

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

The following requirements apply to cases assigned to Judge Baker that are brought pursuant to 28 U.S.C. § 1581(c).¹ These requirements supplement the Standard Chambers Procedures provisions governing joint appendix preparation. *See* SCP 2(C).²

Conforming the joint appendix to the requirements set forth below will assist Judge Baker and his law clerks because the parties' briefing will cite the specific appendix pages rather than the administrative record index. It should also substantially reduce the effort necessary to prepare the applicable joint appendix in any ensuing appeal to the Federal Circuit. Judge Baker contemplates that a joint appendix formatted according to these procedures—which replicate the Federal Circuit's requirements—will be reusable for the same purpose on appeal.

Any questions concerning these requirements should be directed to Judge Baker's case manager, Casey Anne Cheevers, at 212-264-1615.

¹ Unless otherwise ordered, compliance with these instructions is not required in § 1581(c) cases assigned to Judge Baker prior to January 1, 2021, nor in § 1581(c) cases assigned to three-judge panels that include Judge Baker. Nor do these instructions apply in any § 1581(c) cases assigned to Judge Baker for which other orders respecting joint appendix preparation are in place.

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

1. Two options for selecting record material for the joint appendix: The parties may choose either of two options for determining the administrative record material from which the joint appendix will be assembled. The first option, explained in ¶ 3 below, is for the parties to agree to designate and Bates-number the record material prior to filing their briefs. The second option, explained in ¶ 4 below, is a two-step system in which the parties initially file “proof briefs” citing the administrative record and later file final briefs after the plaintiff³ assigns Bates-numbered pagination to the record material cited by the parties in their proof briefing. If the parties are unable to agree about which method to select, they shall use the proof brief method described in ¶ 4 below. Either way, the joint status report the parties submit pursuant to Rule 56.2(a) must advise the Court which method the parties will use and the proposed briefing schedule must incorporate the deadlines prescribed below for the chosen method.

2. Required material: Regardless of which option the parties use for determining the record materials from which the joint appendix will be assembled, the joint appendix must include the entirety of the administrative agency’s final decision (Federal Register notice or other document pending publication) and any supporting document(s) or memoranda (e.g., “Issues and

³ As used in these instructions, the words “plaintiff” and “defendant” include plaintiff-intervenors and defendant-intervenors, respectively, unless otherwise specified.

Decision Memorandum”) or related materials created by the agency explaining or bearing on the reasons for the decision. It must also include, again in their entirety, all preliminary agency notices, announcements, memoranda, rulings, determinations, or similar documents bearing on the final decision before the Court, together with any Federal Register notices issued in connection with those materials.

3. Designation option: This option allows the parties to cooperate in advance to determine the universe of record documents (in addition to the required documents specified in ¶ 2 above) the parties’ briefs might cite.

a. Designation by agreement: If the parties opt to designate material in advance, they will compile a list (designation) of all items in the administrative record they intend to cite (or wish to have the option of citing) in their briefs, plus the required material specified in ¶ 2 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. Designated material not to be filed: The designation of material agreed to by the parties is not to be filed with the Court—it is for the parties’ use in preparing their briefing and the joint appendix.

c. Plaintiff’s assembly of the soft appendix contents: After the parties agree upon the record material to be designated, the

plaintiff will assemble the material required by ¶ 2 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 ¶ 2 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.⁴

d. Plaintiff’s Bates-numbering of the soft appendix: After assembling the record material for the soft appendix as described above,

⁴ 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.”

the plaintiff shall consecutively number this material starting with Appx1000⁵ 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) (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) (i.e., 14-point serif)).⁶

e. Service of the soft appendix: The plaintiff shall serve a copy of this Bates-numbered soft appendix on all parties within 14 days after the Court issues the scheduling order.

f. Citation of Appx pages in briefs: If the parties use this designation option, their briefs will cite the relevant Appx page numbers in the soft appendix and need not include additional information about what is being cited. In their public briefs, the parties will bracket

⁵ 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); ¶ 9, *below*.

⁶ 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.” 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. <http://www.ca9.uscourts.gov/sites/default/files/cmecf/ElectronicFilingProcedures.pdf>, Section IV(A)(2)(a).

confidential material in the customary manner. *See* USCIT R. 5(g). Appx citations must follow the same format as the Appx numbers in the soft appendix 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 soft appendix pages Appx1776 through Appx1783 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 example, a citation to a transcript page found on Appx1824 should not refer to Appx1824:18.

g. Service of cited, contextual, and transcript cover

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, any additional Appx pages reasonably necessary for context,⁹

⁷ <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.

⁹ Parties should construe the phrase “reasonably necessary” in this context consistently with the admonition that it is unacceptable to include indiscriminate blocks of record material that are irrelevant to the issues before the Court. *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”).

and the cover Appx page(s) of any cited Appx transcript pages that include the administrative proceeding's caption and the list of counsel.¹⁰

h. 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 pursuant to ¶ 5 below.

i. Summary of deadlines under the designation method:

Date	Event
(Deadline stated in Rule 56.2 letter)	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.
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

¹⁰ See Fed. Cir. R. 30(a)(1)(B) ("Parties must . . . include in the appendix sufficient surrounding record and transcript pages to provide context for a cited excerpt, as well as the transcript cover page identifying participating counsel if included in the record.").

