

Part 600 – Watershed Program Management

Subpart D – Program Administrative Requirements

600.30 Civil Rights

A. The requirement of nondisparate delivery of services goes beyond the requirements of the Civil Rights Act. It also relates to Executive Order 12898, which was issued February 11, 1994. This Executive order outlines the requirements for environmental justice. The key parts of this Executive order are as follows:

- (1) Provide all populations an opportunity to comment before decisions are rendered on a proposed Federal action.
- (2) All populations are allowed to share in the benefits of the proposed action.
- (3) No population is to be disproportionately affected in a severely adverse manner.

B. The specific populations of concern are the following:

- (1) Minorities
- (2) Low income
- (3) Indian Tribes

C. If any of the specific populations mentioned above exist in the affected project area, which includes downstream offsite populations, the “Public Participation” section of a plan should document efforts to include the above-mentioned populations in the planning process.

D. See Title 390, National Watershed Program Manual (NWPM), Part 500, Subpart D, Section 500.30, for a general description of civil rights.

600.31 Administrative Record Requirement

A. The administrative record is vital for reference throughout the development, review, installation, and operation and maintenance phases of a watershed project. This file provides a comprehensive administrative record of pertinent facts, observations, computations, procedures, assumptions, expert opinion, and rationale used in reaching planning and implementation decisions. The administrative file should be organized and usable by staff disciplines involved in plan development and others. It should be organized into logical sections for each principal environmental concern or by discipline where appropriate, and it should be indexed for ease of reference. Sections should include narrative, data, charts, maps, and computations, arranged in a sequence consistent with the steps of planning so that the documentation leads to a clear understanding of the study, the methodology used, and the conclusions reached.

B. The goal for a good administrative record is to reflect what the agency did and why it did what it did. It should reflect the process the agency used to arrive at its decision as well as what the decision was. It should reflect factors that support the decision, and should reflect factors that are contrary to the decision and how the agency handled them.

C. Public participation activities and publicly releasable information should be documented in their own file so that the requirement for a reviewable record is met. The reviewable record can be a subset of the information contained in the administrative record. The terms “reviewable record” and “administrative record” are defined further in the glossary.

D. The administrative record includes documents of all types—papers, studies, data, references, maps, correspondence, computer runs, etc.—in all formats—paper, hard drive, floppy disk, magnetic tape, etc.—that supports the decisionmaking process. This is the agency’s collection of the evidence that proves that decisionmakers understood the law applying to the decision, considered all the relevant factors, and made a reasoned decision.

E. The administrative record also goes by other names—analysis file, project file, etc. Normally, the entire administrative record (or an index of it) is filed with the court when there is litigation. Legal positions taken by both sides are based on what is in—or missing from—the administrative record. The general rule is that an administrative record, which should be considered to be the support for the decision at the time the decision was made, may not be supplemented by either side once it is compiled and filed with a court. However, the court often admits explanatory material offered by both sides in the form of affidavits or other additional documentation.

F. The biggest mistake for an administrative record is omission. The most common omission is failure to explain action. When the basis for decisions is not explicitly disclosed by the agency, the court is free to draw its own conclusions. When a particular law or regulation requires the consideration of specific factors, the administrative record must reflect those factors and how they were considered. Omission of a single factor can be fatal to a decision.

600.32 Federal Laws, Regulations, Executive Orders, Other Authorities

There is no further guidance in the handbook corresponding to this section in the manual.