content of the scheduling or other postassignment conference order;

(K) disposing of pending motions;

(L) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(M) ordering a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim, or particular issue;

(N) ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);

(O) establishing a reasonable limit on the time allowed to present evidence;

(P) accessing confidential or privileged information, including business proprietary information, contained in an administrative record, which is the subject of the action; and

(Q) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) Orders. After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(e) Final Postassignment Conference and Orders. The court may hold a final postassignment conference to formulate a plan for submission of the action for final disposition. The conference must be held as close to the submission of the action for

final disposition as is reasonable, and must be attended by at least one of the attorneys on behalf of each of the parties and any unrepresented parties. The court may modify the order issued after a final postassignment conference only to prevent manifest injustice.

(f) Sanctions.

(1) In General. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b), if a party or its attorney:

(A) fails to appear at a scheduling or other postassignment conference;

(B) is substantially unprepared to participate — or does not participate in good faith — in the conference; or

(C) fails to obey a scheduling or other postassignment conference order.

(2) Imposing Fees and Costs. Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses — including attorney's fees — incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

PRACTICE COMMENT: The attorneys for the parties and any unrepresented parties are expected to consult prior to a postassignment conference. The consultations should pertain to such matters as: access to the confidential portions of the administrative record, if any; the definition of the issues; whether discovery is necessary or permissible; and, the establishment of a proposed discovery schedule, if it is agreed that discovery will be conducted.

PRACTICE COMMENT: A party may seek expedited consideration under Rule 3(g). For possible applicability of other scheduling rules, see practice comment to Rule 3(g).

PRACTICE COMMENT: Notwithstanding a scheduling order setting a single date for the filing of dispositive motions, a party may include a cross-motion for summary judgment in a response to a motion for summary judgment unless the court orders otherwise.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 27, 2007, eff. Jan. 1, 2008; Nov. 25, 2008, eff. Jan. 1, 2009; Aug. 2, 2010, eff. Sept. 1, 2010.)

Rule 16.1. Court-Annexed Mediation

At any time during the pendency of an action before the United States Court of International Trade, any judge or three-judge panel of the court may refer the action for mediation. The matter will be referred to a judge of the court who is not assigned to the action to be mediated, who has consented to serve as a Judge Mediator in the action, and who is not otherwise disqualified to serve in accordance with Title 28 U.S.C. § 455 and the Canons of Judicial Ethics.

At any time, but not less than 30 days prior to the scheduled date for the filing of: a motion for summary judgment; a motion pursuant to USCIT Rules 56.1 or 56.2; or trial (whichever first occurs), any party may move for the referral to mediation of an action pending before the court.

The USCIT Guidelines for mediation set forth in full the procedures to be followed in actions referred to mediation. The Judge Mediator and all parties and counsel participating in a session of mediation are bound by the confidentiality provisions set forth in the Guidelines. The Guidelines will have the same force and effect as the provisions of this Rule.

(Added Sept. 30, 2003; eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

TITLE IV. PARTIES

Rule 17. Plaintiff and Defendant; Capacity; Public Officers

(a) Real Party in Interest.

(1) Designation in General. An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by statute.

(2) Action in the Name of the United States for Another's Use or Benefit. When a federal statute so provides, an action for another's use or benefit must be brought in the name of the United States.

(3) Joinder of the Real Party in Interest. The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) Capacity To Sue or Be Sued. Capacity to sue or be sued is determined as follows:

(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;

(2) for a corporation, by the law under which it was organized; and

(3) for all other parties, by the law of the appropriate state, except that:

(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and

(B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.

(c) Minor or Incompetent Person.

(1) With a Representative. The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) Without a Representative. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by guardian ad litem. The court must appoint a guardian ad litem – or issue another

appropriate order – to protect a minor or incompetent person who is unrepresented in an action.

(d) Public Officer's Title and Name. A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

(As amended July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr. 1, 2002; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 18. Joinder of Claims

(a) In General. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party, except that in an action described in 28 U.S.C. § 1581(a), a party may join claims only if they involve a common issue.

(b) Joinder of Contingent Claims. A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 19. Required Joinder of Parties

(a) Persons Required To Be Joined if Feasible.

(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) Joinder by Court Order. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(b) When Joinder is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) Pleading the Reasons for Nonjoinder. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) Exception for Class Actions. This rule is subject to Rule 23.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 20. Permissive Joinder of Parties

(a) Persons Who May Join or Be Joined.

(1) Plaintiffs. Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) Defendants. Persons may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) Extent of Relief. Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) Protective Measures. The court may issue orders — including an order for separate trials — to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissing an action**.** On motion or on its own**,** the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

(As amended, July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 22. Interpleader

(a) Grounds.

(1) By a Plaintiff. Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) By a Defendant. A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) Relation to Other Rules and Statutes. This rule supplements — and does not limit — the joinder of parties allowed by Rule 20. The remedy this rule provides is in addition to — and does not supersede or limit — the remedy provided by 28 U.S.C. §§ 1335, 1397, and 2361. An action under those statutes must be conducted under these rules.

(As amended Sept. 30, 2003; eff. Jan. 1, 2004; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 23. Class Actions

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) Certification Order.

(A) Time to Issue. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) Defining the Class; Appointing Class Counsel. An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) Altering or Amending the Order. An order that grants or denies class certification may be altered or amended before final judgment.

(2) Notice.

(A) For (b)(1) or (b)(2) Classes. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) For (b)(3) Classes. For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) Judgment. Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members.

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) Particular Issues. When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) Subclasses. When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) In General. In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require — to protect class members and fairly conduct the action — giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) Combining and Amending Orders. An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

(2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.

(3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

(f) Appeals. The Court of Appeals for the Federal Circuit may permit an appeal from an order granting or denying class-action certification under this rule if a petition for permission to appeal is filed with the circuit clerk within 14 days after the order is entered. An appeal does not stay proceedings in this court unless the judge or the Court of Appeals for the Federal Circuit so orders.

(g) Class Counsel.

(1) Appointing Class Counsel. Unless a statute provides otherwise, if the court certifies a class, it must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) Standard for Appointing Class Counsel. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) Interim Counsel. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) Duty of Class Counsel. Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney’s Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master as provided in Rule 54(d)(2)(D).

(As amended, eff. Jan. 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 23.1. [Reserved]

(As amended Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 23.2. Actions Relating to Unincorporated Associations

This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 23(e).

(Added Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 24. Intervention

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(3) In an action described in 28 U.S.C. § 1581(c), a timely motion must 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:

(i) mistake, inadvertence, surprise or excusable neglect; or

(ii) 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 motion 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.

(1) In General. On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) By a Government Officer or Agency. On timely motion, the court may permit a federal governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) Notice and Pleading Required.

(1) Except in an action described in 28 U.S.C. § 1581(c), a person desiring to intervene must serve a motion to intervene upon the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

(2) 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) must, after consultation as provided in Rule 7(b), serve a motion to intervene upon the parties as provided in Rule 5. The motion must state (1) whether the motion for intervention has been

consented to by the parties, and (2) the grounds in support of the motion. When the movant for intervention seeks to intervene on the side of the plaintiff, the motion must state the movant's standing, and must state the administrative determination to be reviewed and the issues that the intervenor desires to litigate. When the movant for intervention seeks to intervene on the side of the defendant, the motion must state the movant's standing. If no other party objects within 14 days after service of the motion, or if all parties consent to the motion, 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 on the grounds of a financial interest, under 28 U.S.C. § 455, a completed "Disclosure Statement" form, available on 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 55, 444 F. Supp. 2d 1309 (2006).

(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; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 25. Substitution of Parties

(a) Death.

(1) Substitution if the Claim Is Not Extinguished. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) Continuation among the Remaining Parties. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) Service. A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner.

(b) Incompetency. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

(d) Public Officers; Death or Separation from Office. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

(As amended July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr.1, 2002; Nov. 25, 2009, eff. Jan. 1, 2010.)

TITLE V. DEPOSITIONS AND DISCOVERY

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) Required Disclosures.

(1) Initial Disclosure.

(A) In General. Except as exempted by Rule 26(a)(1)(B), or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party – who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) Proceedings Exempt from Initial Disclosure. The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record;

(ii) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(iii) an action to enforce or quash an administrative summons or subpoena;

(iv) an action by the United States to recover benefit payments;

(v) a proceeding ancillary to a proceeding in another court; and

(vi) an action to enforce an arbitration award.

(C) Time for Initial Disclosures – In General. A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(D) Time for Initial Disclosures – Parties Served or Joined Later. A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In General. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report prepared and signed by the witness. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) Time to Disclose Expert Testimony. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B), within 30 days after the other party's disclosure.

(D) Supplementing the Disclosure. The parties must supplement these disclosures when required under Rule 26(e).

(3) Pretrial Disclosures.

(A) In General. In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and, if not previously provided, the address and telephone number of each witness – separately identifying those the party expects to present and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit, including summaries of other evidence – separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) Time for Pretrial Disclosures; Objections. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made – except for one under Federal Rule of Evidence 402 or 403 – is waived unless excused by the court for good cause.

(4) Form of Disclosures. Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

(b) Discovery Scope and Limits.

(1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense – including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

(2) Limitations on Frequency and Extent.

(A) When Permitted. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under Rule 30 and the number of requests under Rule 36.

(B) Specific Limitations on Electronically Stored Information. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the

limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(3) Trial Preparation: Materials

(A) Documents and Tangible Things. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) Protection Against Disclosure. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) Previous Statement. Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(4) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording – or a transcription of it – that recites substantially verbatim the person's oral statement.

(4) Trial Preparation: Experts.

(A) Deposition of an Expert Who May Testify. A party may depose any person who had been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) Trial-Preparation Protection for Draft Reports or Disclosures. Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses. Rules 26(b)(3)(A) and (B) protect communications between a party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) Expert Employed Only for Trial Preparation. Ordinarily, a party may not by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(E) Payment. Unless manifest injustice would result, the court must require the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and

(ii) for discovery under (D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(5) Claiming Privilege or Protecting Trial-Preparation Materials.

(A) Information Withheld. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed – and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) Information Produced. If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) Protective Orders.

(1) In General. A party or any person from whom discovery is sought may move for a protective order. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) Ordering Discovery. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) Awarding Expenses. Rule 37(a)(4) applies to the award of expenses.

(d) Timing and Sequence of Discovery.

(1) Timing. A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.

(2) Sequence. Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and (B) discovery by one party does not require any other party to delay its discovery.

(e) Supplementing Disclosures and Responses.

(1) In General. A party who has made a disclosure under Rule 26(a) – or who has responded to an interrogatory, request for production, or request for admission – must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the

additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) Expert Witness. For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due.

(f) Conference of the Parties; Planning for Discovery.

(1) Conference Timing. Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable – and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).

(2) Conference Content; Parties' Responsibilities. In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report

outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(3) Discovery Plan. A discovery plan must state the parties' views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including – if the parties agree on a procedure to assert these claims after production – whether to ask the court to include their agreement in an order;

(E) what changes should be made in the limitations on discovery imposed under these rules, and what other limitations should be imposed; and

(F) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

(4) Expedited Schedule. If necessary to comply with its expedited schedule for Rule 16(b) conferences, the court may:

(A) require the parties' conference to occur less than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b); and

(B) require the written report outlining the discovery plan to be filed less than 14 days after the parties' conference, or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference.

(g) Signing Disclosures and Discovery Requests, Responses, and Objections.

(1) Signature Required; Effect of Signature. Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name – or by the party personally, if unrepresented – and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) Failure to Sign. Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) Sanction for Improper Certification. If a certification violates this rule without substantial justification, the court, upon motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

PRACTICE COMMENT: Rule 26(a)(2) requires disclosure of certain information concerning expert witnesses. Practitioners who are familiar with Fed. R. Civ. P. 26(a)(2) should note that Rule 26(a)(2) is more expansive. The Federal Rule only applies to a witness who is retained or specially employed to testify as an expert, including any employee of a party whose duties "regularly involve giving expert testimony." The CIT rule makes no distinction among experts, whether they are outside experts specially retained by a party, in-house employees whose duties regularly involve giving expert testimony, or employees who do not routinely testify as experts, but do so in a specific case.

PRACTICE COMMENT: Rule 26(f) requires the parties to confer "as soon as practicable after the filing of a complaint, and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under

Rule 16(b)....” However, time permitting, parties may frequently find it more practical to confer after the answer has been filed.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 27, 2007, eff. Jan. 1, 2008; March 24, 2009, eff. May 1, 2009; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 6, 2011, eff. Jan. 1, 2012; Sept. 21, 2016, eff. Oct. 3, 2016.)

Rule 27. Depositions to Perpetuate Testimony

(a) Before an Action Is Filed.

(1) Petition. A person who wants to perpetuate testimony about any matter cognizable in this court may file a verified petition. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

(A) that the petitioner expects to be a party to an action cognizable in this court but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address, and expected substance of the testimony of each deponent.

(2) Notice and Service. At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice must be served in the manner provided in Rule 4. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney to represent persons not served in the manner provided by Rule 4 and to cross-examine the

deponent if an unserved person is not otherwise represented. If any expected adverse party is a minor or is incompetent, Rule 17(c) applies.

(3) Order and Examination. If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules; and the court may issue orders like those authorized by Rules 34 and 35.

(4) Using the Deposition. A deposition to perpetuate testimony may be used under Rule 32(a) in any later-filed action involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible in evidence in the courts of the state where it was taken.

(b) Pending Appeal.

(1) In General. If an appeal has been taken from a judgment, or may still be taken, the court may permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings.

(2) Motion. The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) Court Order. If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in actions pending in court.

(c) Perpetuation by an Action. This rule does not limit this court's power to entertain an action to perpetuate testimony.

(As amended July 28, 1988, eff. Nov. 1, 1988; Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 27, 2007, eff. Jan. 1, 2008; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 28. Persons Before Whom Depositions May Be Taken

(a) Within the United States.

(1) In General. Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths either by federal law or by the law in the place of examination; or

(B) a person appointed by the court to administer oaths and take testimony.

(2) Definition of "Officer". The term "officer" in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).

(b) In a Foreign Country.

(1) In General. A deposition may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a "letter rogatory";

(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) Issuing a Letter of Request or a Commission. A letter of request, a commission, or both may be issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) Form of a Request, Notice, or Commission. When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in [name of country]." A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) Letter of Request – Admitting Evidence. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States.

(c) Disqualification. A deposition must not be taken before a person who is any party's relative, employee, or attorney; who is related to or employed by any party's attorney; or who is financially interested in the action.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; Nov. 14, 1997, eff. Jan. 1, 1998; Aug. 29, 2000, eff. Jan. 1, 2001; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 29. Stipulations About Discovery Procedure

Unless the court orders otherwise, the parties may stipulate that:

(a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified – in which event it may be used in the same way as any other deposition; and

(b) other procedures governing or limiting discovery be modified – but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Aug. 29, 2000, eff. Jan. 1, 2001; Nov. 25, 2009, eff. Jan. 1, 2010).

Rule 30. Depositions by Oral Examination

(a) When a Deposition May Be Taken.

(1) Without Leave. A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) With Leave. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take the deposition before the time specified in Rule 26(d), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time; or

(B) if the deponent is confined in prison.

(b) Notice of the Deposition; Other Formal Requirements.

(1) Notice in General. A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general

description sufficient to identify the person or the particular class or group to which the person belongs.

(2) Producing Documents. If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

(3) Method of Recording.

(A) Method Stated in the Notice. The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) Additional Method. With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) By Remote Means. The parties may stipulate – or the court may on motion order – that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), the deposition takes place where the deponent answers the questions.

(5) Officer's Duties.

(A) Before the Deposition. Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:

(i) the officer's name and business address;

(ii) the date, time, and place of the deposition;

(iii) the deponent's name;

(iv) the officer's administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

(B) Conducting the Deposition; Avoiding Distortion. If the deposition is recorded non-stenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)-(iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) After the Deposition. At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) Notice or Subpoena Directed to an Organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must

describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Written Questions.

(1) Examination and Cross-Examination. The examination and cross-examination of a deponent may proceed as they would at trial under the Federal Rules of Evidence, except Rules 103 and 615. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) Objections. An objection at the time of the examination – whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition – must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only

when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) Participating Through Written Questions. Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Duration; Sanction; Motion to Terminate or Limit.

(1) Duration. Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours. The court must allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) Sanction. The court may impose an appropriate sanction – including the reasonable expenses and attorney's fees incurred by any party – on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) Motion to Terminate or Limit.

(A) Grounds. At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) Order. The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court.

(C) Award of Expenses. Rule 37(a)(4) applies to the award of expenses.

(e) Review by the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing.

(1) Certification and Delivery. The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who arranged for the transcript

or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) Documents and Tangible Things.

(A) Originals and Copies. Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals – after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked – in which event the originals may be used as if attached to the deposition.

(B) Order Regarding the Originals. Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) Copies of the Transcript or Recording. Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) Notice of Filing. A party who files the deposition must promptly notify all other parties of the filing.

(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses.

A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr. 1, 2002; Nov. 25, 2009, eff. Jan. 1, 2010).

Rule 31. Depositions by Written Questions

(a) When a Deposition May Be Taken.

(1) Without Leave. A party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) With Leave. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take a deposition before the time specified in Rule 26(d); or

(B) if the deponent is confined in prison.

(3) Service; Required Notice. A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) Questions Directed to an Organization. A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with Rule 30(b)(6).

(5) Questions from Other Parties. Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) Delivery to the Officer; Officer's Duties. The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

(1) take the deponent's testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and of the notice.

(c) Notice of Completion or Filing.

(1) Completion. The party who noticed the deposition must notify all other parties when it is completed.

(2) Filing. A party who files the deposition must promptly notify all other parties of the filing.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 2000, eff. Jan. 1, 2001; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 32. Using Depositions in Court Proceedings*

(a) Using Depositions.

(1) In General. At a hearing or trial, all or part of a deposition may be used against a party on these conditions:

(A) the party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying; and

(C) the use is allowed by Rule 32(a)(2) through (8).

(2) Impeachment and Other Uses. Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the Federal Rules of Evidence.

(3) Deposition of Party, Agent, or Designee. An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).

(4) Unavailable Witness. A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) that the witness is dead;

(B) that the witness is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition could not procure the witness's attendance by subpoena; or

(E) on motion and notice, that exceptional circumstances make it desirable – in the interest of justice and with due regard to the importance of live testimony in open court – to permit the deposition to be used.

(5) Limitations on Use.

(A) Deposition Taken on Short Notice. A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place –and this motion was still pending when the deposition was taken.

(B) Unavailable Deponent; Party Could Not Obtain an Attorney. A deposition taken without leave of court under the unavailability provision of Rule 30(a)(2)(A)(iii) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(6) Using Part of a Deposition. If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) Substituting a Party. Substituting a party under Rule 25 does not affect the right to use a deposition previously taken.

(8) Deposition Taken in an Earlier Action. A deposition lawfully taken and, if required, filed in any federal- or state-court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the Federal Rules of Evidence.

(b) Objections to Admissibility. Subject to Rules 28(b) and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) Form of Presentation. Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but may provide the court with the testimony in nontranscript form as well. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court for good cause orders otherwise.

(d) Waiver of Objections.

(1) To the Notice. An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) To the Officer's Qualification. An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) To the Taking of the Deposition.

(A) Objection to Competence, Relevance, or Materiality. An objection to a deponent's competence – or to the competence, relevance, or materiality of testimony – is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) Objection to an Error or Irregularity. An objection to an error or irregularity at an oral examination is waived if:

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.

(C) Objection to a Written Question. An objection to the form of a written question under Rule 31 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.

(4) To Completing and Returning the Deposition. An objection to how the officer transcribed the testimony – or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition – is waived unless a

motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

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* As provided in 28 U.S.C. § 2641(a), the Federal Rules of Evidence apply to all actions in this court, except as provided in 28 U.S.C. §§ 2639 and 2641(h) or the rules of this court.

(As amended July 28, 1988, eff. Nov. 1, 1988; Aug. 29, 2000, eff. Jan. 1, 2001; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 33. Interrogatories to Parties

(a) In General.

(1) Availability. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(2).

(2) Scope. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(b) Answers and Objections.

(1) Responding Party. The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

(2) Time to Respond. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) Answering Each Interrogatory. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) Objections. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) Signature. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) Use. An answer to an interrogatory may be used to the extent allowed by the Federal Rules of Evidence.

(d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Aug. 29, 2000, eff. Jan. 1, 2001, Nov. 27, 2007, eff. Jan. 1, 2008; Nov. 25, 2009, eff. Jan. 1, 2010; Sept. 21, 2016, eff. Oct. 3, 2016.)

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

(a) In General. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information – including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations – stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Procedure.

(1) Contents of the Request. The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) Responses and Objections.

(A) Time to Respond. The party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(B) Responding to Each Item. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.

(C) Objections. An objection to part of a request must specify the part and permit inspection of the rest.

(D) Responding to a Request for Production of Electronically Stored Information. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form – or if no form was specified in the request – the party must state the form or forms it intends to use.

(E) Producing the Documents or Electronically Stored Information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(c) Nonparties. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1. 1993; August 29, 2000, eff. January 1, 2001; Nov. 27, 2007, eff. Jan. 1, 2008; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 35. Physical and Mental Examinations

(a) Order for an Examination.

(1) In General. The court may order a party whose mental or physical condition – including blood group – is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) Motion and Notice; Contents of the Order. The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

(b) Examiner's Report.

(1) Request by the Party or Person Examined. The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) Contents. The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) Request by the Moving Party. After delivering the reports, the party who moved for the examination may request – and is entitled to receive – from

the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) Waiver of Privilege. By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have – in that action or any other action involving the same controversy – concerning testimony about all examinations of the same condition.

(5) Failure to Deliver a Report. The court on motion may order – on just terms – that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) Scope. This subdivision (b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subdivision does not preclude obtaining an examiner's report or deposing an examiner under other rules.

(As amended July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 36. Requests for Admission

(a) Scope and Procedure.

(1) Scope. A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) Form; Copy of a Document. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) Time to Respond; Effect of Not Responding. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

(4) Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry

and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) Objections. The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) Motion Regarding the Sufficiency of an Answer or Objection. The requesting party may move to determine the sufficiency of an answer or objections. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(4) applies to an award of expenses.

(b) Effect of an Admission; Withdrawing or Amending It. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

(As amended, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006; eff. Jan. 1, 2007; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) Motion for an Order Compelling Disclosure or Discovery.

(1) In General. On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) Specific Motions.

(A) To Compel Disclosure. If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to respond that inspection will be permitted – or fails to permit inspection – as requested under Rule 34.

(C) Related to a Deposition. When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(3) Evasive or Incomplete Disclosure, Answer, or Response. For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

(4) Payment of Expenses; Protective Orders.

(A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted – or if the disclosure or requested discovery is provided after the motion was filed – the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) If the Motion Is Denied. If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing

the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) If the Motion Is Granted in Part and Denied in Part. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) Failure to Comply with a Court Order.

(1) Sanctions When the Deposition Is Taken. If the court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court.

(2) Sanctions in Other Discovery Matters.

(A) For Not Obeying a Discovery Order. If a party or a party's officer, director, or managing agent – or a witness designated under Rule 30(b)(6) or 31(a)(4) – fails to obey an order to provide or permit discovery, including an order under Rules 26(f), 35, or 37(a), the court may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) For Not Producing a Person for Examination. If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(A)(i)-(vi), unless the disobedient party shows that it cannot produce the other person.

(C) Payment of Expenses. Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) Failure to Disclose, to Supplement an Earlier Response, or to Admit.

(1) Failure to Disclose or Supplement. If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

(2) Failure to Admit. If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.

(1) In General.

(A) Motion; Grounds for Sanctions. The court may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent – or a person designated under Rule 30(b)(6) or 31(a) (4) – fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(B) Certification. A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) Unacceptable Excuse for Failing to Act. A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) Types of Sanctions. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to

pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) Failure to Provide Electronically Stored Information. Absent exceptional circumstances, the court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

(f) Failure to Participate in Framing a Discovery Plan. If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 26(f), the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr.1, 2002; Nov. 27, 2007; eff. Jan. 1, 2008; Nov. 25, 2009, eff. Jan. 1, 2010.)

TITLE VI. TRIALS

Rule 38. Right to a Jury Trial; Demand

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution – or as provided by a federal statute – is preserved to the parties inviolate.

(b) Demand. On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand – which may be included in a pleading – no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with Rule 5(d).

(c) Specifying Issues. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may – within 14 days after being served with the demand or within a shorter time ordered by the court – serve a demand for a jury trial on any other or all factual issues triable by jury.

(d) Waiver; Withdrawal. A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr. 1, 2002; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 6, 2011, eff. Jan. 1, 2012.)

Rule 39. Trial by Jury or by the Court

(a) When a Demand Is Made. When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial.

(b) When No Demand Is Made. Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) Advisory Jury; Jury Trial by Consent. In an action not triable of right by a jury, the court, on motion or on its own: (1) may try any issue with an advisory jury; or (2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is against the United States and a federal statute provides for a nonjury trial.

(As amended Nov. 25, 2009; eff. Jan. 1, 2010.)

Rule 40. Request for Trial

(a) Request. At any time after issue is joined in an action, unless the court otherwise orders, any party who desires to try an action must: (1) confer with the opposing party or parties to attempt to reach agreement as to the time and place of trial, and (2) serve on the opposing party or parties, and file with the court, a request for trial which must be substantially in the form shown in Form 6 in the Appendix of Forms. The request must be served and filed at least 30 days prior to the requested date of trial, or for good cause, at a reasonable time prior to the requested date of trial. A party who opposes the request must serve and file its opposition within 14 days after service of the request, unless a shorter period is ordered by the court. In all instances where a trial is requested to be held at a location other than or in addition to the courthouse at One Federal Plaza, New York, New York, all other parties must serve and file a response within 14 days after the service of the request, unless a shorter period is ordered by the court.

(b) Designation. The court will designate the date and place for trial, as provided in Rule 77(c)(1) or (2), and must give reasonable notice thereof to the parties.

(c) Premarking Exhibits. All exhibits and documents which are intended to be introduced in evidence must be marked for identification and exhibited to opposing attorneys prior to trial or court proceeding.

PRACTICE COMMENT: To implement the authority conferred on the chief judge by 28 U.S.C.§§ 253(b) and 256(a), and for the convenience of parties, there is set out in the instructions for Form 6, in the Appendix of Forms, the procedures to be followed in connection with trials or oral arguments of dispositive motions at places other than New York City.

PRACTICE COMMENT: A schedule, agreed to by the parties, suitable for attachment to a decision of the court, should be filed at the time an action is submitted to the court for final determination on a dispositive motion or on the conclusion of a trial. The schedule should indicate (1) when one action is involved, the ports of entry, protest and entry numbers, (2) when consolidated actions are involved, the ports of entry, court numbers, protest and entry numbers, and (3) when joined actions are involved, the ports of entry, court numbers, plaintiffs, protest and entry numbers. Cases should be arranged according to port of entry, in numerical order.

PRACTICE COMMENT: A party may seek expedited consideration under Rule 3(g). For possible applicability of other scheduling rules, see Practice Comment to Rule 3(g).

(As amended Oct. 3, 1990, eff. Jan. 1, 1991; Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2009; eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal.

(1) By the Plaintiff.

(A) Without a Court Order. Subject to Rules 23(e), 23.2, 56.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

(b) Involuntary Dismissal; Effect.

(1) Actions on the Reserve Calendar or the Suspension Disposition Calendar are subject to dismissal for lack of prosecution at the expiration of the applicable period of time as prescribed by Rules 83 and 85.

(2) Actions commenced pursuant to 28 U.S.C. § 1581(c) by the filing of a summons only are subject to dismissal for failure to file a complaint at the expiration of the applicable period of time prescribed by 19 U.S.C. § 1516a.

(3) When it appears that there is a failure of the plaintiff to prosecute, the court may on its own after notice, or on motion of a defendant, order the action or any claim dismissed for lack of prosecution.

(4) For failure of the plaintiff to comply with these rules or with any order of the court, a defendant may move that the action or any claim against the defendant be dismissed.

(5) Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, operates as an adjudication on the merits.

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Costs of a Previously Dismissed Action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

PRACTICE COMMENT: Rule 41(a)(1)(A) may be used to dismiss fewer than all plaintiffs or defendants from an action. There is no standard form for this purpose. Plaintiffs should construct an appropriate notice or stipulation identifying the case and the party to be dismissed. In cases of misjoined parties, Rule 21 is applicable. Following the dismissal of a party, the court may, either on its own initiative or on a motion of a party, conform the caption of the case to reflect the actual parties remaining.

(As amended Nov. 4, 1981, 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; Oct. 5, 1994, eff. Jan. 1, 1995; Jan. 25, 2000, eff. May 1, 2000; Dec. 18, 2001, eff. Apr.1, 2002; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 42. Consolidation; Separate Trials

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial.

(As amended Dec. 18, 2001, eff. Apr.1, 2002; Nov. 25, 2009; eff. Jan. 1, 2010.)

Rule 43. Taking Testimony*

(a) In Open Court. At trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) Affirmation Instead of an Oath. When these rules require an oath, a solemn affirmation suffices.

(c) Evidence on a Motion. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(d) Interpreter. The court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.

(e) Documents Specially Admissible.

(1) Reports – Depositions – Affidavits. In addition to other admissible evidence, when the value of merchandise or any of its components is in issue, reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons, who cannot reasonably attend a court proceeding, may be admitted in evidence, as provided for in 28 U.S.C. § 2639(c), when served on the opposing party in accordance with this rule.

(2) Service. A copy of any report, deposition or affidavit described in paragraph (1) that is intended to be offered in evidence, must be served on the

opposing party with the request for trial. A party other than the party serving the request for trial must serve a copy of any report, deposition or affidavit that the party intends to offer in evidence on the opposing party within 21 days after service of the request for trial. On consent or by order of the court for good cause, timely service of the documents may be waived or the time extended.

(3) Objections. Objections to the admission of such documents in evidence may be made at the trial.

(4) Pricelists – Catalogs. When the value of merchandise is in issue, pricelists and catalogs may be admitted into evidence when duly authenticated, relevant, and material.

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*As provided in 28 U.S.C. § 2641(a), the Federal Rules of Evidence apply to all actions in this court, except as provided in 28 U.S.C. § 2639 and 2641(b), or the rules of the court.

PRACTICE COMMENT: The availability of contemporaneous transmission per Rule 43(a) is in addition to other provisions of law and rules regarding the receipt of testimony and evidence in the court. See, e.g. 28 U.S.C. §§ 256 (trials outside New York), 2639(c) (special evidence rules), and 2641 (confrontation of witnesses, inspection of evidence). These provisions may be factors in determining whether the court will permit the reception of testimony from a different location.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 14, 1997, eff. Jan. 1, 1998; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 44. Proving an Official Record

(a) Means of Proving.

(1) Domestic Record. Each of the following evidences an official record – or an entry in it – that is otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record – or by the officer's deputy – and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

(i) by a judge of a court of record in the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) Foreign Record.

(A) In General. Each of the following evidences a foreign official record – or an entry in it – that is otherwise admissible:

(i) an official publication of the record; or

(ii) the record – or a copy – that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) Final Certification of Genuineness. A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) Other Means of Proof. If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the record to be evidenced by an attested summary with or without a final certification.

(b) Lack of a Record. A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with (a)(2)(C)(ii).

(c) Other Proof. A party may prove an official record – or an entry or lack of an entry in it – by any other method authorized by law.

(As amended July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination must be treated as a ruling on a question of law.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2009; eff. Jan. 1, 2010.)

Rule 45. Subpoena

(a) In General.

(1) Form and Contents.

(A) Requirements – In General. Every subpoena must:

(i) state the U.S. Court of International Trade as the court from which it issued;

(ii) state the title of the action and its civil-action number;

(iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(d) and (e).

(B) Command to Attend a Deposition – Notice of the Recording Method. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) Command to Produce; Included Obligations. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(2) Issued from the Court. A subpoena must issue from the court.

(3) Issued by Whom. The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney admitted to practice before the Court of International Trade as an officer of the court may also issue and sign a subpoena on behalf of the court.

(4) Notice to Other Parties Before Service. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

(b) Service.

(1) By Whom and How; Tendering Fees. Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.

(2) Service in the United States. A subpoena may be served at any place within the United States.

(3) Service in a Foreign Country. 28 U.S.C. § 1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country.

(4) Proof of Service. Proving service, when necessary, requires filing with the court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(c) Place of Compliance.

(1) For a Deposition. A subpoena may command a person to attend a deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person;

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person is a party or a party's officer; or

(C) at any place beyond the geographical limits of (A) or (B) that the court authorizes on motion and for good cause, if a federal statute so provides or when the interest of justice may require.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(3) For a Trial or Hearing. A subpoena may command a person to attend a trial or hearing at any place within the United States:

(A) if the person is a party or a party's officer; or

(B) if the person is neither a party nor a party's officer and the person would not incur substantial expense.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction – which may include lost earnings and reasonable attorney's fees – on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises

– or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in

a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without

revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) Contempt. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

(As amended June 19, 1985, eff. Oct. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Nov. 27, 2007, eff. Jan. 1, 2008; Nov. 25, 2009, eff. Jan. 1, 2010; June 5, 2015, eff. July 1, 2015.)

