

AASHTO PRACTITIONER'S HANDBOOK

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MAINTAINING A PROJECT FILE AND PREPARING AN ADMINISTRATIVE RECORD FOR A NEPA STUDY

This Handbook provides advice on maintaining the project file during the National Environmental Policy Act (NEPA) process and preparing the administrative record if decisions made in the NEPA process are challenged in a lawsuit.

Issues covered in this Handbook include:

- Maintaining accurate project files during the NEPA process
- Using the NEPA process to build a strong administrative record
- Identifying potential administrative record documents in project files
- Making judgment calls about what documents to include in the record
- Submitting the administrative record to the court

The Practitioner's Handbooks are produced by the Center for Environmental Excellence by AASHTO. The Handbooks provide practical advice on a range of environmental issues that arise during the planning, development, and operation of transportation projects.

The Handbooks are primarily intended for use by project managers and others who are responsible for coordinating compliance with a wide range of regulatory requirements. With their needs in mind, each Handbook includes:

- key issues to consider;
- a background briefing;
- practical tips for achieving compliance; and
- a list of reference materials.

In addition, key regulations, guidance materials, and sample documents for each Handbook are posted on the Center's web site at <http://environment.transportation.org>



Center for Environmental Excellence by AASHTO



American Association of State Highway and Transportation Officials

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Overview



This Practitioner's Handbook provides advice for maintaining the project file during the National Environmental Policy Act (NEPA) process and for compiling the administrative record if and when a lawsuit is filed challenging the decisions made in the NEPA process.¹ The Handbook is intended primarily for projects in which the Federal lead agency is the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), or the Federal Railroad Administration (FRA), and the project sponsor is a state department of transportation (DOT), public transit agency, or other state or local public agency.

Maintaining an accurate and up-to-date project file is an important task in any NEPA study, regardless of whether litigation is anticipated. A well-maintained project file reduces inefficiency and duplication of effort, while also reducing the risk of overlooking information. It also enables an agency to respond promptly to document requests under the Freedom of Information Act (FOIA) and similar state public records laws.

When a lawsuit is filed challenging a Federal agency's decision, the agency must compile and submit its administrative record, which consists of all documents and materials that the agency "directly or indirectly" considered in making its decision. The court is required to base its review of the agency's decision on the information contained in the administrative record. A strong and complete record greatly enhances an agency's ability to defend its decision; a weak or incomplete record negatively affects the defensibility of the agency's decision.

Legally, the responsibility for compiling the administrative record rests with the Federal agency whose decision has been challenged.² If two or more Federal agencies granted approvals for the project, each of those agencies could be named as a defendant, and each agency would then need to prepare its own administrative record. The project sponsor typically works collaboratively with the Federal lead agency to prepare the record. When a state DOT has assumed the responsibilities of FHWA or another U.S. Department of Transportation (U.S. DOT) agency under an assignment program, the state DOT essentially is the Federal agency for purposes of the litigation and therefore is directly responsible for preparing the administrative record.

Since the NEPA process is often lengthy and complex, it is not uncommon for the administrative record in a NEPA case to include tens (or even hundreds) of thousands of pages. For that reason, compiling the administrative record requires a substantial effort by the agency's program staff and attorneys. The best way to expedite the preparation of the administrative record is to maintain an accurate and up-to-date project file throughout the NEPA process.

In this Handbook, the term "project file" refers to the files maintained by the project team during the NEPA process, while the term "administrative record" refers to the documents that are actually submitted by an agency to the court in a NEPA lawsuit.

Background Briefing

Maintaining a Project File

The agencies involved in preparing a NEPA study generally have wide discretion to determine how to manage their project files, as long as the procedures satisfy the agency's standard record-keeping requirements. Federal and state public-record laws may also have a bearing on the development of project filing procedures.

Records Retention and Disposal Requirements. Most government agencies have requirements regarding the management of agency records. These requirements address issues such as the types of documents that must be filed and the process for disposing of old records. For example, FHWA's requirements are established by an agency order.³ State DOTs generally have their own requirements, as do most other Federal, state, and local governments. These types of requirements may affect the record-keeping procedures that are used in the NEPA process.

¹ The term "NEPA process" is used in this handbook to refer to a process that includes compliance with NEPA and other laws (not just NEPA itself).

² The term "Federal lead agency" is used in this handbook to refer to the Federal agency or agencies that act as lead or co-lead agencies in preparing a NEPA document. It also includes states that have assumed U.S. DOT responsibilities under a NEPA assignment program (23 USC 326 or 327).

³ FHWA Order 1324.1B, "FHWA Record Management" (July 29, 2013).

FOIA and Other Public Record Laws. FOIA and similar state laws require Federal and state agencies, respectively, to release a wide range of public records upon request. These laws may result in the release of documents well beyond those that would typically be included in an administrative record. For example, a request under a state public records law may result in disclosure of internal state agency documents that would not be part of the Federal agency's administrative record. A public records request can be received at any time during the NEPA process or afterward. Maintaining an orderly project file throughout the NEPA process facilitates prompt compliance with these public records laws.

Preparing the Administrative Record for Litigation

The requirement to prepare an administrative record exists under a Federal law, the Administrative Procedure Act (APA), which empowers courts to review Federal agencies' decisions. The courts have provided only general principles for determining what an administrative record must contain. This section provides a brief overview of the legal principles established in case law and through agency practice. Individual agencies may have more specific guidance documents and best practices.

Requirement to Prepare. Section 706 of the APA directs Federal courts evaluating the final decision of a Federal agency action to "review the whole record or those parts of it cited by a party."⁴ A Federal agency whose decision has been challenged in court under the APA must compile an administrative record and provide it to the court and to the opposing parties in the lawsuit.

Contents of Record. The general rule, as established by case law, is that the administrative record should contain "all documents and materials directly or indirectly considered by the agency" in making its decision. This is a broad and subjective standard. Nonetheless, it is well-settled that the record may include supporting documents located outside the files of the lead agency itself (e.g., documents maintained by the project sponsor on behalf of the Federal agency).

Deciding What to Include. The responsibility for preparing the administrative record rests with the Federal agency whose decision is being challenged in litigation. Therefore, judgments about what documents to include in the record are made by that Federal agency. When preparing the administrative record for the court, the Federal agency typically consults with its own attorneys, the attorneys of any other Federal agency involved in the litigation, and the attorneys at the U.S. Department of Justice who are handling the case. Attorneys for the project sponsor normally are also involved in preparing the record.

