

## **Instructions to Counsel in § 1581(c) Cases**

The following requirements apply to cases assigned to Judge Baker that are brought under 28 U.S.C. § 1581(c). Any questions should be directed to his case manager at 212-264-1615.

### **1. Proposed Orders**

U.S. Court of International Trade Rule 7(b)(1)(E) requires that all motions must “be accompanied by a proposed order.” The proposed order the plaintiff submits with its Rule 56.2 motion must specify the relief sought, including identifying issues and/or record material Plaintiff contends the court should direct Defendant to reconsider and/or address on remand. Any relief not identified in Plaintiff’s proposed order is waived. The proposed order shall not contain legal argument or address procedural matters.

Following remand, any party seeking relief from an agency redetermination must submit a proposed order consistent with the requirements set forth above.

### **2. Briefs**

Indiscriminate citations to large blocks of joint appendix pages are prohibited. *Cf.* Fed. Cir. R. 28(f) (same).

### 3. Joint Appendix<sup>1</sup>

**3.1. Page limitations:** The joint appendix may not exceed 2500 pages absent advance leave of court.<sup>2</sup>

**3.2. Two preparation options:** The Rule 56.2(a) joint status report the parties submit must advise the court which preparation method the parties will use. The proposed briefing schedule must incorporate the deadlines prescribed below for the chosen method.

**3.3. Required material:** The joint appendix must include the entirety of the agency's final decision (Federal Register notice or other document pending publication) and any supporting document(s) or memoranda (e.g., "Issues and Decision Memorandum") created by the agency at any stage of the proceeding explaining or bearing on those aspects of its decision challenged by the plaintiff.

**3.4. Designation option:** This option allows the parties to cooperate in advance to determine the universe of record documents (in addition

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<sup>1</sup> These instructions, which require that joint appendices be compliant with the Federal Circuit rules, supplement the court's Standard Chambers Procedures provisions governing joint appendix preparation. *See* SCP 2(C). Insofar as this document conflicts with SCP provisions, the former controls.

<sup>2</sup> It is unnecessary for administrative materials to be included in the joint appendix for purposes of the appellate record. *See* USCIT R. 73.2(b)(1), (2) (even though the agency only files a "certified list" of items in the administrative record and a few other specified items from that record, "all parts of the [administrative] record will be a part of the record on review for all purposes").

to the required material specified in ¶ 3.3 above) the parties' briefs might cite.

- a. Designation by agreement:** If the parties opt to designate material in advance, they will compile a list of all items in the administrative record they wish to have the option of citing in their briefs, plus the required material specified in ¶ 3.3 above. Consistent with the procedure often used by regular Federal Circuit practitioners, Judge Baker recommends that the parties simply agree to designate the entire record or, if possible, a subset of the entire record.
- b. Plaintiff's assembly of the soft appendix contents:** After the parties agree upon the record material to be designated, the plaintiff will assemble the required material, *see above* ¶ 3.3, and the material designated by the parties to create a "soft appendix" from which the joint appendix will be assembled.

  - i. Required material:** Plaintiff will first assemble the record material required by ¶ 3.3 in chronological order.
  - ii. Confidential record material:** After the set of required record material, the plaintiff will add (in chronological order) documents designated by the parties from the confidential administrative record.

- iii. Public record material:** After the sets of required and confidential record material, the plaintiff will add (in chronological order) documents designated by the parties from the public administrative record insofar as they are not duplicative of required record documents and confidential record documents already compiled.<sup>3</sup>
- c. Plaintiff’s Bates-numbering of the soft appendix:** The plaintiff shall consecutively number the assembled soft appendix record material starting with Appx1000<sup>4</sup> using an automated Bates numbering feature of a software program in the format required by the Federal Circuit for the joint appendix for that court. *See* Fed. Cir. R. 30(c)(2) (“The page numbers must appear centered in the bottom margin of each page and meet the font size requirements of Federal Rule of Appellate Procedure 32(a)(5). Other marks must be redacted if necessary to avoid confusion.”).<sup>5</sup> The Appx page number must

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<sup>3</sup> As used here, a redacted document in the public administrative record that already exists in unredacted form in the soft appendix’s set of confidential record material is “duplicative.”

<sup>4</sup> These procedures reserve joint appendix page range 1–999 for any ensuing appeal to the Federal Circuit, which requires that the joint appendix filed in that court begin with material from the CIT record identified in Federal Circuit Rule 30(a)(1)(A) and (c)(1). *See also* Fed. R. App. P. 30(d).

<sup>5</sup> The Federal Circuit’s Electronic Filing Procedures require that “[a]ll appendix page numbers must be preceded by ‘Appx’ . . . and then the number, without any interve-

appear at least half an inch from the bottom of the page to ensure legibility if printed. *See also* Fed. Cir. Electronic Filing Procedures<sup>6</sup> at 36 (admonishing counsel to “be cognizant of how the pagination will appear on the printed paper copies”). Counsel may *not* shrink the record pages in Adobe Acrobat to allow the insertion of Appx pagination without redaction of other marks.

