

FAST ACT Section 1309
Program for Eliminating Duplication of Environmental Reviews (23 USC 330)
“CEQA/NEPA Reciprocity”¹

What the FAST Act does:

- The FAST Act establishes a 12-year pilot program which allows up to five states (limited to those with NEPA Assignment) to substitute one or more state environmental laws for NEPA (called “Alternative Environmental Review” or “AER”).
- A state may elect to use an AER on behalf of up to 25 local governments for locally-administered projects.
- Under the AER process, Caltrans or a local agency’s CEQA document may be used to meet the requirements of NEPA, FHWA’s implementing regulations (23 CFR 771 and 772), and/or 23 USC 139 (Efficient Environmental Reviews), as applicable.
- To be eligible, the state must apply to participate in the program, and the application must specify each federal requirement that will be substituted, each state provision that will substitute the federal provision, and prove that each state provision *is at least as stringent* as the substituted federal provision.
- The FAST Act requires that the state agree to be sued in federal court.
- **The FAST Act sets the statute of limitations, to challenge a document prepared under the AER or compliance with 23 USC 330, at two years. In comparison, the statute of limitations is 150-days for projects approved through the process established by SAFETEA-LU and MAP-21.**
- If Caltrans participated in the program, it would have the discretion on a project-by-project basis to decide whether to use the AER or prepare a NEPA document.

What the FAST Act does NOT do:

- The FAST Act does not eliminate NEPA.
- With the exception of using state procedures to satisfy the requirements of NEPA and the procedures in 23 USC 139, the FAST Act does not allow the substitution of state laws for other federal laws or eliminate the need to comply with federal laws and regulations such as Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, Clean Air Act (and conformity requirements), Section 4(f), Clean Water Act (LEDPA), Executive Order 11988, Executive Order 11990, Farmland Protection Policy Act, etc.
- The FAST Act does not *require* a federal agency granting a permit or other approval over the project to accept the “CEQA for NEPA” document although it does state that other federal agencies shall adopt or incorporate by reference documents produced under an AER process to the “maximum extent practicable and consistent with federal law.”
- No changes are expected to other NEPA requirements such as environmental document re-evaluations, etc.
- The FAST Act does not remove Caltrans from the process. Caltrans will remain the federal lead agency under NEPA Assignment and it is anticipated that Caltrans will need to review local agencies’ CEQA documents for compliance with the AER and other federal laws.

Required for Implementation:

- Draft rule-making within 270 days (from December 4, 2015)
- Public comment period
- Final rule-making
- A detailed Caltrans application with public comment period
- Development of Environmental Document Annotated Outline satisfactory to all local agencies, FHWA, and other federal permitting and approving agencies.
- Waiver of Sovereign Immunity Legislation
- MOU developed and executed