Disputes Over Completeness of the Record. In litigation, plaintiffs can dispute the completeness of the agency's record. For example, plaintiffs may contend that the agency omitted documents that tended to cast its decision in a negative light. Such disputes are ultimately decided by the court if the parties are unable to reach an agreement. If the court concludes that the agency showed bad faith in compiling the record, the court can allow discovery—that is, an opportunity for the plaintiffs to take sworn testimony from agency personnel or others involved in the process, such as the project sponsor or consultants. By compiling the record in a systematic manner and documenting the process used to compile the record, the Federal agency can help to avoid the need for discovery, which can be time-consuming, costly, and unpredictable.

Supplementing the Record. Any party to the litigation may request the court's permission to "supplement the record" with additional documents. It is not uncommon for those challenging a Federal agency's decision to make this type of request—for example, by seeking to introduce new evidence or testimony from expert witnesses. Federal agencies typically object to this type of request and urge courts to base their review on the administrative record compiled by the agency. Requests to supplement the record are generally disfavored by the courts, but courts may allow supplementation under some circumstances—for example, if there are unexplained gaps in the agency's own record. Because Federal agencies generally oppose plaintiffs' requests to supplement the record, Federal agencies themselves also are reluctant to ask courts to consider documents outside the administrative record.

Adding Inadvertently Omitted or Incomplete Documents. After the agency has submitted the record, the agency may identify additional documents that were inadvertently omitted (in whole or in part) when the record was compiled. When this occurs, the agency normally has an opportunity to submit the additional documents or parts of documents to the court and the other parties, along with an updated index and an explanation of the inadvertent omission. As long as these inadvertent omissions are identified early and are limited in number, they are unlikely to raise concerns. However, repeated requests to submit inadvertently omitted documents could call into question the completeness of the record as a whole. For this reason, it is in the agency's interest to file a complete record in the first instance.

⁴ 5 USC 706.

Cost of the Record. The Federal agency, not the plaintiffs who filed the lawsuit, is responsible for the cost of preparing the record. If the plaintiffs request additional copies of the record or seek paper copies in lieu of an electronic one, they may be asked to pay for those copies. Costs incurred by the project sponsor in helping to prepare the administrative record may be reimbursable by the Federal agency as an eligible project cost.

Multiple Federal Agency Records. For projects that require the approval of two or more Federal agencies, each Federal agency's decision could be challenged in court. For example, many transportation projects require approval of both a U.S. DOT agency and the U.S. Army Corps of Engineers; each agency's approval is a separate action, and each agency's decision could be challenged in court. If a lawsuit is filed challenging both agencies' decisions, each agency is responsible for preparing its own administrative record. There may, of course, be substantial overlap between the agencies' administrative records. The filing of a joint record by two or more agencies is allowed and is often the most efficient approach, but in some cases each agency chooses to file a separate record.

Timing of Record Preparation. The deadline for filing the administrative record is set by the court after the litigation begins. The litigation begins with the filing of a complaint, and Federal defendants normally have 60 days or longer to file an answer to the complaint. After the answer is filed, the court typically will set a schedule for the case. In most cases, the court will allow the agencies several months or longer to submit the record unless there are time-sensitive issues. The record must be filed before the court can issue a final decision on the merits of the case. To avoid delays, agencies that anticipate litigation often begin work on preparing the administrative record even before litigation is actually filed.

Key Issues to Consider

Maintaining a Project File

- Is there a central project file, and if so, who is responsible for maintaining it?
- If separate files are being maintained by the U.S. DOT agency, the project sponsor, and/or consultants, is there a common understanding about what documents will be kept in each file?
- Is there a written filing protocol? If so, is it being followed consistently? Does it need to be updated?
- What method is being used for preserving project-related emails?
- Where will electronic project documents and data be stored?
- Who will identify and retain privileged materials? Will privileged materials be segregated?
- How are oversize documents being filed (e.g., plans, displays, and maps)?
- How are attachments to correspondence being preserved (including those transmitted electronically)?
- What safeguards are in place to ensure that proper filing is taking place (e.g., periodic audits)?
- Do the lead agencies have specific record-retention requirements that must be met?

Preparing the Administrative Record for Litigation

- What is the Federal action or decision for which the administrative record is being compiled?
- What is the time period during which the decision-making process took place?
- What procedures were used for filing documents during the study?
- Where are the study documents located? In particular, is there a central project file? And if so, are there additional repositories of documents outside the main project files?
- Are there any important documents that are stored only in paper format? If so, where are they?
- Is there a central repository of project-related e-mails? If not, how will e-mails be located and compiled?
- Are there any known gaps or omissions in the record-keeping? For example, was there a period of time during which records were not well-maintained? Were records lost for any reason?
- Will the record be incorporated into a litigation database? If so, what database software will be used? If not, what system will be used in lieu of a litigation database as the means of preparing the administrative record?
- Does the court have any specific requirements with respect to the filing of administrative records?
- If two or more Federal agencies' decisions have been challenged in the same case, what coordination is needed regarding the preparation of the administrative records for those agencies?

Practical Tips

1 | Maintaining Accurate Project Files During the NEPA Process

The key to compiling a complete administrative record, with minimum delay, is effective record-keeping during the NEPA process. However, given the sheer volume of material generated within a NEPA project team, it can be challenging to determine which documents need to be filed, and the task of maintaining an up-to-date filing system for a large project is likely to be time-consuming. The following actions can facilitate the maintenance of the project file during the NEPA process.

Establishing Record-Keeping Responsibilities. It is important to establish clear responsibilities for record-keeping within the project team. For example, the NEPA consultant can be tasked with maintaining a project file that can later provide the basis for the Federal agency's administrative record. If that approach is used, it is helpful to distinguish the consultant's own project files—which encompass a great deal of internal consultant work product that may not need to be included in the record—from the project file that the consultant is maintaining on behalf of the Federal agency.

Filing Protocols. Regardless of who is responsible for filing, it is useful to establish a written filing protocol that designates the types of documents that should be filed and where they should be filed, as well as the information that should be included in an index or database identifying the filed documents. In developing the protocol, consider issues such as (1) how to handle drafts and e-mails; (2) how to handle attorney–client privileged or other confidential items; and (3) how to ensure that final versions of project documents are preserved in a distinct, readily identifiable location.

Creating and Preserving “File Copies” of Documents. When paper files were the norm, it was common to make a photocopy of a final document—for example, a signed letter—and send that paper copy to a central project file. With electronic filing systems, multiple versions of the same document may be saved to the same folder, and it may not be clear which (if any) of those versions is the final one. In addition, the electronic file may include only the unsigned version of a letter, without any copy being kept of the final, signed document. These problems can be avoided by setting up an electronic filing system in which final, complete versions of project documents are saved in standard format (e.g., Adobe PDF) and are segregated from draft documents. If paper files are maintained, clean originals should be preserved with their attachments.