- d. **Service of the soft appendix:** The plaintiff shall serve a copy of the Bates-numbered soft appendix on all parties within 14 days after the court issues the scheduling order.
- e. **Citation of Appx pages in briefs:** If the parties use this designation option, their briefs need only cite the relevant Appx page numbers from the soft appendix. Appx citations must follow the same format as the Appx numbers in the soft appendix and, as required by the Federal Circuit, the page number at the end of the range must not omit any “repeating leading digits.”<sup>7</sup> It is counsel’s option

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ning non-numerical characters or spaces. Sub-organizational indicators (such as .1 or a) are also not permitted.” The use, or omission, of leading zeroes between “Appx” and the page number and the use, or non-use, of all capital letters for “APPX” is at counsel’s option. Thus, “Appx1348,” “Appx001348,” “APPX1348,” or “APPX001348” are all acceptable. <https://cafc.uscourts.gov/home/case-information/electronic-filing-information/electronic-filing-procedures/>, Section IV(A)(2)(a).

<sup>6</sup> <https://cafc.uscourts.gov/home/case-information/electronic-filing-information/electronic-filing-procedures/>.

<sup>7</sup> <https://cafc.uscourts.gov/home/case-information/electronic-filing-information/electronic-filing-procedures/>, Section IV(A)(2)(b).

whether to include “Appx” for the closing page reference. For example, a citation to soft appendix pages Appx1776 through Appx1783 would be either Appx1776–1783 or Appx1776–Appx1783, but not Appx1776–83. Citations to nonconsecutive pages must use the full page number for each—for example, “*See* Appx1800, Appx1804.”

- f. Service of cited and contextual Appx pages:** Within 14 days of filing its brief, the defendant’s counsel will provide the plaintiff with a list of the Appx pages cited in the defendant’s brief and any additional Appx pages reasonably necessary for context.<sup>8</sup>
- g. Plaintiff’s assembly and filing of the joint appendix:** Within 14 days of the filing of the last reply brief, the plaintiff will assemble and file the joint appendix as described in ¶ 3.6 below.
- h. Summary of deadlines under the designation method:**

| Date                                 | Event                                                                                                                                                                                                                                     |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Deadline stated in Rule 56.2 order) | Parties meet and confer to select which appendix preparation method they will use. Joint Status Report must state which option was chosen and proposed briefing schedule must incorporate the deadlines prescribed in these instructions. |

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<sup>8</sup> Counsel should construe the phrase “reasonably necessary” in view of the prohibition of citations to indiscriminate blocks of record material. *See above* ¶ 2; *cf.* D.D.C. LCvR 7(n)(1) (admonishing parties not to “burden the appendix with excess material from the administrative record that does not relate to the issues raised in the motion or opposition”).

| Date                                           | Event                                                                                 |
|------------------------------------------------|---------------------------------------------------------------------------------------|
| Within 14 days after scheduling order issued   | Plaintiff assembles soft appendix and serves it on all parties                        |
| Within 14 days after defendant files its brief | Defendant provides plaintiff with list of cited Appx pages plus contextual Appx pages |
| Within 14 days after last reply brief filed    | Plaintiff assembles and files the joint appendix                                      |

**3.5. Proof brief option:** Under this option, Bates-numbering of record material will not occur until after the parties file initial proof briefs that function to designate record material for the joint appendix.

- a. Placeholder citations:** In the proof brief option, parties prepare and file their briefs on the due dates prescribed in the scheduling order using placeholder record citations that use underscores in lieu of Appx page numbers—e.g., Webster’s Response to Supplemental Section D Questionnaire, PR 456, at 123, 127, Appx\_\_\_\_, Appx\_\_\_\_\_.
- b. Service of list of documents cited:** Within 7 days after filing its proof brief, the defendant’s counsel will provide the plaintiff with a list of the administrative record documents cited in the defendant’s proof brief for plaintiff to include in the soft appendix.
- c. Preparation and service of the soft appendix:** After the last proof brief is filed, the plaintiff will assemble the soft appendix

following the procedures outlined in ¶ 3.4.b above, except that the parties' proof briefs shall constitute the designation of the record material to include in the soft appendix. The plaintiff will then Bates-number that material following the procedures outlined in ¶ 3.4.c above and serve the Bates-numbered soft appendix on all parties as outlined in ¶ 3.4.d above within 14 days after the last proof brief is filed.

