

An Act

To mandate transparency and completeness in administrative records explaining the basis for Federal decisions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This act shall be known and may be cited as the Antidote to Alternatives Facts Act.

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds and declares that –

- a) The administrative record is an irreplaceable tool for gauging the quality and integrity of Federal agency decision-making.
- b) A complete administrative record is necessary to enable a reviewing court to assess a Federal agency's decision-making process fully.
- c) Federal agencies have recently attempted to limit the contents of the administrative record in order to shield from review evidence of information and materials that do not support the agency decision or that evidence intra-agency or interagency dissent and controversy.
- d) Agency guidance documents instructing agency staff to limit the contents of the record as it is compiled over the course of the agency decision-making process are contrary to the will of Congress.
- d) Recent agency assertions in litigation that they have unilateral authority to define the contours of the record are incorrect and contrary to the will of Congress.
- e) The statutory clarification embodied by this Act codifies the January 1999 U.S. Department of Justice Guidance to Federal Agencies on Compiling the Administrative Record and is intended to ensure uniform development of the whole administrative record.

SEC. 3. Paragraph (3) is added to Section 706 of Title 5 to read:

(3) The whole record shall consist of all documents and materials which were before or available to the decision-making office at the time the decision was made, regardless of whether they were specifically considered by the final agency decision-maker and regardless of whether the documents and materials support the final agency decision, including –

(A) All decision documents;

(B) All factual information and data, not limited to technical information, sampling results, survey information, engineering reports or studies;

- (C) Policies, guidelines, directives and manuals;
- (D) Communications that the agency received from other agencies and from the public, and any responses to those communications;
- (E) Minutes from meetings and the memorialization of pertinent telephone conversations;
- (F) Draft documents that were circulated for comment either outside the agency or outside the author's immediate office, if changes in these documents reflect significant input into the decision-making process;
- (G) Privileged documents and materials and which may contain any protected information. Any privileged material the agency seeks to withhold from the record shall be detailed in a privilege log for court review;
- (H) Handwritten notes relating to the agency action or decision; and
- (I) Non-printed communications, not limited to e-mail, computer tapes, discs, and other electronic records, as well as microfilm and microfiche.