

Joint Appendix Preparation in § 1581(c) Cases Assigned to Judge Vaden

These rules apply to all cases assigned to Judge Vaden brought under 28 U.S.C. § 1581(c).¹ They supplement the Standard Chambers Procedures provisions governing joint appendix preparation. *See* SCP 2(C).²

Conforming the joint appendix to these rules—modeled on the Federal Circuit’s—will assist Judge Vaden’s Chambers when reviewing the administrative record because the parties’ briefing will cite specific appendix pages rather than an administrative record index with non-continuous and varied numbering formats. It should also make it substantially easier for the parties to prepare the applicable joint appendix for any appeal to the Federal Circuit, *i.e.*, the parties might reuse a joint appendix formatted according to these procedures for the same purpose in the Federal Circuit.

Any documents designated for inclusion in the joint appendix (confidential or public) MUST be included in full. Additionally, the entirety of the confidential record before the agency should be included in the confidential

¹ Unless otherwise ordered, compliance with these instructions is not required in § 1581(c) cases assigned to Judge Vaden prior to February 1, 2021, or in § 1581(c) cases assigned to three-judge panels that include Judge Vaden.

² Insofar as this document conflicts with SCP provisions, this document controls.

joint appendix.

(a) Designating the contents of the joint appendix.

(1) Designation by agreement. The parties must compile a designation of material, consisting of all items in the administrative record from which the appendix will be prepared. To the extent practicable, the parties must attempt to agree on the designation no later than twenty-one (21) days following the filing of the index to the administrative record. Consistent with the procedure often used by regular Federal Circuit practitioners, Judge Vaden highly recommends that the parties simply agree to designate the entire administrative record. Such an agreement would permit the parties to determine the actual contents of the joint appendix as they prepare their briefs.

(2) Party designations. If the parties cannot agree upon a designation of the joint appendix contents, the plaintiff³ must serve a designation on the defendant no later than 35 days following the filing of the index to the administrative record. Within 14 days after service of plaintiff's designation, the defendant may either serve on the plaintiff a counter-designation of additional material (which

³ As used herein, the word "plaintiff" includes plaintiff-intervenor(s) and the word "defendant" includes defendant-intervenor(s). Both words also include the plural such that they refer to multiple aligned parties.

the plaintiff must include) or inform the plaintiff that no additional material need be added.

(3) Designations not to be filed. Regardless of which of the foregoing methods the parties choose, the designations are not to be filed with the Court.

(b) Required contents. In addition to whatever materials the parties designate as described above, the appendix must include the entirety of the administrative agency’s final decision (Federal Register notice or other document pending publication), any supporting documents (“Issues and Decision Memorandum” or similar material explaining the reasons for the decision), and the entirety of the confidential record.

(c) Bates numbering of the designated and required material.

(1) Use of Bates numbers. Once the parties have designated (whether by agreement or otherwise) the portions of the administrative record to be included in the joint appendix, the plaintiff shall assign Bates-numbered pagination to the designated and required material using the precise Bates numbering format the Federal Circuit requires for the appendix in appeals to that court. 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 intervening non-numerical

characters or spaces. Sub-organizational indicators (such as .1 or a) are also not permitted.”⁴ 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, “Appx495,” “Appx000495,” “APPX495,” or “APPX0495” are all acceptable.

- (2) Assignment of page numbers.** Pages in the public record are to bear consecutive page numbers beginning with page 1000 (*i.e.*, “Appx1000”)⁵ and pages in the confidential record are to bear consecutive page numbers beginning with page 80,000 (*i.e.*, “Appx80000”). To summarize:

Page range	Documents to include
Appx1–Appx999	Reserved
Appx1000–Appx79999	Public record materials
Appx80000 and higher	Confidential record materials

⁴ <http://www.cafc.uscourts.gov/sites/default/files/cmecf/ElectronicFilingProcedures.pdf>, Section IV(A)(2)(a).

⁵ These procedures reserve joint appendix page ranges 1–999 for post-remand proceedings and 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).

- (3) **Service of the Bates-numbered materials.** After assigning Bates numbers to the designated and required administrative record material as described above, the plaintiff will serve on all parties either (i) a table reflecting the assigned Bates-page numbers of the designated and required items, or (ii) an electronic or physical compilation of the designated and required material with the assigned Bates-number pagination reflected on each administrative record item.
- (4) **Bates-numbering format on designated and required materials.** If the plaintiff serves an electronic or physical compilation of the designated and required joint appendix items with Bates-numbered pagination, the pagination shall comply with the Federal Circuit's requirements. *See supra* ¶ (c)(1); Fed. Cir. R. 30(c)(2) (requiring text-searchable Bates-numbered pagination to appear centered in the bottom margin of each page and to meet the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) (*e.g.*, 14-point)). The pages of the designated and required material must be numbered by the automated Bates numbering feature of a software program and must be in the format required by the Federal Circuit's electronic filing procedures, as summarized above in

paragraph (c)(1). Other marks must be redacted if necessary to avoid confusion.