Filing or Archiving E-mails. Maintaining a filing system that captures project-related e-mails can be a major challenge, given the number of e-mails generated and the involvement of project team members working at different agencies and companies. No system is perfect; some useful methods for retaining important emails include:

- Encourage key project team members to maintain a separate folder in their inboxes for important project-related e-mails (both sent and received); periodically copy e-mails from that folder to a separate archive folder.
- Encourage project team members to include a specific person—for example, a project manager—as a “cc” or “bcc” on all important email messages.
- Ensure that, when a key team member leaves the project, all of that person's project-related e-mails are archived and sent to the project file so that they are available when the administrative record is prepared.

Preserving Copies of Public-Record Requests and Responses. Agencies involved in preparing NEPA documents often receive requests for project-related documents under both FOIA and state public-record laws. Often, these requests are received and handled by separate offices within the agency, outside the NEPA project team. While public-record requests and responses are not automatically included in the administrative record, there are circumstances where they should be included. (See Practical Tips, Part 4, “Deciding What Documents to Include in the Administrative Record.”) Therefore, the filing system should ensure that copies of public-record requests and responses—including the documents transmitted as part of the response—are preserved even after the NEPA process is completed, so that they can be reviewed when the administrative record is prepared.

Periodic Audits. Periodic audits can help to ensure that the filing protocol is being followed. The audits should include spot checks for key documents. For example, project management staff can develop a short list of important documents that clearly will need to be included in the record and then check to see whether those documents have actually been included in the file.

Training in Good Communication Practices. Project team members should receive training on good communication practices, and if possible, the training should occur before the NEPA process begins. This training should provide all team members with a basic understanding of what types of documents are included in an administrative record and what types of documents could be disclosed in response to public record requests. The training also should remind the team members of good practices that should be followed for all written communications, even for internal communications. It is especially important to provide reminders regarding the proper use of e-mail communication, including:

- maintaining a professional tone;
- avoiding speculation;
- keeping personal and work-related communications separate; and
- being mindful of privilege and confidentiality considerations.

2 | Using the NEPA Process to Build a Strong Administrative Record

The administrative record for a NEPA study will always include the NEPA documents themselves—for example, the draft environmental impact statement (DEIS), final environmental impact statement (FEIS), and record of decision (ROD), including any appendices to those documents. It goes without saying that the thoroughness and quality of these documents will play a vital role in determining the outcome of the litigation.

The following additional types of documents can help to complement the NEPA documents by providing supporting information and explaining how the NEPA documents were developed:

Technical Reports. Technical reports are among the most important documents in any administrative record. If there is a challenge to the adequacy of the analysis in the main body of the NEPA document, the agency will often turn to the technical report for an explanation of the relevant data and methodology used in that analysis, as well as a detailed breakdown of the results of the analysis. Therefore, special attention should be given to preparing thorough, high-quality technical reports, especially on issues that could become the subject of litigation.

Meeting Summaries. Meeting summaries can be used to document coordination with resource agencies and stakeholders. It is beneficial to establish a consistent practice of preparing meeting summaries, including a standard format that specifies the types of information to be included. It is important to review meeting summaries for accuracy and to include copies of meeting handouts and sign-in sheets along with the meeting summary. Generally, only the final versions of meeting summaries need to be included in the record. To distinguish the final versions from the drafts, it is helpful to convert the final versions to PDF format.

Correspondence with Agencies and Stakeholders. The record will be strengthened if the lead agencies respond substantively to concerns raised in correspondence (including e-mail) from resource agencies and stakeholders. In particular, great care should be taken in responding to correspondence that expresses significant disagreement with the methodologies, assumptions, findings, or other aspects of the analysis in the NEPA document itself, or that specifically raises concerns about compliance with legal requirements. It is a good practice to respond clearly and systematically to the concerns raised. One effective approach is to itemize the issues raised and address them point-by-point in the response.

File Memos. In addition to the documents described above, it is good practice to prepare memoranda that capture important information that is considered during the NEPA process but may not be reflected (or may be difficult to locate) in the NEPA document or technical reports. Memoranda to the project file can be more succinct and potentially more effective than e-mails and other informal communications. They can be used for a variety of purposes, including:

- **To Document Decisions.** File memos can be used to document the rationale for decisions made at key point during the study—for example, decisions about which methodology to use for analyzing impacts on environmental resources. These memoranda are especially beneficial when there are divergent views within the project team, or disagreements between the project team and outside agencies or stakeholders, or the lead agency changed its position on an important issue. These memoranda can help to ensure that the record includes a clear, well-documented explanation of the reasons for the decision.
- **To Document Information Received.** File memos can be used to record information that was provided by telephone or in meetings—for example, data provided in a telephone conversation. File memos also can be used to compile or synthesize information that the team collected from multiple sources, or to explain information that would not otherwise be understandable to a layperson (e.g., to explain information shown on a map or plan sheet).
- **To Document Public and Agency Outreach.** File memos can be used to document interactions with the public and other agencies. For example, a file memo could be used to document a phone call from a citizen or a conversation with an agency official that took place following a meeting. The value of this type of memo lies not only in the substantive information that is recorded in the memo, but also in documenting the fact that the interaction occurred.

When a file memo is prepared, it should include the author and date, and the memo should be saved in a manner that makes clear it is a final document and not just a working draft. As with correspondence and meeting summaries, a good practice is to save the final version of the file memo in PDF format in the electronic project file so that the final version can be readily identified when the record is compiled. In addition, to the extent possible, file memos should be prepared close to the time of the events or decisions that are being documented. File memos prepared “in real time” are likely to be more accurate than file memos prepared months or years afterward.

Social Media. Project team members responsible for social media should be trained in proper usage of social media in the context of a NEPA study. For example, one good practice is to use social media as a tool for building awareness and answering basic questions regarding issues such as meeting times and locations, while using methods such as letters or e-mail correspondence to address substantive questions about the study itself. In addition, it is prudent to include information on social media platforms regarding the methods for submitting comments on the NEPA document, so that users of social media do not mistakenly assume that a social media post would be considered a comment on the NEPA document. Lastly, while social media communications are not necessarily included in the administrative record, it is advisable to archive social media communications in some way so that they can be reviewed when the record is prepared.

