

Title: Environmental Project File and Considerations for Administrative Records
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SOP No.: 1
Issued by the Office Planning and Environment (TPE)

1. Purpose

This document provides guidance to ensure that FTA has records of all written materials, electronic or hard copy, that pertain to FTA’s environmental review process for a project.

An environmental project file (project file) should be part of FTA’s management of the environmental review process. The project file may be needed when the DOT Office of the Inspector General or the Government Accountability Office conducts a review of the FTA grant process. More importantly, the project file serves as the basis for developing an administrative record to document FTA decisions and is crucial when litigation occurs.

2. Applicability/Scope

FTA Regional staff should start compiling a project file when a project sponsor signals its intent to seek funding from FTA. Best practice is to keep a comprehensive collection of files in a shared library (e.g., SharePoint, network drive, or contractor-initiated site). Shared network drives can be used but are not ideal due to lack of version control. Additionally, some FTP sites are used for file transfer only. If using a site managed by a contractor, the project sponsor should have an agreement in place where the contractor agrees to collect and keep records in accordance with FTA policy. The Region should retain the project file past the completion of the environmental review process, until the grant is closed out and the project is in operation. The Region should follow established FTA policies and practices for records management of all written materials—electronic and hard copy. It is preferable to maintain electronic files over hard copy.

There are instances, typically if there is litigation or anticipation of litigation, when FTA Regional Counsel or FTA Headquarters Counsel will direct staff to compile a more comprehensive record of the project, called the administrative record. The administrative record is a compilation of all the written documents that FTA relied upon when it made its National Environmental Policy Act (NEPA) determination. The administrative record must be able to satisfy a Federal court that:

- The FTA decisionmaker (the Regional Administrator or designee) was not arbitrary or capricious in its decisionmaking;
- The FTA decisionmaker relied on documentation in the administrative record to support its determination. In other words, the Regional Administrator considered relevant data and information, and objectively evaluated all the information before him/her before issuing a determination in accordance with the applicable laws; and
- The final agency action is supported by the administrative record.

Issuance of a categorical exclusion (CE), a finding of no significant impact (FONSI), a record of decision (ROD), or a final environmental impact statement (FEIS)/ROD is a “final agency action” per the Administrative Procedure Act (APA), 5 U.S.C. §§ 551-9 and 701-6. A person who wants to challenge a final agency action may sue for judicial review per APA Section 706(2)(A). Any judicial review will rely

primarily on an agency's administrative record. An agency's action will be upheld unless the court finds it "arbitrary, capricious, and an abuse of discretion, or otherwise not in accordance with the law" (APA Section 706(2)(A)).

3. Responsibilities

FTA Regional staff responsible for an environmental review will maintain the project file. For some projects, FTA Headquarters staff may maintain the project file in coordination with Regional staff. FTA Regional Counsel and FTA Headquarters Counsel are responsible for determining when to compile an administrative record for a project. Project sponsors or their consultants should also maintain a project file during the environmental review process. The collection of files should be comprehensive, and not limited to the working documents that FTA is actively reviewing.

4. Standard Procedures

4.1. Designate responsibility. Management at the FTA Regional Office will designate the FTA staff member responsible for retaining the project file.

4.2. Communicate with the project sponsor. At the initiation of environmental review process, Regional staff should discuss with the project sponsor the process for maintaining the project file. The Region may advise the project sponsor to maintain its own file similar to FTA's; this may include items not included in FTA's file, such as minutes of internal meetings.

4.3. Material to include in the project file. The list below includes documents that should reside in the project file. Documents in the project file should relate directly to the environmental review process, should identify the persons involved (e.g., include cover letters indicating "to" and "from"), and should be dated. Generally, deliberative material (e.g., draft project plans presented during meetings) should be retained, as appropriate, until the project is constructed and in operation.

- **Conflict-of-interest forms.** Include the disclosure forms signed by the project sponsor's consulting firms, attesting to the lack of a NEPA conflict of interest.
- **Correspondence among FTA staff.** Correspondence (emails, transcribed phone conversations, letters, etc.) between staff can be useful to show that FTA considered an issue before making a decision. General email conversations, in particular those concerning particularly complex issues, must be retained.
- **Correspondence with agencies and stakeholders.** Correspondence (including memos, letters, and significant emails) to and from resource agencies and stakeholders should be included in the project file.
- **Environmental documents and decision documents.** The project file should always include the environmental documents themselves (e.g., draft EIS (DEIS), ROD or combined FEIS/ROD, environmental assessment (EA), finding of no significant impact (FONSI), and/or the CE substantiation and their supporting materials (e.g., appendices and technical reports). In addition, the project file should include re-evaluations and supplemental documents. If "working drafts" contain information pertinent to decision-making they should also be included in the project file, but clearly labeled as "working", "internal", or "administrative" draft.

- **Meeting agendas, minutes, and supporting materials.** For larger projects, the project sponsor or consultant often prepares these products. For smaller projects, FTA staff should note when meetings or conversations took place with resource agencies.
- **Public notices and supporting materials.** Copies of notices issued by FTA, or notices issued by the project sponsor on behalf of FTA, should include an indication of the method(s) of distribution, and project materials distributed at public meetings.
- **Technical reports.** Technical reports (or memos) can be an efficient means of compiling supporting data for major topics under review through the environmental review process and should be retained in the project file.
- **Telephone memos.** A telephone conversation should be documented if the conversation yields substantive information that will not be reproduced in writing. We expect this to occur rarely, as most such conversations would be documented in writing.

4.4. Attorney-client and internal files. Certain files are used for internal deliberation within FTA/DOT or for discussion of legal issues between attorneys or between an attorney and a client. Those types of files and communications should be labeled accordingly, when possible.

4.5. Paper records. In an effort to reduce paper use, retention of paper records should be limited to documents essential to FTA's decisionmaking; however, paper records should include documents having original signatures and important handwritten notations. The electronic file folder should contain copies of all items included in the paper file.

4.6. Retention of files. Unless otherwise directed, the Regional Office taking the final agency action should retain the project file until the project is open for revenue service and all grants providing funds for the project have been closed out. Project files may be stored in an archive, as appropriate.

5. References

- [Maintaining a Project File and Preparing an Administrative Record for NEPA Study](#) (AASHTO, 2006)
- Records Management by Federal Agencies, [41 U.S.C. §§ 3101-3107](#)
- FTA Order 1324.1D, Records Management Guidelines (2017), internal – FTA only
- [National Archives and Records Administration guidelines](#)
- [Guidance to Federal Agencies on Compiling the Administrative Record](#) (DOJ, 1999)

APPROVAL:



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