Rule 46. Objecting to a Ruling or Order

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2009; eff. Jan. 1, 2010.)

Rule 47. Selecting Jurors

(a) Examining Jurors. The court may permit the parties or their attorneys to examine prospective jurors or may itself do so. If the court examines the jurors, it must permit the parties or their attorneys to make any further inquiry it considers proper, or must itself ask any of their additional questions it considers proper.

(b) Peremptory Challenges. The court must allow the number of peremptory challenges provided by 28 U.S.C. § 1870.

(c) Excusing a Juror. During trial or deliberation, the court may excuse a juror for good cause.

(As amended July 21, 1986, eff. Oct. 1, 1986; Sept. 25, 1992, eff. Jan. 1, 1993; Nov. 25, 2009; eff. Jan. 1, 2010.)

Rule 48. Number of Jurors; Verdict; Polling

(a) Number of Jurors. A jury must begin with at least 6 and no more than 12 members, and each juror must participate in the verdict unless excused under Rule 47(c).

(b) Verdict. Unless the parties stipulate otherwise, the verdict must be unanimous and must be returned by a jury of at least 6 members.

(c) Polling. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.

(As amended July 21, 1986, eff. Oct. 1, 1986; Sept. 25, 1992, eff. Jan. 1, 1993; Nov. 25, 2009; eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 49. Special Verdict; General Verdict and Questions

(a) Special Verdict.

(1) In General. The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) submitting written questions susceptible of a categorical or other brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) Instructions. The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) Issues Not Submitted. A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) General Verdict with Answers to Written Questions.

(1) In General. The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to

enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) Verdict and Answers Consistent. When the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.

(3) Answers Inconsistent with the Verdict. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:

(A) approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

(4) Answers Inconsistent with Each Other and the Verdict. When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2009; eff. Jan. 1, 2010.)

Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

(a) Judgment as a Matter of Law.

(1) In General. If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) Motion. A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) Renewing the Motion After Trial; Alternative Motion for a New Trial. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 30 days after the entry of judgment – or if the motion addresses a jury issue not decided by a verdict, no later than 30 days after the jury was discharged – the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

(1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

(c) Granting the Renewed Motion; Conditional Ruling on a Motion for a New Trial.

(1) In General. If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) Effect of a Conditional Ruling. Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) Time for a Losing Party's New-Trial Motion. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 30 days after the entry of the judgment.

(e) Denying the Motion for Judgment as a Matter of Law; Reversal on Appeal. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 27, 2007, eff. Jan. 1, 2008; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error

(a) Requests.

(1) Before or at the Close of the Evidence. At the close of the evidence or at any earlier reasonable time that the court orders, a party may file and furnish to every other party written requests for the jury instructions it wants the court to give.

(2) After the Close of the Evidence. After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and

(B) with the court's permission, file untimely requests for instructions on any issue.

(b) Instructions.

The court:

(1) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(2) must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered; and

(3) may instruct the jury at any time before the jury is discharged.

(c) Objections.

(1) How to Make. A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection.

(2) When to Make. An objection is timely if:

(A) a party objects at the opportunity provided under Rule 51(b)(2); or

(B) a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Assigning Error; Plain Error.

(1) Assigning Error. A party may assign as error:

(A) an error in an instruction actually given, if that party properly objected; or

(B) a failure to give an instruction, if that party properly requested it and – unless the court rejected the request in a definitive ruling on the record – also properly objected.

(2) Plain Error. The court may consider a plain error in the instructions that has not been preserved as required by Rule 51(d)(1) if the error affects substantial rights.

(As amended July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr.1, 2002; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

(a) Findings and Conclusions.

(1) In General. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

(2) For an Interlocutory Injunction. In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) [Reserved.]

(4) Effect of a Master's Findings. A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) Questioning the Evidentiary Support. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) Setting Aside the Findings. Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to this court's opportunity to judge the witnesses' credibility.

(b) Amended or Additional Findings. On a party's motion, or on its own, filed no later than 30 days after the entry of judgment, the court may amend its findings – or

make additional findings – and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 53. Masters

(a) Appointment

(1) Scope. Unless a statute provides otherwise, the court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available judge.

(2) Disqualification. A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under 28 U.S.C. § 455, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(3) Possible Expense or Delay. In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) Order Appointing a Master.

(1) Notice. Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.

(2) Contents. The appointing order must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);

(B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

(3) Issuing. The court may issue the order only after:

(A) the master files an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455; and

(B) if a ground is disclosed, the parties, with the court's approval, waive the disqualification.

(4) Amending. The order may be amended at any time after notice to the parties and an opportunity to be heard.

(c) Master's Authority.

(1) In General. Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) if conducting an evidentiary hearing, exercise the court's power to compel, take, and record evidence.

(2) Sanctions. The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) Master's Orders. A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.

(e) Master's Reports. A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.

(f) Action on the Master's Order, Report, or Recommendations.

(1) Opportunity for a Hearing; Action in General. In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(2) Time to Object or Move to Adopt or Modify. A party may file objections to – or a motion to adopt or modify – the master's order, report, or recommendations no later than 21 days after a copy is served, unless the court sets a different time.

(3) Reviewing Factual Findings. The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:

(A) the findings will be reviewed for clear error; or

(B) the findings of a master appointed under Rule 53(a)(1)(A) or (C) will be final.

4) Reviewing Legal Conclusions. The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) Reviewing Procedural Matters. Unless the appointing order establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(g) Compensation.

(1) Fixing Compensation. Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

(2) Payment. The compensation must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(3) Allocating Payment. The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties

for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Aug. 29, 2000, eff. Jan. 1, 2001; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 6, 2011, eff. Jan. 1, 2012.)

TITLE VII. JUDGMENT

Rule 54. Judgment; Costs

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) Judgment on Multiple Claims or Involving Multiple Parties. When an action presents more than one claim for relief – whether as a claim, counterclaim, crossclaim, or third-party claim – or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) Demand for Judgment; Relief to be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) Costs; Attorney's Fees.

(1) Costs Other than Attorney's Fees. Unless a federal statute, these rules, or a court order provides otherwise, costs – other than attorney's fees – should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law.

The clerk may tax costs on 14 day's notice. On motion served within the next 7 days, the court may review the clerk's action.

(2) Attorney's Fees.

(A) Claim to Be by Motion. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) Timing and Contents of the Motion. Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) Proceedings. The court must, on a party's or a class member's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c). The Court may decide issues of liability for fees before receiving submissions on the value of services.

The court must find the facts and state its conclusions of law as provided in Rule 52(a).

(D) Special Procedures; Reference to a Master. The court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a).

(E) Exceptions. Subparagraphs (A)-(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. § 1927.

PRACTICE COMMENT: The USCIT Guidelines for Bill of Costs set forth in full the procedures to be followed when a prevailing party files a Bill of Costs pursuant to Rule 54(d)(1). The Guidelines will have the same force and effect as the provisions of this Rule. The failure of a prevailing party either to timely file a Bill of Costs or to comply with these Guidelines will constitute a waiver of any claim for costs.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995; Sept. 30, 2003, eff. Jan. 1, 2004; May 25, 2004, eff. Sept. 1, 2004; Nov. 25 , 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 54.1. Attorney's Fees and Expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412(d)

(a) Time for Filing. The court may award attorney's fees and expenses where authorized by 28 U.S.C. § 2412(d). Applications must be filed within 30 days after the date of final judgment, as defined in 28 U.S.C. § 2412(d)(2)(G).

(b) Content of Application. Each application for attorney's fees and expenses under subdivision (a) must include citations to the authority authorizing the award, and must indicate how the prerequisites for an award have been fulfilled. In addition, each application must include a statement, under oath, specifying:

(1) the nature of each service rendered;

(2) the amount of time expended in rendering each type of service; and

(3) the customary charge for each type of service rendered.

(c) Response and Reply. The responding party has 30 days from the date of service of the application to file a response. No other papers or briefs will be allowed, except as the court, on its own, directs.

PRACTICE COMMENT: The 30-day statutory period for filing an application under the Equal Access to Justice Act begins to run after the expiration of the time period for filing an appeal. An application for attorney's fees and expenses under this rule shall be substantially in the form set forth in Form 15 of the Appendix of Forms.

(Added Sept. 30, 2003, eff. Jan. 1, 2004; as amended Nov. 25, 2008, eff. Jan. 1, 2009; Nov. 25, 2009, eff. Jan. 1, 2010; July 24, 2012, eff. Sept. 3, 2012).

Rule 55. Default Judgment

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) Entering a Default Judgment. In all cases the party must apply to the court for a default judgment.

When the plaintiff's claim is for a sum certain or for a sum that can be made certain by computation, the court – on the plaintiff's request with an affidavit showing the amount due – must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 14 days before the hearing. The court may conduct hearings or make referrals – preserving any federal statutory right to a jury trial – when to enter or effectuate judgment, it needs to:

(1) conduct an accounting;

(2) determine the amount of damages or other relief;

(3) establish the truth of an allegation by evidence; or

(4) investigate any other matter.

(c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).

(d) Judgment Against the United States. A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) Procedures.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) Objection That a Fact Is Not Supported by Admissible Evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) Materials Not Cited. The court need consider only the cited materials, but it may consider other materials in the record.

(4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials -- including the facts considered undisputed -- show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact – including an item of damages or other relief – that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court – after notice and a reasonable time to respond – may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

PRACTICE COMMENT: See Rule 56.3, which requires that a statement of material facts not in dispute be annexed to a motion for summary judgment.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Jan. 25, 2000, eff. May 1, 2000; Nov. 29, 2005, eff. Jan. 1, 2006; Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 4, 2012, eff. Jan. 1, 2013; June 5, 2015, eff. July 1, 2015.)

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 30 days after service of the motion. The movant must serve a reply within 14 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.)

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.)

Rule 56.3. Annexation of Statement to Rule 56 Motion for Summary Judgment

(a) On any motion for summary judgment filed pursuant to Rule 56, the factual positions described in Rule 56(c)(1)(A) must be annexed to the motion in a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit this statement may constitute grounds for denial of the motion.

(b) In the papers opposing a Rule 56 motion for summary judgment, the factual positions described in Rule 56(c)(1)(B) must include correspondingly numbered paragraphs responding to the numbered paragraphs in the statement of the movant, and if necessary, additional paragraphs including a separate, short and concise statement of additional material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Subject to any Rule 56(c)(2) objection, each statement by the movant or opponent pursuant to Rule 56.3(a) and (b), including each statement controverting any statement of material fact, will be followed by citation to evidence which would be admissible.

(Added June 5, 2015, eff. July 1, 2015.)

Rule 57. Declaratory Judgment

These rules govern the procedure for obtaining a declaratory judgment under 28 U.S.C. § 2201. Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action.

(As amended Dec. 18, 2001, eff. Apr.1, 2002; Sept. 28, 2004, eff. January 1, 2005; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 58. Entering Judgment

(a) Judgments. Subject to the provisions of Rule 54(b), a judgment, decree or final order must be entered upon every final decision from which an appeal lies.

(b) Separate Document. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

(1) for judgment under Rule 50(b);

(2) to amend or make additional findings under Rule 52(b);

(3) for attorney's fees under Rule 54;

(4) for a new trial, or to alter or amend the judgment, under Rule 59; or

(5) for relief under Rule 60.

(c) Entering Judgment.

(1) Without the Court's Direction. Subject to Rule 54(b) and unless the court orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when:

(A) the jury returns a general verdict;

(B) the court awards only costs or a sum certain; or

(C) the court denies all relief.

(2) Court's Approval Required. Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(A) the jury returns a special verdict or a general verdict with answers to written questions; or

(B) the court grants other relief not described in this subdivision (c).

(d) Time of Entry. For purposes of these rules, judgment is entered at the following times:

(1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or

(2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:

(A) it is set out in a separate document; or

(B) 150 days have run from the entry in the civil docket.

(e) Request for Entry. A party may request that judgment be set out in a separate document as required by Rule 58(b).

(f) Cost or Fee Awards. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 58.1. Stipulated Judgment on Agreed Statement of Facts**;** General Requirements

An action described in 28 U.S.C. § 1581(a) or (b) may be stipulated for judgment, at any time without brief or complaint or formal amendment of any pleading, by filing with the clerk of the court a stipulation for judgment on agreed statement of facts, signed by the parties or their attorneys, together with a proposed stipulated judgment. The proposed stipulated judgment on agreed statement of facts must be substantially in the form set forth in Form 9 of the Appendix of Forms.

(Added Nov. 4, 1981, eff. Jan. 1, 1982; and amended Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 25, 2008, eff. Jan. 1, 2009; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 59. New Trial; Rehearing; Altering or Amending a Judgment

(a) In General.

(1) Grounds for New Trial or Rehearing. The court may, on motion, grant a new trial or rehearing on all or some of the issues -- and to any party -- as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) Further Action After a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) Time to File a Motion. A motion for a new trial or rehearing must be served and filed not later than 30 days after the entry of the judgment or order.

(c) Time to Serve Affidavits. When a motion for a new trial or rehearing is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) New Trial on the Court's Initiative or for Reasons not in the Motion. No later than 30 days after the entry of judgment, or order, the court, on its own, may order a new trial or rehearing for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial or rehearing, for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be served no later than 30 days after the entry of the judgment.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 3, 1990, eff. Jan. 1, 1991; Dec. 18, 2001, eff. Apr. 1, 2002; Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 60. Relief from a Judgment or Order

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial or rehearing under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit the court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 28, 2004, eff. January 1, 2005; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 61. Harmless Error

Unless justice requires otherwise, no error in admitting or excluding evidence -- or any other error by the court or a party -- is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

(As amended Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) Automatic Stay; Exception for Injunctions. Except as stated in this rule or as otherwise ordered by the court, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 30 days have passed after its entry. But unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction is not stayed after being entered even if an appeal is taken.

(b) Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment – or any proceedings to enforce it – pending disposition of any of the following motions:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or rehearing or to alter or amend a judgment; or

(4) under Rule 60, for relief from a judgment or order.

(c) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights. If the judgment appealed from is rendered by a three-judge panel, the order must be made either:

(1) by that court sitting in open session; or

(2) by the assent of all its judges, as evidenced by their signatures.

(d) Stay with Bond on Appeal. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a). The bond may be

given on or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) Stay without Bond on an Appeal by the United States, Its Officers, or Its Agencies. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government.

(f) Stay According to State Law. In any state in which a judgment is a lien on the judgment debtor's property, the judgment debtor is entitled to the same stay of execution the state court would give.

(g) Appellate Court's Power Not Limited. This rule does not limit the power of the appellate court or one of its judges or justices:

(1) to stay proceedings – or suspend, modify, restore, or grant an injunction – while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) Stay with Multiple Claims or Parties. The court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

PRACTICE COMMENT: The court-ordered exception to the 30-day automatic stay under subdivision (a) is intended to permit timely enforcement of judgments in cases involving perishable merchandise, or where time is otherwise shown to be of the essence.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct 1, 1986; July 28, 1988, eff. Nov.1,1988; Nov. 25, 2008, eff. Jan. 1, 2009; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 62.1. Indicative Ruling on a Motion for Relief that Is Barred by a Pending Appeal

(a) Relief Pending Appeal. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

(b) Notice to the Court of Appeals. The movant must promptly notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the court states that it would grant the motion or that the motion raises a substantial issue.

(c) Remand. The court may decide the motion if the court of appeals remands for that purpose.

(Added Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 63. Judge's Inability to Proceed

If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

(As amended July 28, 1988, eff. Nov. 1, 1988; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009; March 24, 2009, eff. May 1, 2009.)

TITLE VIII – PROVISIONAL AND FINAL REMEDIES

Rule 64. Seizing a Person or Property

(a) Remedies Under State Law – In General. At the commencement of and throughout an action, every remedy is available that, under the appropriate state law, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.

(b) Specific Kinds of Remedies. The remedies available under this rule include the following – however designated and regardless of whether the appropriate state procedure requires an independent action:

- arrest;
- attachment;
- garnishment;
- replevin;
- sequestration; and
- other corresponding or equivalent remedies.

(As amended Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction.

(1) Notice. The court may issue a preliminary injunction only on notice to the adverse party.

(2) Consolidating the Hearing with the Trial on the Merits. Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) Temporary Restraining Order.

(1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) Contents; Expiration. Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry – not to exceed 14 days – that the court sets, unless before

that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) Expediting the Preliminary-Injunction Hearing. If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) Motion to Dissolve. On 2 days' notice to the party who obtained the order without notice – or on shorter notice set by the court – the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) Security. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) Contents. Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail – and not by referring to the complaint or other document – the act or acts restrained or required.

(2) Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) Precedence of Motions. Motions seeking temporary or preliminary injunctive relief will be given precedence over other matters pending before the court and expedited in every way.

(As amended July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr.1, 2002; Nov. 25, 2009; eff. Jan. 1, 2010; Aug. 2, 2010, eff. Sept. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 4, 2012, eff. Jan. 1, 2013.)

Rule 65.1. Proceedings Against a Surety

Whenever these rules require or allow a party to give security, and security is given through a bond or other undertaking with one or more sureties, each surety submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for receiving service of any papers that affect its liability on the bond or undertaking. The surety's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly mail a copy of each to every surety whose address is known. The bond or other undertaking must be secured by a corporate surety holding a certificate of authority from the Secretary of the Treasury. Except as otherwise provided by law, where the amount has been fixed by a judge, all bonds or other undertakings must be approved by the judge.

PRACTICE COMMENT: Circular No. 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," is published annually, as of July 1, in the Federal Register, under Fiscal Service, Department of Treasury. Interim changes in the circular are published in the Federal Register as they occur. Copies of the circular and interim changes may be obtained from http://www.fms.treas.gov/c570/.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr.1, 2002; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 66. Receivers

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule. An action in which a receiver has been appointed may be dismissed only by court order.

(As amended Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 67. Deposit into Court

(a) Depositing Property. If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party – on notice to every other party and by leave of court – may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

(b) Investing and Withdrawing Funds. Money paid into court under this rule must be deposited and withdrawn in accordance with 28 U.S.C. §§ 2041 and 2042 and any like statute. The money must be deposited in an interest-bearing account or invested in a court-approved, interest-bearing instrument.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; Dec. 18, 2001, eff. Apr.1, 2002; Nov. 25, 2009; eff. Jan. 1, 2010.)

Rule 67.1. Deposit into Court Pursuant to Rule 67

(a) Order for Deposit-Interest Bearing Account. When a party seeks a court order for money to be deposited by the clerk in an interest-bearing account, the party must file, by delivery or by mailing by certified mail, return receipt requested, the proposed order with the clerk or financial deputy who will inspect the proposed order for compliance with this rule prior to signature by the judge for whom the order is prepared. The proposed order must be substantially in the form set forth in Form 16-1, 16-2, 16-3, 16-4 or 16-5 of the Appendix of Forms.

(b) Orders Directing Investment of Funds by Clerk. Any order obtained in an action that directs the clerk to invest in an interest-bearing account or instrument funds deposited in the registry of the court pursuant to 28 U.S.C. § 2041 must include the following:

(1) the amount to be invested;

(2) the name of the depository approved by the Treasurer of the United States as a depository in which funds may be deposited;

(3) a designation of the type of account or instrument in which the funds should be invested;

(4) wording which directs the clerk to deduct from the income earned on the investment a fee, consistent with that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office, when such income becomes available for deduction from the investment and without further order of the court.

(Added Oct. 3, 1990, eff. Jan. 1, 1991; as amended, Mar. 1, 1991, eff. Mar. 1, 1991; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2009, eff. Jan. 1, 2010; Aug. 2, 2010, eff. Sept. 1, 2010.)

Rule 68. Offer of Judgment

(a) Making an Offer; Judgment on an Accepted Offer. At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk will then enter the judgment.

(b) Unaccepted Offer. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) Offer After Liability Is Determined. When one party's liability to another has been determined but the extent of the liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time – but at least 14 days – before the date set for a hearing to determine the extent of liability.

(d) Paying Costs After an Unaccepted Offer. If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

(Added Oct. 3, 1984, eff. Jan. 1, 1985; and amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 69. Execution

(a) In General.

(1) Money Judgment; Applicable Procedure. A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution – and in proceedings supplementary to and in aid of a judgment or execution – must accord with the procedure of the state where execution is sought, but a federal statute governs to the extent it applies.

(2) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or successor in interest whose interest appears of record may obtain discovery from any person – including the judgment debtor – as provided in these rules or by the procedure of the state where execution is sought.

(b) Against Certain Public Officers. When a judgment has been entered against a revenue officer in the circumstances stated in 28 U.S.C. § 2006, the judgment must be satisfied as that statute provides.

(As amended July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 28, 2004, eff. January 1, 2005; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 70. [Reserved]

(As amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 71. Enforcing Relief For or Against a Nonparty

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Nov. 14, 1997, eff. Jan. 1, 1998; Jan. 25, 2000, eff. May 1, 2000; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2009, eff. Jan. 1, 2010.)

IX. FILING OF OFFICIAL DOCUMENTS

Rule 72. [Reserved]

(As amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 73. Time for Filing Documents – Notice of Filing

(a) Time. On motion of a party for good cause, or on its own, the court may shorten or extend the times for filing prescribed in Rules 73.1, 73.2, or 73.3.

(b) Notice. The clerk will give notice to all parties of the date on which the record is filed.

(As amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 73.1. Documents in an Action Described in 28 U.S.C. § 1581 (a) or (b)

On service of the summons on the Secretary of Homeland Security, the appropriate customs officer must promptly transmit the following items, if they exist, to the clerk of the court, as part of the official record of the civil action:

(1) consumption or other entry and the entry summary;

(2) commercial invoice;

(3) special customs invoice;

(4) copy of protest or petition;

(5) copy of denial, in whole or in part, of the protest or petition;

(6) importer's exhibits;

(7) official and other representative samples;

(8) any official laboratory reports; and

(9) copy of any bond relating to the entry.

If any of the items do not exist in a particular action, an affirmative statement to that effect must be transmitted to the clerk of the court as part of the official record.

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 73.2. Documents in an Action Described in 28 U.S.C. § 1581(c) or (f)

(a) Actions Described in 28 U.S.C. § 1581(c). Unless the alternative procedure prescribed by subdivision (b) of this rule is followed, in an action described in 28 U.S.C. § 1581(c), within 40 days after the date of service of the complaint on the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the Commission must file with the clerk of the court the items specified in paragraphs (1) and (2) of this subdivision (a), if they exist, and the certified list specified in paragraph (3) of this subdivision (a), as part of the official record of the civil action.

(1) A copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceedings, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a)(3) of the Tariff Act of 1930.

(2) A copy of the determination and the facts and conclusions of law on which such determination was based, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(3) A certified list of all items specified in paragraphs (1) and (2) of this subdivision.

(b) Alternative Procedure in an Action Described in 28 U.S.C. § 1581(c). As an alternative to the procedures prescribed in subdivision (a) of this rule in an action described in 28 U.S.C. § 1581(c):

(1) Within 40 days after the date of service of the complaint on the administering authority or the International Trade Commission, the administering authority or the Commission may file with the clerk of the court a certified list of all items described in subdivisions (a)(1) and (a)(2) of this rule, along with a copy of the determination and the facts and conclusions of law on which such determination was based. The Commission must in addition file a copy of its staff report of information received in the investigation

(2) The agency must retain the remainder of the record. All parts of the record will be a part of the record on review for all purposes.

(3) At any time, the court may order any part of the record retained by the agency to be filed. A motion by a party to have the agency file a retained part of the record must set forth reasons why the submission of appendices required by Rule 56.2(c) is insufficient to fairly present the relevant portions of the record to the court.

(c) Confidential or Privileged Information in an Action Described in 28 U.S.C. § 1581(c).

(1) In an action described in 28 U.S.C. § 1581(c), any document, comment, or information that is accorded confidential or privileged status by the agency whose action is being contested and that is required to be filed with the clerk of the court, must be filed under seal. Any such document, comment, or information must be accompanied by a non-confidential description of the nature of the material being transmitted. For the purposes of this rule and Rule 81(h), the term “confidential

information" includes business proprietary information as defined in 19 U.S.C. § 1677f(b).

(2) An attorney or consultant may retain or otherwise have access to business proprietary information in the administrative record in an action described in 28 U.S.C. § 1581(c) if: (i) the attorney or consultant timely files with the court a Business Proprietary Information Certification which must be substantially in the form set forth in Form 17 of the Appendix of Forms making each of the certifications therein required or (ii) the court issues an order granting the attorney or consultant access to such information. On meeting either of these requirements, the attorney or consultant will retain or have access to business proprietary information pursuant to the terms of Administrative Order No. 02-01.

(3) A Business Proprietary Information Certification for an attorney or consultant representing or retained on behalf of a party or applicant for intervention is timely if it is filed: (i) at the time the summons or application for intervention is filed, as applicable or (ii) at any other time if the party or applicant for intervention is, at the time of filing, represented by an attorney who retains or has access to business proprietary information pursuant to this rule.

(4) When an attorney or consultant:

(A) has access to business proprietary information in an action pursuant to subdivision (2) and

(B) (i) the attorney terminates the attorney's appearance in the action, (ii) the consultant ceases to be retained for purposes of the action, (iii) the time period for appealing a final judgment in the action has expired without the filing of a notice of appeal or (iv) all appeals of the action have concluded,

the attorney or consultant must file with the court and serve on parties, within 30 days of the event described in subdivision (B), a Notice of Termination of Access to Business Proprietary Information which must be substantially in the form set forth in Form 18 of the Appendix of Forms, certifying that the attorney or consultant meets the requirements therein. The attorney or consultant must also mail the notice to: Secretary, United States International Trade Commission, when a determination of that Commission is contested; and to APO Unit, United States Department of Commerce, when a determination of that Department is contested.

(5) If filed fewer than 31 days after the date of service of the complaint, any Certification under subdivision (2) or other request for access to business proprietary information, in addition to being served on all parties to the action, must be served on any interested party described in Rule 3(f) that has not become a party to the action as of the time of service.

(d) Documents in an Action Described in 28 U.S.C. § 1581(f). In an action described in 28 U.S.C. § 1581(f), within 15 days after the date of service of the summons and complaint on the administering authority or the International Trade Commission, the administering authority or the Commission must file, with the

clerk of the court, under seal, the confidential information involved, together with pertinent parts of the record, which must be accompanied by a non-confidential description of the nature of the information being filed, as part of the official court record of the action.

(e) Documents Filed-Copies. Certified copies of the original papers in the agency proceeding may be filed.

(f) Filing of the Record With the Clerk of the Court-What Constitutes. The filing of the record will be as prescribed by subdivision (a) of this rule, unless the alternative procedure prescribed by subdivision (b) of this rule is followed. In the latter event, the filing of the certified list and the part of the record filed pursuant to subdivision (b) constitutes filing of the record.

PRACTICE COMMENT: The court has established Security Procedures for Safeguarding Confidential Information in the Custody and Control of the Clerk. These procedures apply to confidential information or privileged information received by the court and may include: trade secrets, commercial or financial information, and information provided to the United States by foreign governments or foreign businesses or persons. These procedures do not pertain to national security information.

Section 11(a) of Security Procedures regulates the transmittal of confidential information to and from the clerk by governmental agencies and private parties. A copy of Section 11(a) is available on request from, and is posted in the Office of the Clerk.

(Added Sept. 30, 2011, eff. Jan. 1, 2004; and amended Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 4, 2012, eff. Jan. 1, 2013.)

Rule 73.3. Documents in All Other Actions Based on the Agency Record

(a) Documents Furnished in All Other Actions Based on the Agency Record. Unless the alternative procedure prescribed by subdivision (b) of this rule is followed, in all actions in which judicial review is on the basis of the record made before an agency, other than those actions described in Rules 73.1 and 73.2, simultaneously with the filing of an answer, the agency must file with the clerk of the court the items specified in paragraphs (1), (2) and (3) of this subdivision (a), if they exist, and the certified list specified in paragraph (4) of this subdivision (a), as part of the official record of the civil action.

(1) A copy of the contested determination and the findings or report on which such determination was based.

(2) A copy of any reported hearings or conferences conducted by the agency.

(3) Any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action. The agency must identify and file under seal any document, comment, or other information obtained on a confidential basis, including a non-confidential description of the nature of such confidential document, comment or information.

(4) A certified list of all items specified in paragraphs (1), (2) and (3) of this subdivision (a).

(b) Stipulations. The parties may stipulate that fewer documents, comments, or other information than those specified in subdivision (a) of this rule will be filed with the clerk of the court. The agency must retain the remainder of the record. All parts of the

record will be part of the record on review for all purposes. On request to the agency by a party, or by the court, at any time, any part of the record retained by the agency must be filed by the agency with the clerk of the court promptly, notwithstanding any prior stipulation or designation under this subdivision.

(c) Documents Filed-Copies. Certified copies of the original papers in the agency proceeding may be filed.

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended May 25, 2004, eff. Sept. 1, 2004; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 6, 2011, eff. Jan. 1, 2012.)

TITLE X. ATTORNEYS

Rule 74. Admission to Practice*

(a) Qualifications. An attorney of good moral character who has been admitted to practice before the Supreme Court of the United States, the highest court of any state, the District of Columbia, a territory or possession, any United States court of appeals, or any United States district court, and is in good standing therein, may be admitted to practice before this court.

(b) Procedure.

(1) An applicant for admission must file with the clerk a completed application, on the form shown in Form 10 of the Appendix of Forms, to be provided by the clerk.

(2) The applicant must be admitted either (A) on oral motion by a member of the bar of this court or of the Supreme Court of the United States, before a judge of this court who will administer the following oath:

I, _____, do solemnly swear (or affirm) that I will faithfully conduct myself as an attorney and counselor at law of this court uprightly and according to law, and that I will support the Constitution of the United States, so help me God.

or (B) on the filing of a certificate issued by a judge of or by the clerk of any of the courts specified in subdivision (a) of this rule, or by another official duly authorized to issue such certificates, dated within 90 days of the application stating that the applicant is a member of the bar of such court and is in good standing therein.

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*An attorney admitted to practice before the United States Customs Court will be considered to be admitted to practice before the United States Court of International Trade.

(3) The applicant must pay to the clerk a fee of $76, and will be entitled to a certificate of admission. The clerk, as trustee, must deposit the fee in a special account in a bank designated by the court and must make expenditures from the special account as directed by the court. This application fee is waived for all attorneys in the employ of the United States government.

(4) If the application is made pursuant to section (b)(2)(A), above, and the sponsoring attorney making the motion has not known the applicant for more than one year, then the application must also be submitted with a certificate issued by a judge of or by the clerk of any of the courts specified in subdivision (a) of this rule, or by another official duly authorized to issue such certificates, dated within 90 days of the application stating that the applicant is a member of the bar of such court and is in good standing therein.

(c) Admission of Foreign Attorneys. An attorney, barrister, or advocate who is qualified to practice at the bar of the court of any foreign state which extends a like privilege to members of the bar of this court may be specially admitted for purposes limited to a particular action. The applicant will not, however, be authorized to act as attorney of record. In the case of such an applicant, the oath will not be required and there will be no fee. Such admission will be granted only on motion of a member of the bar of this court.

(d) Pro Hac Vice Applications. An attorney who is eligible for admission to practice under subdivision (a) of this rule, and who has been retained to appear in a particular action by a legal services program may, on written application and in the discretion of the court, be permitted to specially appear and participate in the particular

action. A pro hac vice applicant must state under penalty of perjury (i) the attorney's residence and office address, (ii) the court to which the applicant has been admitted to practice and the date of admission thereof, (iii) that the applicant is in good standing and eligible to practice in said court, (iv) that the applicant is not currently suspended or disbarred in any other court, and (v) if the applicant has concurrently or within the year preceding the current application made any pro hac vice application to this court, the title and the number of each action wherein such application was made, the date of the application, and whether or not the application was granted. If the pro hac vice application is granted, the attorney is subject to the jurisdiction of the court with respect to the attorney's conduct to the same extent as a member of the bar of this court, and no application fee is required.

(e) Renewal Registration.

(1) In addition to the initial admission, there will be a renewal registration and a $50 renewal registration fee. This fee and registration will be due on June 1, 2009 and every 5 years thereafter unless deferred by the court. Failure to remit this fee will result in the removal of the non-paying attorney from the court's bar roll, without prejudice to an application for admission as a new member. Should the payment of this renewal fee present a significant financial hardship, an attorney may request, via an application to the chief judge, that the registration fee be waived. Attorneys admitted in the year that this registration and renewal fee is collected and the year prior are exempt from the renewal requirement.

(2) Although government attorneys must submit their renewal registration, renewal registration fees are waived for all attorneys in the employ of the United States government.

(f) Attorney Discipline.

(1) Definitions. For purposes of this Rule:

(A) "serious crime" is any felony or lesser crime that reflects adversely on the attorney's honesty, trustworthiness, or fitness as an attorney in other respects, or any crime, a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a "serious crime;"

(B) "discipline" will include:

(i) disbarment, suspension, probation, public reprimand, private admonition or transfer to inactive status, and

(ii) by stipulation or on court order, assessment of the costs of the proceedings, including, but not limited to, the fees and expenses of disciplinary counsel and staff, costs of investigations, service of process, witness fees and stenographic services.