3 | Reviewing Project Files and Compiling the Administrative Record

Even when project files have been well maintained, preparing the administrative record is likely to be time-consuming. A methodical approach, combined with the effective use of technology, can help to minimize the time and cost of compiling the record, while also assuring that the record submitted to the court is complete.

General Considerations

- The process for compiling the record is itself important and should be documented. A systematic, well-documented process for compiling the record helps to assure the court that the record submitted is accurate and complete.
- The process for compiling the record should be designed to minimize the need for multiple parties to handle original documents. Every effort should be made to maintain the integrity of originals (paper and electronic), which minimizes the risk of documents being lost, altered, or damaged.
- The process for compiling the record should focus on avoiding both over-inclusiveness and under-inclusiveness. Over-inclusiveness occurs if the record is cluttered with extraneous items that are not needed for the court's review. Under-inclusiveness occurs if the record omits substantive documents that were directly or indirectly considered by the agency in reaching its decision.
- Administrative record documents are normally submitted in electronic format, rather than being submitted on paper. In most cases, project files themselves are maintained primarily in electronic format, which facilitates compilation of the record. In some cases, especially for projects with a long history, some documents may exist only in paper format. These paper documents normally need to be converted to an electronic format for inclusion in the record.
- If the decision is made to scan paper documents, electronic images must be legible and adequately reflect the information contained in the hard-copy originals. Special consideration may be needed for color documents, two-sided documents, oversize documents, documents with attachments, and damaged documents. If electronic scanning is used, the originals should be maintained in a secure location for the duration of the litigation.

Suggested Steps for Preparing an Administrative Record in Electronic Format

The following step-by-step process provides one possible approach to compiling the administrative record. This process assumes that the record is produced in an electronic format.

Step 1: Creating the AR Team. The preparation of an administrative record can be an intense, time-consuming process. The process often takes several months; for complex projects, the process may take more than a year. To carry out this process effectively, it is important to have a dedicated team with the right types of expertise and experience, including individuals who collectively possess knowledge of:

- the project history, including any important events that occurred prior to the initiation of the NEPA process;
- the NEPA document itself, including technical reports and responses to comments;
- the key participants and key issues involved in the NEPA process at all stages;
- the filing systems used during the NEPA process, including any differences among filing systems used at different stages of the NEPA process; and
- legal expertise regarding the types of documents that need to be included in an administrative record.

Step 2: Developing Document Collection Guidelines and a Document Checklist. Before beginning the document collection, it is important to have at least a general understanding of the universe of documents that the Federal lead agency intends to include in its record. The AR team should solicit advice from the Federal agency's legal counsel regarding the agency's overall approach to deciding what should be included in an administrative record. If the agency has written guidance, the AR team should review the guidance and identify any issues where clarification is needed. Based on these efforts, the AR team should

develop document collection guidelines that identify the types of documents that will need to be collected.⁵ In addition, it is helpful to develop a checklist of specific documents that are likely to be needed for the record, with input from project team members who have first-hand knowledge of the documents. The guidelines and checklist can be refined as more is learned about the documents that were generated, where they are located, and how they were used.

Step 3: Identifying Document Repositories. In an ideal world, an administrative record would be compiled from a single collection of project documents located in a well-organized project file. In reality, an administrative record typically is compiled from documents located in multiple repositories. For example, electronic documents may be in the custody of several agencies and consultants and may be stored on various computer networks, on individual computers, and on stand-alone storage devices. In addition, paper documents may have been archived in off-site locations. An important task at the outset is to identify the locations where documents are stored and the types of documents stored at each location. This information can be gathered by reviewing document filing protocols, reviewing file inventory reports or indices, and interviewing project team members. Interviews are especially important for identifying storage locations outside the main filing system.

Step 4: Collecting the Documents. Once document repositories have been identified, the collection of documents can begin. For most projects, the project file is maintained primarily in electronic format rather than on paper. Therefore, collecting documents typically involves making electronic copies of documents that are already in an electronic format. Important issues to consider when making electronic copies include:

- keeping a record of the location from which the document was collected—e.g., which server, and ideally the file-path location on that server (i.e., the electronic ‘folder’ in which it was located);
- preserving the metadata that is included in the electronic document; and
- avoiding any alteration to the content of the electronic document.

If paper documents are collected, they will normally be converted to electronic format. If using a vendor to scan and convert documents, clear instructions must be provided to the vendor about the specifications for scanning paper documents. For example, the vendor will need instructions about how to treat attachments; how to handle oversize or bound documents; how to treat damaged originals; and how to name the new electronic document files. In addition, it is helpful for the project team itself to prepare the paper documents prior to scanning by removing obvious duplicates or irrelevant documents, clipping loose pages together, and identifying documents that should be scanned in color.

Keep in mind the importance of quality-control at this stage. If documents are scanned incorrectly, the record may include an incomplete or illegible version of a key document. If two separate documents are scanned as one, the second document may appear to be missing from the record because it is not listed on the index. And if attachments are inadvertently separated from the parent document, then the parent document may appear to be missing its attachment. Attention to detail at this stage is critical to ensure that paper documents are accurately captured as electronic images in the record.

Step 5: Selecting the Litigation Database. For any project with a large number of documents, it is beneficial to create a litigation database.⁶ For small projects (e.g., with fewer than 1,000 documents), it may be more cost-effective to prepare the administrative record without using a litigation database.⁷ Where a litigation database is used, it typically will provide robust capabilities, including the ability to:

- store hundreds of thousands (or even millions) of documents;
- run full-text searches across all documents, including Boolean searches (e.g., “word X within 5 words of word Y”);
- store both the original version and a scanned image of each document;
- customize the database fields that are used to identify and describe each document;
- identify and remove exact duplicates; and
- allow multiple users at different locations to access the database simultaneously via a secure, web-based platform.

⁵ Keep in mind that, if other parties challenge the adequacy of the record in litigation, the document collection guidelines could be submitted to the court as evidence of the agency’s approach to preparing the record. Therefore, it is important to ensure that the guidelines are written clearly and are updated as necessary to reflect any important changes in the agency’s approach to document collection.

⁶ A litigation database is a type of software that is designed specifically to manage the review of a high volume of documents in litigation. Examples of widely used litigation database software include Concordance, Relativity, RingTail, and Summation. Experienced legal counsel can provide advice regarding the pros and cons of the various litigation database options.

⁷ A simple method for developing an administrative record without a database is to save all documents as PDFs; give the PDFs simple file names using a standard convention—e.g., a number or date; create an index in Excel or other spreadsheet software, listing all documents by file-name and date; and use Adobe or similar software to apply page numbers electronically to each page of each document in the record.

