

U.S. Department of Transportation

Questions and Answers on the Adoption of NEPA Documents

Question 1: How does the adoption provision in 49 U.S.C. 304a(c)(2), created in section 1311 of the FAST Act, differ from the Council on Environmental Quality (CEQ) regulation on adoption, 40 CFR 1506.3?

Answer 1: The adoption provision provides that an Operating Administration (OA) or secretarial office within DOT may adopt an environmental assessment (EA), draft environmental impact statement (EIS), or final EIS of another OA for a project that is substantially the same, without the need to recirculate it for public review. In contrast, the CEQ regulation only authorizes this approach for an EIS where the adopting agency is a cooperating agency. *Compare* 49 U.S.C. 304a(c)(2) *with* 40 CFR 1506.3(c).

Question 2: Can OAs apply the Section 304a(c)(2) process to proposed actions that are not projects, e.g. rulemakings?

Answer 2: No. Section 304a (c)(2) is limited to the adoption of EAs or EIS for projects.

Question 3: What EAs and EISs are eligible for adoption under 49 U.S.C. 304a(c)(2)?

Answer 3: Beginning December 4, 2015, an OA or secretarial office may use the Section 304a(c)(2) process to adopt an EA or EIS prepared by another OA for a project, regardless of whether the EA or EIS was initiated prior to the effective date of the FAST Act, October 1, 2015. When adopting any non-DOT EAs or EISs, OAs must continue to follow 40 CFR 1506.3.

Question 4: What is the Section 304a(c)(2) process for adopting an EA or EIS?

Answer 4: When using this process, an OA or secretarial office should document the adoption in the project file and include, at a minimum, the following:

- Certification that the OA or secretarial office's proposed action is substantially the same as the project in the original environmental document to be adopted;
- Written correspondence or other documentation from the OA that prepared the EA or EIS documenting its concurrence that the project is substantially the same;
- A determination that the adopted EA or EIS is consistent with NEPA.

The adopting OA or secretarial office should provide notice to the public of adoption. This may include posting on the project website, Infrastructure Permitting Dashboard, social or other electronic media, and local publications. The adopting OA or secretarial office should also ensure that the EA or EIS is publically available. Finally, the adopting OA should ensure that it complies with the requirements to post information regarding the project to the Infrastructure Permitting Dashboard.

Question 5: What are the timing implications for adopting an EA or EIS?

An OA or secretarial office may only adopt a final EIS following the conclusion of the issuing OA's 30-day waiting period, consistent with 40 CFR 1506.10(b)(2), unless the issuing OA combines the final EIS with the Record of Decision (ROD) pursuant to 49 U.S.C. 304a(a)/23 U.S.C. 139(n)(2). In that case, an OA or secretarial office may adopt the final EIS any time after its issuance by the other OA. Subsequent to the adoption of a final EIS, if the adopting OA is going to make a decision on the proposed action, it must issue its own ROD and make it publically available, consistent with the CEQ regulations and its NEPA Implementing Procedures. An OA with a statute of limitations triggered by notice in the *Federal Register* (such as the provision in 23 U.S.C. 139(l)) would need to publish appropriate notice for its own final agency action.

An OA or secretarial office may adopt a draft EIS any time subsequent to its issuance. This does not preclude the adopting OA or secretarial office from also becoming a cooperating or joint lead agency for the environmental review of that project.

An OA or secretarial office may adopt an EA any time subsequent to its issuance. The OA or secretarial office must issue and make publically available its own Finding of No Significant Impact (FONSI), consistent with the CEQ regulations and its NEPA Implementing Procedures, once the OA or secretarial office has adopted the EA.