(C) "misconduct" will include:

(i) acts or omissions, individually or in concert with any other person or persons, that violate or attempt to violate the rules of the

bar of the state in which an attorney is licensed to practice. If the attorney is licensed to practice in more than one jurisdiction, the rules to be applied will be those of the admitting jurisdiction in which the attorney principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the attorney is licensed to practice, the rules of that jurisdiction will be applied to that conduct.

(ii) violation of subdivision (e)(3)(A) of this rule.

(2) Disciplinary Proceedings For Misconduct.

(A) On filing of a complaint alleging that an attorney admitted to practice before the court has engaged in misconduct, the clerk must refer the matter to the chief judge who may:

(i) determine that the complaint merits no further action;

(ii) forward a copy of the complaint to the attorney and request a response within a time certain;

(iii) initiate formal disciplinary proceedings; or

(iv) take other appropriate action.

Failure to file a response to the complaint will constitute an admission of its factual allegations. Where the attorney files a response to the complaint, the chief judge may take any of the actions in section (4)(A)(i), (iii), or (iv).

(B) To initiate formal disciplinary proceedings, the chief judge will enter an order directing the attorney to show cause within 30 days after

service of the order why the attorney should not be disciplined. If the attorney fails to respond timely to the order to show cause, the chief judge will enter a further order imposing appropriate discipline.

(C) If the attorney files a response to the order to show cause, the chief judge will assign the matter to a single judge (other than a complainant judge) for an evidentiary hearing. If the attorney fails to appear when specifically so ordered by the judge in a disciplinary proceeding, the attorney will be deemed to have admitted the factual allegations which were to be the subject of such hearing and/or stipulated to any motion or recommendation to be considered at such hearing. Disciplinary proceedings for misconduct will be conducted as in any civil action before the court. The court's decision must be based on clear and convincing evidence and supported by written findings of fact and conclusions of law.

(D) Disciplinary proceedings for misconduct will be public in any action which the chief judge assigns to a single judge, provided however, that prior to such assignment, the chief judge may, for good cause, authorize the clerk to produce, disclose, release, inform, report or testify regarding any information, reports, investigations, documents, evidence or transcripts in the clerk's possession. In order to protect the interests of a complainant, witness, third-party, or the attorney, the chief judge, or the single judge to whom any action has been assigned may, on application of

any person and for good cause, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential.

(3) Attorneys Convicted of Crimes.

(A) On filing of a certified copy of a judgment of conviction demonstrating that an attorney admitted to practice before the court has been convicted of a serious crime in another court, the clerk of the court must serve a notice to the attorney containing:

(i) a copy of the judgment of conviction; and

(ii) an order directing the attorney to show cause within 30 days after service of the notice why the attorney should not be suspended by the court.

The clerk must serve the notice regardless of the circumstances of the conviction or the pendency of an appeal. If the attorney fails timely to file a response to the notice, the clerk must promptly enter an order of suspension, pending further action by the court. If the attorney files a response to the notice, the clerk must refer the matter to the chief judge for assignment to a single judge.

(B) For purposes of any hearing requested on an attorney's response to the notice from the clerk, a certified copy of a judgment of conviction constitutes conclusive evidence that the attorney committed the crime and the sole issue in any hearing will be the nature and extent of the discipline to be imposed by the court, provided that a final order of

discipline will not be entered until all appeals from the conviction are concluded.

(4) Discipline Imposed By Other Courts.

(A) On any change in an attorney's status or public disciplinary action taken in any other jurisdiction in which an attorney is admitted to practice, an attorney admitted to practice before the court must promptly inform the clerk of the court of such action. Failure to so inform the clerk will constitute misconduct.

(B) On filing of a certified copy of a judgment or order demonstrating that an attorney admitted to practice before the court has been disciplined by another court, resigned with charges pending before the bar of another court, or transferred to inactive status, the clerk of the court must serve a notice to the attorney containing:

(i) a copy of the judgment or order; and

(ii) an order requiring the attorney to show cause within 30 days after service of the notice why the court should not impose the identical discipline.

If the attorney fails timely to file a response to the notice, the clerk must enter an order imposing the identical discipline in the court. If the attorney files a response to the notice from the clerk, the clerk must refer the matter to the chief judge for assignment to a single judge for formal disciplinary proceedings.

(C) A final adjudication in another court that an attorney has committed misconduct will conclusively establish the misconduct. However, if the attorney's response demonstrates that:

(i) the procedure in the other court was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject;

(iii) the imposition of the same discipline by the court would result in injustice; or

(iv) the misconduct established is deemed by the court to warrant different discipline,

the court will enter an appropriate order. If the discipline imposed in the other court has been stayed, any reciprocal discipline imposed in the court will likewise be deferred until the stay is lifted or expires.

(5) Appointment of Disciplinary Counsel. If it becomes necessary to investigate, prosecute or defend disciplinary proceedings under this rule, the chief judge or the judge to whom the case is assigned, may appoint one or more members of the bar of the court to serve as counsel. Once appointed, counsel may not resign except on leave of court. On good cause shown, disciplinary

counsel may cause subpoenas to issue, returnable before the judge presiding over the disciplinary matter.

(6) Readmission/Reinstatement.

(A) On filing of a petition for readmission by a disbarred attorney or reinstatement by a suspended attorney, the clerk must refer the matter to the chief judge for consideration or for assignment to a single judge for hearing and determination. The petition must demonstrate by clear and convincing evidence that:

(i) the attorney has the requisite character and fitness to practice law; and

(ii) the relief requested will not be detrimental to the integrity and standing of the bar of the court or the administration of justice, or subversive to the public interest.

The court may provide for readmission or reinstatement on appropriate terms and conditions.

(B) No petition for readmission or reinstatement will be filed within one year following an adverse decision on a petition for readmission or reinstatement filed by or on behalf of the same attorney.

(7) Service of Disciplinary Notices and Orders. The clerk must serve notices or orders issued under this rule by mailing a copy by certified mail, restricted to the addressee, return receipt requested, and by first class mail, to the last known address of the attorney. Every attorney admitted to practice

before the court must timely inform the clerk of the court of any change of address.

(8) Duties of the Clerk. If it appears that an attorney who has been disciplined for misconduct by the court is admitted to practice law before another court, the clerk must serve the clerk of such other court a certified copy of the order of discipline, as well as the last known office and residence address of the attorney. The clerk must likewise notify the National Lawyer Regulatory Data Bank of the American Bar Association when an attorney admitted to practice before this court has been disciplined.

PRACTICE COMMENT: Pursuant to Rule 75, government attorneys who appear on behalf of the United States must now be admitted to practice before the court. However, because attorneys in the employ of the United States government are exempt from admission fees, they will not receive a certificate upon their admission to the U.S. Court of International Trade because the court incurs an expense in printing these certificates. If a U.S. government attorney would like a certificate, a request can be submitted to the court's attorney admissions section, along with a check in the amount of $76.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Mar. 25, 1998, eff. July 1, 1998; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009; Nov. 25, 2009, eff. Jan. 1, 2010; Mar. 27, 2012, eff. May 1, 2012.)

Rule 75. Practice; Appearance; Substitution of Attorneys; Withdrawal of Attorney; Notification of Changes

(a) Practice. Only an attorney admitted to the bar of the court may practice before the court, except that individuals may represent themselves in an action.

(b) Appearances.

(1) Except for an individual (not a corporation, partnership, organization or other legal entity) appearing *pro se*, each party and any *amicus curiae* must appear through an attorney authorized to practice before the court. When a summons contains the name, address and telephone number of an attorney, the attorney will be recognized as the attorney of record, and no separate notice of appearance will be required of the attorney.

(2) In all other instances, an attorney authorized to appear in an action must serve a notice of appearance for each action. The notice must be substantially in the form as set forth in Form 11 of the Appendix of Forms. An appearance may be made by an individual attorney or a firm of attorneys. If the appearance is made by a firm, the individual attorney(s) responsible for the litigation must be designated.

(c) Substitution of Attorneys. A party who desires to substitute an attorney may do so by serving a notice of substitution on the prior attorney of record and the other parties. The notice must be substantially in the form as set forth in Form 12 of the Appendix of Forms. If the prior attorney of record wishes to be heard by the court on the substitution, that attorney may, by motion, request such relief as that attorney deems appropriate.

(d) Withdrawal of Attorney. The appearance of an attorney of record may be withdrawn only by order of the court, on motion served on the attorney's client and the other parties.

(e) Notification of Changes. Whenever there is any change in the name of an attorney of record, the attorney's address, telephone number, or e-mail address, a new notice of appearance for each action must be promptly served on the other parties and filed with the court. The notice must be substantially in the form as set forth in Form 11 of the Appendix of Forms. Unless and until an attorney of record files a new notice of appearance as prescribed in this subdivision, service of all papers must be made on the attorney of record at the last known address.

PRACTICE COMMENT: When a party is represented in an action by more than one attorney of record, the party must designate only one attorney of record to serve, file and receive service of pleadings and other papers on behalf of the party.

PRACTICE COMMENT: Attorneys are reminded that merely providing updated attorney information (e.g., firm, email address, mailing address, phone number) in the signature block or on the cover page of a pleading or paper filed in an action before the court is insufficient to update either the attorney's appearance in a given action or the court's attorney rolls. An attorney must also file appropriate papers for each action in which he or she appears, as set forth in Rule 75, and is also advised to separately notify the Clerk's Office so that his or her contact information is updated in the Court's list of registered attorneys.

(As amended July 21, 1986, eff. Oct. 1, 1986; July 20, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 28, 2004, eff. Jan. 1, 2005; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 4, 2012, eff. Jan. 1, 2013.)

Rule 76. *Amicus Curiae*

The filing of a brief by an *amicus curiae* may be allowed on motion made as prescribed by Rule 7, or at the request of the court. The brief may be conditionally filed with the motion. The motion for leave must identify the interest of the applicant and state the reasons why an *amicus curiae* is desirable. An *amicus curiae* must file its brief within the time allowed the party whose position the amicus curiae brief will support unless the court for cause shown grants leave for later filing. In that event the court will specify within what period an opposing party may answer. A motion of an *amicus curiae* to participate in the oral argument will be granted only for extraordinary reasons.

PRACTICE COMMENT: To provide information to assist a judge in determining whether there is reason for disqualification on the grounds of a financial interest, under 28 U.S.C. § 455, a completed "Disclosure Statement" form, available on 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.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Nov. 25, 2009, eff. Jan. 1, 2010.)

TITLE XI. THE COURT AND CLERK

Rule 77. Sessions of the Court

(a) When Court Is Open. The court is considered always open and in continuous session for transacting judicial business on all business days throughout the year. Emergency matters may be presented to and heard by the court at any time.

(b) Place for Trial and Other Proceedings. Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom. Any other act or proceeding may be done or conducted by a judge in chambers, with or without the attendance of the clerk or other court official.

(c) Place of Trials or Hearings.

(1) In New York City. The judge to whom a case is assigned may designate the date of any trial or hearing to be held in, or continued to, New York City.

(2) Other Than New York City. The chief judge may, as authorized by 28 U.S.C. §§ 253(b) and 256(a), designate the place and date of any trial or hearing to be held at, or continued to, any place other than New York City within the jurisdiction of the United States.

(3) Foreign Countries. The chief judge may, as authorized by 28 U.S.C. § 256(b), authorize a judge to preside at any evidentiary hearing in a foreign country.

(d) Photography, Tape Recording and Broadcasting. The taking of photographs, or the use of recording devices in the courtroom or its environs, or radio or television broadcasting from the courtroom or its environs, in connection with judicial proceedings is prohibited. A judge may, however, permit (1) the use of electronic or photographic means

for the presentation of evidence or the perpetuation of a record, and (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

Environs as used in this rule include: (1) the entire United States Court of International Trade Courthouse at One Federal Plaza, New York, New York; and (2) any place within the jurisdiction of the United States where a judge may preside at a trial or hearing pursuant to 28 U.S.C. § 256(a).

(e) Assignment and Reassignment of Cases.

(1) Assignment to Single Judge. All cases will be assigned by the chief judge to a single judge, except as prescribed in paragraph (2) of this subdivision (e).

(2) Assignment to Three-Judge Panel. A case may be assigned by the chief judge to a three-judge panel either on motion, or on the chief judge's own initiative, when the chief judge finds that the case raises an issue of the constitutionality of a federal statute, a proclamation of the President, or an Executive order; or has broad or significant implications in the administration or interpretation of the law.

(3) Time of Assignment. Cases are assigned by the chief judge at any time on the chief judge's own initiative or on motion for good cause shown.

(4) Reassignment. A case may be reassigned by the chief judge on the death, resignation, retirement, illness or disqualification of the judge to whom it was assigned, or on other special circumstances warranting reassignment.

(f) Judge and Court; Defined. The word "judge" as used in these rules means the single judge or three-judge panel to whom a case is assigned or a matter is referred. The word "court" as used in these rules means, unless the context of a particular rule clearly indicates otherwise, the single judge or three-judge panel to whom a case is assigned or a matter is referred.

PRACTICE COMMENT: To implement the authority conferred upon the chief judge by 28 U.S.C. §§ 253(b) and 256(a), and for the convenience of parties, there is set out in the instructions for Form 6, in the Appendix of Forms, a list of tentative dockets and the procedures to be followed in connection with trials or oral arguments of dispositive motions at places other than New York City.

(As amended Apr. 28, 1987, eff. June 1, 1987; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009; Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 77.1. Judicial Conference

(a) Purpose. The chief judge is authorized to summon annually the judges of the court to a judicial conference, at a time and place the chief judge designates, for the purpose of considering the business of the court and improvements in the administration of justice in the court. The chief judge will preside at the conference.

(b) Composition. All members of the bar of this court may be members of the conference and participate in its discussions and deliberations.

(c) Registration Fee. A registration fee will be paid by attendees of the conference, and will be applied to the payment of expenses of the conference, as approved by the judge.

(Added July 21, 1986, eff. Oct. 1, 1986**;** as amended Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 78. Motion Part

(a) Motion Part - Establishment. A Motion Part is established for hearing and determining all motions in cases that have not been assigned to a judge or proceedings that are not otherwise provided for in these rules.

(b) Motion Part - Referral. The clerk must refer motions ready for disposition to the Motion Part judge for hearing and determination. The Motion Part judge will: determine the motion; or refer the motion to another judge who previously determined a related motion in the case; or refer the matter to the chief judge with a recommendation that the case be assigned to another judge.

(c) Motion Part - Emergency Matters.

(1) An emergency matter is one which, because of special circumstances, requires extraordinary priority and immediate disposition.

(2) The Motion Part judge will be available, on call, to hear and determine an emergency matter at any time.

(3) The clerk will refer to the Motion Part judge any emergency matter arising in an unassigned case, or in an assigned case when the assigned judge is unavailable.

(4) The Motion Part judge will dispose of the emergency matter only to the extent necessary to meet the emergency, and the case will otherwise be retained for disposition by the judge to whom the case has been or will be assigned.

(5) If the Motion Part judge decides that an emergency matter should not be determined, for lack of emergency or other reason, the judge must refer the matter for determination in the ordinary course.

PRACTICE COMMENT: A party may seek expedited consideration under Rule 3(g). For possible applicability of other scheduling rules, see practice comment to Rule 3(g).

(As amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 79. Records Kept by the Clerk

(a) Civil Docket.

(1) In General. The clerk must keep a record known as the "civil docket" for each case. The clerk must enter each civil case in the docket. Cases must be assigned consecutive file numbers, which must be noted in the docket where the first entry is made.

(2) Items to be Entered. The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk;

(B) process issued, and proofs of service or other returns showing execution; and

(C) appearances, orders, verdicts, and judgments.

(3) When a jury trial has been properly demanded or ordered, the clerk must enter the word "jury" in the docket.

(b) Judgments and Orders. The clerk will keep a copy of every final judgment and appealable order, together with all opinions, decisions, or findings of fact and conclusions of law on which it is based, and any other order that the court directs to be kept.

(c) Notices of Orders or Judgments.

(1) Immediately on the entry of an order the clerk must serve a notice of the entry, together with a copy of the order and any accompanying memorandum, by delivery or mail in the manner prescribed in Rule 5 on each party who is not in default for failure to appear, and should make a note in the docket of the delivery or

mailing. Any party may in addition serve a notice of such entry in the manner prescribed in Rule 5 for the service of papers.

(2) Immediately on the entry of a judgment the clerk must serve a notice, together with a copy of the judgment, opinion, decision, or findings of fact and conclusions of law on which it is based, by delivery or mail in the manner provided for in Rule 5 on each party who is not in default for failure to appear, and, if appropriate, the port director of the customs port in which the case arose, and must make a note in the docket of the delivery or mailing. Any party may in addition serve a notice of such entry in the manner prescribed in Rule 5 for the service of papers.

(3) Lack of notice of the entry by the clerk does not affect the time to appeal or relieve, or authorize the court to relieve, a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure or by the rules of the United States Court of Appeals for the Federal Circuit.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993; Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 30, 2003, eff. Jan. 1, 2004**;** Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 80. Papers, Exhibits, and other Material

(a) Custody and Control. All papers, exhibits and other material filed with or transmitted to the court must be retained by the clerk of the court, under the clerk's custody and control except when required by the court. When requested by an attorney for a party, papers, exhibits and other material may be transmitted by the clerk to an appropriate customs officer. Notice of the request must be given to all other parties by the party filing the request.

(b) Inspection. Any person may inspect all papers, exhibits and other material in a case except where restricted by statute or by court order. Unless otherwise directed by the court, entry papers, invoices and laboratory reports will be available only to the party to whose merchandise the papers, invoices and reports relate, or to the attorney of record for that party, or to an attorney for the United States, or an officer of United States Customs and Border Protection.

(c) Withdrawal of Papers, Exhibits, and Other Materials.

(1) Any person may withdraw the papers, exhibits and other material, which that person is authorized to inspect as prescribed in subdivision (b) of this rule, to a designated place in the court. The papers, exhibits and other material must be returned to the office of the clerk no later than the close of business on the day of withdrawal. On request of a party, the clerk may permit papers, exhibits and other material to be withdrawn to a designated place in the offices of the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, for not more than 30 days, provided that they must be returned immediately to the office of the clerk on notice from the clerk.

(2) Whenever any person withdraws papers, exhibits and other material, that person must sign and leave with the clerk a receipt describing what has been withdrawn.

(d) Return and Removal. When a judgment or order of the court has become final, papers, exhibits, and other material transmitted to the court pursuant to 28 U.S.C. § 2635, must be returned by the clerk, together with a copy of the judgment or order, to the agency from which they were transmitted. All exhibits must be removed from the custody of the clerk by the party who filed them within 60 days after the judgment or order of the court has become final. A party who fails to comply with this requirement must be notified by the clerk that, if the exhibits are not removed within 30 days after the date of the notice, the clerk may dispose of them as the clerk may see fit. Any expense or cost pertaining to the removal of exhibits as prescribed by this rule must be borne by the party who filed them.

(e) Reporting of Proceedings. Each session of the court and every other proceeding designated by court order must be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, as prescribed by regulations promulgated by the Judicial Conference of the United States and subject to the discretion and approval of the judge. Proceedings to be recorded include: all proceedings in open court unless the parties, with the approval of the judge, agree specifically to the contrary; and such other proceedings as a judge may direct, or as may be required by rule or court order, or as may be requested by any party to the proceeding. The court reporter or other individual designated to produce the record must attach an official certificate to the original shorthand notes or other original records

so taken and promptly file them with the clerk of the court who must preserve them in the public records of the court for not less than 10 years.

(f) Transcript of Proceedings. The court reporter or other individual designated to produce the record must transcribe and certify such parts of the record of proceedings as may be required by rule or court order or direction of a judge. On the request of any party to the proceeding which has been so recorded, who has agreed to pay the fee, or of a judge of the court, the court reporter or other individual designated to produce the record must promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript an official certificate, and deliver the certified transcript to the clerk of the court for the public records of the court. The certified transcript in the Office of the Clerk must be open during office hours to inspection by any person without charge, except where restricted by statute or court order.

(g) Fees. Except as otherwise provided by the rules, the clerk must collect in advance from the parties such fees for services as are consistent with the "Judicial Conference Schedule of Additional Fees for the United States District Courts."

(1) Reproductions. Reproductions of original records may be given to any person who is authorized to inspect original records as prescribed in subdivision (b) of this rule.

(2) Transcripts. The clerk of the court may require any party requesting a transcript to prepay the estimated fee in advance except for transcripts that are to be paid for by the United States.

(h) Physical Exhibits or Items.

(1) An identical copy of any physical exhibit or item filed with or transmitted to the Court by a party, except for items transmitted pursuant to USCIT R. 73.1, must be served upon the other parties except in instances where:

(A) The exhibit or item is unique and an identical or substantially identical copy of the exhibit or item cannot be served upon the other parties;

(B) An identical or substantially identical copy of the exhibit or item was served during discovery;

(C) The parties have agreed that service is not necessary; or

(D) By order of the court.

(2) When an exhibit or item is filed under this rule with the court, a completed Certification of Filing and Service of Physical Exhibit substantially in conformity with Form 23 in the Appendix of Forms also must be filed.

PRACTICE COMMENT: From time to time, the Judicial Conference of the United States establishes fees for services performed by the clerk. The rates applicable at any time are available upon request from, and are posted in the Office of the Clerk.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Dec. 29, 1982, eff. Jan. 1, 1983; July 28, 1988, eff, Nov. 1, 1988; Nov. 25, 2008, eff. Jan. 1, 2009; Sept. 21, 2016, eff. Oct. 3, 2016.)

Rule 81. Papers Filed; Conformity; Form, Size, Copies

(a) Conformity Required. All papers filed with the court must be produced, duplicated, and filed in conformity with these rules as to means of production, methods of duplication, form and size, and number of copies.

(b) Means of Production. All papers must be plainly and legibly typewritten or otherwise produced by any duplicating or copying process.

(c) Caption and Signing. All papers must bear a caption in conformity with Rule 7 and must be signed in conformity with Rule 11.

(d) Numbering of Pages. The pages of each paper must be numbered consecutively, commencing with the number 1.

(e) Designation of Originals. When multiple copies of a paper are filed, one must be designated as the original by the party.

(f) Pleadings and Other Papers. Unless otherwise provided by these rules, all papers must be filed in duplicate, only the original of which need be signed. Pleadings and other papers must be 8½ by 11 inches in size, with typed matter not exceeding 6½ by 9½ inches, and with type size of 12 points or larger, including type used in footnotes. Pages must be numbered on the bottom and bound or attached on the top margin. Typed matter must be double spaced except footnotes, which may be single spaced, quoted material, which may be indented and single spaced, and titles, schedules, tables, graphs, columns of figures, and other interspersed material which are more readable in a form other than double spaced.

(g) Status of Case. Papers filed after a case has been commenced must identify, with respect to each case affected by the papers, the court number assigned to the case, the court calendar on which the case is listed; and, if the case has been assigned, the name of the judge to whom the case has been assigned or reassigned.

(h) Confidential Information.

(1) If a party considers it necessary to refer in a pleading or other paper to confidential or privileged information, two sets of the pleadings or other papers must be filed.

(A) Confidential Set. One set of the pleadings or other papers must be labeled "Confidential" on the cover page and be filed with the clerk of the court. In addition, each page containing confidential material must bear a legend so indicating; however, in a case where Rule 73.2(c) is applicable, the label “Business Proprietary” may be used instead.

(B) Nonconfidential Set. The second set of pleadings or other papers must be labeled "Nonconfidential" on the cover page and be filed with the clerk of the court. In addition, each page of the "nonconfidential" set from which confidential or privileged information has been deleted must bear a legend so stating.

(2) Each party to the case must be served with one copy of the "nonconfidential" pleading or other paper, and, when permitted by an

applicable protective order, one copy of the "confidential" pleading or other paper, in accordance with Rule 5.

(3) Non-Availability to the Public. The "confidential" set of pleadings or other papers filed with the court will be available only to persons authorized to receive them and will not be made available to the public.

i) Briefs or Memoranda. A brief or memorandum must be filed in duplicate and must be 8½ by 11 inches in size. Pages must be numbered on the bottom portion thereof and bound or attached on the left margin. Typed matter must be double spaced, except quoted material which may be indented and single spaced, and except titles, schedules, tables, graphs, columns of figures, and other interspersed material which are more readable in a form other than double spaced.

(j) Movant's Brief or Memorandum. A brief or memorandum of the movant must contain under proper headings and arranged in the following order:

(1) a table of contents;

(2) a table of statutes, regulations, and cases cited, giving the volume and page in the official editions where they may be found, and arranging the cases in alphabetical order;

(3) in a case involving a specific importation, a brief description of the merchandise, country of origin and of exportation, date of exportation, date of entry, and port of entry;

(4)(A) in cases involving classification, the verbatim paragraph or paragraphs or item or items of the tariff statute under which the merchandise was assessed, and the verbatim paragraph or paragraphs or item or items under which it is claimed that the merchandise is properly dutiable, together with any other verbatim pertinent statutory provisions or regulations; (B) in cases involving valuation, the statutory basis of appraisement and the unit of value at which the merchandise was appraised, and the claimed statutory basis of value and unit of value, together with the verbatim pertinent statutory provisions;

(5) the questions presented for decision, including all subsidiary questions involved; when a brief is filed under Rule 56.2, the issues must be presented in accordance with Rule 56.2(c)(1)(B), and need not be restated under this paragraph (5);

(6) a concise statement of facts relevant to the issues with a specific citation to the page or pages in the record or exhibits supporting each such material fact;

(7) a summary of argument, which must be a succinct, but accurate and clear, condensation of the contentions made in the body of the brief;

(8) an argument, exhibiting clearly the contentions of the party with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, exhibits, and pages of the record relied on;

(9) a short conclusion stating the relief sought.

(k) Responding Party's Brief or Memorandum. A brief or memorandum of a responding party must conform to the requirements prescribed in subdivision (j) of this rule, except that no statement of the facts need be made beyond what may be considered necessary to correct any inaccuracies or omissions in the movant's brief, and except that items (3), (4) and (5) need not be included unless a responding party is dissatisfied with their presentation by the movant.

(l) Reply Brief or Memorandum. A reply brief or memorandum must be confined to rebutting matters contained in the brief of a responding party.

(m) General. A brief or memorandum must be concise, logically arranged, and free from burdensome, irrelevant, immaterial, pejorative and scandalous matter. A brief or memorandum not complying with this rule may be disregarded by the court.

PRACTICE COMMENT: All decisions of the United States Court of International Trade are published in: slip opinion form, the Customs Bulletin, and the official reports of the United States Court of International Trade. Certain decisions will also be published in the Federal Supplement or the Federal Rules Decisions. Decisions are also available on the LEXIS and WESTLAW electronic databases and those issued beginning in 1999 may be viewed on the website of the United States Court of International Trade, www.cit.uscourts.gov.

1. Published Opinions

After an opinion appears in the official CIT reports, Federal Supplement (F. Supp. or F. Supp. 2d), or Federal Rules Decisions (F.R.D.), the slip opinion is no longer used, and the citation is to the official reports, and unofficial reports, if available, together with the year of publication. One should not cite the Customs Bulletin and Decisions in any event.

Example

JCM, Ltd. v. United States, 23 CIT 121 (1999).

If the opinion is also published in F. Supp., F. Supp. 2d or F.R.D., citation of these reporters should follow the citation of the official reports.

Examples

Ludvig Svensson (U.S.) Inc. v. United States, 23 CIT 573, 62 F. Supp. 2d 1171 (1999);

NOT, 23 CIT 573, Slip Op. 99-82, 62 F. Supp. 2d 1171 (1999).

2. Internet Resources

The following guidelines should be used when contemplating citing Internet-based materials:

a. To provide a stable record of what was presented to the court, whenever possible cite to a printed version of the resource.

b. For LEXIS and WESTLAW, a correct and complete citation is sufficient. For government internet-based materials, a complete citation, including the full internet address (e.g., the "Uniform Resource Locator" for a website) is sufficient. For other Internet-based resources, if a printed version is not available for citation, print or otherwise capture the Internet-based resource and attach it as an exhibit to the document in which it has been cited.

c. Where it is not possible or practical to print or capture the entire non-governmental Internet-based resource, include the relevant portions in an exhibit to the document in which it has been cited.

d. In citations to any Internet-based materials, include the name of the author(s) (where applicable), the title of the specific page being cited (underscored or in *italics*), the title of the website or other Internet-based resource, the date and time the material was posted (if available), and the full Internet address. If the date and time are available for the referenced material, include a parenthetical stating when the material was "last updated" or "last modified" if that information is available, or last visited.

e. For material available and readily accessible in printed form, an Internet citation may be provided as a parallel citation, introduced by "*available at*."

f. Citations to Internet-based materials should point directly to the referenced document (i.e., provide a permanent link or "permalink").

Examples of citations to Internet-based materials follow.

(i) NYRL N074904, 2 (Sep. 15, 2009), *available at* http://rulings.cbp.gov/ny/2009/n074904.doc.

(ii) Int'l Trade Admin., Dep't of Commerce, *Market Economy Questionnaire, Section A, Organization, Accounting Practices, Markets and Merchandise*, A-10 (June 18, 2010), http://ia.ita.doc.gov/ questionnaires/20100618/q-inv-sec-a-061810.pdf.

(iii) Katherine Skiba, *Obamas Honor Mexico at State Dinner*, Chicago Tribune (May 19, 2010, 9:57 PM), http://www.chicagotribune.com/news/politics/obama/ct -met-obama-state-dinner-0520-20100519,0,5557697.story (attached as Exhibit 4).

(iv) *How Hot is a Habeñero?*, Red Rock Farms, http://www.redrockfarms.info/howhot (last visited Nov. 1, 2010) (attached as Exhibit 2).

g. Documents filed in the court's CM/ECF system should include the document number. For example, Plaintiff's Motion For Partial Summary Judgment 13, ECF No. 22.

For further rules of citation, reference may be made to The Bluebook: A Uniform System of Citation (Columbia L. Rev. et al. ed., 19th ed. Harvard L. Rev. Ass'n 2010)[Bluebook]. For punctuation, capitalization, abbreviations, and other matters of style, reference may be made to the U.S. Government Printing Office Style Manual. Assistance in citing recent decisions of this court may be obtained from the court librarian (212) 264-2816.

PRACTICE COMMENT: The court has established Security Procedures For Safeguarding Confidential Information in the Custody and Control of the Clerk. These procedures apply to confidential information or privileged information received by the court and may include: trade secrets, commercial and financial information, and information provided to the United States by foreign governments or foreign businesses or persons. These procedures do not pertain to national security information.

Section 11(a) of the Security Procedures regulates the transmittal of confidential information to and from the clerk by government agencies and private parties. A copy of Section 11(a) is available upon request from, and is posted in the office of the clerk.

PRACTICE COMMENT: Compliance with Rule 81 is encouraged because it will facilitate review of papers by the court. Pursuant to Rule 5(d), the clerk may refuse to accept any paper presented for filing because it does not comply with the procedural requirements of the rules or practice of the court. Additionally, a judge may reject nonconforming papers or take other appropriate action if it is determined that such action is warranted.

PRACTICE COMMENT: Rule 5(g) contains requirements for designation of business proprietary and other confidential information and the form of notification required when a party desires to delay filing a non-confidential version of a submission by one business day.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; May 1, 1998, eff. Sept. 1, 1998; Jan. 25, 2000, eff. May 1, 2000; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; May 25, 2004, eff. Sept. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009; March 24, 2009, eff. May 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 6, 2011, eff. Jan. 1, 2012; Dec. 4, 2012, eff. Jan. 1, 2013.)

Rule 82. Clerk's Office Hours; Clerk's Orders

(a) Clerk's Office Hours; Clerk's Orders. The clerk's office – with a clerk or deputy on duty – must be open between 8:30 a.m. and 5:00 p.m. on all days except Saturdays, Sundays, and legal holidays as set forth in Rule 6, at:

Office of the Clerk of the Court
United States Court of International Trade
One Federal Plaza
New York, New York 10278-0001
(212) 264-2800

(b) Motions, Orders and Judgments. Subject to the court's power to suspend, alter, or rescind the clerk's action for good cause, the clerk may dispose of the following motions and sign the following orders and judgments without submission to the court:

(1) Motions on consent in unassigned cases extending the time within which to plead, move or respond.

(2) Motions on consent in unassigned cases for the discontinuance or dismissal of the case.

(3) Orders of dismissal on notice as prescribed by Rules 41(a)(1) and 41(b)(3).

(4) Orders of dismissal for lack of prosecution as prescribed by Rules 83(c) and 85(d).

(5) Consent motions to intervene as of right made within the 30-day period provided in Rule 24(a).

(6) Orders of dismissal for failure to file a complaint as prescribed by Rule 13(h)(4).

(7) Orders of dismissal for failure to file a complaint as prescribed by Rule 41(b)(2).