Step 6: Loading Documents into the Litigation Database. The initial collection may capture a large number of duplicates, especially when electronic documents are collected from multiple locations. In addition, the initial collection may capture a large number of documents that have little or no relevance to the subject matter of the litigation. Therefore, it often is beneficial for the project team to conduct an initial assessment to determine whether any of the collected documents should be excluded prior to loading into the database. This step can help to avoid the potentially costly step of loading an extreme number of documents into the database. Once documents are loaded into the database, they are typically converted to an image file (e.g., “TIFF” format), which provides a static image for review and ultimately for production to the court. The electronic original file (e.g., Word or Excel format) typically is preserved in the database as well.⁸

Step 7: Indexing the Documents. This step involves the creation of a database entry linked to each document. For cases involving a large number of documents, this task may be accomplished by the use of a vendor.⁹ The cost of indexing will depend on the level of detail; the more information captured in the database about each document, the more time-consuming and expensive the task will be. The efficiency and effectiveness of the indexing will depend not only on the quality of the vendor, but also on the clarity and the simplicity of the coding instructions provided by the AR team. Also, keep in mind that while the index must be accurate, it need not be detailed; a basic description of each document normally will suffice. For example, a typical index entry would include the sender, recipient, date, and document description or title; in some cases, the document type (e.g., letter, report, memo, etc.) also is included.

Step 8: Reviewing the Documents. At this stage, the AR team (including legal counsel) conducts an in-depth review of the project documents in the litigation database with the goal of ensuring that:

- all relevant documents are included;
- document descriptions (for the index) are accurate;
- any duplicative or extraneous materials are removed; and
- any privileged documents are appropriately redacted or removed.

This is the step where most of the difficult judgment calls will be made about which documents to include or exclude. For complex projects, this step often is the most time-consuming, and often proceeds iteratively—with multiple rounds of review, each one successively narrowing the range of unresolved issues. If gaps in the collection are identified in the review, additional document collection may occur during this stage. (See Practical Tips, Part 4, “Deciding What Documents to Include in the Administrative Record.”)

Step 9: Quality Control: Once the review is largely complete, the AR team should set aside time for a quality-control step prior to final production of the record. This stage should involve checking for issues such as: errors or inconsistencies in document descriptions, missing pages or attachments, poor quality images (e.g., documents that were not properly scanned), and any important documents that were inadvertently omitted. One way to check for completeness is to develop a checklist of key documents, and then use that checklist to ensure that all of those documents are actually included in the record.

Step 10: Final Production. The final step in the process involves production of the administrative record and transmittal of the record to the other parties and the court. Typically, the record is provided to the court and other parties solely in electronic format on DVDs, and typically consists of a series of PDF files together with an index that lists each document with a number that corresponds to the file name of the relevant PDF file. In some cases, it also may be necessary to provide all or portions of the record in paper format. (See Practical Tips, Part 5, “Submitting the Administrative Record to the Court.”)

4 | Deciding What Documents to Include in the Administrative Record

Even if project files have been well-maintained throughout the course of the NEPA process, the Federal agency compiling the administrative record will still face a multitude of judgment calls. The following guidelines provide a framework for making those judgment calls. As noted earlier, judgments about specific documents will require advice from legal counsel.

General Considerations

- The administrative record should include only documents that were in existence on the date of the decision (e.g., the date of the Federal agency’s Record of Decision or other approval). Documents created after the fact to justify or explain the decision generally cannot be included in the record.

⁸ The litigation database is a tool for creating the record, but the database itself is not submitted to the court. See Step 10 for a discussion of the format used for producing the record for the court.

⁹ Vendors typically refer to this task as “coding” the documents.

- The administrative record should include documents that were “directly or indirectly considered” by the decision-maker. Documents that were indirectly considered may include memoranda, reports, data, manuals, and other materials that support the materials that were actually reviewed by the agency’s decision-maker.
- The administrative record should not be limited to documents that support the agency’s decision. Documents that criticize the agency’s decision, raise doubts about the decision, or otherwise cast the decision in a negative light should be included if they were directly or indirectly considered. For example, comments from groups opposed to the agency’s action should be included in the record.
- In deciding what documents to include, the key factor to consider is the substantive content of the document, not the medium (paper vs. electronic) in which the document is maintained.

Common Types of Documents

Drafts of NEPA Documents. A NEPA document typically undergoes many rounds of revisions within the project team before it is published. Technical reports and other supporting documents also undergo many rounds of revisions. As a result, drafts of these documents may constitute one of the most voluminous aspects of a project file. While there are few bright-line rules for handling drafts, the following general guidelines reflect typical practices:

- Drafts that remain internal to the consultant team and/or the project sponsor (e.g., a state DOT) generally are not included in the administrative record.
- Drafts that are submitted to the Federal lead agency are sometimes included in the administrative record. For example, FHWA has recommended including drafts where the revisions represent a ‘significant departure’ from previous drafts.
- Drafts that are transmitted to a cooperating or participating agency for review often are included in the record, along with correspondence to and from that agency regarding the draft. These drafts help to document the coordination that occurred with those agencies in developing the NEPA document. Other methods also could be used to document input from cooperating and participating agencies, such as comment/response tables showing the comments received and the responses provided.
- Drafts that are made available for public comment are almost always included in the administrative record.

Internal Comments on Draft NEPA Documents. The Federal lead agency often provides written comments to the project sponsor or consultant team on drafts of a NEPA document and related technical reports. When such comments are received, the project sponsor or consultant team often provides written responses to show how the comments were addressed. Agency practices vary widely regarding the inclusion of such comments in the administrative record. The following general guidelines provide a starting point for considering the treatment of these comments:

- Comments provided by the Federal lead agency to the project sponsor and/or consultant team often are included in the record because they reflect direction given by the Federal agency regarding changes needed to the NEPA document. These types of communications help to demonstrate that the Federal lead agency exercised independent oversight during preparation of the NEPA document, which can be important in litigation.
- Comments from the Federal lead agency’s legal counsel on draft NEPA documents generally are treated as privileged communications and, on that basis, generally are not included in an administrative record. (Privileged communications are discussed further below.)
- Internal discussions within the Federal agency regarding the development of its comments (for example, e-mails discussing potential comments) generally are not included in the administrative record.
- Comments provided by the project sponsor or project consultants on draft NEPA documents generally are not included in the administrative record. However, if these comments were shared with the Federal lead agency, there may be a basis for including them in the record.
- If a state DOT has received assignment of U.S. DOT’s responsibilities, then the state is the Federal lead agency for purposes of the administrative record. In these situations, there is no distinction to be made between the project sponsor and the Federal lead agency; they are one and the same. Therefore, documents in the possession of the state DOT would be deemed to be in the possession of the Federal lead agency.