(d) Citations in party briefs. The parties' briefing shall cite the Bates numbers assigned to the designated and required administrative record materials. The citations need not include further description of what is being cited.⁶ Citations must be to as limited and precise a range of material as possible consistent with clarity; indiscriminate citations to blocks of administrative record material are prohibited and are grounds for rejection of a brief. Page numbers in citations must follow the same format as the Bates numbers and, as required by the Federal Circuit, should omit "Appx" at the end of the range but should not omit any "repeating leading digits."⁷ For example, a citation to pages 1776 through 1783 would be Appx1776–1783, not Appx1776–83.⁸ Citations to nonconsecutive pages must use the full page number for each—for example, "See Appx1800, Appx1804." Citations should not include line numbers—for

⁶ That is, the citations should not use "PR" and "CR" style references to the administrative record because the purpose is to direct the Court to the appropriate page in the joint appendix, rather than to the administrative record. It is acceptable, but not necessary, to include a description of what a document is (e.g., a document title or similar) prior to the Appx page number should a party wish to do so.

⁷ See generally <http://www.cafc.uscourts.gov/sites/default/files/cmecf/ElectronicFilingProcedures.pdf>, Section IV(A)(2)(b).

⁸ Take note that this requirement differs from the Bluebook convention of retaining only the last two digits of the page number at the end of a range.

example, a citation to a transcript page found on Appx1824 should not refer to Appx1824:18.

(e) Assembling the joint appendix.

(1) Documents that must be included in full. As stated above in paragraph (b), the joint appendix must include the entirety of the administrative agency's final decision (Federal Register notice or other document pending publication), any supporting document(s) ("Issues and Decision Memorandum" or similar material explaining the reasons for the decision), and the entirety of the confidential record. Any other documents designated for inclusion must be included in full.

(2) Inclusion of cited Bates-numbered pages and contextual material. Consistent with the Federal Circuit's requirements, and subject to the exception stated above in paragraph (e)(1), the joint appendix is to include only the pages cited in the parties' briefs, any additional pages from the designated material reasonably necessary to provide context for the cited material, and the beginning pages of any transcript that include the administrative proceeding's caption and the list of counsel. Within seven days of filing its brief, the defendant shall provide the plaintiff with a list of the Bates-numbered pages of the designated or required material cited

in its brief as well as any surrounding pages from the designated material necessary for context.

- (3) Plaintiff's assembly of appendix.** Once the parties have completed briefing, the plaintiff is to assemble the joint appendix by retrieving the required materials and specific administrative record pages cited by the parties and the additional surrounding pages necessary to provide appropriate context as discussed in paragraphs (e)(1) and (2) above. Insofar as the plaintiff has not already done so pursuant to paragraph (c)(4) above, the plaintiff must then add text-searchable Bates numbers to those pages consistent with the page numbers of the designated record material cited in the briefs. In short, the joint appendix—representing only the designated administrative record pages cited in the parties' briefing, the additional pages needed for context, and the agency's decision and accompanying explanation subject to review—will likely constitute a subset of the administrative record materials designated by the parties prior to briefing, and gaps in the 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).”).

(4) **Table of contents or index.** The table of contents or index for the joint appendix is to contain a column listing the Bates page range for each document included in the joint appendix. 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 record.

Document description	PR #	CR #	Appx page range
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(5) **Redacted or confidential material.** In the public joint appendix, confidential material shall be redacted or replaced by slipsheets in the customary manner, whichever is more appropriate and practical for a given page. It is acceptable to substitute a single-page slipsheet for multiple sequential confidential pages as long as the slipsheet clearly states the page range it replaces (e.g., “Appx80654–80660 contain confidential material not feasibly susceptible to redaction”).

- (f) CM/ECF filing of the joint appendix.** When uploading a multi-volume joint appendix to the CM/ECF docket, the ECF description for each attachment must include the Bates-page range for each attachment to assist the Court in finding particular pages (e.g., if the appendix is in two volumes, the second attachment might be “Volume 2, Appx1501–2000 or similar). This requirement does not apply to a single-volume joint appendix. Consistent with this Court’s rules, confidential material must be submitted in one or more volumes separate from the public record filing(s). Volume numbering resets for the confidential portion of the record (e.g., if the confidential portion of the appendix is in two volumes, the second attachment might be “Volume 2, Appx81751–82250” or similar)
- (g) Post-remand appendices.** In preparing the joint appendix for cases returning to this Court after remand to an agency, the parties are to follow the procedures set forth above, with the following qualifications.
- (1) Remand appendix.** In the interest of clarity, the joint appendix filed in court proceedings following an initial agency remand is to be titled “Remand Appendix.” In the event of any subsequent remands to the agency, any additional appendices filed in ensuing post-remand court proceedings would be titled “Second Remand Appendix,” etc.

(2) Material required to be assigned reserved page numbers.

Consistent with Federal Circuit Rule 30(c)(1), this Court's pre-remand opinion and/or order should be assigned page numbers beginning with Appx1 and should be included in the Remand Appendix in its entirety.

(3) Citations to material in the original joint appendix. Insofar

as parties' post-remand comments cite the material in the original joint appendix, that material should be included in the Remand Appendix with its original Bates numbering. Additional administrative material generated during the remand should be assigned Bates numbers in the same manner described above with the pagination beginning with the next available numbers for both the public and confidential records. For example, if the pages from the public record ended with page Appx24601, the pages from the public record on remand would begin with Appx24602.

Any questions concerning these requirements should be directed to Judge Vaden's case manager, Jason Chien, at 212-264-2063.