(8) Disciplinary orders to show cause as prescribed by Rule 74(e)(3)(A)(ii) and (4)(B)(ii).

(9) Orders on Bill of Costs as prescribed by Rule 54(d)(1).

(c) Clerk--Definition. The words "clerk" or "clerk of the court" as used in these rules include a deputy clerk designated by the clerk to perform services of the kind provided for in these rules.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan 1, 1995; Nov. 29, 1995, eff. March 31, 1996; Nov. 14, 1997, eff. Jan. 1, 1998; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. April 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; May 25, 2004, eff. Sept. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009; May 20, 2014, eff. July 1, 2014.)

Rule 82.1. [Reserved]

(Added Dec. 18, 2001, eff. Apr.1, 2002; and amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2009, eff. Jan. 1, 2010.)

Title XII. COURT CALENDARS; GENERAL PROVISIONS

Rule 83. Reserve Calendar

(a) Reserve Calendar. A case commenced under 28 U.S.C. § 1581(a) or (b) will be placed on a Reserve Calendar at the time of the filing of the summons. A case may remain on the Reserve Calendar for an 18-month period. The applicable 18-month period will run from the last day of the month in which the case is commenced until the last day of the 18th month thereafter.

(b) Removal. A case may be removed from the Reserve Calendar on: (1) assignment; (2) filing of a complaint; (3) granting of a motion for consolidation pursuant to Rule 42; (4) granting of a motion for suspension under a test case pursuant to Rule 84; or (5) filing of a stipulation for judgment on agreed statement of facts pursuant to Rule 58.1.

(c) Dismissal for Lack of Prosecution. A case not removed from the Reserve Calendar within the 18-month period will be dismissed for lack of prosecution and the clerk will enter an order of dismissal without further direction from the court unless a motion is pending. If a pending motion is denied and less than 14 days remain in which the case may remain on the Reserve Calendar, the case will remain on the Reserve Calendar for 14 days from the date of entry of the order denying the motion.

(d) Extension of Time. The court may grant an extension of time for the case to remain on the Reserve Calendar for good cause. A motion for an extension of time must be made at least 30 days prior to the expiration of the 18-month period.

(As amended Oct. 3, 1984; eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 22, 2014, eff. Jan. 28, 2015.)

Rule 84. Suspension Calendar

(a) Test Case Defined. A test case is an action, selected from a number of other pending actions involving the same significant question of law or fact, that is intended to proceed first to final determination and serve as a test of the right to recovery in the other actions. A test case may be so designated by order of the court on a motion for test case designation after issue is joined.

(b) Motion for Test Case Designation. A party who intends that an action be designated a test case must: (1) consult with all other parties to the action in accordance with Rule 7(b); and (2) file with the court a motion requesting such designation and serve it on the other parties. The motion for test case designation must include a statement that the party: (1) intends to actively prosecute the test case once designated; and (2) has other actions pending before the court that involve the same significant question of law or fact as is involved in the test case and that it will promptly suspend under the test case. In any instance in which the consent of all other parties has not been obtained, a non- consenting party must serve and file its response within 14 days after service of the motion for test case designation, setting forth its reasons for opposing.

(c) Suspension Criteria. An action may be suspended under a test case if both involve the same significant question of law or fact.

(d) Suspension Calendar. By order of the court, pending the final determination of a test case, a Suspension Calendar is established on which a case described in 28 U.S.C. §§ 1581 (a) and (b) may be suspended.

(e) Motion for Suspension. A motion for suspension must include, in addition to the requirements of Rule 7: (1) the title and court number of the action for which suspension is requested; (2) the title and court number of the test case; and (3) a statement of the significant question of law or fact alleged to be the same in both actions.

(f) Time. A motion for suspension may be made at any time, and may be joined with a motion for designation of a test case as prescribed by subdivision (b) of this rule.

(g) Effect of Suspension. An order suspending a case stays all further proceedings and filing of papers in the suspended case unless the court otherwise directs.

(h) Removal from Suspension. A suspended case may be removed from the Suspension Calendar only on a motion for removal. A motion for removal may be granted solely for the purpose of moving the case toward final disposition. An order granting a motion for removal will specify the terms, conditions and period of time within which the case will be finally disposed.

(As amended Sept. 25, 1992; eff. Jan. 1, 1993; Aug. 29, 2000, eff. Jan. 1, 2001; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 85. Suspension Disposition Calendar

(a) Suspension Disposition Calendar. After a test case is finally determined, dismissed or discontinued, any case that was suspended under that test case will be placed on a Suspension Disposition Calendar.

(b) Time – Notice. The court will notify the parties when a test case has finally been determined, dismissed or discontinued. After consultation with the parties, the court will then enter an order providing for a period of time for the removal of a case from the Suspension Disposition Calendar.

(c) Removal. A case may be removed from the Suspension Disposition Calendar on: (1) filing of a complaint; (2) filing of a demand for an answer when a complaint previously was filed; (3) granting of a motion for consolidation pursuant to Rule 42; (4) granting of a motion for suspension under another test case pursuant to Rule 84; (5) filing of a stipulation for judgment on an agreed statement of facts pursuant to Rule 58.1; (6) granting of a dispositive motion; (7) filing of a request for trial; or (8) granting of a motion for removal.

(d) Dismissal for Lack of Prosecution. A case not removed from the Suspension Disposition Calendar within the established period will be dismissed for lack of prosecution, and the clerk will enter an order of dismissal without further direction of the court, unless a motion is pending. If a pending motion is denied and less than 14 days remain in which the case may remain on the Suspension Disposition Calendar, the case will remain on the Suspension Disposition Calendar for 14 days from the date of entry of the order denying the motion.

(e) Extension of Time The court may grant an extension of time for the case to remain on the Suspension Disposition Calendar for good cause. A motion for an extension of time must be made at least 30 days prior to the expiration of the established period.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011.)

Rule 86. Reserved

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 86.1. Judge's Directive

A judge may regulate practice in any manner consistent with federal law and the rules of the court adopted under 28 U.S.C. § 2633(b). No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law or these rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 86.2. Contempt

(a) Motion for Contempt. A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Rule 37(b), must be commenced by the service of motion or order to show cause. The affidavit on which the motion or order to show cause is based must set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the movant. A reasonable counsel fee, necessitated by the contempt proceeding, may be included as an item of damage.

(b) Service. Where the alleged contemnor has appeared in the case by an attorney, the notice of motion or order to show cause and the papers on which it is based may be served on the contemnor's attorney; otherwise service must be made personally, in the manner provided for the service of a complaint.

(c) Arrest; Bail. If an order to show cause is sought, such order, may, on a showing of necessity, embody a direction to a United States marshal to arrest the alleged contemnor and hold the alleged contemnor in bail in an amount fixed by the order, conditioned for the contemnor’s appearance at the hearing, and further conditioned that the alleged contemnor will be thereafter amenable to all orders of the court for surrender.

(d) Oral Evidence; Trial by Jury. If the alleged contemnor puts in issue the alleged misconduct or the damages thereby occasioned, the alleged contemnor, will, on demand therefor, be entitled to have oral evidence taken either before the court or before a master appointed by the court. When by law such alleged contemnor is entitled to a trial by jury, the alleged contemnor must make written demand therefor on or before

the return day or adjourned day of the application; otherwise the alleged contemnor will be considered to have waived a trial by jury.

(e) Court Order of Contempt. In the event the alleged contemnor is found to be in contempt of court, an order will be made and entered: (1) reciting or referring to the verdict or findings of fact on which the adjudication is based; (2) setting forth the amount of the damages to which the complainant is entitled; (3) fixing the fine, if any, imposed by the court, which fine will include the damages found, and naming the person to whom such fine will be payable; (4) stating any other conditions, the performance of which will operate to purge the contempt; and (5) directing the arrest of the contemnor by a United States marshal, and confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law. The order will specify the place of confinement.

(f) Confinement. No party will be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. On such an order, no person will be detained in prison by reason of nonpayment of the fine for a period exceeding 6 months. A certified copy of the order committing the contemnor will be sufficient warrant to the marshal for the arrest and confinement.

(g) Remedies. The aggrieved party will also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(h) Discharge. In the event the alleged contemnor is found not guilty of the charges, the alleged contemnor will be discharged from the proceeding.

(Added Sept. 30, 2003, eff. Jan. 1, 2004.; and amended Nov. 25, 2009; eff. Jan. 1, 2010.)

Rule 87. Forms

The forms in the Appendix suffice under these rules and illustrate the simplicity and brevity that these rules contemplate.

(Added Oct. 3, 1984, eff. Jan. 1, 1985; and amended Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 88. Title

These rules may be cited as the Rules of the United States Court of International Trade.

(Added Oct. 3, 1984, eff. Jan. 1, 1985; and amended Nov. 25, 2009, eff. Jan. 1, 2010.)

Rule 89. Effective Date

In General. These rules and any amendments take effect at the time specified by the court. They govern: (1) proceedings in a case commenced after their effective date; and (2) proceedings after that date in a case then pending unless: (A) the court specifies otherwise; or (B) the court determines that applying them in a particular case would be infeasible or work an injustice.

(Added Nov. 4, 1981, eff. Jan 1., 1982; and amended Dec. 29, 1982; eff. Jan. 1, 1983; Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; Dec. 3, 1986, eff. Mar. 1, 1987; Apr. 28, 1987; eff. June 1, 1987; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Mar. 1, 1991, eff. Mar. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995; June 1, 1995, eff. June 1, 1995; Nov. 29, 1995, eff. Mar 31, 1996; Aug. 29, 1997, eff. Nov. 1, 1997; Nov. 14, 1997, eff. Jan. 1, 1998; Mar. 25, 1998, eff. July 1, 1998; May 27, 1998, eff. Sept. 1, 1998; Jan. 25, 2000, eff. May 1, 2000; Aug. 29, 2000, eff. Jan. 1, 2000; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 30, 2003, eff. Jan.1, 2004; May 25, 2004, eff. Sept. 1, 2004; Sept. 28, 2004, eff. Jan. 1, 2005; Mar. 29, 2005, eff. Oct. 1, 2005; Nov. 29, 2005, eff. Jan. 1, 2006; Mar. 21, 2006, eff. Apr. 10, 2006; Nov. 28, 2006, eff. Jan. 1, 2007; Nov. 27, 2007, eff. Jan 1. 2008; Nov. 25, 2008; eff. Jan. 1, 2009; Mar. 24, 2009, eff. May 1, 2009.; Nov. 25, 2009, eff. Jan. 1, 2010.)

GUIDELINES - BILL OF COSTS - RULE 54(d)(1)

1. Within thirty (30) days after the expiration of the time allowed for appeal of a final judgment, whether or not an appeal has been filed, the prevailing party shall serve on the attorney for the adverse party and file with the clerk of court the original and one copy of a Bill of Costs and Disbursements (Form 21), together with a certificate of service.

2. Any Bill of Costs shall precisely set forth each item thereof, and shall be verified by the attorney for the applicant, stating that: the items are correct; the services were actually and necessarily performed; and the disbursements were necessarily incurred in the action or proceeding. Counsel shall attach to the verified Bill of Costs copies of all invoices in support of the request for each item.

3. Counsel are directed to 28 U.S.C. § 1927 regarding counsel's liability for excessive costs.

4. The failure of a prevailing party either to timely file a Bill of Costs, or to comply with these Guidelines, shall constitute a waiver of any claim for costs.

5. If a party objects to the Bill of Costs or any item claimed by a prevailing party, that party shall state its objection in a motion for disallowance of costs with a supporting brief within fourteen (14) days after the filing of the Bill of Costs. Within seven (7) days thereafter, the prevailing party may file a response motion and brief.

6. After the clerk or his designee has entered an order on the Bill of Costs, counsel for either party may, within seven (7) days, file a motion to review the action of the clerk and request review by the court. Once the court has ruled on the motion filed by any party, and the matter of costs has been determined, those costs shall be included in the judgment and shall be paid directly to the prevailing party. These costs are not processed through the office of the clerk. To record payment, counsel may file a Notice of Satisfaction of Costs (Form 22).

7. The clerk or his designee shall tax costs even if the case is appealed, unless a stay pending appeal has been granted by the court. In the event of a stay, counsel shall be responsible to advise the clerk at the conclusion of all appellate proceedings that costs may be taxed.

8. Authority for the clerk to tax costs is found at:

   - 28 U.S.C. § 1920 (taxation of costs);
   - 28 U.S.C. § 1821 (per diem and mileage generally);
   - 28 U.S.C. § 1921 (fees of United States Marshals Service);
   - 28 U.S.C. § 1922 (witness fees);

- 28 U.S.C. § 1923 (docket fees and costs of briefs);
- 28 U.S.C. § 1924 (verification of bill of costs);
- USCIT R. 54(d)(1)
- USCIT R. 82(b)

(Added May 25, 2004, eff. Sept. 1, 2004; and amended Dec. 6, 2011, eff. Jan. 1, 2012.)

GUIDELINES FOR COURT-ANNEXED MEDIATION

Mediation is a flexible, non-binding dispute resolution procedure in which a neutral third party, the mediator, facilitates negotiations between the parties to assist them with settlement. A hallmark of mediation is its capacity to help parties expand traditional settlement discussions and broaden resolution options, often going beyond the legal issues in controversy. Mediation sessions are confidential and structured to help parties communicate, to clarify their understanding of underlying interests and concerns, probe the strengths and weaknesses of legal positions, explore the consequences of not settling and generate settlement options. The mediator, who may meet jointly or separately with the parties, serves as a facilitator and does not issue a decision or make findings of fact.

Judges of the United States Court of International Trade are available throughout the pretrial phase of all litigation to conduct judge-hosted sessions of mediation. A judge may serve as the Judge Mediator in any case referred for mediation, provided it is not a case in which he or she is the presiding judge, and he or she is not otherwise disqualified to serve in accordance with Title 28 U.S.C. § 455 and the Canons of Judicial Ethics.

These Guidelines are intended to govern the procedures for Court-Annexed Mediation unless otherwise ordered by the assigned judge or Judge Mediator.

I. REFERRAL

Any judge may issue an Order of Referral to Court-Annexed Mediation in any case assigned to him or her. The Order may be in response to a consent motion from all the parties which requests mediation, in response to a motion from one or more parties, or may be issued *sua sponte* by the assigned judge.

The original Order of Referral to Court-Annexed Mediation will be filed with the Clerk's Office and copies served on the parties. A copy of the Order also will be provided to the judge who has agreed to serve as Judge Mediator in the case.

The Order of Referral will provide for a maximum number of days within which the parties must complete the mediation process. All proceedings (including motion practice and discovery) shall be stayed for a period of ninety (90) days from the date of the Order of Referral, unless the judge assigned, on the judge's own initiative or on a motion of a party, for good cause shown, provides for a longer or shorter stay, or limits the scope of the stay.

A Form "Order of Referral to Court-Annexed Mediation" is attached to these Guidelines as **Form - M1**.

II. PROCEEDINGS AFTER REFERRAL

(A) Submission of Position Papers and Documents.

Within fourteen (14) days of the Order of Referral, counsel for each party shall prepare and submit to the Judge Mediator confidential memoranda of no more than ten (10) pages, which shall:

1. Identify the person with actual authority to negotiate a settlement of the case;

2. State the relevant facts in the action;

3. State the key legal issues in the action;

4. Identify what discovery would improve the prospects for settlement;

5. State the pertinent factors relating to settlement;

6. State the party's initial settlement position; and

7. Identify the names of all counsel and other persons who are expected to attend any scheduled mediations; such identification will include the title of each such person, and: a) in the case of a party who is an individual, whether such person will be attending as a representative of that individual or in some other capacity (e.g., witness, assistant), or b) in the case of a party who is an entity, whether the person is appearing as counsel of record or as an attorney (or another representative) with authority to recommend a settlement or in some other capacity (e.g., witness, assistant).

Copies of the confidential memoranda submitted directly to the Judge Mediator should not be served on opposing counsel, are not to be filed with the Clerk's Office, and are not to be on record in the action.

(B) Mediation Sessions.

Within thirty (30) days of the Order of Referral, the Judge Mediator will notify the parties of the time, date, and place of the mediation session and whether it will be conducted in person, telephonically, or by videoconference. Unless the Judge Mediator directs otherwise, except in the case of a party who is an individual, all sessions of mediation

must be attended by counsel of record and an attorney (or another representative) with authority to recommend a settlement (who may be one and the same). In the case of a party who is an individual, unless excused by the judge or Judge Mediator, the individual or a representative who has actual authority to settle the case shall attend. The Judge Mediator may meet with counsel and the parties jointly or ex parte. The Judge Mediator may conduct one or more sessions of mediation.

(C) Confidentiality of Mediation Proceedings.

All statements made at and all materials shared or submitted by a party during a session of mediation shall be confidential, unless during the course of the mediation a party, its representative or its counsel agrees that anything submitted in confidence to the Judge Mediator by or on behalf of that party may be disclosed to another party, its representative or counsel, in furtherance of the mediation (provided that such disclosure is not also the subject of any specially agreed upon confidentiality terms).

Except as provided for above, the Judge Mediator shall not discuss with or disclose to the assigned judge or anyone else the statements made or information developed during the mediation process. The attorneys and other persons attending the mediation are likewise prohibited from disclosing statements made or information developed during the mediation process. The parties are prohibited from using any information obtained in the mediation process in any motion or argument to any court. The sessions of mediation shall be considered compromise negotiations under Rule 408 of the Federal Rules of Evidence. Notwithstanding the foregoing, the bare fact that a settlement has or has not been reached as a result of mediation shall not be considered confidential. Nothing in this provision, however, shall preclude any party or other person from obtaining, outside of the mediation proceedings, any matter which a party may lawfully obtain through independent means, such as discovery, any matter which is not otherwise privileged, regardless of whether the party or person learned about the existence of such information from the mediation proceedings, unless the information was expressly disclosed after an agreement that precludes such discovery.

Additionally, notwithstanding the foregoing, nothing shall preclude the court, when the interests of justice may require, such as to prevent the commission of a crime, to order, after notice and hearing, that any confidential information be disclosed for such limited purposes.

(D) Settlement.

No party shall be bound by statements or actions at a session of mediation unless a settlement or other written agreement is reached. If an agreement is reached, the agreement shall be reduced to writing and shall be binding on all parties to the agreement. The agreement shall be signed by all parties and their respective counsel (who may be one and the same when counsel have been authorized to sign on behalf

of a party). If such an agreement includes a dismissal, in whole or in part, of the case, then the parties will file an appropriate dismissal, pursuant to Rule 41, or stipulated judgment, pursuant to Rule 58.1. Such papers will be filed with the court within thirty (30) days after the settlement or other written agreement is signed or the case will be returned to the active calendar, unless such period is extended by the judge assigned to the case on the judge's own initiative or on motion filed by a party, for good cause shown.

(E) Report of Mediation.

On conclusion of the mediation process, the Judge Mediator shall file promptly a Report of Mediation which indicates whether the case has settled in whole or in part. The original Report of Mediation will be filed with the Clerk's Office and copies served on the parties. A copy of the Report also will be provided to the referring judge assigned to the case.

A Form "Report of Mediation" is attached to these Guidelines as **Form - M2**.

(F) Extensions of Deadlines and Modification of Terms of Stay.

Nothing contained in these guidelines precludes the judge assigned to the case (or the Judge Mediator, as to a deadline relating to the planning or conducting of the mediation once the case has been referred to a Judge Mediator) from extending the time periods set in these guidelines, unless such extension will result in the time permitted for the mediation to extend beyond the time period of the stay set in these guidelines. In that event, such extension may only be granted by the judge assigned to the case or by the Judge Mediator in consultation with and with the concurrence of the judge assigned to the case. Extensions may be permitted by the judge or the Judge Mediator, on the judge's or Judge Mediator's own initiative or on motion of a party, for good cause shown. Further, nothing in these guidelines precludes the judge assigned to the case, at any time, on the judge's own initiative, pursuant to the recommendation of the Judge Mediator, or on motion of a party, for good cause shown, from determining that the case should not be stayed pending the completion of mediation, or from excluding certain activities that a party may be permitted or required to perform from the stay, or from otherwise modifying the terms or length of the stay so as to facilitate the conduct of the mediation or to avoid undue delay or hardship in the final determination of the case.

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended May 25, 2004, eff. Sept. 1, 2004; Dec. 6, 2011, eff. Jan. 1, 2012.)

SCHEDULE OF FEES

(Effective November 1, 1988, as amended Jan. 28, 2014, eff. Apr. 1, 2014.)

As provided by 28 U.S.C. § 2633(a) and the Rules of the United States Court of International Trade, the following are fees to be charged for services provided by the Court. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 5 and 6 of Additional Fees. No fees under this schedule shall be charged to federal agencies or programs, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and Bankruptcy Administrator programs.

Filing Fees - Rule 3(b)

1. For filing an action other than one commenced under 28 U.S.C. § 1581(a) or (d)(1) $400.00

2. For filing a summons in an action commenced under 28 U.S.C. § 1581(a) $175.00

3. For filling an action commenced under 28 U.S.C. § 1581(d)(1) ..... $ 35.00

4. For filing a complaint in an action commenced under 28 U.S.C. §1581(a) on or after November 1, 1997 ..... $200.00

5. For filing an appeal in the U.S. Court of International Trade to the U.S. Court of Appeals for the Federal Circuit $505.00

Attorney Admission Fees - Rule 74(b)(3)

For the original admission of an attorney to practice, including a certificate of admission ..... $ 76.00

Additional Fees - Rule 80(g)

The clerk shall collect in advance from the parties fees for miscellaneous services as are consistent with the "Judicial Conference Schedule of Additional Fees for the United States District Courts." The additional fees that are applicable to the court are as follows:

1. For filing or indexing any paper not in a case or proceeding for which a case filing fee has been paid (e.g., filing a petition to perpetuate testimony pursuant to Rule 27, the filing of letters rogatory or letters of request, and the registering of a judgment pursuant to 28 U.S.C. § 1963) ..... $ 46.00

2. For every search of the records of the court for each case searched. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access. The court has adopted guidelines consistent with those promulgated by the Judicial Conference of the United States to provide guidance in the application of this fee. The Guidelines are attached to this Schedule of Fees ..... $ 30.00

3. For certification of any document or paper, whether the certification is made directly on the document or by separate instrument..... $ 11.00

4. For exemplification of any document or paper ..... $ 21.00

5. For reproducing any record or paper, including paper copies made from either original documents; or microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access ..... $ .50

6. For reproduction of recordings of proceedings, regardless of the medium, including the cost of materials. This fee shall apply to the United States if the reproduction of the recording is available electronically ..... $ 30.00

7. For each microfiche sheet of film or microfilm jacket copy of any court record, where available ..... $ 6.00

8. For retrieval of one box of records from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court..... $ 64.00

For retrievals involving multiple boxes, each additional box..... $ 39.00

9. For any payment returned or denied for insufficient funds..... $ 53.00

10. For a duplicate certificate of admission or certificate of good standing ..... $ 18.00

11. For handling registry funds, a charge shall be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

SEARCH FEE GUIDELINES

The following guidelines reflect, to the maximum extent possible, (1) the duty of the clerk's office to provide access to the court's records, and (2) the efficient use of the limited resources available in the clerk's office. These guidelines attempt to strike a fair balance between these two competing concerns. In addition, the guidelines are intended to be consistent with the search fee applicable to the other federal courts.

The guidelines are meant to inform the clerk's discretion, not to limit it. Thus, the guidelines are not meant to be hard-and-fast rules on the application of the search fee; rather, they are meant to be parameters within which the clerk's office may operate.

Guideline No. 1

Any information which is easily retrieved, with a minimum expenditure of time and effort, will be considered a non-chargeable "retrieval," as opposed to a chargeable search. A search fee will not be charged for a single request for basic information readily retrievable through an automated database. A request of this nature will be considered a "retrieval" and will not be considered a "search."

The advent of the automated database has greatly diminished the resource strain on the clerk's office when retrieving basic information about a case. Basic information is defined as any information which is easily retrievable from an automated database or from the front of a docket sheet. Basic information which may be retrieved without a search fee may include: (1) the name of a party when the case number is provided; (2) the number of a case when the plaintiff or defendant is known; (3) the date a summons or complaint was filed when the case number is provided; (4) the name of a party's attorney when the case number is provided; (5) the status of the case generally when the case number is provided.

The public is encouraged to come to the court to conduct searches for information, and to utilize the court's automated database. Within limits, the clerk's office will assist those attempting to use the docket sheets or computers placed for the public's use.

If the request is made by telephone, and does not require a written response, no charge will be imposed if it is a single request and can be answered easily by examining a docket sheet or through the automated database.

Guideline No. 2

A search fee will be charged for any request for which accurate court number and docket information is not provided by the requestor and which therefore requires a physical search of the court's records.

A request for information where documents or pleadings are not identified by the requestor, with accurate and complete court number and docket information, and which therefore requires a *physical* search of the court's records (whether automated or hard copy) will be considered a "search" which is properly chargeable.

Guideline No. 3

With limited exceptions, a fee will be charged for all written search requests which require a written response.

A written request is defined as any search request made in writing which requires a written response. Because of the time and resources which must be expended in order to respond to a written request, such a request will be considered a search which is subject to the fee, even if the request is for basic information which may be obtained from an automated database or the docket sheet. An exception is the situation where a written request for "basic" information (as defined above), can be responded to by having the clerk's office staff provide a handwritten response on the requestor's letter (as opposed to requiring a separate document in response) and where the requestor has provided a self-addressed, stamped return envelope. In this situation, the time and effort involved do not warrant the imposition of the search fee.

The search fee should be included with the request, and the clerk's office will not process a written request until the search fee is received.

Guideline No. 4

Where requested information is available on an automated database, a requestor seeking information via the telephone may be required to utilize that database, instead of having a court employee conduct the information retrieval.

Much basic information which is sought may be retrievable by a requestor through an automated database without the need for any direct communication with a court employee. In order to maximize the utility of the court's automated database and minimize the expenditure of court personnel time, the court may require a requestor to use that database. This guideline is applicable when users can reasonably be expected to avail themselves of that particular service.

Guideline No. 5

When an automated database is available, a computer terminal with suitable data protection will be made available for use by the public. When a computer terminal is available for use by the public, the court may adopt the policy set forth in Guideline No. 4 for in-person requests for basic information, i.e., the clerk's office may require an in-person requestor to utilize the public computer terminal rather than having a clerk's office employee retrieve the information.

Guideline No. 6

Requests for archived documents shall be charged only the archive retrieval fee and not the additional search fee.

Item 8 of the court's Schedule of Additional Fees provides that a fee shall be charged for retrieval of a record from any place that such record may be archived. The Schedule of Fees does not refer to any additional fee for such retrieval, and the court did not contemplate two separate fees (one for the request and one for the retrieval) to be charged when a particular document is off-site.

However, the search fee may be charged to an individual who makes a request to the clerk's office for box, location, and accession information of a document in order to conduct his or her own search of the Records Center. In such a case, a physical search of the court's records would be necessary in order to obtain the information, and a search fee would be appropriate.

In order to reduce the time involved in responding to these types of requests, and also to make this information more accessible to the public, the court may automate this information or make a duplicate accession number book available to the public.

Guideline No. 7

The clerk has the general authority to refuse to conduct searches which are unreasonable or unduly burdensome.

The clerk of court has the responsibility of being responsive to parties in interest in cases pending in the court. However, this does not mean that either the public or government agencies have an unfettered right to make unreasonable or unduly burdensome demands upon the resources and personnel of the clerk's office. The clerk will refuse to conduct searches which would require a disproportionate expenditure of time and/or resources, and will encourage entities making such requests to conduct their own search of court records. This includes a request for information which, instead of comprising a single request, includes a list of numerous names or items to be searched. Such requestor will be encouraged to utilize the court's automated database to obtain the desired information.

This procedure applies to federal agencies as well. Although search and copying fees are waived for federal agencies, the clerk is not required to accommodate search or copy requests from such agencies which are unduly burdensome or time-consuming. Because of the volume of requests that often comes from federal agencies, the court may invite or encourage federal agencies (or a local representative), to come into the court to conduct their own searches and will allow them to use court copy facilities.

A P P E N D I X I

S E A R C H F E E G U I D E L I N E S

I n t r o d u c t i o n

The following guidelines reflect, to the maximum extent possible, (1) the duty of the Clerk's Office to provide access to the court's records, and (2) the efficient use of the limited resources available in the Clerk's Office. These guidelines attempt to strike a fair balance between these two competing concerns. In addition, the guidelines are intended to be consistent with the search fee applicable to the other federal courts.

The guidelines are meant to inform the clerk's discretion, not to limit it. Thus, the guidelines are not meant to be hard-and-fast rules on the application of the search fee; rather, they are meant to be parameters within which the Clerk's Office may operate.

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an in-person requestor to utilize the public computer terminal rather than having a Clerk's Office employee retrieve the information.

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APPENDIX II

ADVISORY NOTE

The court, consistent with the policy of the Judicial Conference of the United States, has prescribed a fee for electronic access to court data, as set forth in the court's Schedule of Fees. The schedule provides that the court may exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. Exemptions will be granted as the exception, not the rule. The exemption language is intended to accommodate those users who might otherwise not have access to this information in electronic form. It is not intended to provide a means by which the court would exempt all users.

The court has determined that the following persons and classes of persons are exempt from the electronic public access fees: pro-se plaintiffs in trade adjustment assistance actions; indigents; bankruptcy case trustees; not-for-profit organizations and voluntary ADR neutrals.

APPENDIX OF FORMS

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General Instructions

Specific Instructions

Complaint Allegations

Form		Applicable Rule
1	Summons in 28 U.S.C. § 1581(a)	Rule 3(a)(1)
1A	Notice of Lawsuit and Request for Waiver of Service of Summons	Rule 4(c)
1B	Waiver of Service of Summons	Rule 4(c)
2	Summons in 28 U.S.C. § 1581(b)	Rule 3(a)(1)
3	Summons in 28 U.S.C. § 1581(c)	Rule 3(a)(2)
4	General Summons	Rule 3(a)
5	Information Statement	Rule 3(d)
6	Request for Trial	Rule 40(a)
7	Notice of Dismissal	Rule 41 (a)(1)(A)(i)
7A	Notice of Dismissal	Rule 41(a)(1)(A)(i)
8	Stipulation of Dismissal	Rule 41(a)(1)(A)(ii)
8A	Stipulation of Dismissal	Rule 41(a)(1)(A)(ii)
9	Stipulated Judgment on Agreed Statement of Facts	Rule 58.1
10	Application for Admission	Rule 74(b)
11	Notice of Appearance	Rule 75(b)(2)
12	Notice of Substitution of Attorney	Rule 75(c)
13	Disclosure of Corporate Affiliations and Financial Interest	Rule 3(i), Practice Comments to Rules 24, 76
14	Joint Notice Regarding Termination of Access to Confidential Information	AO No. 02-01
15	Application for Fees and Other Expenses Pursuant to the Equal Access to Justice Act	Rule 54.1
16-1	Order [For Day-of-Deposit to Day-of-Withdrawal]	Rule 67.1
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16-3	Order [For Certificate of Deposit]	Rule 67.1
16-4	Order [For Treasury Bills]	Rule 67.1
16-5	Order [For Return of Money]	Rule 67.1
17	Business Proprietary Information Certification	Rule 73.2(c)
18	Notice of Termination of Access to Business Proprietary Information	Rule 73.2(c)
18A	Notification of Termination of Government Attorney Access to Business Proprietary Information	Rule 73.2(c)
19	Report of the Parties' Planning Meeting	Rule 26(f)
20	Subpoena	Rule 45
21	Bill of Costs	Rule 54(d)(1)
22	Satisfaction of Costs	Rule 54(d)(1)
23	Certification of Filing and Service of Physical Exhibit or Item	Rule 80(h)
M-1	Order of Referral to Mediation	Rule 16.1
M-2	Order of Report of Mediation	Rule 16.1

GENERAL INSTRUCTIONS

1. The forms contained in this Appendix of Forms are intended for use as samples, except for those forms which, when required are to be obtained from the office of the clerk, *viz.,* Forms 5, 10 and 13.

2. No attempt is made to furnish a manual of forms; and the forms are limited in number. For other forms, reference may be made when appropriate to the Appendix of Forms to the Federal Rules of Civil Procedure.

3. Except when otherwise indicated, each pleading and other paper must have a caption similar to that of the summons, with the designation of the particular paper substituted for the word, "Summons."

4. In the caption of the summons and of the complaint, all parties must be named; but in other pleadings and papers, it is sufficient to name the first party on either side, with an appropriate indication of other parties.

5. A motion must contain a designation below the caption indicating the nature of the motion, e.g., "DEFENDANT'S MOTION FOR SUMMARY JUDGMENT." A response to a motion, or a reply to a response when allowed, must contain a similar designation.

6. Papers filed after an action is commenced must set out to the right of the caption: the court number assigned to the action; the court calendar (Reserve, Suspension, or Suspension Disposition Calendar) on which the action is listed; and, if the action has been assigned, the name of the judge to whom it is assigned.