Attorney–Client Privileged Documents. Attorney–client communications generally are not included in the administrative record, except sometimes in the case of the attorney’s legal sufficiency determination, which may be included to document compliance with the FHWA and FTA regulations.¹⁰ Nonetheless, issues involving attorney–client privilege are complex, especially when attorneys played an active role in the development of the NEPA document. The AR team should keep the following points in mind:

¹⁰ See 23 CFR 771.125(b) (legal sufficiency determination for FEIS); 23 CFR 774.7(d) (legal sufficiency determination for Section 4(f) evaluation).

- Not all communications involving attorneys are privileged. In particular, the fact that an email was sent to an attorney does not automatically make that email a privileged communication. For example, it is common for e-mail distribution lists to include attorneys as “cc’s” among many other project team members. In the absence of any indication that the e-mail was specifically directed to an attorney or attorneys, such an e-mail normally would not be considered privileged.
- The attorney–client privilege can be waived if a privileged communication is shared outside the attorney–client relationship. If an attorney sends an e-mail to a client, and the client then widely shares that email with others, the privilege may be waived (i.e., the communication may be deemed non-privileged).
- The fact that a communication is marked “privileged” does not necessarily mean that it is, in fact, privileged. For example, if a “privileged and confidential” stamp is automatically applied by a sender to all communications, those communications will need to be reviewed individually to determine which ones are actually privileged.
- Conversely, a communication that is not marked “privileged” may still be privileged. For example, an e-mail exchange with an attorney in which legal advice is requested and provided would likely be considered an attorney–client privileged communication, even if it was not marked as “privileged.”
- A communication sent from one non-attorney to another may be privileged if it transmits attorney–client privileged information (for example, one project team member emailing another to report advice received from legal counsel).
- A document that includes privileged and non-privileged communications may be included in the record with the privileged portions redacted (blacked-out) if the non-privileged portion shows some aspect of the decisionmaking and it is not duplicative of information found elsewhere in the record.
- In some circumstances, documents shared among attorneys representing the Federal lead agency and the project sponsor (e.g., a state DOT or public transit agency) may remain privileged under a theory of a “common interest.” It is a good practice to enter into an agreement documenting the agencies’ intent to preserve the privilege; this type of agreement is called a joint-defense or common-interest agreement.
- Given the complexity and sensitivity of privilege issues, any decisions involving privileged or potentially privileged documents should be made with the advice of legal counsel.

“Pre-Decisional and Deliberative” Documents. The term “pre-decisional and deliberative” refers to communications among agency personnel with regard to an ongoing decision-making process.¹¹ Under Federal FOIA rules, Federal agencies can sometimes withhold pre-decisional and deliberative materials from disclosure. When preparing an administrative record, a Federal agency must decide whether and to what extent these types of documents will be included in the record. The Federal agency may choose to omit these materials because other documents (e.g., file memos) have been prepared and adequately document the basis for the agency’s decision. On the other hand, the agency may decide that it is necessary to include some deliberative materials as a means of documenting the internal debate that led up to a decision. Importantly, state public-record laws vary widely regarding pre-decisional and deliberative materials; some include an exemption similar to FOIA, but others do not exempt these documents from disclosure at all.

E-Mail Messages. E-mail messages present perhaps the most complex and difficult judgment calls in compiling the administrative record. The production of a single large NEPA document may generate tens of thousands of e-mails. The vast majority of those e-mails will not need to be included in the record in most cases, yet it may still be necessary to review a very large number of e-mails to determine which e-mails need to be included. A single e-mail chain may involve multiple forwards and replies, many of which include numerous attachments, and the attachments themselves may include slightly different versions of the same documents. A single e-mail may include both substantive project-related information and entirely extraneous personal matters. The review process is likely to be time-consuming and will require input from agency attorneys. In general, the following points should be considered:

- E-mails with external parties (e.g., resource agencies and the public) are simply another form of correspondence. Like traditional correspondence, these types of emails generally are included if they include substantive information and relate to issues under consideration in the NEPA process.
- E-mails sent solely within the Federal lead agency often are considered pre-decisional and deliberative communications and excluded from the record on that basis. E-mails among the Federal lead agency, the project sponsor, and/or the consultant team also may be treated as pre-decisional and deliberative communications in some circumstances.
- E-mails sent to and from an agency’s legal counsel (including attachments) may be subject to attorney–client privilege. Redactions may be needed if a single email chain includes privileged and non-privileged communications. The fact that an attorney is copied on an e-mail does not necessarily mean the e-mail is privileged. In most cases, e-mails to or from an agency attorney will require individual review during preparation of the administrative record.

¹¹ See U.S. Department of Justice, “Guide to the Freedom of Information Act, Exemption 5” (2014).

- E-mails that are not covered by attorney–client privilege may still be considered pre-decisional and deliberative communications and in some cases could be excluded from the record on that basis. For example, e-mails discussing a draft letter may be excluded, while the transmittal of the letter itself would be included in the record.
- E-mails that relate to minor administrative matters—e.g., scheduling internal meetings—or personal matters, or that relate to other projects, do not need to be included in the record.

Consultant-to-Consultant Communications. The consultant team for a NEPA document can be extensive. It often includes a single prime consultant and a team of specialized sub-consultants. Communications that are entirely internal to the consultant team generally are not included in the administrative record. Nonetheless, it is important for consultants to understand that communications within the consultant team may be included in the administrative record, particularly if those communications involve the lead agency or in some manner were considered by the lead agency. With this in mind, consultants should adopt file management procedures to ensure relevant communications can be retrieved.

Modeling Data and Results. The development of a NEPA document often involves the use of computer models—for example, to develop traffic, noise, and air quality forecasts. Traffic forecasts, in particular, are frequently challenged in litigation. Traffic forecasts often evolve over the course of the NEPA study, as new data becomes available and as improvements are made to the regional travel model for the project area. At a minimum, technical reports should be developed to document the assumptions and methodologies used at each stage of the modeling. In addition, model inputs and outputs at each stage should be archived so that they can be retrieved if necessary during litigation. In some cases, the Federal agency may include the model inputs and outputs as part of the administrative record.