- d. Final briefs:** The parties will have 7 days after the plaintiff's service of the soft appendix to prepare and file final briefs in which the placeholder underscores in the proof briefs are replaced with relevant Appx numbers from the soft appendix—e.g., Webster's Response to Supplemental Section D Questionnaire, PR 456, at 123, 127, Appx1836, Appx1840. The parties may make no changes to the final briefs other than inserting joint appendix page numbers and correcting typographical errors.<sup>9</sup>
- e. Service of cited and contextual Appx pages:** Within 7 days of filing its final brief, the defendant's counsel will provide the plaintiff with a list of the Appx pages cited in the defendant's brief and any

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<sup>9</sup> In filing their final briefs, the parties should use the "Supplemental Brief" event in CM/ECF and should link the final briefs to the corresponding proof briefs.



additional Appx pages reasonably necessary for context. *See also above* note 8 (clarifying these requirements).

**f. Plaintiff’s assembly of the joint appendix:** Within 14 days of the deadline for the defendant to serve the list of Appx pages identified in ¶ 3.5.e above, the plaintiff shall assemble and file the joint appendix per ¶ 3.6 below.

**g. Summary of deadlines under the proof brief method:**

| Date                                                     | Event                                                                                                                                                                                                                                     |
|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (Deadline stated in Rule 56.2 order)                     | Parties meet and confer to select which appendix preparation method they will use. Joint Status Report must state which option was chosen and proposed briefing schedule must incorporate the deadlines prescribed in these instructions. |
| Per scheduling order                                     | Proof briefs filed                                                                                                                                                                                                                        |
| Within 7 days after defendant files its proof brief      | Defendant provides plaintiff with a list of administrative record documents cited in its proof brief                                                                                                                                      |
| Within 14 days after the last proof reply brief is filed | Plaintiff assembles the soft appendix and serves it on all parties                                                                                                                                                                        |
| Within 7 days after soft appendix served                 | All parties prepare and file final briefs                                                                                                                                                                                                 |
| Within 7 days after filing final briefs                  | Defendant provides plaintiff with list of cited Appx pages plus contextual Appx pages                                                                                                                                                     |
| Within 14 days after defendant serves list of Appx pages | Plaintiff assembles and files joint appendix                                                                                                                                                                                              |

**3.6. Assembling the joint appendix:** Within 14 days of the filing of the last reply brief (if the parties use the designation option, *see above* ¶ 3.4.f) or the deadline for the defendant to serve the list of Appx pages identified in ¶ 3.5.e (if the parties use the proof brief method), the plaintiff will assemble and file the joint appendix. To do so, the plaintiff must retrieve the Appx pages of (1) the required materials specified in ¶ 3.3, (2) the specific Appx pages cited by the parties in their briefs, and (3) the additional surrounding pages the parties deem reasonably necessary to provide appropriate context, *see above* ¶¶ 3.4.f and 3.5.e; *see also* Standard Chambers Procedures ¶ 2(C)(3) (directing inclusion of documents of 10 or fewer pages in their entirety and providing guidance on selecting contextual pages). Those pages,<sup>10</sup> together with an appropriate table of contents, will become the joint appendix.

**3.7. Table of contents or index:** The table of contents or index for the joint appendix must contain a column listing the Bates page range for each included document. The Bates range column should be to the right of the other columns listing the document description and the public or confidential record document number from the administrative

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<sup>10</sup> Gaps in the assembled joint appendix's Bates-numbering pagination need not be accounted for. *Cf.* Fed. Cir. R. 30(c)(2) ("Omission of pages need not be noted (e.g., page 102 may be followed by page 230 without stating that pages 103–229 are not reproduced).").

record. In a multiple-volume joint appendix, the full table of contents or index must appear at the beginning of every volume.

| Document description | PR # | CR # | Appx page range |
|----------------------|------|------|-----------------|
|----------------------|------|------|-----------------|

- 3.8. Public and confidential versions of the joint appendix:** The public and confidential versions of the joint appendix shall contain the same material and have identical Appx pagination, except that the public version will be redacted in whole or in part on pages where material is confidential. Where multiple pages are redacted, the plaintiff may insert a single slip sheet indicating the Appx page range of the redaction.
- 3.9. Multiple volumes:** If the joint appendix contains multiple volumes, the ECF description for each volume must include the Bates-page range it contains.
- 3.10. Remand appendix:** In cases that return to the court following remand to the agency, the following additional procedures apply.
- a. Title:** The joint appendix in the post-remand proceedings must be titled “Remand Appendix,” or in the case of successive remands, numbered, e.g., “Second Remand Appendix.”
  - b. Included pages:** Record materials antedating the most recent remand shall not be included unless cited in the parties’ post-remand comments.

- c. Pagination:** Any page repeated from the joint appendix will bear its original Appx pagination. New pages not contained in the original joint appendix will receive page numbers that continue the numerical sequence from the last page of the original Appx page numbering. The process for numbering pages, and then for determining the actual pages to be included in the remand appendix, will follow the instructions set out above.