7. Each pleading or other paper is to be signed in the attorney's individual name by at least one attorney of record. The attorney's name is to be followed by the attorney's mailing address and telephone number. If the attorney of record is a firm of attorneys, the firm name, the name of the individual attorney responsible for the litigation, must appear on every pleading or other paper. A party represented by more than one attorney of record must designate only one attorney of record to serve, file and receive service of pleadings and other papers on behalf of the party. If an individual is not represented by an attorney, the signature, mailing address, and telephone number of the individual are required in place of those of an attorney.

8. When a summons, pleading or other paper includes a schedule of actions, the schedule must:

a. not list both assigned and unassigned actions;
b. not include actions assigned to more than one judge;
c. list the actions in numerical order;
d. indicate the court calendar, if any, in which the action is pending; and
e. list the protest or customs numbers in numerical order.

(As amended July 23, 1993, eff. July 23, 1993.)

Form 1

This form of summons is to be used only in those actions described in 28 U.S.C. § 1581(a).

The summons must be filed together with a $175 filing fee, a completed Information Statement (Form 5), and a completed Disclosure of Corporate Affiliation and Financial Interest (Form 13).

The summons form (copies of which may be obtained from the office of the clerk) consists of three pages. The first page is to be completed with the required information pertaining to the denied protest. The second page is to be completed with the required information pertaining to the administrative decision contested in the action. The third page is to be completed with a schedule of protests, listed in numerical order, when more than one denied protest is included in the action.

When the action includes protests denied at one port of entry, the original and four copies of the summons must be filed. When the action includes protests denied at more than one port of entry, an additional copy of the summons must be filed at the same time for the protests denied at each such additional port of entry.

(As amended July 23, 1993, eff. July 23, 1993; Nov. 29, 2005, eff. Jan. 1, 2006; Mar. 19, 2013, eff. May 1, 2013.)

Form 1A

A Notice of Lawsuit and Request for Waiver of Service of Summons which, as previously prescribed by Rule 4(d), shall be addressed directly to a defendant and sent by first-class mail or other reliable means. The defendant shall be allowed a reasonable period of time to return the waiver (Form 1B).

Plaintiff shall provide the defendant with a stamped and addressed return envelope. Plaintiff also shall provide the defendant with a copy of the waiver for defendant's records.

Upon receipt of the signed waiver, plaintiff shall file the waiver with the court.

If the waiver is timely returned by the defendant, that defendant, if located within any judicial district in the United States, is not required to serve an answer until 60 days after the date on which the request for the waiver was sent.

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Form 1B

A Waiver of Service of Summons which, as prescribed in Rule 4(d), shall be returned to a plaintiff who has requested a defendant to waive service.

If a defendant, after being notified on an action and asked to waive service fails to do so, that defendant will be required to bear the cost of service unless good cause can be shown for its failure to sign and return the waiver.

If the waiver is timely returned by the defendant, that defendant, if located within any judicial district of the United States, is not required to serve an answer until 60 days after the date on which the request for the waiver was sent.

(Added October 5, 1994, eff. Jan. 1, 1995.)

Form 2

This form of summons is to be used only in those actions described in 28 U.S.C. § 1581(b).

The summons must be filed together with a $400 filing fee, a completed Information Statement (Form 5), and a completed Disclosure of Corporate Affiliation and Financial Interest (Form 13).

The summons form (copies of which may be obtained from the office of the clerk) consists of two pages. The first page is to be completed with the required information pertaining to the entry involved in the action. The second page is to be completed with the required information pertaining to the administrative decisions contested in the action.

When one action includes entries involving one consignee and one port of entry, the original and five copies of the summons must be filed. When the action includes entries involving more than one consignee or more than one port of entry, an additional copy of the summons must be filed at the same time for each such additional consignee and each such additional port of entry.

(As amended July 23, 1993, eff. July 23, 1993; December 18, 2001, eff. April 1, 2002; Nov. 29, 2005, eff. Jan. 1, 2006; Mar. 21, 2006, eff. Apr. 10, 2006; Mar. 19, 2013, eff. May 1, 2013.)

Form 3

This form of summons is to be used only in those actions described in 28 U.S.C. § 1581(c). It is to be used both: (1) when the action is commenced by filing a summons only (i.e., to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930; and (2) when the action is commenced by filing concurrently a summons and a complaint (i.e., to contest a determination listed in section 516A(a)(1) of the Tariff Act of 1930).

The summons must be filed with a $400 filing fee, a completed Information Statement (Form 5), and a completed Disclosure of Corporate Affiliation and Financial Interest (Form 13).

When the clerk of the court is required to make service of the summons (i.e., those actions commenced by filing a summons only), the original and one copy of the summons must be filed with an additional copy for each defendant to be served; and the back of the summons must list the complete name and mailing address of each defendant to be served.

When the plaintiff is required to make service of the summons (i.e., those actions commenced by filing concurrently a summons and a complaint), the original and one copy of the summons must be filed with proof of service. Before making service of the summons, plaintiff must obtain a court number from the office of the clerk and endorse the number on the summons. For this purpose, a court number may be assigned to the action and obtained by telephone request, but in no event shall a court number be obtained from the office of the clerk more than 24 hours prior to the service of the summons.

(As amended July 21, 1986, eff. Oct. 1, 1986; July 23, 1993, eff. July 23, 1993; Aug. 29, 2000, eff. Jan.1, 2001; Nov. 29, 2005, eff. Jan. 1, 2006; Mar. 21, 2006, eff. Apr. 10, 2006; Mar. 19, 2013, eff. May 1, 2013.)

Form 4

This form of summons is to be used in all actions other than those actions in which the form of summons to be used is Form 1, 2, or 3.

The original and one copy of the summons must be filed with proof of service, a $400 filing fee, except that a $35 filing fee shall be paid when the action is one described in 28 U.S.C. § 1581(d)(1), a completed Information Statement (Form 5), and a completed Disclosure of Corporate Affiliation and Financial Interest (Form 13). Before making service of the summons, plaintiff must obtain a court number from the office of the clerk and endorse the number on the summons. For this purpose, a court number may be assigned to the action and obtained by telephone request, but in no event shall a court number be obtained from the office of the clerk more than 24 hours prior to the service of the summons.

(As amended July 23, 1993, eff. July 23, 1993; December 18, 2001, eff. April 1, 2002; Nov. 29, 2005, eff. Jan. 1, 2006; Mar. 21, 2006, eff. Apr. 10, 2006; Mar. 19, 2013, eff. May 1, 2013.)

Form 5

The Information Statement, which must be filed when an action is commenced, is a form available from the office of the clerk. The original and a sufficient number of copies for service (when service is to be made by the office of the clerk) of the completed Information Statement must be filed.

(As amended Aug. 29, 2000, eff. Jan. 1, 2001; Nov. 29, 2005, eff. Jan. 1, 2006.)

Form 6

A Request for Trial must be filed after service as prescribed in Rule 40(a). The request must be substantially in the form set forth in Form 6.

After receipt of a Request for Trial and any opposition to the request, the court will designate the date and place for trial. As prescribed in Rule 77(c), the judge to whom the action is assigned will designate the date of the trial to be held at, or continued to, New York City; and the chief judge will designate the place and date of the trial to be held at, or continued to, any place other than New York City.

To complete the fillable version of Form 6, follow the steps below:

Caption:

1) Enter the names of the plaintiff and defendant in the appropriate free text box
2) Select “Court No.” or “Consolidated Court No.” from the drop-down box
3) Enter the Court No. or Consolidated Court No. in the free text box

Body:

1) Select “plaintiff” or defendant”
2) Enter the requested trial date(s)
3) Enter the requested place of trial
4) Select “Plaintiff” or “Defendant”
5) Select “party” or “parties”

Date and Contact Information:

1) Enter the filing date in the free text box
2) Enter the attorney’s contact information in the appropriate fields

(As amended July 23, 1993, eff. July 23, 1993; June 5, 2015, eff. July 1, 2015.)

Form 7

In an action commenced under 28 U.S.C. § 1581(a), 1581(b) or 1582, a Notice of Dismissal which, as prescribed by Rule 41(a)(1)(A)(i), may be filed by plaintiff at any time before service of an answer or motion for summary judgment, must be substantially in the form set forth in Form 7, and must include for each action noticed for dismissal: the court number; and the name of the plaintiff. In addition, in an action commenced under section 1581(a) or (b), the plaintiff is to include the protest number and the entry number, if applicable. In an action commenced under section 1582, the plaintiff also shall include the claim number, if applicable.

A Notice of Dismissal may include, on an attached schedule, more than one action.

(As amended July 23, 1993, eff. July 23, 1993; Dec. 18, 2001, eff. Apr.1, 2002; Aug. 2, 2010, eff. Sept. 1, 2010.)

Form 7A

In an action commenced other than under 28 U.S.C. § 1581(a), 1581(b) or 1582, a Notice of Dismissal which, as prescribed by Rule 41(a)(1)(A)(i), may be filed by plaintiff at any time before service of an answer or motion for summary judgment, must be substantially in the form set forth in Form 7A, and must include for each action noticed for dismissal the court number and the name of the plaintiff.

(As added Dec. 18, 2001, eff. Apr.1, 2002; Aug. 2, 2010, eff. Sept. 1, 2010.)

Form 8

In an action commenced under 28 U.S.C. § 1581(a), 1581(b) or 1582, a Stipulation of Dismissal which, as prescribed by Rule 41(a)(1)(A)(ii), may be filed by plaintiff, must be substantially in the form set forth in Form 8, and must include for each action stipulated for dismissal: the court number; and the name of the plaintiff. In addition, in an action commenced under section 1581(a) or (b), the plaintiff is to include the protest number and the entry number, if applicable. In an action commenced under section 1582, the plaintiff also shall include the claim number, if applicable.

A Stipulation of Dismissal may include, on an attached schedule, more than one action.

(As amended July 23, 1993, eff. July 23, 1993; Dec. 18, 2001, eff. Apr.1, 2002; Aug. 2, 2010, eff. Sept. 1, 2010.)

Form 8A

In an action commenced other than under 28 U.S.C. § 1581(a), 1581(b) or 1582, a Stipulation of Dismissal which, as prescribed by Rule 41(a)(1)(A)(ii), may be filed by plaintiff, must be substantially in the form set forth in Form 8A, and must include for each action stipulated for dismissal the court number and the name of the plaintiff.

(As added Dec. 18, 2001, eff. Apr.1, 2002; amended Aug. 2, 2010, eff. Sept. 1, 2010**.**)

Form 9

As prescribed in Rule 58.1, an action described in 28 U.S.C. § 1581 (a) or (b) may be stipulated for judgment on an agreed statement of facts.

The proposed stipulated judgment on agreed statement of facts shall be substantially in the form set forth in Form 9, with appropriate additions and deletions if the action does not involve valuation or classification. The proposed stipulated judgment on agreed statement of facts shall be filled out in accordance with the Endnotes found following Form 9.

(Added July 23, 1993, eff. July 23, 1993; amended Mar. 25, 1998, eff. July 1, 1998)

Form 10

An Application for Admission to Practice which, as prescribed by Rule 74(b)(1),must be completed and filed with the clerk of the court. The application must be on Form 10, which can be obtained from the Office of the Clerk of the Court. The application must include the name, the residential and office address of the applicant, and the name and address of the applicant's employer, among other essential contact information. Additionally, the application must include information pertaining to the applicant's bar admissions, good standing, and suspension and disbarment proceedings, if any.

An application may be made by (1) written motion or (2) oral motion. When the application is made upon written motion, it must be accompanied by a certificate of a judge or a clerk of any of the courts specified in Rule 74(a). The certificate must have been issued no earlier than 90 days prior to the date of the application and must state that the applicant is a member in good standing of the bar of that court.

When the application is made upon oral motion, the applicant must file the statement of the sponsoring attorney, who is a member of the bar of this court or of the bar of the Supreme Court of the United States. In addition, if the sponsoring attorney has known the applicant for less than one year, the applicant must include a certificate of a judge or a clerk of any of the courts specified in Rule 74(a), which was issued no earlier than 90 days prior to the date of the application and which must state that the applicant is a member in good standing of the bar of that court. When the application is made by oral motion, the attorney is not admitted to the Court until the oath specified in Rule 74(a) is administered. The applicant is required to sign a declaration, under penalties of perjury, that the statements made by the applicant are true and correct.

(As amended July 23, 1993, eff. July 23, 1993; Mar. 25, 1998, eff. July 1, 1998; Nov. 29, 2005, eff. Jan. 1, 2006; Nov. 28, 2006, eff. Jan. 1, 2007; Nov. 25, 2008, eff. Jan. 1, 2009.)

Form 11

A Notice of Appearance, as prescribed by Rule 75(b)(2), must be filed and served by an attorney authorized to appear in the action. The attorney must file and serve a notice for each action. The notice must be filed and served in all instances except those specified in Rule 75(b)(1). The notice should be substantially in the form set forth in Form 11.

An appearance may be made by an individual attorney or by a firm of attorneys. If an appearance is made by a firm of attorneys, the individual attorney responsible for the litigation must be designated. In addition, private attorneys and government attorneys whose agency is represented by the Department of Justice may appear as "of counsel." The notice should include the name of the attorney, the attorney's e-mail address, and the name, address and telephone number of the firm.

Whenever there is any change in the name of an attorney of record or in the attorney's address, telephone number, or e-mail address, a new notice of appearance for each action must be promptly filed and served on the other parties and filed with the court. The notice should be substantially in the form as set forth in Form 11.

To complete the fillable version of Form 11, follow the steps below:

<u>Caption:</u>

1) Enter the names of the plaintiff and defendant in the appropriate free text box
2) Select "Court No." or "Consolidated Court No." from the drop-down box
3) Enter the Court No. or Consolidated Court No. in the free text box
4) If appropriate, select "and Attached Schedule" from the drop-down box

<u>Body:</u>

1) Select "attorney" or "of counsel" from the drop-down box.
2) Select "plaintiff", "defendant", "plaintiff-intervenor", "defendant-intervenor" or "amicus" from the drop-down box
3) Enter the name of the party in the free text box
4) If appropriate, check the box for "and for the parties indicated in the actions listed on the attached schedule"
5) If appropriate, check the box for "The individual attorney in the undersigned firm, corporate law department, or the Government, who is responsible for the litigation, is" and enter the name of the attorney in the free text box

Date and Contact Information:

1) Enter the filing date in the free text box
2) Enter the attorney's contact information in the appropriate fields

Schedule, if any:

1) Enter the court numbers of all appropriate cases in the free text box
2) Enter the case name for those cases in the free text box
3) Enter the name of the party or parties represented in the free text box

(Added July 23, 1993, eff. July 23, 1993; amended, Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 4, 2012, eff. Jan. 1, 2013; June 5, 2015, eff. July 1, 2015.)

Form 12

A Notice of Substitution of Attorney, which, as prescribed by Rule 75(c), must be served by the party desiring to substitute an attorney. The service must be to the prior attorney of record and to all other parties. The notice shall be substantially in the form set forth in Form 12.

The notice should include the name of the substituted attorney, the prior attorney of record, and shall be signed by the substituting party. The notice also shall include a notice of appearance by the substituted attorney.

To complete the fillable version of Form 12, follow the steps below:

Caption:

1) Enter the names of the plaintiff and defendant in the appropriate free text box
2) Select “Court No.” or “Consolidated Court No.” from the drop-down box
3) Enter the Court No. or Consolidated Court No. in the free text box
4) If appropriate, select “and Attached Schedule” from the drop-down box

Body:

1) Enter new attorney, undersigned firm or corporate law department
2) Select “plaintiff”, “defendant”, “plaintiff-intervenor”, “defendant-intervenor” or “amicus” from the drop-down box
3) Enter former attorney, firm or corporate law department
4) Enter date
5) Enter name of party
6) Select “Plaintiff”, “Defendant”, “Plaintiff-Intervenor”, “Defendant-Intervenor” or “Amicus” from the drop-down box
7) Signature of party
8) Enter name of party
9) Select “plaintiff”, “defendant”, “plaintiff-intervenor”, “defendant-intervenor” or “amicus” from the drop-down box
10) Select “her” or “him” from the drop-down box
11) If appropriate, check the box for “The individual attorney in the undersigned firm, corporate law department, or the Government, who is responsible for the litigation, is” and enter the name of the attorney in the free text box

Date and Contact Information:

1) Enter the filing date in the free text box
2) Enter the attorney’s contact information in the appropriate fields

(As added July 23, 1993, eff. July 23, 1993; amended June 5, 2015, eff. July 1, 2015.)

Form 13

A Disclosure of Corporate Affiliation and Financial Interest which, as prescribed by 28 U.S.C. § 455, must be made when a corporation is a party to any action and the corporation as a subsidiary or affiliate of any publicly owned American or foreign corporation not named in the action. The attorney of record must notify the clerk of the court in writing of the identity of the parent or affiliate corporation and the relationship of the party and the parent or affiliate corporation.

A Disclosure must be made in all actions described in 28 U.S.C. § 1581. In an action described in 28 U.S.C. § 1581(a) or (b), the attorney of record for the plaintiff also shall notify the clerk of the court in writing of the identity of the ultimate consignee or real party in interest if different from the named plaintiff.

A Disclosure must be made when a trade association is a party to the action. The attorney for the trade association shall notify the clerk of the court in writing of the identity of each publicly-owned American or foreign member of the trade association.

If any trade association or corporate party seeks to intervene or appear as *amicus curiae*, the entity's attorney is also required to comply with the notification requirements set forth above.

The required disclosure notification shall be made on Form 13. The form will be provided by the office of the clerk of the court when the first pleading or other paper is filed by a party or when a motion to intervene or appear as *amicus curiae* is filed.

(As added July 23, 1993, eff. July 23, 1993.)

Form 14

After final judgment has been entered in an action, and any further appeals have been finally resolved, the parties must jointly notify the Clerk of the Court so that all CM/ECF access to confidential information and/or business proprietary information can be terminated. This notice should be filed within 28 days of entry of final judgment, including any judgment resulting from subsequent appeals of the court's decisions. The notice should be substantially in the form set out in Form 14.

(As added Dec. 4, 2012, eff. Jan. 1, 2013.)

Form 15

An Application for Attorney's Fees and Other Expenses Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and Rule 54.1, must be filed within 30 days after the date of final judgment, as defined in 28 U.S.C. § 2412(d)(2)(G).

The Application for Attorney's Fees and Expenses shall be substantially in the form set forth in Form 15. As prescribed by Rule 54.1, the application shall contain a citation to the authority which authorizes an award. The application shall indicate the manner in which the prerequisites for an award have been fulfilled. Each application shall also contain a statement, under oath, which specifies (1) the nature of each service rendered; (2) the amount of time expended in rendering each type of service; and (3) the customary charge for each type of service rendered.

(Added July 23, 1993, eff. July 23, 1993; and amended Sept. 30, 2003, eff. Jan. 1, 2004; July 24, 2012, eff. Sept. 3, 2012.)

Forms 16-1 through 16-5

An Order of Deposit and Investment directing the clerk to deposit money in an interest-bearing account, which as prescribed by Rule 67.1, shall be filed by delivery or by certified mail, return receipt requested, which the clerk or financial deputy who will inspect the proposed order for proper form and content prior to signature by the judge for whom the proposed order was prepared. The proposed order shall be substantially in the form set forth in Form 16-1, 16-2, 16-3, 16-4, or 16-5.

Any proposed order that directs the clerk to invest in an interest-bearing account or instrument funds deposited in the registry of the court pursuant to 28 U.S.C. § 2401 also shall contain all information in accordance with Rule 67.1(b).

(Added July 23, 1993, eff. July 23, 1993; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Form 17

As provided in Rule 73.2(c), the filing of a properly executed Business Proprietary Information Certification with the court entitles an attorney representing a party in an action brought pursuant to 28 U.S.C. § 1581(c) to have access to business proprietary information in the administrative record. Further, as also provided in Rule 73.2(c), the filing of a properly executed Business Proprietary Information Certification (including the required additional certifications as detailed in Form 17) entitles a non-attorney consultant to have access to business proprietary information in such an action. The Business Proprietary Information Certification shall be substantially in the form set forth in Form 17. Assuming that the properly executed Certification is timely filed, obtaining the consent of the other parties is not necessary for individuals who were subject to the administrative protective order in the underlying proceeding. Form 17 and the provisions referred to in the form are designed specifically for use in an action brought pursuant to 28 U.S.C. § 1581(c), and are not intended for use in other actions.

(Added Jan. 25, 2000, eff. May 1, 2000; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Form 18

As provided in Rule 73.2(c), in an action brought pursuant to 28 U.S.C. § 1581(c) in which a party has access to business proprietary information, a Notification of Termination of Access to Business Proprietary Information Pursuant to Rule 73.2(c) is to be utilized to inform the court and the other parties of the attorneys and consultants whose access to business proprietary information has been terminated. As also provided in Rule 73.2(c), the removal of parties from access to business proprietary information is, to the extent practicable, to be a matter of notice. Use of a standard form is intended to facilitate that process and further ease the burden on any parties who are subject to the terms of Rule 73.2(c) and the Appendix on Access to Business Proprietary Information Pursuant to Rule 73.2(c). The Notification of Termination of Access to Business Proprietary Information Pursuant to Rule 73.2(c) shall be substantially in the form set forth in Form 18.

(Added Jan. 25, 2000, eff. May 1, 2000; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Form 18A

Form 18A is intended to provide a means for notice of termination of access to business proprietary information through CM/ECF for a government attorney in an action brought pursuant to 28 U.S.C. § 1581(c). A government attorney who is no longer participating in an action in which he/she previously entered an appearance may use this form to notify the court and other parties that he/she should no longer have electronic access to, or be served with, business proprietary information in the listed cases. The form may be filed by the attorney whose access to business proprietary information is to be terminated, or by another government attorney who has entered an appearance.

(As added Dec. 4, 2012, eff. Jan. 1, 2013.)

Form 19

Rule 26(f) requires the parties, unless exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, to confer "as soon as practicable after the filing of a complaint, and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)…, and submi[t] to the court within 14 days after the conference a written report…." Form 19 illustrates the type of report the parties are expected to submit to the court, and it can be used as a checklist of items to be discussed at the conference.

To complete the fillable version of Form 19, follow the steps below:

<u>Caption:</u>

1) Enter the names of the plaintiff and defendant in the appropriate free text box
2) Select "Court No." or "Consolidated Court No." from the drop-down box
3) Enter the Court No. or Consolidated Court No. in the free text box
4) If appropriate, select "and Attached Schedule" from the drop-down box

<u>Body:</u>

1) Section 1: Enter date of Rule 26(f) conference and method of conferring
2) Section 2: Select "will complete by" or "have completed" from the drop-down box and if appropriate, enter the date when initial disclosures will be completed
3) Section 3 and 4: Enter the appropriate information in the provided fields

<u>Date:</u>

1) Date: Enter the filing date

(Added Sept. 30, 2003, eff. Jan. 1, 2004; amended June 5, 2015, eff. July 1, 2015.)

Form 23

As provided in Rule 80(h), Form 23 is intended to be used when a party submits a physical exhibit or item to the court other than as provided in USCIT R. 73.1 (for USCIT R. 73.1, CBP transmits entries, protests, other documents and samples via CBP Form 322 which the Clerk's office posts as an attachment to the docket entry which notes that the entries have been received). The filing of Form 23 provides public notice through CM/ECF of the filing and service of a physical exhibit or item was made in connection with a specific docket entry. The submission of a physical exhibit or item should include the name of the party, a general description of the merchandise, and the docket entry to which it relates.

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

COMPLAINT ALLEGATIONS

The forms of allegations set out below are intended to indicate the allegations which should be included in the particular civil actions.

Actions Described in 28 U.S.C. § 1581 (a) or (b)

(a) General: The complaint in a civil action should set forth:

(1) a statement of the basis of the court's jurisdiction;

(2) a statement of plaintiff's standing in the action;

(3) a statement that the protest was timely filed;

(4) a statement, when appropriate, that all liquidated duties have been paid;

(5) a description of the merchandise involved;

(6) a specification of the contested customs decision or decisions; and

(7) a demand for judgment for the relief which plaintiff seeks.

(b) Value: If the contested customs decision involves the value of merchandise, the complaint should also set forth:

(1) the date and country of exportation;

(2) a statement of the appraised value or values;

(3) a statement of the claimed statutory basis or bases of value;

(4) a statement of the amount or amounts of the unit value claimed to be the correct value or values, or a statement of how the claimed value may be computed; and

(5) concise allegations of plaintiff's contentions of fact and law in support of the above.

(c) Classification: If the contested customs decision involves the classification of merchandise, the complaint should also set forth:

(1) the item number of the Tariff Schedules of the United States, or the heading or subheading of the Harmonized Tariff Schedules of the United States, including all modifications and amendments thereof, under which the merchandise was classified, and the rate of duty imposed;

(2) the tariff description and the item number of the Tariff Schedules of the United States, or the heading or subheading of the Harmonized Tariff Schedules of the United States, including all modifications and amendments thereof, under which the merchandise is claimed to be properly subject to classification, and the rate of duty claimed to be applicable; and

(3) concise allegations of plaintiff's contentions of fact and law in support of the above.

(d) Other: If the contested customs decision involves any other administrative decision, the complaint should also set forth:

(1) a statement of the nature of the alleged error in the decision; and

(2) concise allegations of plaintiff's contentions of fact and law in support of plaintiff's position.

(As amended July 23, 1993, eff. July 23, 1993.)

TRANSCRIPT ORDER FORM

Submitted to: Clerk of the Court, United States Court of International Trade

COURT NO.:_____ **CASE CAPTION** _____

DATE(S) OF PROCEEDING	TRIAL OR HEARING	REPORTER OR ECRO	JUDGE
_____	_____	_____	_____
_____	_____	_____	_____

TYPE OF TRANSCRIPT	COST PER PAGE (Original)	First Copy to Each Party	Each Add'l Copy To Same Party
[ ] Ordinary Transcript (30 day) A transcript to be delivered within thirty (30) calendar days after receipt of an order.	$3.65	$ .90	$ .60
[ ] 14-Day Transcript A transcript to be delivered within fourteen (14) Calendar days after receipt of an order.	$4.25	$ .90	$ .60
[ ] Expedited Transcript (7 day) A transcript to be delivered within (7) calendar days after receipt of an order.	$4.85	$ .90	$ .60
[ ] Daily Transcript Transcript to be delivered after adjournment and before the usual opening hour of the Court on the following morning whether or not it actually is a Court day.	$6.05	$1.20	$ .90
[ ] Hourly Transcript Transcript to be delivered within (2) hours after receipt of order.	$7.25	$1.20	$ .90
[ ] Realtime Transcript A draft unedited transcript produced to be delivered electronically during proceedings or immediately following adjournment.	$3.05	$1.20	$ .90

Note: Daily, Hourly & Realtime transcription services require that arrangements be made for such services at least one week prior to actual proceedings

TRANSCRIPT ORDERED BY:

FIRM NAME: _____

ADDRESS: _____

TELEPHONE NO.: _____ ATTORNEY FOR: _____

SIGNATURE: _____ PRINTED NAME: _____

[ ] Cost of transcript being shared. See Additional trancript order form(s).

NOTE: THE TRANSCRIPT SERVICE WILL SEND YOU A COPY OF THE TRANSCRIPT WITH AN INVOICE. PAYMENT MUST BE MADE DIRECTLY TO THE TRANSCRIPTION SERVICE.

(THIS SECTION TO BE COMPLETED BY COURT)

1. **The transcript was ordered [ ] by mail [ ] FAX [ ] or in person on: _____.**

2. **Number of trial/hearing days ____: Estimated number of transcript pages ___ .**

3. **Estimated cost _____ for [ ] Ordinary, [ ] Expedited, [ ] Daily,.[ ] Hourly.**

4. **Estimated completion date _____.**

5. **Date forwarded to Transcription service _____.**

6. **If expedited transcript ordered, Federal Express or DHL Airbill No. _____ .**

DATE: _____ COURT REPORTER/ECRO: _____ .

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 1**

Plaintiff, **v.** **UNITED STATES,** **Defendant.**

S U M M O N S

TO: The Attorney General and the Secretary of Homeland Security:

PLEASE TAKE NOTICE that a civil action has been commenced pursuant to 28 U.S.C. § 1581(a) to contest denial of the protest specifi ed below (and the protests listed in the attached schedule).

/s/ Tina Potuto Kimble
Clerk of the Court

PROTEST

Port of Entry:	Date Protest Filed:
Protest Number:	Date Protest Denied:
Importer:	
Category of Merchandise:	

ENTRIES INVOLVED IN ABOVE PROTEST

Entry Number	Date of Entry	Date of Liquidation	Entry Number	Date of Entry	Date of Liquidation

Port Director,

Address of Customs Port in Which Protest was Denied

Name, Address, Telephone Number and E-mail Address of Plaintiff's Attorney

CONTESTED ADMINISTRATIVE DECISION

Appraised Value of Merchandise		
	Statutory Basis	Statement of Value
Appraised:		
Protest Claim:		

Classification, Rate or Amount				
	Assessed		Protest Claim	
Merchandise	Paragraph or Item Number	Rate	Paragraph or Item Number	Rate

Other

State Specifically the Decision [as Described in 19 U.S.C. § 1514(a)] and the Protest Claim:

The issue which was common to all such denied protests:

Every denied protest included in this civil action was filed by the same above-named importer, or by an authorized person in the importer's behalf. The category of merchandise specified above was involved in each entry of merchandise included in every such denied protest. The issue or issues stated above were common to all such denied protests. All such protests were filed and denied as prescribed by law. All liquidated duties, charges or exactions have been paid, and were paid at the port of entry unless otherwise shown.

_____

Signature of Plaintiff's Attorney

_____

Date

SCHEDULE OF PROTESTS

_____
Port of Entry

Protest Number	Date Protest Filed	Date Protest Denied	Entry Number	Date of Entry	Date of Liquidation

Port Director of Customs,

If the port of entry shown above is different from the port of entry shown on the first page of the summons, the address of the Port Director for such different port of entry must be given in the space provided.

(As amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007; Dec. 7, 2010, eff. Jan. 1, 2011.)

FORM 1A

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: _____(A)*_____
as _____(B)___ of _____(C)_____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States Court of International Trade and has been assigned Court Number __(D)__

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive the signed copy of the waiver within __(E)___ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Rules of the Court of International Trade and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this ___ day of _____,_____

_____
Signature of Plaintiff's Attorney or Unrepresented Plaintiff

PRACTICE COMMENT: The waiver of service provision under Rule 4(d) does not apply to the United States government. Practitioners also should be aware that failure to waive service in the appropriate circumstances may result in the assessment of the costs of service of a summons and complaint.

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*Notes:
(A) Name of individual defendant (or name of officer or agent of corporate defendant)
(B) Title, or other relationship of individual to corporate defendant
(C) Name of corporate defendant, if any
(D) Court Number of action
(E) Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

(Added Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 14, 1997, eff. Jan.1, 1998.)

FORM 1B

UNITED STATES COURT OF INTERNATIONAL TRADE

W A I V E R O F S E R V I C E O F S U M M O N S

TO: _____
(name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of _____, which is
(caption of action)
Court Number _____ in the United States Court of International Trade.
(docket number)
I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____, or within
(date request was sent)
90 days after that date if the request was sent outside the United States.

_____ _____
Date Signature

Printed/typed name:_____

[as _____]
[of _____]

To be printed on reverse side of the waiver form or set forth at the foot of the form:

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the court lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

(Added Oct. 5, 1994, eff. Jan. 1, 1995 and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 2**

Plaintiff, v. UNITED STATES, Defendant.

S U M M O N S

TO: The Attorney General, the Secretary of Homeland Security and _____, Party in Interest.

PLEASE TAKE NOTICE that a civil action has been commenced pursuant to 28 U.S.C. § 1581(b) to contest a decision of the Secretary ofthe Treasury made pursuant to section 516(c) of the Tariff Act of 1930 [19 U.S.C. § 1516(c)].

/s/Tina Potuto Kimble
Clerk of the Court

E N T R Y

Port of Entry	Entry Number	Date of Entry	Date of Liquidation	Date of Mailing of Notice of Liquidation
Description of Merchandise		Name and Address of Consignee or Agent		

Port Director,

Address of Customs Port
From Which Notice Was Given

Name, Address, Telephone Number
and E-mail Address of Plaintiff's Attorney

CONTESTED DECISION

Appraised Value of Merchandise	
Statutory Basis	Statement of Value
Appraised:	
Claim:	

Classification and Rate			
Assessed		Claim	
Item Number	Rate	Item Number	Rate

Signature of Plaintiff's Attorney

Date

(As amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007; Dec. 7, 2010, eff. Jan. 1, 2011.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 3**

Plaintiff, v. UNITED STATES, Defendant.	**S U M M O N S**

TO: The Attorney General, the Department of Commerce, and/or the United States International Trade Commission:

PLEASE TAKE NOTICE that a civil action has been commenced pursuant to 28 U.S.C. § 1581(c) to contest the determination described below.