Public-Record (FOIA) Requests and Responses. The Federal agency is not required to include all public record requests in the administrative record, nor is it required to include all documents that were provided to the public in response to those requests. Even so, it is prudent to retain this correspondence (including the copies of the materials released) and ensure that it is reviewed when the record is prepared. An agency may choose to include public-record requests and responses to those requests in order to document the public coordination and disclosure that occurred during the NEPA process. Documents released in response to public record requests also may be included in the record if they were, in fact, considered by the agency in making its decision.

Transportation Planning Documents. In some cases, U.S. DOT agencies can adopt a decision or analysis from the transportation planning process for use in the NEPA process. When a planning decision or analysis is adopted, the Federal lead agency must consider several factors, including the degree of public and agency involvement in developing that planning product. When this approach is used, it is important to include not only the planning document that is being adopted, but also supporting information to show that the agency’s decision to adopt the planning document met all applicable criteria for adoption.

Pre-NEPA and Post-NEPA Documents. In general, an administrative record includes documents generated during the NEPA process itself, beginning when the NEPA process is initiated and ending when the NEPA decision document is signed. There may be circumstances when pre-NEPA or post-NEPA documents should be included:

- **Pre-NEPA Documents.** Documents developed prior to initiation of the NEPA process may be relied upon as part of the NEPA process. Examples include: reports and studies that are referenced in the NEPA process; earlier NEPA studies for the same project; planning studies that are adopted or incorporated by reference in the NEPA document; correspondence with resource agencies in anticipation of the initiation of the NEPA process; and correspondence between the project sponsor and the Federal lead agency related to initiation of the NEPA process.
- **Post-NEPA Documents.** In some cases, a lawsuit challenges not only the NEPA decision document but also subsequent decisions, such as a decision not to prepare a supplemental EIS or the decision to issue a permit. When post-NEPA decisions are challenged, the record will include additional documents related to those decisions. In such cases, documents relating to the subsequent decision may be submitted as a separate record, so that it is clear they were not considered when reaching the initial NEPA decision.

Other Document Types. The AR team should also consider the following document types, which often involve judgment calls about whether they should be included in an administrative record:

- **Legal Sufficiency Memos.** If a legal sufficiency determination has been made by an agency attorney with regard to the NEPA document, that determination may be documented in a memo from the attorney to the decision-maker who will be approving the NEPA document. While practices vary, legal sufficiency memos are sometimes treated as non-privileged communications and included in the administrative record.
- **Prior Concurrence Memos.** FHWA policy requires “prior concurrence” by FHWA headquarters prior to publication of some NEPA documents, generally those involving more complex issues.¹² FHWA may include prior concurrence

¹² FHWA, “Guidance on FHWA Prior Concurrence Procedures for EISs” (Oct. 3, 2001).

memoranda in an administrative record as a way of demonstrating that the prior concurrence requirement was met. Other U.S. DOT agencies may have similar practices for documenting acceptance or approval of environmental documents by key personnel in headquarters or regional offices.

- **Attachments.** In general, letters or e-mails should be included in the administrative record along with any attachments. Without the attachment, the transmittal letter or e-mail may lack context and may not be particularly meaningful in the administrative record. If the same attachment was sent to multiple recipients, as with a form letter, it is only necessary to include the attachment in the record once (along with the relevant transmittal letters).
- **Manuals and Guidance Documents.** Manuals and guidance documents that are pertinent to the agency's decision (for example, FHWA's Section 4(f) Policy Paper) are often included in the administrative record. Including these materials helps to demonstrate that they were, in fact, considered and makes it easier for the court to locate them. At the same time, some judgment is needed about which guidance documents to include. It is not necessary for each administrative record to include a compendium of all guidance documents related to the NEPA process.
- **Secondary Sources.** Secondary sources (for example, published research papers) are often cited in NEPA documents. For ease of reference, it is helpful to include copies of these materials in the administrative record, particularly if they relate to a key issue in the litigation. However, duplicating these materials may raise copyright issues, which must be considered by legal counsel. In addition, the cited materials often are voluminous and may have marginal relevance to the litigation. Therefore, it may be appropriate to incorporate some of these materials by reference, with the understanding that copies will be provided to the court and other parties if requested.
- **Consultant Invoices, Contracts, and Scopes of Work.** Consultant contracts and invoices generally are not included in the administrative record. However, it is important to be aware that these documents may be subject to disclosure under Federal or state public records laws. In addition, there have been instances in which a consultant's scope of work for a NEPA study has become an issue in litigation, and thus needs to be included in the record.
- **Documents with Personally Identifiable Information.** Personally identifiable information includes street addresses, telephone numbers, e-mail addresses, and other similar information, which may be provided by the public during the NEPA process (e.g., when asking to be included on a mailing list). It is a good practice to advise the public that any comments submitted are considered public record documents and may be released. .
- **Documents with Other Sensitive Information.** An administrative record may include information that is deemed sensitive for various reasons, such as locations of archeological sites; locations of threatened or endangered species and their habitats; and information relating to the location, design, or operation aspects of critical infrastructure (electricity, water supply, etc.). Potential administrative record documents should be reviewed to determine whether they include such information. If so, it may need to be redacted, or entire documents may need to be withheld or provided to the other parties under a confidentiality agreement.
- **Maps and Drawings.** Visual materials can be an extremely important element of the administrative record, because they help the court to gain an understanding of the project. When preparing the record, consider whether there are important maps, drawings, or other visual materials that are not included in the NEPA document or its technical reports. For example, a map may have been developed specifically for use in a meeting with an agency or a stakeholder group; that map could be included as part of the materials for that meeting. On the other hand, it is not necessary to include individual maps or other visual materials if it is not clear when they were prepared or whether they were ever used as part of the decision-making process. When maps are included, consider including them in paper to retain full legibility. When a large-scale map is scanned, it may be reduced in size and converted to black-and-white, resulting in a loss of legibility.
- **Videos and Animations.** Videos and animations can be useful in introducing the project to the court, so consideration should be given to including these materials in the administrative record. For example, if a video was presented at a public meeting, it could be included in the record as part of the meeting materials. In particular, consider including videos or animations that provide an overview of the project location and/or show specific resources that relevant to the litigation.
- **Project Website.** A project website is one of the most important tools for communicating information about the project to the public. At the same time, a website often changes frequently during the course of the NEPA process. There is no simple technical solution for capturing an entire project website in an administrative record. Nonetheless, the AR team should consider ways to document the type of information that was made available to the public on the project website. For example, screenshots of key pages could be taken at key milestone dates (e.g., publication of the NEPA document) and included in the project file.
- **Social Media.** Federal agencies and project sponsors increasingly make use of social media as part of the public involvement process for a NEPA study. Documenting social media engagement can be challenging because social

media involves an ongoing stream of communication rather than a series of distinct documents. One possible approach is to incorporate screenshots from social media pages, which demonstrates the fact that such methods were used. Another approach is to download the “feed” from the social media site and incorporate it into a document or documents that are included in the record.

