Program for Eliminating Duplication of Environmental Review (23 USC 330; 23 CFR 778)
"CEQA Reciprocity"

What it does:

- Creates a 12-year pilot program for "alternative environmental review" (AER) which allows up to two states (limited to those with NEPA Assignment) to conduct environmental reviews and make approval for projects under state environmental laws and regulations instead of the National Environmental Policy Act (NEPA), under certain circumstances.
- The proposed program was initially established by Section 1309 of the FAST Act and is codified at 23 USC 330. The Notice of Proposed Rulemaking to add 23 CFR Part 778 was published September 28, 2017, the Final Rule was published December 28, 2020, and the regulations are effective January 27, 2021.
- An approved state may elect to use the AER on behalf of up to 25 local governments for locally-administered projects.
- When administering the program on behalf of a local agency, the state is the responsible party that must meet the requirements of the program. Any local governments participating in the pilot program may conduct the environmental analyses or reviews, but the state is responsible for ensuring that the requirements of the approved alternative state procedures are met for those projects (see § 778.107(h)).
- State environmental laws and regulations may only be used in place of NEPA, related laws under the authority of the USDOT Secretary (including 23 USC 109. 128, and 139) and related regulations (including 23 CFR 771 and 772), and related executive orders.
- A state must demonstrate that each state environmental law or regulation intended to substitute for a federal environmental requirement is at least as stringent as the federal requirement and must consent to a waiver of its sovereign immunity to accept the jurisdiction of the federal courts. This waiver is separate from any waiver already in place for the implementation of NEPA Assignment.
- Provides a broader authority than 23 USC 327 (NEPA Assignment) but states with NEPA Assignment would need to retain their authorities under 23 USC 327 to 1) to preserve the ability to apply NEPA on a project-by-project basis and 2) to retain the ability to conduct federal environmental reviews where such reviews cannot be substituted by the state's environmental laws or regulations because they are outside the scope of the Pilot Program (such as Section 4(f)).

What it does NOT do:

- The pilot program does not eliminate the need for compliance with other federal environmental requirements and does not allow for the substitution of state environmental laws or regulations for any federal requirements outside the authority of the USDOT Secretary such as Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, Clean Water Act (Farmland Protection Policy Act, etc. In certain cases, Caltrans will continue to make certain approvals under 23 USC 327, such as for Section 4(f), which is under the authority of the USDOT Secretary and assigned to Caltrans, but outside the statutory authority of the pilot program.
- The pilot program does not delegate or assign to local agencies responsibility for the approval of projects under the pilot program as the state is responsible party which must meet the requirements of the program and accept the jurisdiction of the federal courts for the compliance, discharge, and enforcement of any responsibility under the pilot program. In the event that Caltrans enters the pilot program, Caltrans will continue to make NEPA compliance document approvals under the new pilot program and/or NEPA Assignment, as applicable.