/s/Tina Potuto Kimble
Clerk of the Court

---

1. _____
(Name and standing of plaintiff)

2. _____
_____
_____
(Brief description of contested determination)

3. _____
(Date of determination)

4. _____
(If applicable, date of publication in Federal Register of notice of contested determination)

Name, Address, Telephone Number
and E-mail Address of Plaintiff's Attorney

_____
Signature of Plaintiff's Attorney

_____
Date

SEE REVERSE SIDE

SERVICE OF SUMMONS BY THE CLERK

If this action, described in 28 U.S.C. § 1581(c), is commenced to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930, the action is commenced by filing a summons only, and the clerk of the court is required to make service of the summons . For that purpose, list below the complete name and mailing address of each defendant to be served.

(As amended July 21, 1986, eff. Oct. 1, 1986; Sept . 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007; Dec. 7, 2010, eff. Jan. 1, 2011).

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 4**

Plaintiff, v. UNITED STATES, Defendant.	**S U M M O N S**

TO: The Above-Named Defendant:

You are hereby summoned and required to serve on plaintiff's attorney, whose name and address are set out below, an answer to the complaint which is herewith served on you, within 21* days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/s/Tina Potuto Kimble
Clerk of the Court

Name, Address, Telephone Number
and E-mail Address of Plaintiff's Attorney

_____
Signature of Plaintiff's Attorney

_____
Date

* If the United States or an officer or agency thereof is a defendant, the time to be inserted as to it is 60 days, except that in an action described in 28 U.S.C. § 1581(f) the time to be inserted is 14 days.

(As amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007; Dec. 7, 2010, eff. Jan. 1, 2011).

FORM 5

UNITED STATES COURT OF INTERNATIONAL TRADE

INFORMATION STATEMENT

(*Place an "X" in applicable [ ]*)

PLAINTIFF:

_____

ATTORNEY (*Name, Address, Telephone No.*):

CONSTITUTIONAL ISSUE - 28 U.S.C. § 255

If this action raises an issue of the constitutionality of an Act of Congress, a proclamation of the President or an Executive order, check this box: [ ]

J U R I S D I C T I O N

28 U.S.C. § 1581(a) - Tariff Act of 1930, Section 515 - 19 U.S.C. § 1515

[ ] Appraisal [ ] Classification [ ] Charges or Exactions [ ] Vessel Repairs
[ ] Exclusion [ ] Liquidation [ ] Drawback
[ ] Refusal to Reliquidate [ ] Rate of Duty [ ] Redelivery

28 U.S.C. § 1581(b) - Tariff Act of 1930, Section 516 - 19 U.S.C. § 1516

[ ] Appraisal [ ] Classification [ ] Rate of Duty

28 U.S.C. § 1581(c) - Tariff Act of 1930, Section 516A(a)(1), (a)(2) or (a)(3) - 19 U.S.C. §1516a (*Provide a brief description of the administrative determination you are contesting, including the relevant* ***Federal Register*** *citation(s) and the product(s) involved in the determination. For Section 516A(a)(1) or (a)(2), cite the specific subparagraph and clause of the section.*)

Subparagraph and Clause _____ Agency_____

Federal Register Cite(s)_____

Product(s)_____

28 U.S.C. § 1581(d) - Trade Act of 1974 - 19 U.S.C. §§ 2273, 2341, 2401b

[ ] U.S. Secretary of Labor [ ] U.S. Secretary of Commerce [ ] U.S. Secretary of Agriculture

28 U.S.C. § 1581(e) - Trade Agreements Act of 1979, Section 305(b)(1) - 19 U.S.C. § 2515 (*Provide a brief statement of the final determination to be reviewed.*)

28 U.S.C. § 1581(f) - Tariff Act of 1930, Section 777(c)(2) - 19 U.S.C. § 1677f(c)(2)

Agency: [ ] U.S. International Trade Commission [ ] Administering Authority

28 U.S.C. § 1581(g) - Tariff Act of 1930, Section 641 - 19 U.S.C. § 1641 - or Section 499 - 19 U.S.C. § 1499

[ ] Sec. 641(b)(2) [ ] Sec. 641(b)(3) [ ] Sec. 641(c)(1) [ ] Sec. 641(b)(5)
[ ] Sec. 641(c)(2) [ ] Sec. 641(d)(2)(B) [ ] Sec. 499(b)

JURISDICTION
(Continued)

28 U.S.C. § 1581(h) - Ruling relating to:

☐ Classification ☐ Valuation ☐ Restricted Merchandise
☐ Rate of Duty ☐ Marking ☐ Entry Requirements
☐ Drawbacks ☐ Vessel Repairs ☐ Other: _____

_____

28 U.S.C. § 1581(i) - (*Cite any applicable statute and provide a brief statement describing jurisdictional basis.*)

28 U.S.C. § 1582 - Actions Commenced by the United States

☐ (1) Recover civil penalty under Tariff Act of 1930:
☐ Sec. 592 ☐ Sec. 593A ☐ Sec. 641(b)(6)
☐ Sec. 641(d)(2)(A) ☐ Sec. 704(i)(2) ☐ Sec. 734(i)(2)
☐ (2) Recover upon a bond
☐ (3) Recover customs duties

RELATED CASE(S)

To your knowledge, does this action involve a common question of law or fact with any other action(s) previously decided or now pending?

	PLAINTIFF	COURT NUMBER	JUDGE
☐ Decided:			
☐ Pending:			

(Attach additional sheets, if necessary.)

(As amended, eff. Jan. 1, 1985; Jan. 25, 2000, eff. May 1, 2000; May 25, 2004, eff. Sept. 1, 2004; Nov. 29, 2005, eff. Jan. 1, 2006; Nov. 28, 2006, eff. Jan. 1, 2007; Dec. 4, 2012, eff. Jan. 1, 2013.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 6**

Plaintiff, v. Defendant.	Court No.:

REQUEST FOR TRIAL

PLEASE TAKE NOTICE that _____ desires to try this action. It is requested that trial be held on or about_____
(date)
at _____.
(place)

_____ has conferred with the opposing _____ concerning the requested date and place of trial.

1. Allegation that all parties concur in the request, or names of the party or parties who do not concur.

2. Allegation that party requesting trial has completed discovery, or will complete discovery before the requested date of trial.

3. Statement of reasons why trial has been requested at the date and place set forth in the request.

4. Estimate of the number of witnesses and the time required by the party filing the request for examination of its witnesses.

Dated: _____ _____
Attorney

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

(As amended May 25, 2004, eff. Sept. 1, 2004; June 5, 2015, eff. July 1, 2015.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 7**

Plaintiff, v. Defendant.	Court No. and Attached Schedule

NOTICE OF DISMISSAL

PLEASE TAKE NOTICE that plaintiff, pursuant to Rule 41(a)(1)(A)(i) of the Rules of the United States Court of International Trade, hereby dismisses the action(s) listed on the attached schedule.

Dated: _____

_____
Attorney for Plaintiff

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

Schedule to Notice of Dismissal

Court Number(s)	Plaintiff(s) Name	Protest Number(s) or Claim Number(s) (if applicable)	Entry Number(s) (if applicable)

Order of Dismissal

The actions listed on the schedule set forth above, having been voluntarily noticed for dismissal by plaintiff, are dismissed.

Dated: _____

Clerk, U. S. Court of International Trade

By: _____
Deputy Clerk

(As amended Dec. 18, 2001, eff. Apr.1, 2002; Aug. 2, 2010, eff. Sept. 1, 2010.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 7A**

Plaintiff, v. Defendant.	Court No.

NOTICE OF DISMISSAL

PLEASE TAKE NOTICE that plaintiff, pursuant to Rule 41(a)(1)(A)(i) of the Rules of the United States Court of International Trade, hereby dismisses this action.

Dated: _____

_____
Attorney for Plaintiff

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

Order of Dismissal

This action, having been voluntarily noticed for dismissal by plaintiff, is dismissed.

Dated: _____ Clerk, U. S. Court of International Trade

By: _____
Deputy Clerk

Schedule to Notice of Dismissal

Court Number(s)	Plaintiff(s) Name

Order of Dismissal

This action and those listed on the schedule set forth above, having been voluntarily noticed for dismissal by plaintiff, are dismissed.

Dated: _____

Clerk, U. S. Court of International Trade

By: _____
Deputy Clerk

(As added Dec. 18, 2001, eff. Apr.1, 2002; Aug. 2, 2010, eff. Sept. 1, 2010.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 8**

Plaintiff, v. Defendant.	Court No.

STIPULATION OF DISMISSAL

PLEASE TAKE NOTICE that plaintiff, pursuant to Rule 41(a)(1)(A)(ii) of the Rules of the United States Court of International Trade, having filed a stipulation of dismissal signed by all parties who have appeared in this action and those actions listed on the attached schedule hereby dismisses this action and those listed on the attached schedule.

Dated: _____

_____
Attorney for Plaintiff

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

_____
Attorney for Defendant

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

Schedule to Stipulation of Dismissal

Court Number	Plaintiff(s) Name	Protest Number(s) or Claim Number(s) (if applicable)	Entry Number(s) (if applicable)

Order of Dismissal

This action and those listed on the schedule set forth above, having been voluntarily stipulated for dismissal by all parties having appeared in the action, are dismissed.

Dated: _____

Clerk, U. S. Court of International Trade

By: _____
Deputy Clerk

(As amended Dec. 18, 2001, eff. Apr.1, 2002; Aug. 2, 2010, eff. Sept. 1, 2010.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 8A**

Plaintiff, v. Defendant.	Court No.

STIPULATION OF DISMISSAL

PLEASE TAKE NOTICE that plaintiff, pursuant to Rule 41(a)(1)(A)(ii) of the Rules of the United States Court of International Trade, having filed a stipulation of dismissal signed by all parties who have appeared in this action and those actions listed on the attached schedule hereby dismisses this action and those listed on the attached schedule.

Dated: _____

_____
Attorney for Plaintiff

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

_____
Attorney for Defendant

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

Schedule to Stipulation of Dismissal

Court Number(s)	Plaintiff(s) Name

Order of Dismissal

This action and those listed on the schedule set forth above, having been voluntarily stipulated for dismissal by all parties having appeared in the action, are dismissed.

Dated: _____

Clerk, U. S. Court of International Trade

By: _____
Deputy Clerk

(As added Dec. 18, 2001, eff. A pr.1, 2002; Aug. 2, 2010, eff. Sept. 1, 2010.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 9**

Plaintiff[s], v. THE UNITED STATES, Defendant.	COURT NO[S]. ,[etc.**[1]**] See attached Schedule[s]**[2]** Before: (Insert name of Judge if assigned) Port[s]: [List applicable port[s] of entry]**[3]**

STIPULATED JUDGMENT ON AGREED STATEMENT OF FACTS

[This action] [These actions], as prescribed by Rule 58.1 of the Rules of the United States Court of International Trade, [is] [are] stipulated for judgment on the following agreed statement of facts in which the parties agree that:

1. The protest[s] involved here [was] [were] filed and the action[s] involved here [was] [were] commenced within the time provided by law, and all liquidated duties, charges or exactions have been paid prior to the filing of the summons(es).

2. The imported merchandise covered by the [entry] [entries] set forth on Schedule ["A"] ["B"], [4] attached, consists of [(Describe imported merchandise. The description should be sufficiently specific to enable U.S. Customs and Border Protection to identify the stipulable articles. Appropriate general terms or inclusion of descriptions on Schedule may be used.)]

3. The imported merchandise was classified by U.S. Customs and Border Protection or its predecessors, as [(describe)] under [(insert pertinent tariff provision[s])] at the rate[s] of [(insert tariff rate[s])] [, depending upon the date of entry].[5]

4. The stipulable imported merchandise is classifiable as [(describe)] under [(insert pertinent tariff provision[s]) at the rate[s] of [(insert tariff rate[s])] [, depending upon the date of entry].[6]

5. The imported merchandise, covered by the entries set forth on the attached schedule, which have been marked with the letter[s] [("A")] [and] [("B")][7] and initialed ____ [8] by _____[9], of U.S. Customs and Border Protection, [10] is stipulable in accordance with this agreement.

6. Any refunds payable by reason of this judgment are to be paid with any interest provided for by law.

7. All other claims and non-stipulable entries[11] are abandoned.

Court No[s]. [insert
lead number [etc.])].
See attached Schedule[s]

Respectfully submitted,

By: _____
Attorney[s] for Plaintiff[s]
[(Insert name of firm, address &
telephone number)]

Assistant Attorney General
Civil Division

By: _____
[(Insert name of Attorney in Charge)]
Attorney in Charge

International Trade Field Office

By: _____
[(Insert name of applicable DOJ attorney)][12]
U.S. Dept. of Justice, Civil Division
Commercial Litigation Branch
26 Federal Plaza
New York, New York 10278
Tel.: (212) 264-9230
Attorneys for the United States

IT IS HEREBY ORDERED that [this action] [these actions] [is] [are] decided and this final judgment is to be entered by the Clerk of this Court; the appropriate U.S. Customs and Border Protection officials shall [reliquidate the] [entry] [entries] [and][13] make refund in accordance with the stipulation of the parties set forth above.

_____
Judge [insert name]

Date: _____

SCHEDULE [A] [B] TO STIPULATED JUDGMENT[14]

Port: [(insert port of entry)]

File or Assignment	Court #	Protest #	Entry #	Description of Merchandise[15]

(Date Summons Filed)[16]

E N D N O T E S

Endnotes are for guidance in preparation of document and are not part of the final document. Material in brackets should be selected and/or modified depending on whether singular or plural text, et cetera, is applicable, and inserted into the text of the document; the brackets themselves are ordinarily not part of the final document.

1. If more than one case.

2. The Schedule should contain, the court number[s], the date[s] of the filing of the summons[es], the protest number[s] and the entry number[s]. The civil actions should be arranged in ascending order, and the name of the Judge assigned, and/or reserve or suspension file in which the case resides, should be set forth.

3. If more than one port of entry is covered by a single stipulated judgment ("stipulation") covering a civil action, separate pages of the schedule (see n. 2) should be used for listing each different port and its applicable entries and protests. Civil actions involving different ports of entry should not normally be combined on a single stipulation, since the need to consider the entries at the ports involved will usually delay the stipulation until all ports respond; in such instances, it is preferable that separate stipulations be prepared.

4. See n. 3.

5. If appropriate, as an addition or an alternative:

> 3. The imported merchandise was appraised by U.S. Customs and Border Protection or its predecessors, upon the basis of [(describe and insert statutory provision[s])] at a value of [(describe)].
>
> The use of the term “U.S. Customs and Border Protection”or its predecessors, is preferable over any attempt to specify which agency took the action. Responsibility for the implementation of the court’s judgment, as provided for later in the stipulation, now rests with U.S. Customs and Border Protection.

6. If appropriate, as an addition or an alternative:

> 4. Plaintiff claims that the imported merchandise should be appraised upon the basis of [(describe and insert statutory provision[s]) at a value of . . . (describe)].

7. Different letters should be used if the entries were previously marked on a different stipulation with the letter "A" or if the stipulation covers merchandise stipulated under more than one tariff provision and/or at different appraised values. More than one letter is required to distinguish merchandise stipulable under different provisions or at different appraised values.

8. Initials to be inserted by the Government.

9. See n. 8. Name of person to be inserted by the Government.

10. If appropriate, insert:

> is the same [similar] in all material respects as the merchandise in [(insert complete case citation)] and,

11. In the event the civil action[s] covered by the stipulation include[s] non-stipulable entries (e.g., no stipulable merchandise, untimely entries, increased duties not timely paid), such entries should be clearly marked with an asterisk [*] on each page on which they appear, including schedules, with the footnote: "*All claims arising from this entry are abandoned."

12. To be completed by either plaintiff's or defendant's counsel.

13. In most instances the parties will prefer that the refund be effectuated by having the entry[ies] reliquidated; in other instances the parties may agree that a refund should be made without the necessity of reliquidation.

14. See nn. 2 and 3.

15. [(See paragraph 2 of stipulated judgment and include if necessary. Otherwise omit.)]

16. To be inserted below each separate court number.

(As amended, eff. Jan. 1, 1982; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 30, 2003, eff. Jan. 1, 2004; Aug. 2, 2010, September 1, 2010.)

FORM 10

UNITED STATES COURT OF INTERNATIONAL TRADE
Office of the Clerk
Admissions Office - Room 299
One Federal Plaza, New York, NY 10278-0001
Telephone: 212-264-2812

APPLICATION FOR ADMISSION TO PRACTICE

PART I - COMPLETED BY APPLICANT

I, _____, hereby apply for admission to practice before the United States Court of International Trade and make the following statements:

1. My contact information is:

Affiliation/Firm: _____
Title (if any): _____ Firm Telephone: _____
Address: _____ Suite/Floor: _____
City: _____ State: _____ Zip: _____
County: _____ E-Mail: _____
Direct Telephone: _____ Fax:_____

2. I hereby certify that I meet the qualifications of CIT Rule 74(a) to practice before the United States Court of International Trade based on my admission and membership in good standing in the court listed below:

Title of Court	Date of Admission
_____	_____

Have you ever been censured, disbarred or suspended from practice before any court? (Check the applicable answer).

No ❑

Yes ■ (If you answer yes, check the applicable answer to the following questions, and attach a separate statement explaining the nature of such actions or proceedings):

Are there any disciplinary proceedings presently pending against you? Yes ❑ No ❑

I did ❑ did not ❑ resign while disciplinary proceedings were pending.

I verify that I am attaching a separate statement explaining the nature of the proceedings. ❑

3. ❑ For all attorneys other than attorneys employed by the U.S. government: I have enclosed my $76 admission fee.

❑ I have not enclosed an admission fee because I am an attorney employed by the U.S. government entitled to waiver of the fee under USCIT Rule 74(b)(3). I understand I will not receive a Certificate of Admission.

❑ Although I am entitled to waiver of the fee as an attorney employed by the U.S. government, I request a Certificate of Admission and have included my $76 certificate fee.

4. **If this application is not submitted on oral motion, or if submitted on oral motion and the sponsoring attorney making the motion has not known me for more than one year, I enclose a certificate stating that I am a member in good standing of the court identified in part 2 above issued by a judge of or the clerk of that court, or by another official duly authorized to issue such certificates.**

❑ (Check, if applicable) A "certificate of good standing," dated not more than ninety (90) days prior to this application, is attached.

5. **I, _____, do solemnly swear (or affirm) that I will faithfully conduct myself as an attorney and counselor-at-law of this Court, uprightly and according to law, and that I will support the Constitution of the United States, so help me God.**

I have read and am familiar with the *Rules of the United States Court of International Trade*.

I declare under the penalty of perjury that the foregoing is true and correct.

***Date:* _____ *Signature of Applicant:* _____**

or, if signed outside the United States of America,

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

***Date:* _____ *Signature of Applicant:* _____**

PART II - COMPLETED BY SPONSORING ATTORNEY (if applicable)

I, _____(*insert name of sponsoring attorney)*, a member of the bar of this Court or of the Supreme Court of the United States, move the admission to practice before this Court of _____(*insert name of applicant)*.

I have known the applicant since _____(*insert approximate month and year*) and consider the applicant to be a person of good moral character and in every way qualified to practice as a member of the Bar of this Court.

I have read the application for admission, and, to the best of my knowledge and belief, the statements therein are true.

_____ _____

Signature of Sponsoring Attorney ***Address***

PART III - COMPLETED BY JUDGE

Application for Admission approved on (*date*) _____, at (*place*) _____.

***Signature of Judge*: _____**

(As amended Jan. 1, 1996, eff. Jan. 1, 1996; March 25, 1998, eff. July 1, 1998; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007; Nov. 25, 2008, eff. Jan. 1, 2009; March 24, 2009, eff. May 1, 2009; Nov. 25, 2009, eff. Jan. 1, 2010; March 27, 2012, eff. May 1, 2012.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 11**

Plaintiff, v. Defendant.	Court No.:

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that, pursuant to Rule 75(b) of the Rules of the United States Court of International Trade, the undersigned appears as _____ for _____ , _____, in this action

☐ and for the parties indicated in the actions listed on the attached schedule

and requests that all papers be served on him/her.

☐ The individual attorney in the undersigned firm, corporate law department, or the Government, who is responsible for the litigation, is _____.

Date: _____

_____
Attorney

_____
Firm

_____
Street Address

_____
City, State and Zip Code

_____
Telephone Number

_____
E-mail Address

Schedule to Notice of Appearance

Court Number	Case Name	Party or Parties Represented

(As amended May 25, 2004, eff. Sept. 1, 2004; Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011; Dec. 4, 2012, eff. Jan. 1, 2013; June 5, 2015, eff. July 1, 2015.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 12**

Plaintiff, v. Defendant.	Court No.:

NOTICE OF SUBSTITUTION OF ATTORNEY

PLEASE TAKE NOTICE that _____ has been substituted as attorney of record for _____ in this action in place of _____.

Dated: _____

_____

By: _____

* * * * * * * * * *

PLEASE TAKE FURTHER NOTICE that the undersigned hereby appears in this action as attorney for _____ _____, the _____ herein, and requests that all papers in connection therewith be served upon _____.

☐ The individual attorney in the undersigned firm, corporate law department, or the Government, who is responsible for the litigation, is _____.

Dated: _____

_____
Attorney

_____
Street Address

_____
City, State and Zip Code

By:_____
New Attorney of Record

(As amended June 5, 2015, eff. July 1, 2015.)

FORM 13

UNITED STATES COURT OF INTERNATIONAL TRADE
One Federal Plaza
New York, New York 10278

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

This notification is submitted by_____
(Name of attorney of record)
on behalf of _____in the
matter of _____ v._____,
Court No. _____.

1. If this statement is submitted on behalf of a corporate party, that entity shall identify below all of its publicly-owned companies, any publicly-held company that has a 10% or greater ownership interest in the entity, and any publicly-owned affiliate of the entity, and describe the relationship between the party and each identified company.

_____
_____
_____

2. Indicate whether the party on whose behalf this Form is being filed is[ ] or is not [ ] the real party in interest. If not, identify below the real party in interest.

_____
_____
_____

3. If this statement is submitted on behalf of a trade association, identify below each publicly-owned member of the trade association. (Attach additional pages if necessary.)

_____
_____
_____

_____ _____
(Signature of Attorney) (Date)

SEE REVERSE SIDE

(Added Nov. 4, 1981, eff. Jan. 1, 1982; as amended Dec. 18, 2001, eff. Apr.1, 2002; Sept. 28, 2004, eff. January 1, 2005.)

INSTRUCTIONS FOR USE

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST*

1. When a corporation is a party to any action, the attorney for the party shall notify the clerk of the court in writing of the identity of all publicly-owned companies owned by the party, any publicly-held company that has a 10% or greater ownership interest in the entity and any publicly-owned affiliate of the entity and the relationship between the party and each identified company.

2. The attorney for the party on whose behalf the form is filed shall, in addition to the information required in paragraph 1, notify the clerk of the court in writing of the identity of the real party in interest if different from the named party.

3. When a trade association is a party to an action, the attorney for the trade association shall notify the clerk of the court in writing of the identity of each publicly-owned member of the trade association.

4. The notification required of a corporate party or trade association also shall be made by the attorney for any corporation or trade association seeking to intervene, or appear as *amicus curiae*, in any action.

5. The required notification shall be made on a Disclosure Statement form (on the reverse) to be provided by the clerk of the court when the first pleading or other paper is filed by a party or when a motion to intervene or appear as *amicus curiae* is filed. In accordance with Rule 3(i), if any the information required changes after the form is filed, and before a final judgment is issued, the attorney for the party or *amicus curiae* must promptly file an amended form.

*See generally: 28 U.S.C. § 455.

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 14**

Plaintiff, v. Defendant.	Court No.:

JOINT NOTICE REGARDING TERMINATION OF ACCESS TO CONFIDENTIAL INFORMATION

The parties hereby jointly notify the Clerk of the Court that, pursuant to Rule 54, the Court entered judgment in the above-captioned action on _____, 20__, and that, if any further appeals were filed, those have now been finally resolved. The parties request that CM/ECF access to Confidential Information and/or Business Proprietary Information in the action be terminated.

This Notice is timely filed within 28 days of entry of final resolution, including any judgment resulting from subsequent appeals.

Date: _____

_____ Name	_____ Name
_____ Party represented	_____ Party represented
_____ Name	_____ Name
_____ Party represented	_____ Party represented

(As added Dec. 4, 2012, eff. Jan. 1, 2013.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 15**

Plaintiff, v. Defendant.	Before: Court No.

APPLICATION
FOR FEES AND OTHER EXPENSES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT
28 U.S.C. § 2412(d), Title II of Public Law 96-481,
94 STAT. 2325 and Rule 54.1.

1. Name of Applicant: _____

2. Government Agency involved in claim: _____

3. Showing of Prevailing Party Status (28 U.S.C. § 2412(d)(1)(B)).

   Is court order attached? ____YES ____NO

4. Showing of Eligibility (28 U.S.C. § 2412(d)(2)(B)).

   Is net worth information attached? ____YES ____NO

5. Enter allegation that Government position was not substantially justified (28 U.S.C. § 2412(d)(1)(B)).

_____

6. For each amount claimed, please attach itemization information indicating service provided, date, hours, and rate (28 U.S.C. § 2412(d)(2)(A)).

	Amount Claimed
A. Attorney Fees	$_____
B. Study	_____
C. Analysis.	_____
D. Engineering Report.	_____
E. Test.	_____
F. Project	_____
G. Expert Witness Fees	_____
H. Other Fees and Expenses--Specify	
1. _____	_____
2. _____	_____
3. _____	_____
I. Total Fees and Expenses	$_____

_____

_____
Attorney for Applicant

_____
Name of Law Firm

_____
Street Address

_____
City, State and Zip Code

_____
Telephone Number

Date: _____

(Added Oct. 3, 1984, eff. Jan. 1, 1985; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

FORM 16. [Reserved]

(Added Oct. 3, 1990, eff. Jan. 1, 1991; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 16-1**

Plaintiff, v. Defendant.	**Court No.:**

ORDER [FOR DAY-OF-DEPOSIT TO DAY-OF-WITHDRAWAL]

On the application of _____, it is hereby

ORDERED that the application to deposit money with the court, to wit,

_____be, and it is hereby granted; and it is further
[amount in words]

ORDERED that the Clerk of the Court, as soon as business allows, accept a check in the amount of_____, payable to, "Clerk of the Court, U.S. Court of International Trade", to be invested in a Day-of-Deposit to Day-of-Withdrawal Account. This investment will be subject to 31 C.F.R. Part 202; and it is further

ORDERED that the Clerk of the Court deduct from income earned on registry funds invested in interest-bearing accounts or instruments a fee not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office. The fee will be withdrawn at the time distribution of the investment principal is made, without further order of the court; and it is further

ORDERED that the Clerk of the Court serve a signed copy of the order on the Fiscal Operations Manager of the Court.

DATED:_____ _____
New York, New York Judge

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended Nov. 25, 2009, eff. Jan. 1, 2010.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 16-2**

Plaintiff, v. Defendant.	**Court No.:**

ORDER [FOR MONEY MARKET OR MANAGEMENT]

On the application of _____, it is hereby

ORDERED that the application to deposit money with the court, to wit,

_____be, and it is hereby granted; and it is further
[amount in words]

ORDERED that the Clerk of the Court, as soon as business allows, accept a check in the amount of _____, payable to, "Clerk of the Court, U.S. Court of International Trade", to be invested in a Money (Market or Management) Account at the rate of interest then obtaining. This investment will be subject to 31 C.F.R. Part 202; and it is further

ORDERED that the Clerk of the Court deduct from income earned on registry funds invested in interest-bearing accounts or instruments a fee not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office. The fee will be withdrawn at the time distribution of the investment principal is made, without further order of the court; and it is further

ORDERED that the Clerk of the Court serve a signed copy of the order on the Fiscal Operations Manager of the Court.

DATED:_____ _____
New York, New York Judge

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended Nov. 25, 2009, eff. Jan. 1, 2010.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 16-3**

Plaintiff, v. Defendant.	**Court No.:**

ORDER [FOR CERTIFICATE OF DEPOSIT]

On the application of _____, it is hereby

ORDERED that the application to deposit money with the court, to wit,

_____ be, and it is hereby granted; and it is further
[amount in words]

ORDERED that the Clerk of the Court, as soon as business allows, accept a check in the amount of _____, payable to, "Clerk of the Court, U.S. Court of International Trade", for the purchase of a ___-day Certificate of Deposit at the rate of interest then obtaining; and it is further

ORDERED that on maturity of said certificate of deposit, the principal amount plus accrued interest be automatically reinvested until further order of the court. The initial investment and subsequent reinvestments will be subject to 31 C.F.R. Part 202; and it is further

ORDERED that the Clerk of the Court deduct from income earned on registry funds invested in interest-bearing accounts or instruments a fee not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the

Administrative Office. The fee will be withdrawn at the time distribution of the investment principal is made, without further order of the court; and it is further

ORDERED that the Clerk of the Court serve a signed copy of the order on the Fiscal Operations Manager of the Court.

DATED:_____ _____

New York, New York Judge

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended Nov. 25, 25, 2009, eff. Jan. 1, 2010.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 16-4**

Plaintiff, v. Defendant.	**Court No.:**

ORDER [FOR TREASURY BILLS]

On the application of _____, it is hereby

ORDERED that the application to deposit money with the court, to wit,

_____be, and it is hereby granted; and it is further
[amount in words]

ORDERED that the Clerk of the Court, as soon as business allows, accept a check in the amount of_____, payable to, "Clerk of the Court, U.S. Court of International Trade", for the purchase of ___-day interest bearing Treasury Bills; and it is further

ORDERED that the Clerk of the Court deposit all accrued interest into an interest-bearing U.S. Court of International Trade savings account at _____until further order of the Court; and it is further

ORDERED that the Clerk of the Court deduct from income earned on registry funds invested in interest-bearing accounts or instruments a fee not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office. The fee will be withdrawn at the time distribution of the investment principal is made, without further order of the court; and it is further

ORDERED that the Clerk of the Court serve a signed copy of the order on the Fiscal Operations Manager of the Court.

DATED:_____ _____
New York, New York Judge

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended Nov. 25, 2009, eff. Jan. 1, 2010.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 16-5**

Plaintiff, v. Defendant.	**Court No.:**

ORDER [FOR RETURN OF MONEY]

On the application of _____, it is hereby

ORDERED that the sum of _____
[amount in words]

deposited with the Clerk of the Court on _____ as security
[date]

pursuant to _____,

be returned, with interest earned to date, to _____
[name and address of recipient]

_____; and it is further

ORDERED that the Clerk of the Court serve a signed copy of the order on the Fiscal Operations Manager of the Court.

DATED:_____ _____
New York, New York Judge

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended Nov. 25, 2009, eff. Jan. 1, 2010.)

Form 17

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff, v. Defendant.	Court No.

BUSINESS PROPRIETARY INFORMATION CERTIFICATION

_____ certifies that

1. I am

   ☐ an attorney at the law firm of _____; or an attorney in the corporate legal department of _____, and I have read and am familiar with the Rules of the United States Court of International Trade.

   ☐ a consultant employed by _____.

2. I represent, or am retained by or on behalf of

   ☐ a party to this action,

   ☐ an interested party that has filed a motion to intervene in this action, which is identified below:
   _____.

3. I was

   ☐ granted access to business proprietary information subject to an administrative protective order in the administrative proceeding which gives rise to this action.

   ☐ not subject to an administrative protective order in the administrative proceeding which gives rise to this action. All parties to this action and interested parties who are entitled to service of this Certification pursuant to Rules 5 and 73.2(c)(5) of the United States Court of International Trade are listed below:

Party	Attorney	Date of Contact

Each of these parties or interested parties has been contacted; none has objected to my access to proprietary information in this action subject to Administrative Order No. 02-01 of the United States Court of International Trade.

4. I am

☐ (for attorneys) not involved in competitive decision making for the interested party I represent.

☐ (for consultants) independent of all parties in this action.

5. I have read and agree to be bound by the terms of Administrative Order No. 02-01 of the United States Court of International Trade.

_____
[Attorney or consultant]

_____

_____

_____
[Address and Telephone Number]

Date: _____

Form 17-3

ADDITIONAL CERTIFICATIONS FOR ACCESS TO BUSINESS PROPRIETARY INFORMATION BY NON-ATTORNEY CONSULTANTS

1. Certification by the consultant:

In this action, my access to business proprietary information will be under the direction and control of _____, an attorney at the law firm of _____, who has provided the following certification.

_____
[Consultant]

_____
_____
_____
[Address and Telephone Number]

Date:_____

(2) Certification by the attorney who is responsible for the direction and control of the consultant's access to business proprietary information:

I am an attorney at the law firm of _____ and am admitted to practice before the United States Court of International Trade. I have met the criteria for access to business proprietary information under Rule 73.2(c) of the Rules of the United States Court of International Trade. I will exercise direction and control over the access to business proprietary information by the consultant who submits this Certification, and agree to assume responsibility for the consultant's compliance with the terms of Rule 73.2(c) and Administrative Order No. 02-01 of the United States Court of International Trade.

_____
[Attorney]

_____

_____

_____
[Address and Telephone Number]

Date:_____

(Added Jan. 25, 2000, eff. May 1, 2000; and amended Sept. 30, 2003, eff. Jan. 1, 2004; Feb. 6, 2013, eff. Mar. 1, 2013.)