- **Personal Notes.** In general, personal notes (for example, handwritten notes of a meeting) are considered part of the individual's personal files and are not included in the administrative record.¹³ Such notes could be included if the individual's notes served as the agency's primary record of the meeting (e.g., where a meeting summary was not prepared). It is preferable to convert personal notes into memoranda, which can then serve as the authoritative documentation of the field visit, meeting, etc.
- **Newspaper Articles.** Newspaper articles, editorials, and other published reports about the project are not normally included in an administrative record, even when circulated within the project team. Similarly, blog posts and other on-line reports discussing the project are not normally included in the record. Exceptions may be made if there is evidence that the news article itself played some role in the agency's decision-making process, rather than simply reporting on that process.
- **Document-Sharing Portals.** Some Federal agencies use document-sharing portals to make documents available to other agencies (and in some cases stakeholders) for review during the NEPA process. When a portal is used, documents “sent” for review may be transmitted simply as links to the portal, rather as attachments to the e-mail. The AR team should seek to understand how the portal was used and determine whether any information stored in the portal needs to be captured for the administrative record.

5 | Submitting the Administrative Record to the Court

Once the administrative record has been compiled, it is submitted to the court and other parties to the litigation. This seemingly technical task can have important consequences in litigation. If the record is compiled accurately and is submitted in an easy-to-use format, it communicates a message of competence to the court. If the record is not compiled with care, it can have a negative impact on the court's view of the agency and the completeness of the record.

There is no standard format for submitting an administrative record. Individual courts have local rules, and individual judges have their own preferences. Therefore, the attorneys handling the litigation normally discuss the format of the record with the judge in a status conference, early in the litigation, to ensure that the record is produced in a manner that meets the court's requirements. The following guidelines can help contribute to an orderly, accurate, and easy-to-use administrative record:

Index. As a general rule, the index should list the documents in chronological or reverse-chronological order. Exceptions are sometimes made to this rule; for example, documents may be grouped into categories, and then listed in chronological or reverse-chronological order within those categories. The index should contain a unique identification number for each document and a brief description (e.g., sender, recipient, date, document title).

Privileged Documents. Privileged documents normally are not included in an administrative record. In some cases, courts have required agencies to submit a list of documents that were considered by the agency in making its decision but excluded from the record based on privilege (known as a “privilege log”).

Page Numbering. The pages of the record should be consecutively numbered from the beginning of the record to the end.¹⁴ Courts have adopted this practice to ensure that there is a unique identification number for each page of each document in the record. Various page-numbering conventions can be used—for example, a prefix that identifies the volume of the record, followed by a number indicating the page within that volume (e.g., AR1_00001). When a record is produced in electronic format, a litigation database or other software can be used to apply page numbers electronically, which is more efficient and flexible than the traditional method of hand-stamping page numbers on paper documents.

Format. The administrative record is typically provided to the court and the parties to the litigation on a series of DVDs (or similar medium), which contain an index to the record and the individual administrative record documents, each in a separate electronic file, typically in PDF format. In some cases, courts require the PDFs to be fully text-searchable, which means that optical character recognition (OCR) scanning is required for all PDFs before the record is submitted.

¹³ It is preferable to convert field notes and personal notes into file memoranda, which can then serve as the authoritative documentation of the field visit, meeting, etc. (in lieu of the notes).

¹⁴ This practice is sometimes called “Bates numbering,” which refers to the former practice of hand-stamping each page with a number using an automatic device made by the Bates Manufacturing Company.

Local Rules. Some courts have adopted rules regarding the filing of an administrative record. For example, some courts and judges require that only an index be filed with the court, rather than submitting the entire record. Therefore, if a lawsuit has been filed, it is prudent to check the local rules to determine whether there are any requirements regarding the filing of the record. It also is important to find out whether the individual judge hearing the case has any rules or preferences on this issue.

Certification. The Federal agency submitting the administrative record is responsible for certifying to the court that the record is complete. While agency attorneys provide advice on the compilation of the record, the attorneys do not sign the certification; the certification is signed by the agency's program staff. Standard language for the certification can be obtained from the U.S. Department of Justice attorneys handling the case.

Reference Materials

Reference materials cited in this Handbook are available with this Handbook on the AASHTO Center for Environmental Excellence website, <http://environment.transportation.org>.

Statutes and Regulations

- Administrative Procedure Act, Section 5 USC 702-706.
- Freedom of Information Act, 5 USC 552.

Guidance Documents

- Federal Highway Administration, Order M 1324.1B, "FHWA Record Management" (July 29, 2013).
- J. Goldfrank, "Guidance to Client Agencies on Compiling the Administrative Record," U.S. Attorneys' Bulletin, Vol. 48, No. 1 (February 2000), p. 7.
- U.S. Department of Justice, *Guide to the Freedom of Information Act*, Exemption 5 (2014).

ADDITIONAL RESOURCES

PRACTITIONER'S HANDBOOKS AVAILABLE FROM AASHTO CENTER FOR ENVIRONMENTAL EXCELLENCE:

- 1 Maintaining a Project File and Preparing an Administrative Record for a NEPA Study
- 2 Responding to Comments on an Environmental Impact Statement
- 3 Managing the NEPA Process for Toll Lanes and Toll Roads
- 4 Tracking Compliance with Environmental Commitments/Use of Environmental Monitors
- 5 Utilizing Community Advisory Committees for NEPA Studies
- 6 Consulting Under Section 106 of the National Historic Preservation Act
- 7 Defining the Purpose and Need and Determining the Range of Alternatives for Transportation Projects
- 8 Developing and Implementing an Environmental Management System in a State Department of Transportation
- 9 Using the SAFETEA-LU Environmental Review Process (23 U.S.C. § 139)
- 10 Using the Transportation Planning Process to Support the NEPA Process
- 11 Complying with Section 4(f) of the U.S. DOT Act
- 12 Assessing Indirect Effects and Cumulative Impacts Under NEPA
- 13 Developing and Implementing a Stormwater Management Program in a Transportation Agency
- 14 Applying the Section 404(b)(1) Guidelines in Transportation Project Decision-Making
- 15 Complying with Section 7 of the Endangered Species Act

For additional Practitioner's Handbooks, please visit the Center for Environmental Excellence by AASHTO web site at: <http://environment.transportation.org>

Comments on the Practitioner's Handbooks may be submitted to:
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