4. **Proof brief option:** The alternative option the parties may employ for determining the appendix contents uses a proof brief system under which 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. **Proof brief placeholder citations:** If the parties use the proof brief option, they will prepare and file their briefs on the proof brief due dates prescribed in the scheduling order using placeholder citations to administrative record material. The placeholder citations are to be descriptive and specific enough to allow the other parties to identify the cited material when they are preparing their own “proof briefs,” and the placeholder citations are to be followed by “placeholder” joint appendix citations that use underscores in lieu of page numbers—e.g., Webster’s Response to Supplemental Section D Questionnaire, PR 456, at 123, Appx____.¹¹ In their public proof briefs, the parties will bracket confidential material in the customary manner. *See* USCIT R. 5(g).

b. **Service of list of documents cited:** Within 7 days after filing its proof brief, the defendant’s counsel will provide the plaintiff

¹¹ Placeholder citations to nonconsecutive pages should be separated by a space for word count purposes—e.g., Webster’s Response to Supplemental Section D Questionnaire, PR 456, at 123, 127, Appx____, Appx_____.

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 reply proof brief (including any plaintiff-intervenor's) is filed with the Court, the plaintiff will assemble the soft appendix following the procedures outlined in ¶ 3.c above, except that the parties' proof briefs shall constitute the designation of the record material to include along with the required material in the soft appendix. The plaintiff will then Bates-number that material following the procedures outlined in ¶ 3.d above and serve the Bates-numbered soft appendix on all parties as outlined in ¶ 3.e above within 14 days after the last proof reply 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 placeholder underscores in the proof briefs are replaced with citations to the relevant Appx numbers in the soft appendix—e.g., Webster's Response to Supplemental Section D Questionnaire, PR 456, at 123, Appx1836.¹² The parties may make no changes to the final briefs other

¹² Parties using the proof brief option should not delete the placeholder citations because doing so would change the briefs' word counts.

than inserting joint appendix page numbers and correcting minor typographical errors.¹³

e. Service of cited, contextual, and transcript cover 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, any additional Appx pages reasonably necessary for context, and the cover Appx page(s) of any cited Appx transcript pages that include the administrative proceeding’s caption and the list of counsel. *See also above* notes 8–9 (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 ¶ 4.e above, the plaintiff shall assemble and file the joint appendix pursuant to ¶ 5 below.

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¹³ 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.

g. Summary of deadlines under the proof brief method:

Date	Event
(Deadline stated in Rule 56.2 letter)	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

5. 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.h) or the deadline for the defendant to serve the list of Appx pages identified in ¶ 4.e (if the parties use the proof brief method, *see above* ¶ 4.e), the plaintiff is to assemble and file the joint appendix. To do so, the plaintiff must retrieve the Appx pages of (1) the required materials specified in ¶ 2, (2) the specific Appx pages cited by the parties in their briefs, (3) the additional surrounding pages

the parties deem reasonably necessary to provide appropriate context, *see above* ¶¶ 3.g and 4.e, and (4) the cover Appx page(s) of any cited Appx transcript pages that include the administrative proceeding’s caption and the list of counsel. Those pages,¹⁴ together with an appropriate table of contents, will become the joint appendix.

6. 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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7. Public and confidential versions of the joint appendix: The public and confidential versions of the joint appendix shall have identical Appx pagination and shall be the same length. Insofar as Appx pages from the confidential record are duplicated in redacted form in the public record, the confidential and public versions shall have the same Appx pagination, with the confidential record version Appx pages placed in the confidential appendix and the

¹⁴ As assembled, the joint appendix—unlike the soft appendix—will primarily contain excerpts from cited documents, 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).”).

public record version pages substituted in their place (and Bates-numbered to match their confidential Appx counterparts) in the public appendix. Insofar as Appx pages from the confidential record do not exist in the public record, Plaintiff shall replace them in the public version of the joint appendix with a slip-sheet for each omitted page bearing the same Bates Appx number as the corresponding confidential record page and the words “Page Redacted” prominently displayed.

8. Multiple volumes (if necessary): If the joint appendix contains multiple volumes, the ECF description for each attachment must include the Bates-page range for each volume to assist the Court in finding particular pages (e.g., if the appendix contains two volumes, the second attachment might be described as “Volume 2, Appx1501–2000” or similar). This requirement does not apply if the appendix consists of a single volume. Consistent with this Court’s rules, the confidential appendix must be submitted in one or more volumes separately from the public appendix. Due to the technical limitations on document size imposed by the CM/ECF system, the confidential appendix volumes’ page ranges need not necessarily correspond to the public volumes’ page ranges, as long as the ECF description for each volume is clear as to the Bates range. (That is, for example, if the largely-blank slipsheets cause the public appendix’s file size to be such that the CM/ECF system will accept it as a single

volume despite the confidential appendix needing two volumes, it is completely acceptable for the public appendix to contain just the single volume.)

9. Joint appendix on remand. In cases that return to the Court following remand to the agency, the Court will issue an order governing joint appendix preparation.