Form 18

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff, v. Defendant.	Court No. [and Attached Schedule]

NOTIFICATION OF TERMINATION OF ACCESS TO BUSINESS PROPRIETARY INFORMATION PURSUANT TO RULE 73.2(c)

_____ declares that (check one)

1) TERMINATION BY AN INDIVIDUAL

☐ I am an attorney/consultant representing or retained on behalf of_____ _____ in this action [and on behalf of the parties indicated in the actions listed on the attached schedule]. I hereby give notice that I am no longer involved in the litigation in this action [and those actions listed on the attached schedule] and, therefore, I have terminated my access to Business Proprietary Information in such action[s]. I certify that I have not retained any documents, including copies of documents, work papers, notes or records in electronic media, containing Business Proprietary Information, except as may be authorized by the court or agency for use in the following action(s) or administrative proceeding(s):

_____ _____

[Name of proceeding] [Case or investigation no.]

OR

2) TERMINATION BY A FIRM

☐ I am an attorney representing _____in this action [and the parties indicated in the actions listed on the attached schedule]. I hereby give notice that, because of the termination of all litigation in this action [and those actions listed on the attached schedule] or otherwise, I have terminated the access to Business Proprietary Information by myself, the other attorneys and staff of my firm, and any consultants whose access to Business Proprietary Information under Rule 73.2(c) and Administrative Order No. 02-01 is subject to the direction and control of myself or a member of my firm. I certify that all documents, including copies of documents, work papers, notes, and records in electronic media, containing Business Proprietary Information subject to Rule 73.2(c) and Administrative Order No. 02-01 in this action [and those actions listed on the attached schedule] have been destroyed, except as may be authorized by the court or agency for use in the following action(s) or administrative proceeding(s):

_____ _____
[Name of proceeding] [Case or investigation no.]

I recognize that I remain bound by the terms of Administrative Order No. 02-01 of the United States Court of International Trade, and that I may not divulge the Business Proprietary Information that I learned during this action [and those actions listed on the attached schedule] or in the administrative proceeding[s] that gave rise to the action[s] to any person.

_____
[Attorney or consultant]

_____

_____

_____
[Address and Telephone Number]

Date: _____

Form18-3

Schedule to Notification of Termination of Access
to Business Proprietary Information

Court Number(s)	Case Name	Party or Parties Represented

(As amended, Jan. 25, 2000, eff. May 1, 2000; Sept. 30, 2003, eff. Jan. 1, 2004; Dec. 7, 2010, eff. Jan. 1, 2011; Feb. 6, 2013, eff. Mar. 1, 2013.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 18A**

Plaintiff, v. Defendant.	Court No. [and Attached Schedule]

NOTIFICATION OF TERMINATION OF GOVERNMENT ATTORNEY ACCESS TO BUSINESS PROPRIETARY INFORMATION PURSUANT TO RULE 73.2(c)

PLEASE TAKE NOTICE that _____, an attorney with _____, who previously entered an appearance on behalf of _____ in this action [and the related actions listed in the attached schedule], is no longer participating in this action. Please remove his/her CM/ECF access to business proprietary information and assure that he/she is no longer served with business proprietary information.

Date: _____

_____
Attorney

_____
Agency

_____
Street Address

_____
City, State and Zip Code

_____
Telephone Number

_____
E-mail Address

Form 18A-2

Schedule to Notification of Termination of Government Attorney
Access to Business Proprietary Information

Court Number(s)	Case Name

(As added Dec. 4, 2012, eff. Jan. 1, 2013.)

Form 19

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff, v. Defendant.	Court No.:

Report of the Parties' Planning Meeting

1. The following persons participated in a Rule 26(f) conference on _____ by (*state the method of conferring)*:

2. Initial Disclosures. The parties _____ _____ the initial disclosures required by Rule 26(a)(1).

3. Discovery Plan. The parties propose this discovery plan:
(use separate paragraphs or subparagraphs if the parties disagree.)

   (a) Discovery will be needed on these subjects: *(describe)*

   (b) Disclosure or discovery of electronically stored information should be handled as follows: *(briefly describe the parties' proposals, including the form or forms for production.)*

(c) The parties have agreed to an order regarding claims of privilege or of protection as trial-preparation material asserted after production, as follows: *(briefly describe the provisions of the proposed order.)*

(d) Dates for commencing and completing discovery, including discovery to be commenced or completed before other discovery.

(e) Maximum number of interrogatories by each party to another party, along with the dates the answers are due.

(f) Maximum number of requests for admission, along with the dates responses are due.

(g) Maximum number of depositions for each party.

(h) Limits on the length of depositions, in hours.

(i) Dates for exchanging reports of expert witnesses.

(j) Dates for supplementations under Rule 26(e).

4. Other Items:

(a) A date if the parties ask to meet with the Court before a scheduling order.

(b) Requested dates for pretrial conferences.

(c) Final dates for the plaintiff to amend pleadings or to join parties.

(d) Final dates for the defendant to amend pleadings or to join parties.

(e) Final dates to file dispositive motions.

(f) State the prospects for settlement.

(g) Identify any alternative dispute resolution procedure that may enhance settlement prospects.

(h) Final dates for submitting Rule 26(a)(3) witness lists, designations of witnesses whose testimony will be presented by deposition, and exhibit lists.

(i) Final dates to file objections under Rule 26(a)(3).

(j) Suggested trial date and estimate of trial length.

(k) Other matters.

Date: _____

(Added Aug. 29, 2000, eff. Jan. 1, 2001; and amended Sept. 30, 2003, eff. Jan. 1, 2004; Dec. 6, 2011, eff. Jan. 1, 2012; June 5, 2015, eff. July 1, 2015.)

S U B P O E N A

United States Court of International Trade

v.	: : : : : :	COURT NUMBER:

TO:

☐ YOU ARE COMMANDED to appear in the United States Court of International Trade at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Rule 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	

(See Rule. 45(c) , (d), and (e) on Reverse)

PROOF OF SERVICE		
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
SERVED BY (PRINT NAME)	TITLE	

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45 (c), (d), and (e):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Contempt.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

(As amended June 19, 1985, eff. Oct. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Sept. 30, 2003, eff. Jan. 1, 2004.

United States Court of International Trade

BILL OF COSTS

V.

Court Number:

Judgment having been entered in the above entitled action _____ against _____ ,
Date

the Clerk is requested to tax the following as costs:

Fees of the Clerk . . . . . $ _____

Fees for service of summons and subpoena . . . . . _____

Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case. _____

Fees and disbursements for printing . . . . . _____

Fees for witnesses (itemize on reverse side) . . . . . _____

Fees for exemplification and copies of papers necessarily obtained for use in the case . . . . . _____

Docket fees under 28 U.S.C. §1923 . . . . . _____

Costs as shown on Mandate of Court of Appeals . . . . . _____

Compensation of court-appointed experts . . . . . _____

Compensation of interpreters and costs of special interpretation services under 28 U.S.C. §1828 . . . . . _____

Other costs (please itemize) . . . . . _____

TOTAL $ _____

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid _____ .

Signature of _____

Name of _____

For _____ Date: _____
Name of Claiming Party

Costs are taxed in the amount _____ and included in the judgment.

_____ By: _____ _____
Clerk of Court Deputy Clerk Date

WITNESS FEES (computation, cf. 28 U.S.C. §1821 for statutory fees)

NAME AND RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
					TOTAL		

NOTICE

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:
"Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28, which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

Counsel are directed to the following provisions of the Rules:

Rule 6(d)

"When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), (F), or (G), 5 days are added after the period would otherwise expire under Rule 6(a)."

Rule 54 (d)

"Unless a federal statute, these rules, or a court order provides otherwise, costs -- other than attorney's fees -- should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 day's notice. On motion served within the next 7 days, the court may review the clerk's action."

Rule 58(d) (In Part)

"Entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs ***"

(Added May 25, 2004, eff. Sept. 1, 2004; Dec. 6, 2011, eff. Jan. 1, 2012.)

UNITED STATES COURT OF INTERNATIONAL TRADE FORM 22-1

Plaintiff, v. Defendant.	Court No.

SATISFACTION OF COSTS

Pursuant to USCIT Rule 54(d)(1) and the Guidelines thereunder, an Order of Costs was entered against _____ on _____. That on the ___ day of _____, _____, counsel for _____ paid to counsel for _____ the sum of _____ in full satisfaction of the costs assessed in this action.

_____
(Signature)
Attorney for:

_____

_____
(Address)
_____

_____

DATED:

(Added May 25, 2004, eff. Sept. 1, 2004.)

UNITED STATES COURT OF INTERNATIONAL TRADE Form 23

_____	:	
		Before:
Plaintiff,	:	
v.	:	Court No.
	:	
Defendant.		
_____	:	

CERTIFICATION OF FILING AND SERVICE OF PHYSICAL EXHIBIT OR ITEM

PLEASE TAKE NOTICE that _____, has filed a
[*Party Role*], [*Name of Party*]
physical exhibit or item, _____, with the
[*General Description of Merchandise*]
U.S. Court of International Trade in connection with ECF Docket Entry _____.

Pursuant to USCIT Rule 80(h),

___ On _____ an identical exhibit or item was sent via _____
[*DATE*]
to _____.
[*Party Role*], [*Name of Party*]

___ An identical exhibit or item was not served on _____
[*Party Role*], [*Name of Party*]
because of one of the following:

__ The exhibit or item is unique and an identical or substantially identical copy of the exhibit or item cannot be served upon the other parties;

__ An identical or substantially identical copy of the exhibit or item was served during discovery;

__ The parties have agreed that service is not necessary; or

__ By order of the court.

_____
Attorney

_____
Law Firm Name

_____
Address

_____
Phone Number

_____
E-Mail Address

Dated:

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

Form M-1-1

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM M-1**

Plaintiff, v. Defendant.

Court No.:

ORDER OF REFERRAL TO MEDIATION

Upon consideration of all papers filed in this case, it is hereby

ORDERED that, pursuant to Rule 16.1, this case is referred to mediation. Judge _____ has agreed to serve as the Judge Mediator and will facilitate all sessions of mediation. The parties have a maximum of _____ days in which to conclude the mediation process. This case shall be stayed for a period of ninety (90) days or until the mediation process is concluded, whichever first occurs; and it is further

ORDERED that unless a settlement is reached within the mediation period and a Stipulation of Dismissal or Stipulated Judgment filed, which disposes of the case with respect to all parties and all claims, the stay shall be lifted, and this case shall be returned to the active calendar without further direction from the Court.

_____
(Name)
Assigned Judge

DATED:
New York, New York

(Added Sept. 30, 2003, eff. Jan. 1, 2004; Dec. 6, 2011, eff. Jan. 1, 2012.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM M-2**

Plaintiff, v. Defendant.	**Court No.:**

REPORT OF MEDIATION

That pursuant to the Order of Referral dated _____ in this case, I served as Judge Mediator for the mediation process between the parties in this case. The process was concluded on _____;

___ The mediation resulted in a settlement of all issues;

___ The mediation resulted in a partial settlement;

___ The mediation did not result in a settlement;

_____
(Name)
Judge Mediator

DATED:
New York, New York

(Added Sept. 30, 2003, eff. Jan. 1, 2004; Dec. 6, 2011, eff. Jan. 1, 2012.)

Chambers Procedures

1. Communications.

(A) Although not encouraged, all communications with chambers should be made in writing. Counsel are not to call a judge's law clerks or executive assistants/secretaries, except to initiate conference calls. Counsel may contact a judge's case manager (see list on Court's Web Site, www.cit.uscourts.gov) by telephone with specific procedural questions. Counsel are advised to consult the Rules of Court prior to any request or inquiry.

(B) Counsel must serve copies of communications with chambers on all parties to the litigation.

2. Briefs and Appendices. For the purposes for this section, "briefs" are considered to be briefs, memoranda or written comments filed after remand, but not appendices.

(A) Format.

Each document attached to a brief, appendix, or joint appendix must include a separator/cover page with the name of the document and, where applicable, its identifying number from the Confidential Record ("C.R.") or the Public Record ("P.R."). The separator/cover page may be labeled with a letter or number that corresponds to a more fully descriptive Table of Contents.

(B) Limitations.

(1) Word Count Limitations.

a. Movant's and respondent's briefs must not exceed 14,000 words; reply briefs must not exceed 7,000 words.
b. For purposes of Rule 56.2(h)(2) and (h)(3), comments and responsive comments must not exceed 10,000 words. If a party files both comments in opposition to the agency's remand determination and responsive comments in support of the agency's remand determination, its remand submissions cumulatively may not exceed 10,000 words.
c. Headings, footnotes, and quotations count toward the word limitations. The corporate disclosure statement, table of contents, table of authorities, any addendum containing statutes, rules or regulations, any certificates of counsel, and counsel's signature block do not count toward the limitations. No brief that exceeds these limitations may be filed without the Court's grant of leave, which will be freely given if the party shows good cause.

(2) Certificate of Compliance. Any brief must include a certificate by the attorney, or an unrepresented party, that the brief complies with the word limitation. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief. The certificate must state the number of words in the brief and be signed by the person preparing the certificate.

(C) Citations, Preparation, and Content of Appendices.

(1) Pursuant to Rule 56.2(c)(3) and Rule 56.2(h)(4), all citations to the record in parties' briefs and comments after remand must be supported by a joint appendix containing copies from the record, along with a Table of Contents.

(a) Preparation of the Joint Appendix Pursuant to Rule 56.2(c)(3). The parties are encouraged to agree on the contents of a joint appendix pursuant to Rule 56.2(c)(3). In the absence of an agreement:

i. Plaintiffs and Plaintiff-Intervenors will deliver to Defendant and Defendant-Intervenors by hand delivery or overnight delivery a draft joint appendix (on a CD, flash drive, or other acceptable electronic means) that includes a Table of Contents and a copy of those portions of the administrative record cited in their motions for judgment on the agency record and supporting briefs within 7 days of the filing of the motions for judgment on the agency record and supporting briefs.

ii. Defendant and Defendant-Intervenors will deliver to Plaintiffs and Plaintiff-Intervenors by hand delivery or overnight delivery a revised draft joint appendix (on a CD, flash drive, or other acceptable electronic means) that includes a revised Table of Contents and a copy of any additional portions of the administrative record cited in their response briefs within 7 days of the filing of the response briefs.

iii. Plaintiffs and Plaintiff-Intervenors will deliver to Defendant and Defendant-Intervenors by hand delivery or overnight delivery a final draft joint appendix (on a CD, flash drive, or other acceptable electronic means) that includes a revised Table of Contents and a copy of any additional portions of the administrative record cited in their reply briefs within 7 days of the filing of the reply briefs. Defendant and Defendant-Intervenors may comment on the final draft joint appendix within 3 days after delivery of the final draft joint appendix.

iv. Plaintiffs will file the joint appendix with the Court within 14 days of the filing of the reply briefs.

(b) Preparation of the Joint Appendix Pursuant to Rule 56.2(h)(4). The parties are encouraged to agree on the contents of a joint appendix pursuant to Rule 56.2(h)(4). In the absence of an agreement:

i. Parties submitting comments in opposition to the agency's remand determination will deliver to all other parties by hand delivery or overnight delivery a draft joint appendix (on a CD, flash drive, or other acceptable electronic means) that includes a Table of Contents and a copy of those portions of the administrative record cited in their comments in opposition to the agency's remand determination within 7 days of the filing of those comments.

ii. Parties submitting responsive comments in support of the agency's determination will deliver to all other parties by hand delivery or overnight delivery a revised draft joint appendix (on a CD, flash drive, or other acceptable electronic means) that includes a revised Table of Contents and a copy of any additional portions of the administrative record cited in their responsive comments in support of the agency's determination within 7 days of the filing of those comments.

iii. Parties submitting comments in opposition to the agency's remand determination will file the joint appendix with the Court within 14 days of the filing of the responsive comments in support of the agency's determination.

(2) Pursuant to Rule 56.2(c)(4) and Rule 56.2(h)(5), all citations to the record must be supported by an Appendix containing copies from the record, along with a Table of Contents.

(3) Documents included in a joint appendix, pursuant to Rule 56.2(c)(3) or Rule 56.2(h)(4), or alternatively under an appendix, pursuant to Rule 56.2(c)(4) or Rule 56.2(h)(5), must be reproduced in their entirety for individual documents of less than 10 pages, and documents of 10 pages or more should not be reproduced in their entirety but rather the parties will include the first page of the document and sufficient additional pages to provide context for a referenced record citation (e.g., the entire section or heading containing any relevant part of a party's questionnaire response or an agency staff memorandum, including all relevant sections of any exhibits, appendices, or additional record documents referenced therein).

(4) A joint appendix filed pursuant to Rule 56.2(c)(3) or Rule 56.2(h)(4) or, alternatively, an appendix filed pursuant to Rule 56.2(c)(4) or Rule 56.2(h)(5), will not be Bates stamped, but the Table of Contents will contain hyperlinks to the applicable record documents contained in the joint appendix or appendix to the extent practicable. The joint appendix or appendix will also be searchable to permit easy location of each record document.

(5) Citations for the text should be contained in the text rather than in footnotes. Citations to the administrative record must be to the C.R. or P.R. number of the document and to the specific page number of the cited information in the document, where applicable.

3. Pleadings, Motions and Other Papers.

(A) Courtesy Copies. Courtesy copies of submissions to the Court should not be sent to the clerk's office or to chambers. This will not prohibit a judge, when exigencies require, from requesting a courtesy copy of an expedited filing. The transmission of a courtesy copy to chambers will not affect the filing date of the submission.

(B) Bindings. Notwithstanding Rule 81(f), exhibits must be bound on the left side (i.e., ring binder, spiral notebook, etc.) and independently sequentially numbered.

(C) Orders. A signature page must contain the court number and sufficient text so that the page is identifiable with the order. A judge will not sign any order for which the signature line is separate from the text of the document.

4. Changes to transcripts. Any proposed change to a transcript must be made by written motion.

FORM SCP 1-1

UNITED STATES COURT OF INTERNATIONAL TRADE

	:	
	:	
	:	BEFORE
Plaintiff,	:	Court No.:
	:	
v.	:	
	:	
	:	
	:	
Defendant.	:	
	:	

[Name of attorneys] for the Plaintiff.

[Name of attorneys] for the Defendant.

PRETRIAL ORDER

At the pretrial conference held on [date] before the Hon. _____, and attended by counsel, the following matters were discussed and agreed to, and are hereby ORDERED:

1. General. The parties recognize that this joint pretrial order controls the subsequent course of the action unless the order is modified by consent of the parties and the Court, or by order of the Court to prevent manifest injustice. The attached schedules, each on a separate sheet, are part of this order.

2. Parties and Counsel. Schedule A sets forth the names of all parties; the names, addresses, email addresses, and telephone numbers of their respective attorneys, and the names of trial counsel for each party.

3. Jurisdiction. Schedule B-1 sets forth the statutes, legal doctrines, and facts on which Plaintiff claims jurisdiction. Schedule B-2 indicates which of these, if any, are contested.

4. Uncontested Facts. All material facts that are without substantial controversy are set forth in Schedule C. Material facts that are actually and in good faith controverted, and which a party intends to establish at trial, are separately listed in Schedules C-1, C-2, etc. Facts not included in these schedules may be established at trial, provided prompt notice is given to all parties and to the Court, and on showing of good cause.

5. Claims and Defenses. The parties' claims and defenses are separately listed in Schedules D-1, D-2, etc.

6. Damages and Other Relief. Claims with respect to damages and other relief sought by each party are detailed in Schedules E-1, E-2, etc.

7. Waiver of Claims. The parties waive all claims with respect to liability, damages, and other relief and all affirmative defenses which are not set forth in Schedules D and E.

8. Triable Issues. Schedule F sets forth and separately numbers the issues of the case, without simply restating the disputed facts. All legal issues are to be addressed prior to the commencement of the trial. If the parties cannot agree as to the issues, then their separate statement of the issues must be set forth as Schedules F-1, F-2, etc.

9. Witnesses. Schedules G-1, G-2, etc. list for the respective parties the witnesses they will or will probably call to testify at the trial, setting forth for each witness (a) name, (b) address, (c) a summary of expected testimony, and, for expert witnesses, (d) a curriculum vitae, and (e) the area of expertise. Any objection to a witness, and the grounds therefor, must be separately stated as Objections to Schedule G-1, G-2, etc.

10. Deposition Testimony. Any party proposing to use deposition testimony as evidence must, at least three weeks prior to the trial date, notify all the adversaries of the testimony proposed to be read. Objections to any proposed deposition testimony must be made in writing no later than two weeks prior to trial. The parties must file with the Court copies of the depositions, indicating the portions to be read and the relative objections. The Court will rule on all such objections prior to commencement of the trial.

11. Exhibits. Schedules H-1, H-2, etc. list for the respective parties the exhibits to be offered in evidence by that party. Each list must identify and describe each exhibit. Plaintiff's exhibit must be identified by numbers, Defendant's by letters. Except for exhibits a party intends to use during cross-examination, or rebuttal, the parties recognize that they will not be allowed to use at trial any exhibits or witnesses not identified in this pretrial order except on prompt notice to all parties and to the Court, and on a showing of good cause.

12. Objections to Exhibits. Schedules I-1, I-2, etc. list for the respective parties each adversary's exhibits whose authenticity or admissibility are contested. The parties must state the specific ground for objection to each contested exhibit listed therein.

13. Discovery. All discovery is complete. Undisclosed discovery which surfaces during trial will be deemed untimely and subject to the sanction of exclusion.

14. Jury Trial. The parties must indicate whether the trial is a jury or non-jury trial. If it is a jury trial, the parties must state whether the jury trial is applicable to all aspects of the case or only to certain issues, which must be specified.

Additional Filing Prior to Trial in Jury Cases. In jury cases, unless otherwise ordered by the Court, each party must file, at a date to be determined at the pretrial conference, requests to charge and proposed voir dire questions. This paragraph does not preclude supplemental

requests for additional instructions during the course of trial or at the conclusion of the evidence on matters that cannot reasonably be anticipated unless the Court has directed otherwise, and provided that no request to charge must be accepted unless made and submitted to the Court twenty-four (24) hours in advance of the time that summation commences, unless good cause is shown for submission at a later time.

15. Pretrial Summary Memoranda: No later than [1 week before trial], each counsel [may] / [must] provide the Court with memoranda of law containing (1) a statement of the material facts the party intends to establish at trial, (2) a description of the evidence the party intends to introduce at trial supporting those material facts, and (3) a discussion addressing the material facts, evidentiary issues, and legal issues that remain in dispute.

Filing will be deemed completed when received, without the exception provided under USCIT R. 5(e).

16. Trial Time. The trial will take approximately _____ days.

Dated: _____
New York, New York

Approved and Consented To:

_____
Attorney for

_____
Attorney for

FORM SCP 2-1

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff,	:	BEFORE Court No.:
v.	:	
Defendant.	:	

SCHEDULING ORDER

Please indicate status as a Discovery or Non-Discovery Case with an "X" in the applicable box below:

On consideration of the parties' proposed briefing schedule, it is hereby ORDERED that:

☐ Non-Discovery Cases

1. Plaintiff will file its motion for judgment on the agency record and accompanying initial brief by _____.

2. Defendant and defendant-intervenors will file their response briefs by _____.

3. Plaintiff will file its reply brief by _____.

4. Any requests for oral argument will be filed within 21 days of the [reply brief due date].

5. Oral argument will be scheduled on consultation with the parties.

☐ Discovery Cases

1. Any motions regarding the pleadings or other preliminary matters will be filed by _____.

2. Discovery will be completed by _____.

3. Any motions regarding discovery will be filed no later than 30 days after the close of discovery.

4. Dispositive motions, if any, will be filed by _____. A brief in response to a dispositive motion may include a dispositive cross-motion.

5. If no dispositive motions are filed, a request for trial, if any, will be filed by _____ and will be accompanied by a proposed Order Governing Preparation for Trial.

6. If necessary, trial will begin at a time and place ordered by the court.

The Clerk of the Court is directed to forward copies of this scheduling order to counsel for all parties.

_____

Dated: _____
New York, N.Y.

FORM SCP 3-1

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff,	:	BEFORE Court No.:
v.	:	
Defendant.	:	

ORDER GOVERNING PREPARATION FOR TRIAL

The parties are directed to eliminate any undisputed and peripheral matters, and to proceed to a final definition of the issues to be tried.

To carry out the foregoing, IT IS HEREBY ORDERED:

1. Pretrial Conference: Counsel must participate in the pretrial conference on [date] at [P.M.].

2. Settlement Conference: Counsel for the parties must confer and make a good faith attempt to settle this matter and avoid trial. Prior to the pretrial conference, counsel must file a joint certification of settlement efforts including a representation that they have discussed settlement, identified obstacles thereto, considered options for overcoming those obstacles, and conferred with their clients regarding the status of settlement discussions and any terms of settlement offered by opposing counsel.

3. Exchange of Documents and Lists of Witnesses: Counsel must exchange copies of all documents proposed to be used in evidence and of their lists of witnesses no later than [6 weeks before the pretrial conference]. Counsel must be prepared at the pretrial conference to discuss and have the Court rule on objections.

4. Joint Pretrial Order: No later than [one day] before the pretrial conference, Plaintiff's counsel must prepare and file with the Court a proposed pretrial order using the form attached. Counsel for all parties are directed to cooperate in the preparation and completion of the pretrial order.

A. No later than [5 weeks before the pretrial conference], Plaintiff's counsel must prepare and serve upon Defendant's counsel a proposed pretrial order with attached schedules. Prior to preparing Schedule A (names of parties and

attorneys), Schedule C (uncontested facts), and Schedule F (triable issues) Plaintiff's counsel must consult with opposing counsel.

B. Upon receipt of Plaintiff's proposed order and schedules, Defendant's counsel must prepare any additional schedules and deliver them in final form to Plaintiff's counsel no later than [3 weeks before the pretrial conference] for inclusion in the final pretrial order that must be filed with the Court before the day of the pretrial conference. If counsel cannot agree on the content of Schedules A, C and F, separate statements thereof may be included by each counsel.

C. When separate schedules are submitted by the parties, Plaintiff's schedules will be designated with the suffix number 1, *e.g.*, C-1, D-1, E-1. Defendant's schedules will be designated with the suffix number 2, *e.g.*, C-2, D-2, E-2. If additional parties attach schedules, separate identifying suffix numbers, *e.g.*, -3, -4, will be used for each.

5. Exhibits: Promptly following the pretrial conference, counsel must meet with the courtroom deputy clerk to pre-mark their exhibits, using the numbering assigned to them in the exhibit schedules of the pretrial order.

6. Deposition Testimony: Any party intending to use deposition testimony as evidence must notify all the adversaries of the testimony proposed to be read into the record no later than [3 weeks before trial]. Objections to any proposed deposition testimony must be made in writing no later than [2 weeks before trial]. The parties must file copies of the depositions with the Court, indicating the portions to be read and any related objections. The Court will rule on any objections prior to the trial.

7. Pretrial Motions: Counsel must file with the Court any pretrial motions, including any motions *in limine*, no later than [2 weeks before trial]

8. Pretrial Summary Memoranda: No later than [1 week before trial], each counsel [may] / [must] provide the Court with memoranda of law containing (1) a statement of the material facts the party intends to establish at trial, (2) a description of the evidence the party intends to introduce at trial supporting those material facts, and (3) a discussion addressing the material facts, evidentiary issues, and legal issues that remain in dispute.

SO ORDERED.

_____

, Judge

Dated: , 20
New York, New York

FORM SCP 4-1

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff,	:	BEFORE Court No.:
v.	:	
Defendant.	:	

CERTIFICATION OF SETTLEMENT EFFORTS

The undersigned lead counsel for the parties hereby certify that:

1. They conferred [in person / by telephone] on [date], to discuss in good faith the settlement of this case.

2. [Names and position titles of all persons participating] participated in the settlement conference.

3. Counsel conferred with their clients concerning settlement.

4. At the conference, counsel discussed settlement alternatives, identified obstacles to settlement, and considered options for resolving them (including possible use of mediation).

Submitted this day of , 20 .

_____
Counsel for Plaintiff

_____
Counsel for Defendant

UNITED STATES COURT OF INTERNATIONAL TRADE

In re ELECTRONIC FILING PROCEDURES AND SUBMISSION OF CONFIDENTIAL INFORMATION	:	**ADMINISTRATIVE ORDER** **No. 02-01**

WHEREAS, Rules 1, 5, 79 and 80 of the Rules of the U.S. Court of International Trade and 28 U.S.C. §§ 251, 258, 451, 452, 1651, 2632 and 2633 authorize the Court to enter all appropriate orders respecting practices and procedures for filing, signing, verifying and providing access to the public to Court documents; and

WHEREAS, this Administrative Order is intended to be applied and interpreted in connection with the Public Access to Court Electronic Records (PACER) System, the Court's Case Management/Electronic Case Files (CM/ECF) System and the Case Management/Electronic Case Files (CM/ECF) User's Manual for Electronically Filing Case Events (the "CM/ECF User's Manual") which, together with this Administrative Order, shall be termed the "Electronic Filing Procedures" or "EFPs"; and

WHEREAS, the Court has formulated the EFPs with the assistance of the Court's Advisory Committee, and has solicited and considered public comment on the proposed procedures; and

WHEREAS, consistent with the EFPs, the Court has established a World Wide Website at **www.cit.uscourts.gov** ("USCIT Website") with the technological capacity to provide access to all contents of that Website, including links to all electronically-filed

documents via the PACER System, and to permit direct electronic filing of documents on the Court's CM/ECF System; and

WHEREAS, the EFPs provide adequate procedures for the safeguarding of documents that contain Confidential Information (including Business Proprietary Information) and access to and use of such documents in conjunction with Rule 73.2(c); and

WHEREAS, the EFPs make adequate provision for filing, notice and service of documents and proceedings in actions before the Court, consistent with the requirements of the Rules of the Court; and

WHEREAS, the EFPs provide a means for counsel of record and unrepresented parties to sign documents electronically; and

WHEREAS, the EFPs require the Clerk's Office to provide adequate procedures for electronic filing of documents on behalf of persons who are not able to access the Court's CM/ECF System;

NOW, THEREFORE, IT IS ORDERED as follows:

1. Actions Subject to the EFPs.

(a) All actions commenced in accordance with Rule 3(a) of the Rules of the Court shall be subject to the EFPs of the Court, unless the Court has ordered that the action not be subject to the EFPs pursuant to section (b) of this paragraph.

(b) Upon motion of any party for good cause shown, or upon its own initiative, the Court may terminate or modify application of the EFPs in any action.

(c) A party who is not represented by an attorney and who is permitted by the Rules of the Court to appear without an attorney must file all documents in paper form,

unless such party is permitted to become a Registered CM/ECF Filer pursuant to paragraph 3(b).

2. Access to Confidential Information.

Unless amended by a subsequent order of the Court, this Administrative Order governs access to all Confidential Information filed in any action, including access to Business Proprietary Information (as defined in 19 U.S.C. § 1677f(b)) pursuant to Rule 73.2(c) in an action commenced under 28 U.S.C. § 1581(c). For all actions filed under 28 U.S.C. § 1581(c), the terms of this Order covering access to Confidential Information will take effect with regard to a non-government attorney or consultant upon the filing of a Business Proprietary Certification, substantially in the form set forth in Form 17 of the Appendix of Forms; for government attorneys, the terms regarding access will take effect upon the filing of an entry of appearance. In all other cases, access to Confidential Information will take effect upon the entry of a judicial protective order.

3. Registration, Assignment of Passwords, Notification Requirement of Changes in Information, Authorization for Filing Using User ID and Password of Registered CM/ECF User or Confidential Information Filer .

(a) (i) Types of Registration: Anyone may register to become a "Registered PACER User" on the PACER System. A Registered PACER User will have access to all public documents maintained in the Court's CM/ECF System. In addition to becoming a Registered PACER User with access to the public documents, any attorney admitted to practice before the Court may register to become a "Registered CM/ECF Filer" on the Court's CM/ECF System in order to file public documents on that System. Alternatively, such attorney may register as a "Confidential Information Filer," which will allow the

attorney to file and access not only public information, but also Confidential Information using the CM/ECF System pursuant to the Court's Rules and this Order.

(ii) Registration Process: PACER registration will be accomplished through the PACER website, **www.pacer.gov**. Registered CM/ECF Filer and Confidential Information Filer registration will be accomplished with a non-electronic CM/ECF Registration Form prescribed by the Clerk. This form will require, as appropriate, identification of the registrant's name, employer (if applicable), address, telephone number, Internet e-mail address(es) (e-mail address(es) of record), an identification of the CM/ECF access level being requested, together with a declaration that the attorney, if applicable, is a member in good standing of the Bar of the Court. CM/ECF Registration Forms must be mailed or delivered to the Office of the Clerk of the Court, United States Court of International Trade, One Federal Plaza, New York, New York 10278-0001.

(b) The Court may permit a party to a pending action who is not represented by an attorney and who is permitted by the Rules of the Court to appear without an attorney to become a Registered CM/ECF Filer solely for purposes of the action. Registration will be by non-electronic filing of the CM/ECF Registration Form prescribed by the Clerk. If the party wishes to file confidential information, he or she will do so in accordance with paragraph 7(f) of this order. If during the course of the action, the party retains an attorney who appears on the party's behalf, the appearing attorney must advise the Clerk to terminate the party's registration as a Registered CM/ECF Filer upon the attorney's appearance.

(c) Each attorney of record to an action is obligated to become a Registered CM/ECF Filer or Confidential Information Filer, unless the Court has otherwise ordered in accordance with paragraph 1(b) of this Order. An attorney is required to become a

Confidential Information Filer only if that attorney intends to electronically file or access documents containing Confidential Information.

(d) Everyone registered on the CM/ECF System must immediately notify the Clerk of any change in the information provided in the CM/ECF Registration Form by submitting a Request for Change in Information Form.

(e) Each person registered on the CM/ECF System will, upon registration, be issued a User Identification Designation ("User ID") and a Password by the Clerk. The Clerk will maintain a confidential record of issued User IDs. Confidential Information Filers are required to change their Passwords at least once a year. Failure of a Confidential Information Filer to change his or her Password at least once a year will result in termination of his or her ability to file documents and termination of access to confidential documents on the CM/ECF System until the Password is changed or a new CM/ECF status is requested.

(f) Except as expressly provided in subparagraph (g), the User ID and Password must be maintained as confidential. Upon learning of the compromise of the confidentiality of the CM/ECF Password, the Password holder must change his/her Password immediately and notify the Clerk without delay.

(g) A Registered CM/ECF Filer or Confidential Information Filer may authorize another person to file a document using the User ID and Password of the Registered CM/ECF Filer or Confidential Information Filer. Under these circumstances, the Registered CM/ECF Filer or Confidential Information Filer will retain full responsibility and will be treated as a signatory under the Rules of the Court for any document so filed.

(h) The Court's CM/ECF System will include for each action subject to the EFPs a current list of the e-mail addresses of record maintained by the Clerk. Each attorney of record must file with the Court a notice of any changes in his or her e-mail address, in the manner prescribed by Rule 75(e) of the Rules of the Court, in addition to submitting the Notice required under paragraph 3(d) of this Order.

4. Electronic Filing of Documents.

(a) Except as otherwise ordered by the Court, all pleadings and other documents required to be filed with the Clerk, including documents containing Confidential Information, must be filed electronically on the Court's CM/ECF System pursuant to the EFPs, except for certain documents described in subparagraph (e) below. Electronic filing may be made only by a Registered CM/ECF Filer or Confidential Information Filer, or by a person authorized by a Registered CM/ECF Filer or Confidential Information Filer pursuant to paragraph 3(g) of this Order. Any document filed with the Court that contains any Confidential Information must be conspicuously marked in accordance with Rule 81(h) and any Confidential Information must be appropriately marked by bracketing.

(b) With the exception of agency records filed in accordance with Rules 73.1, 73.2 and 73.3 and federal agency remand determinations, every document filed electronically must be signed for the purposes of Rule 11 of the Rules of the Court by one or more attorneys of record (each "Rule 11 Signatory") pursuant to paragraph 5(a) of this Order. For each Rule 11 Signatory, the document must identify the Signatory by name and provide such Signatory's law firm or agency, address, telephone number and e-mail address(es) of record.

(c) Except as provided in subsection (e) of this paragraph, electronic transmission of a document to the Court's CM/ECF System consistent with the EFPs, together with the receipt by the person making the filing of a Notice of Electronic Filing from the Court as provided in Paragraph 6 of this Order, shall constitute filing of the document for all purposes under the Rules of the Court, and shall constitute entry of that document on the docket kept by the Clerk pursuant to Rules 58 and 79 of the Rules of the Court. A document filed electronically shall be deemed filed at the date and time stated on the Notice of Electronic Filing from the Court.

(d) (i) When a document has been filed electronically, the official document of record is the electronic recording of the document as stored by the Court, and the filing party shall be bound by the document as filed, unless amended by order of the Court. A party wishing to correct a filing must file a motion for errata after seeking consent from all parties, in accordance with the provisions of Rule 7(b) of the Rules of the Court. A motion for errata must list each correction, including the page number for each correction, and must provide a complete copy of the corrected document, or indicate that the corrections are minor. The motion must also include a proposed order either permitting the substitution of the complete corrected copy or ordering the corrections deemed made without physical substitution because the corrections are minor. The corrected filing will become the official document of record and the filing date will remain the date of the filing of the original electronic filing. When a motion for errata is made upon consent of all parties in an unassigned case, the Clerk may dispose of the motion as if such motion were expressly listed in Rule 82(b) of the Rules of the Court.

(ii) If a document containing Confidential Information is erroneously filed as a public document, is filed in the wrong case, or otherwise improperly releases Confidential Information, the filing party must immediately contact the Clerk. Parties should use the emergency number posted on the USCIT Website to contact the Clerk after hours. Parties must also follow the procedures set forth in paragraph 17 of this Order.

(e) Documents, portions of documents or sets of documents that are not readily convertible to electronic form, or which are more appropriately filed as physical exhibits, may be filed in paper form and must be accompanied by a Notice of Manual Filing. Likewise, documents, portions of documents or sets of documents that are in electronic form but exceed certain technical parameters may be filed on electronic media or in paper form, and must be accompanied by a Notice of Manual Filing.

Summonses and original complaints referred to in Rule 3 of the Rules of the Court; original third party complaints; original complaints filed pursuant to 28 U.S.C. § 1581(b); Notices of Appeal filed in accordance with Rule 3 of the Rules of the United States Court of Appeals for the Federal Circuit; and a request for transfer to the Court from a binational panel or committee pursuant to 19 U.S.C. § 1516a(g)(12)(B) or (D) may be filed electronically or manually. A Notice of Manual Filing must accompany manually-filed documents. Notwithstanding any other provision of the EFPs, no document containing classified information may be filed electronically. A party filing a document that contains classified information must file such document manually in accordance with the Rules of the Court. Public versions of such document must be filed electronically in accordance with the requirements and limitations of this Order.

(f) A document properly and timely submitted and filed in non-electronic form pursuant to Rule 5 of the Rules of the Court shall be deemed filed on the date set forth in Rule 5(d)(4). Subsequent electronic submission of the same document shall not be deemed to change the date of original filing of that document. Where a portion of a document is filed electronically and another portion is filed in paper form, or on electronic media, the latest filing date and time of the multiple portions will be used to determine compliance with applicable deadlines.

(g) Unless otherwise ordered by the Court, an agency filing an administrative record pursuant to Rule 73.2 will follow the procedure in Rule 73.2(b).

5. Signatures.

(a) A document filed with the Court electronically shall be deemed to be signed by a person when the document identifies the person as a Signatory and the filing complies with subparagraph (b), (c) or (d). When the document is filed with the Court in accordance with any of these methods, the filing shall bind the Signatory as if the document (or the document to which the filing refers, in the case of a Notice of Endorsement filed pursuant to subparagraph (d)) were physically signed and filed, and shall function as the Signatory's signature, whether for purposes of Rule 11 of the Rules of the Court, to attest to the truthfulness of an affidavit or declaration, or for any other purpose.

(b) In the case of a Signatory who is a Registered CM/ECF Filer or Confidential Information Filer as described in paragraph 3, such document shall be deemed signed, regardless of the existence of a physical signature on the document, provided that such document is filed using the User ID and Password of the Signatory. The page on which the physical signature would appear if filed in non-electronic form must be filed electronically,

but need not be filed in an optically scanned format displaying the signature of the Signatory. In such cases, the electronically filed document shall indicate an “electronic signature”, e.g., “s/Jane Doe”.

(c) In the case of a Signatory who is a Registered CM/ECF Filer or Confidential Information Filer, but whose User ID and Password will not be utilized in the electronic filing of the document, such document will be deemed signed and filed when the document is physically signed by the Signatory, the document is filed electronically, and the signature page is filed in optically scanned form pursuant to and consistent with the EFPs.

(d) In the case of a stipulation or other document to be signed by two or more persons, the following procedure shall be used:

(i) The filing party shall initially confirm that the content of the document is acceptable to all persons required to sign the document and shall indicate in the document that such confirmations have been made. To the extent practicable, the filing party shall obtain the physical signatures of all parties on the document.

(ii) The filing party shall then file the document electronically, indicating the original signatures that have been obtained, e.g., “s/Jane Doe,” “s/John Doe,” etc., and the signatures that will be provided through Notices of Endorsement.

(iii) The filing party or attorney shall retain the hard copy of the document containing the original signatures until one year after the final disposition of the action in which it was filed.

(iv) In the case of any person required to sign the document but for whom the filing party does not obtain a physical signature, such person shall file a Notice of

Endorsement of the document. The document shall be deemed fully executed upon the filing of any and all such Notices of Endorsement.

6. Notice of Electronic Filing.

Upon electronic filing of a pleading or other document, a Notice of Electronic Filing will be sent by the Clerk to all e-mail address(es) of record in the action. Such Notice shall provide, at a minimum, the electronic docket number and the title of the document filed, and shall provide the date and time filed.

7. Service.

(a) A pro se party who becomes a Registered CM/ECF User or Filer, or an attorney who becomes a Registered CM/ECF Filer or Confidential Information Filer, is deemed to have consented in writing to electronic service of all documents that are filed electronically. Therefore, except as otherwise ordered by the Court, electronic filing of any document and the Court's transmission of a Notice of Electronic Filing of that document, as described in Paragraph 6 of this Order, will constitute service of such document on all counsel or pro se parties with CM/ECF accounts. Documents that are not filed electronically must be served in non-electronic form in accordance with Rule 5 of the Rules of the Court, and the Court's transmission of a Notice of Electronic Filing will not constitute service.

(b) Counsel excused in any particular case under Paragraph 1(b) of this Order and pro se parties who do not have a CM/ECF account must serve and be served with all filed documents in non-electronic form as provided in Rule 5 of the Rules of the Court.

(c) For any document which is served electronically pursuant to subparagraph (a) of this paragraph, the requirement for the filing of a certificate or other proof of service

set forth in Rule 5 of the Rules of the Court will be satisfied by the Court's transmission of the Notice of Electronic Filing described in Paragraph 6 of this Order.

(d) Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice or other document upon that person, and such document is filed and served electronically pursuant to the EFPs, five days shall be added to the prescribed period.

(e) Notwithstanding any provision of this Order, where the Rules of the Court require that any document be served but not filed, or that any document be served and filing of that document be delayed, service of that document shall be in non-electronic form. Any subsequent filing of such previously-served document shall be accomplished in the manner prescribed by this Order, and the document need not be re-served upon parties who were previously served.

(f) Any document containing Confidential Information not required to be electronically filed as permitted in this Order must be served on all parties whose counsel are authorized to have access to such document. The document must be contained in a wrapper conspicuously marked on the front "Confidential – to be opened only by (authorized attorney for that party)." If served by mail, the confidential document must be placed within two envelopes, the inner one sealed and marked "Confidential Information – to be opened only by (name of authorized attorney)" or Business Propriety Information – to be opened only by (name of authorized attorney)," and the outer one sealed and not marked as containing Confidential/Business Proprietary Information. Parties not authorized to have access to any such document pursuant to this Order are to be served in

accordance with Rule 81(h) with a copy of the document from which all Confidential Information has been deleted.

8. Docket.

The Court's CM/ECF System shall denote in a separate electronic document for each action subject to the EFPs the filing of any document by or on behalf of a party and the entry of any order or judgment by the Court, regardless of whether such document was filed electronically. The record of those filings and entries for each case shall be consistent with Rule 79 of the Rules of the Court and shall constitute the docket for purposes of that Rule.

9. Notice of Entry of Orders and Judgments.

The Clerk will file electronically all orders, decrees, judgments, and proceedings of the Court in accordance with the EFPs, which filing will constitute entry of the order, decree, judgment or proceeding on the docket kept by the Clerk pursuant to Rules 58 and 79 of the Rules of the Court. Upon the entry of an order or judgment in an action subject to the EFPs, the Clerk will transmit by e-mail to all e-mail addresses(es) of record in the action a notice of the entry of the order or judgment and will make a note of the transmission in the docket. Transmission of the notice of entry will constitute notice as required by Rule 79(c) of the Rules of the Court and will constitute service of such notice unless non-electronic service is required under paragraph 7(b) of this Order.

10. Technical Failures.

(a) The Clerk will deem the USCIT CM/ECF System to be subject to a technical failure on a given day if the CM/ECF System is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon

in New York, New York on that day. The Clerk will provide notice of all such technical failures on the CM/ECF Help Desk line, 866-450-1859, which persons may telephone in order to learn the current status of the CM/ECF System. The Clerk will maintain records of the nature and duration of all such technical failures. Filings due that day, which were not filed due solely to such technical failures, will become due the next business day. Such delayed filings will be rejected unless accompanied by a declaration or affidavit attesting to the filing person's failed attempts to file electronically at least two times after 12:00 noon in New York, New York, separated by at least one hour on that day due to such technical failure. A declaration or affidavit will not be required if, on the day a filing is due, a notice is posted on the Court's Website or on the Court's CM/ECF Help Desk line indicating that the CM/ECF System is not available on that day for a period of one hour or more after 12:00 noon in New York, New York.

(b) If a Notice of Electronic Filing is not received from the Court following transmission of a document for filing, the document will not be deemed filed. The person filing must attempt to re-file the document electronically until such a Notice is received, consistent with the provisions of subparagraph (a) permitting delayed filings.

(c) If, within one business day after filing a document electronically, the party filing the document discovers that the version of the document available for viewing on the Court's CM/ECF System does not conform to the document as transmitted upon filing, the filing party must contact the Clerk, who will either ensure that the document is properly posted as filed or direct the party to re-transmit the document, which will be marked "Re-transmitted". This provision (and the designation "Re-transmitted") will not be used for filing a motion for errata as set forth in paragraph 4(d)(i) of this Order.

11. Copyright and Other Proprietary Rights.

(a) The USCIT Website will bear a prominent notice as follows: "The contents of each filing in the electronic case files on the Court's CM/ECF System may be subject to copyright and other proprietary rights (with the exception of the opinions, memoranda and orders of the Court). It is the user's obligation to determine and satisfy copyright or other use restrictions when publishing or otherwise distributing material found in the electronic case files. Transmission or reproduction of protected items beyond that allowed by fair use requires the written permission of the copyright owners. Users must make their own assessments of rights in light of their intended use."

(b) By consenting to the EFPs, each party or other person and their counsel are deemed to consent to all uses of the filed materials consistent with the notice set forth in subparagraph (a).

(c) By producing discovery materials in an action subject to electronic filing, or by filing any material in the action electronically or otherwise, each party or subpoenaed non-party or other non-party so producing or filing, and all of the counsel to such persons, are deemed to consent to all uses of such materials by all parties to the action solely in connection with and for the purposes of the action, including the electronic filing in the action (by a party who did not originally file or produce such materials) of portions of such excerpts, quotations, or selected exhibits from such discovery materials or other filed materials as part of motion documents, pleadings or other filings with the Court which must refer to such excerpts, quotations, etc.

12. Protective Order.

In connection with discovery or the filing of any material, other than those items specifically exempted from electronic filing in subparagraph 4(a) or (e) of this Order, any person may apply by motion for an order prohibiting the electronic filing in the action of certain specifically-identified materials on the grounds that such materials are subject to copyright, other proprietary rights, privacy interests, or other specifically-identified interests and that electronic filing in the action is likely to result in substantial prejudice to those rights or interests. A motion for such an order must be filed not less than five days before the materials to which the motion pertains are due to be produced or filed with the Court. Any material not filed electronically pursuant to such an order shall be filed with the Clerk and served as if the action were not subject to the EFPs. Nothing in this paragraph may be construed to change the standard for the issuance of a protective order respecting confidentiality in an action subject to the EFPs.

13. Disclosure and Access to Confidential Information.

(a) (i) Individuals who have access to Confidential Information pursuant to Rule 73.2(c) and/or this Order will not disclose it to anyone (including, without limitation, any officer, shareholder, director, or employee of any of the parties in the action), other than the Court, authorized Court personnel, and other persons authorized under this Order. An authorized attorney or authorized consultant may use Confidential Information only for issues relating to the federal administrative agency proceeding that is the subject of the action, in administrative proceedings resulting from an order of the Court remanding the matter to that agency, or in an appeal of a decision rendered by the Court in the action. In the event of the consolidation of actions arising from determinations of the International

Trade Commission and the Department of Commerce, nothing in this Order will be read to require or allow the use of Confidential Information from the records of one agency in argumentation related to the decision of the other agency or the service upon one agency of documents containing Confidential Information from the record of the other.

With respect to Confidential Information that was originally submitted by a party to the action, nothing in Rule 73.2(c) or this Order prevents an attorney for that party from disclosing that information or using that information in any way, so long as such disclosure or use does not result in the disclosure of another entity's Confidential Information to anyone not authorized under Rule 73.2(c) and/or this Order to have access to the Confidential Information.

(ii) The Clerk of the Court will permit access to documents containing Confidential Information, including electronic access, only to the Court, authorized Court personnel, and individuals authorized by this Order to have access to such documents.

(b) Authorized Consultants. An authorized consultant may have access to Confidential Information in an action only under the direction and control of an authorized attorney, who will assume responsibility for compliance with the terms of Rule 73.2(c) and/or this Order by such authorized consultant, and subject to the terms of Rule 73.2(c) and/or this Order. Consultants include non-attorneys such as economists, accountants and computer specialists.

As to any consultant who is subject to the agency's administrative protective order issued in the proceeding that gave rise to the action whom an authorized attorney considers necessary to preparation of the case in the action, the authorized attorney must file with the Court a Business Proprietary Information Certification which must be

substantially in the form set forth in Form 17 of the Appendix of Forms executed by the consultant.

As to any consultant not described in the preceding paragraph whom an authorized attorney considers necessary to preparation of the case, the authorized attorney must, prior to seeking consent for the filing of such a Certification, provide counsel for the parties with the curriculum vitae of the proposed consultant. If all counsel consent, the authorized attorney may then file such a Certification, executed by the proposed consultant, with the Court. If all counsel do not consent, access to Confidential Information for the consultant may be sought by motion.

(c) An authorized attorney or authorized consultant may disclose Confidential Information to office personnel (such as paralegals, administrative assistants, etc.) who are actively assisting in the action and are employed by or supervised by him or her and under his or her direction and control. The authorized attorney charged with direction and control of the authorized consultant will assume responsibility for compliance with the terms of Rule 73.2(c) and/or this Order by all office personnel described in this paragraph. An authorized consultant will assume responsibility for compliance with the terms of Rule 73.2(c) and/or this Order by all of his or her own office personnel. All office personnel authorized to see the Confidential Information must comply with the terms of Rule 73.2(c) and/or this Order, and must, before having access to any confidential documents, sign a statement of recognition that he or she is bound by the terms of Rule 73.2(c) and/or this Order, that the information is confidential and that such information will not be disclosed to anyone other than authorized attorneys, authorized consultants or authorized office personnel. Such

statements of recognition must be retained by an authorized attorney, but need not be filed with the Court or served on the parties.

14. Safeguarding Confidential Information.

The individuals covered by Rule 73.2(c) and/or this Order must review the procedures for the protection of Confidential Information listed in any federal agency administrative protective orders on the administrative record and comply with such procedures for the duration of the action.

15. Termination of Access to Confidential Information.

Termination of access to Confidential Information in other than one filed under 28 U.S.C. § 1581(c) will occur under the terms of the protective order issued in the case. For actions filed under 28 U.S.C. § 1581(c), the following procedures will apply. An authorized attorney or authorized consultant will cease to have access to Confidential Information subject to this Order on the filing of a Notice of Termination pursuant to Rule 73.2(c). For government attorneys, access to Confidential Information will cease upon the filing of a Form 18A. A former authorized attorney or authorized consultant remains bound by his or her obligation to abide by the terms of Rule 73.2(c) and/or this Order and may not divulge Confidential Information that he or she learned during the action or in the underlying administrative proceeding to any person. Within 28 days of final judgment, including all appeals, the parties will file a Joint Notice Regarding Termination of Access to Confidential Information, and the Clerk's Office will terminate electronic access to any confidential documents on receipt of that filing.

16. Use of Confidential Information During Proceedings in Open Court.

Authorized attorneys will endeavor to avoid the unnecessary use of Confidential Information in any oral proceeding before the Court. If an authorized attorney for any party in the action finds it necessary to refer to Confidential Information in any oral proceeding before the Court, such attorney must notify the Court and all other counsel of record as soon as the necessity becomes apparent and propose whatever mechanism may be available and appropriate to prevent disclosure of Confidential Information to persons other than those authorized by this Order.

17. Breach of Requirements Regarding Confidential Information.

The individuals covered by Rule 73.2(c) and/or this Order must promptly report any breach of paragraphs 13-16 of this Order to the Court, to counsel for the federal administrative agency involved, and to counsel for the party whose Confidential Information is involved. The individuals covered by Rule 73.2(c) and/or this Order must take all reasonable steps to remedy the breach and must cooperate fully in any investigation of the breach undertaken by the Court.

18. Miscellaneous Provisions.

(a) The Clerk will establish procedures to permit pleadings and other documents to be presented for electronic filing at the Court. The Clerk will also provide for appropriate access to all electronic Court records. Facilities and equipment made available at the Court to permit access to the PACER System may not be used for any other purpose.

(b) Until such time as the United States Court of Appeals for the Federal Circuit provides notice to the Court that public access to the PACER System obviates or modifies

any need for transmittal of the record on appeal of any action subject to the EFPs as to which a notice of appeal to that Court of Appeals has been filed, when required, the Clerk will deliver to the Court of Appeals, at that Court's election, either a complete non-electronic copy of the record on appeal or an electronic reproduction of that record on appeal as such record is reflected in the PACER System.

(c) This Administrative Order and the CM/ECF User's Manual will be posted on the USCIT Website in a location that may be reached from the home page of that Website via one or more highly visible and easily found hyperlinks and will be posted prominently in and otherwise made available in the Office of the Clerk. Any amendments to the EFPs will be similarly posted and published.

(d) The effective date of this Administrative Order and the CM/ECF User's Manual is April 1, 2002 and may be amended by the Court from time to time on the Court's own initiative. This Administrative Order shall apply to all proceedings in actions brought after its effective date and all further proceedings in actions then pending, except actions in which a complaint was filed prior to the effective date of this Order.

For the Court:

/S/

_____

By: Tina Potuto Kimble
Clerk of the Court

Dated: April 1, 2002, amended Nov. 28, 2006, eff. Jan. 1, 2007; amended Aug. 2, 2010, eff. Sept. 1, 2010; amended Dec. 4, 2012, eff. Jan. 1, 2013; amended August 7, 2013, eff. October 1, 2013.

New York, New York

UNITED STATES COURT OF INTERNATIONAL TRADE

In re PRACTICE BY STUDENTS ENROLLED IN AN APPROVED LAW SCHOOL CLINICAL PROGRAM	**ADMINISTRATIVE ORDER** **No. 06-01**

1. A law student, upon compliance with this Administrative Order, and under supervision of an attorney, may appear on behalf of any party.

2. To appear, the student shall:

(a) be duly enrolled in a law school approved by the American Bar Association;

(b) be a participant in a clinical program approved by that law school;

(c) have successfully completed at least three semesters of legal studies;

(d) be certified by either the law school dean or authorized designee as qualified to provide the legal representation permitted by this Administrative Order. This certification may be withdrawn by the certifier at any time by mailing a notice to the Clerk of the Court, without notice or hearing and without the showing of cause;

(e) be introduced to the Court by an attorney admitted to practice before this Court;

(f) neither seek nor receive any compensation or remuneration of any kind from the client. This provision is not intended to affect the ability or right of an attorney, legal aid bureau or law school clinical program, to seek attorney fees, expenses or costs from any adverse party, which may include compensation for student services;

(g) certify in writing that he or she has read and will comply with the American Bar Association Model Code of Professional Responsibility; and

(h) certify in writing that he or she has read the Rules of the United States Court of International Trade, the evidentiary rules relevant to the action or proceeding in which he or she is appearing, and this Administrative Order.

3. The law student may:

(a) appear as counsel in Court or at other proceedings, accompanied by the supervising attorney, when written consent of the client, the supervising attorney, and the assigned judge have been filed with the Clerk of the Court; and

(b) prepare and sign motions, petitions, answers, briefs and other documents in connection with any matter in which he or she has met the conditions of Section 3(a) above; provided that each such document also shall be signed by the supervising attorney.

4. The attorney who supervises a student shall:

(a) be a member of the bar of the United States Court of International Trade;

(b) be a participant in a student clinical program as defined by the law school;

(c) assume personal professional responsibility for the student's work;

(d) assist the student to the extent necessary;

(e) appear with the student in all proceedings before the Court;

(f) indicate in writing his or her consent to supervise the student; and

(g) sign any motions, petitions, answers, briefs, and other documents in connection with any matter in which a student appears as counsel in Court or at other proceedings.

5. The judge's consent for the student to appear may be withdrawn without notice or hearing and without the showing of cause. The withdrawal of consent by a judge shall not be construed to reflect on the character or ability of the student.

6. Forms for certifying compliance with this Administrative Order shall be available in the Office of the Clerk of the Court. Completed forms shall be filed with the Clerk of the Court.

7. This Administrative Order shall take effect on February 1, 2006 and may be amended by the Court from time to time on the Court's own initiative. This Administrative Order shall apply to all proceedings in actions brought after its effective date and all further proceedings in actions then pending.

For the Court:

By: _____
Tina Potuto Kimble
Clerk of the Court

Dated: January 24, 2006, amended Sept. 25, 2007, eff. Jan. 1, 2008
New York, New York

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff, v. Defendant.	Before: , Judge Court No.

LAW STUDENT APPEARANCE FORM

1. Law Student Certification

I, _____, certify that:
(Name of Student)

(a) I am duly enrolled in _____ law school and am a participant in that school's approved clinical program in accordance with Section 2(b) of the Administrative Order for Student Practice of the United States Court of International Trade.

(b) I am receiving no compensation from the client in accordance with Section 2(f) of the Administrative Order for Student Practice of the United States Court of International Trade.

(c) I have read and will comply with the American Bar Association Model Code of Professional Responsibility.

(d) I have read the Rules of the United States Court of International Trade and evidentiary rules relevant to the action or proceeding in which I am appearing.

(e) I have read the provisions of the Administrative Order for Student Practice of the United States Court of International Trade.

_____ _____
(date) (Signature of Student)

2. Certification of Law School Dean or his/her Authorized Designee

I certify that this student:

(a) has successfully completed at least three semesters of legal studies and is a participant in an approved clinical program;

(b) is qualified, to the best of my knowledge, to provide the legal representation permitted by this Administrative Order; and

(c) that _____, who will serve as supervising attorney, is a participant in a clinical program approved by this school.

_____ (date)

_____ (Signature of Dean or Authorized Designee)

_____ (Position of Above)

3. Consent of Supervising Attorney

As a member of the bar of the United States Court of International Trade, I will:

(a) assume personal professional responsibility for this student's work;
(b) assist this student to the extent necessary;
(c) appear with this student in all proceedings before the court;
(d) sign all documents as required by Sections 3(b) and 4(g) of the Administrative Order for Student Practice of the United States Court of International Trade.

_____ (date)

_____ (Signature of Attorney)

4. Consent of the Judge

I authorize this student:

(a) to appear in Court or other proceedings on behalf of the above client; and
(b) to prepare documents on behalf of _____.
(Name of Client)

_____ _____
(date) (Signature of Judge)

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff, v. Defendant.	Before: , Judge Court No.

CONSENT OF CLIENT

I, _____, authorize _____ to appear on my behalf (insert name of plaintiff), in the above-captioned action or proceeding, in accordance with the Administrative Order for Student Practice of the United States Court of International Trade. I have been provided with a copy of the Administrative Order and am familiar with its provisions.

_____
(Name of Plaintiff)

_____ _____
(date) (Signature)

UNITED STATES COURT OF INTERNATIONAL TRADE

In re THREE JUDGE PANELS	:	ADMINISTRATIVE ORDER
	:	No. 07-01

1. Order of Precedence.

The chief judge shall be the presiding judge. In the absence of the chief judge, the presiding judge shall be that judge most senior in regular active service in accordance with 28 U.S.C. § 258(b).

2. Oral Argument.

(a) Determination in Panel Cases. If it is requested by at least one judge, oral argument shall be ordered.

(b) Notice to Counsel. The clerk shall notify counsel, no fewer than ten days prior thereto, of the date a case is to be orally argued. At that time, the clerk shall also inform the parties of any time limitations placed on oral argument by the panel.

3. Motion Practice.

Motions generally shall be granted or denied by the presiding judge if they are administrative and unrelated to the disposition of the case, unless that judge believes reference to the entire panel is appropriate. In lieu of the presiding judge, the panel may assign the task of deciding procedural motions to another panel member. Motions related to scheduling cases for argument shall always be referred to the entire panel.

4. Post-Decision Matters.

(a) A motion for reconsideration shall be referred to the panel.

(b) A motion to amend the judgment of the court shall be referred to the panel.

(c) A remand from the Federal Circuit shall be referred to the panel that decided the matter.

5. Reassignment to a Single Judge.

Cases shall be assigned to three judge panels by the chief judge in accordance with 28 U.S.C. § 255(a). Every effort shall be made to avoid repetitive scheduling of panels composed of the same judges. If a panel makes a decision in a case disposing of the issue or issues that initially gave rise to the need for a three judge panel, the panel may ask the chief judge to reassign the remaining issues in the case to a single judge from the panel.

For the Court:

By: Tina Potuto Kimble
Clerk of the Court

Dated: December 26, 2007
New York, New York

UNITED STATES COURT OF INTERNATIONAL TRADE

----------X		
	:	**ADMINISTRATIVE ORDER**
In re E-GOVERNMENT ACT OF 2002 AND PRIVACY REDACTION	:	**No. 08-01**
----------X		

Parties and counsel are not to include sensitive information in any document filed with the Court unless such inclusion is necessary and relevant to the case. In accordance with Court of International Trade Rule 5.2, if sensitive information must be included in a filing, personal data identifiers must be partially redacted from the filing, regardless of the form, i.e., paper or electronic media. Social Security numbers are to be redacted to show only the last four digits; birth dates are to contain only the year of birth; individuals known to be minors are to be referred to with initials; and financial numbers are to be redacted to the last four digits. It is important to remember that any sensitive information not otherwise protected will be available over the Internet via the Court's CM/ECF System. See Administrative Order No. 02-01.

Pursuant to the E-Government Act of 2002 (Pub. L. No. 107-347, Dec. 17, 2002), Section 205(c)(3), as amended (Pub. L. No. 108-281, August 2, 2004), a party or counsel intending to file one or more documents containing the personal identifiers specified above may file a "reference list" with the Court that would include the complete version of each personal data identifier and a corresponding partially redacted version of each identifier. This list will be maintained under seal and may be amended by a party as a matter of right.

The list is intended to serve as a type of "key." The redacted version would be used in lieu of, and be construed to refer to, the complete identifier in subsequent filings in the case.

It is the responsibility of counsel and the parties to be sure that all filings comply with the Court's Rules, orders, or notices regarding the redaction of personal data identifiers or other sensitive information. The Office of the Clerk will not review counsel's filings for redaction. In the case of a transcript filed by a court reporter, each party's attorney[1] is required to review the transcript for information that is to be redacted under this Order. Within seven calendar days of a court reporter's delivery of the transcript to the Clerk of Court, an attorney must file a notice with the Court of the attorney's intent to request redaction of such information from the transcript. An attorney is responsible for reviewing the opening and closing statements made on behalf of the party the attorney represents, any statements made by the party, and the testimony of any witnesses called by the party. If no notice is filed during this seven-day period, the Court may assume that redaction of personal data is not necessary and may make the transcript available to the public, through electronic or other means.

Once an attorney has filed a notice of intent to request redaction, the attorney has 21 calendar days from the transcript's delivery to the Clerk to review the transcript and submit to the court reporter a list of the places in the transcript where the personal data to be redacted appears. The court reporter or transcriber must redact the identifiers, as directed by the party. During this time period, an attorney also could, by motion, request

[1] Or, in the case of an unrepresented party, the party should perform the tasks these procedures assign to attorneys.

that additional information be redacted, and no remote electronic public access to the transcript is to be allowed until the Court has ruled on any such motion.

The court reporter must, within 31 calendar days of the delivery of the transcript to the Clerk of Court, perform the requested redactions, and file a redacted version of the transcript with the Clerk of Court. The original unredacted electronic transcript will be retained by the Clerk of Court.

Finally, parties and counsel are advised to exercise caution and follow the requirements of USCIT R. 81(h) when filing a document that contains other sensitive personal information, or confidential, business proprietary, privileged, or classified information.

For the Court:

/S/
By: Tina Potuto Kimble
Clerk of the Court

Dated: May 2, 2008, amended Nov. 25, 2008, eff. Jan. 1, 2009.