

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 624

[Docket No. FHWA–2020–0006]

RIN 2125–AF89

#### Interstate System Access

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** FHWA proposes and requests comments on regulations governing changes in access to the Dwight D. Eisenhower National System of Interstate and Defense Highways (Interstate System). As a condition of funding for Federal-aid highway projects, Federal law prohibits State departments of transportation (State DOT) from adding any point of access to or from the Interstate System without the approval of the Secretary of Transportation (Secretary). This proposed rule would codify and clarify existing policies and practices regarding State DOT requests for and FHWA approval of changes in access to the Interstate System.

**DATES:** Comments must be received on or before October 19, 2023. Late comments will be considered to the extent practicable. In compliance with the Paperwork Reduction Act, FHWA is also seeking comments on a new information collection. All comments relating to the information collection requirements should be submitted to the Office of Management and Budget (OMB) and to FHWA at the addresses listed in the **ADDRESSES** section on or before October 19, 2023.

**ADDRESSES:** You may submit comments by any of the following methods:

- **Fax:** 1–202–493–2251;
- **Mail:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590;

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or

- **Electronically through the Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attn: Desk Officer for FHWA. It is requested that comments sent to the OMB also be sent to the FHWA rulemaking docket identified in the heading of this document.

**Instructions:** All submissions must include the agency name, docket name, and docket number (FHWA–2020–0006) or Regulatory Identification Number (RIN) for this rulemaking (2125–AF89). Note that all comments received will be posted without change to: <https://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clayton Wellman, Office of Preconstruction, Construction and Pavements (HICP–10), (202) 366–4658, or via email at [Clayton.Wellman@dot.gov](mailto:Clayton.Wellman@dot.gov), or Mr. Lev Gabrilovich, Office of the Chief Counsel (HCC–30), (202) 366–3813, or via email at [Lev.Gabrilovich@dot.gov](mailto:Lev.Gabrilovich@dot.gov). Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at [www.regulations.gov](https://www.regulations.gov) using the docket number listed above. Electronic retrieval help and guidelines are also available at <https://www.regulations.gov>. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at [www.FederalRegister.gov](http://www.FederalRegister.gov) and the Government Publishing Office's website at [www.GovInfo.gov](http://www.GovInfo.gov).

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after DOT has had the opportunity to review the comments submitted.

#### Background and Legal Authority

It is in the national interest to preserve and enhance the Interstate System to meet the needs of the 21st century by ensuring that it provides the highest level of service in terms of safety and mobility. Full control of access along the Interstate mainline and ramps, along with control of access on the crossroad at interchanges, is critical to such service. Under 23 U.S.C. 111 (section 111), all agreements between the Secretary and State DOTs for the construction of projects on the Interstate System shall provide that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Any change to an access point can potentially add or remove access from the Interstate System. Therefore, FHWA historically has interpreted the addition of an access point to include the addition of a new, or modification of an existing, interchange or access point along the Interstate System.<sup>1</sup>

The Secretary has delegated authority to administer section 111 to the Federal Highway Administrator pursuant to 49 CFR 1.85(a)(1). Section 111(e) allows FHWA to delegate to a State DOT authority to approve interstate justification reports (IJR) pertaining to certain changes in access to the Interstate System.

<sup>1</sup> See, e.g., 2017 Interstate Access Policy, dated May 22, 2017 (<https://www.fhwa.dot.gov/programadmin/fraccess.cfm>).

## Statement of the Problem

To facilitate implementation of these statutory requirements regarding changes in access to the federally-funded Interstate System, FHWA recognizes a need to codify and clarify current practices, as set forth in FHWA policy, in regulations. When considering a request for a change in access to the Interstate System, FHWA examines the safety, operations, and engineering (SO&E) aspects of the requested change in access. Historically, FHWA has done this by relying on the information provided in an IJR submitted by the State DOT. The IJR contains the project layouts, technical analyses, and other information supporting the change in access request. To date, FHWA has determined whether to approve the request based on the factors listed in FHWA's policy on Access to the Interstate System (Policy).

FHWA initially developed and published the Policy in October 1990 (55 FR 42673) due to numerous requests by States for additional clarity regarding the justification and documentation necessary to substantiate proposed changes in access to the Interstate System. FHWA issued subsequent revisions in February 1998, August 2009, and May 2017. The February 11, 1998, revision (63 FR 7045) reflected the planning requirements of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, Pub. L. 102–240) as implemented in 23 CFR part 450, to clarify coordination between the access request and environmental processes, and to update language. FHWA issued the 2009 Interstate Access Policy (2009 Policy), published August 27, 2009 (74 FR 43743), to reflect the direction provided in Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Pub. L. 109–59) to clarify the operational and safety analysis and assessment of impacts that provides the basis for proposed changes in access to the Interstate System. The 2009 Policy also updated language at various locations to reference Federal laws, regulations, and FHWA policies. Finally, FHWA issued the 2017 Interstate Access Policy (2017 Policy), dated May 22, 2017 (<https://www.fhwa.dot.gov/programadmin/fraccess.cfm>), to reduce duplication with other project reviews. The 2017 Policy focused on the technical feasibility of any change in access in support of FHWA's determination of safety, operational, and engineering acceptability. These changes allow State DOTs to prepare and submit an IJR demonstrating that the change in access will not have a significant adverse

impact on the safety and operation of the Interstate facility (which includes mainline lanes, existing, new, or modified ramps, and ramp intersections with crossroad) or on the local street network based on both the current and the planned future traffic projections without including additional documentation related to other activities in the project development (*i.e.*, planning, preliminary design, environmental analysis, final design, right-of-way acquisition, and construction) process. Codifying and clarifying current practices under the 2017 Policy in regulations, as proposed, will facilitate implementation of the statutory requirements regarding changes in access to the Interstate System. This process is separate from the de-designation of Interstate segments that are processed through FHWA's Office of Planning, Environment, and Realty, and this rulemaking would not preclude de-designation.

## Interstate System Access Regulation Proposed at 23 CFR Part 624

This proposed rule would establish requirements for the justification and documentation necessary for a State DOT to substantiate proposed changes in access to the Interstate System. These requirements are consistent with the existing policies and practices described above. It would facilitate decisionmaking regarding proposed changes in access to the Interstate System in a manner that considers safety, operations, and engineering. Consistent with 23 U.S.C. 109(a) and (b) and 23 U.S.C. 111, new or modified points of access for facilities subject to a Federal-aid project agreement must be approved by FHWA. To facilitate these approvals, such new or modified points of access would be required to be developed in accordance with the requirements of this proposed rule. In addition, new or modified points of access must comply with the requirements in 23 CFR part 625, Design Standards for Highways.

FHWA's decision to approve new or revised access points to the Interstate System must be supported by information justifying and documenting the proposed change in access. Therefore, the decision to approve a request is dependent on the IJR demonstrating that the proposed change in access will not result in a significant adverse impact on the Interstate System traffic operations or the safety in the project's area of influence. In addition, the proposed access must connect to a public road only, provide for all traffic movements, be designed to meet or

exceed current standards, and demonstrate that the change in access can be clearly and adequately signed.

This proposed rule would identify the requirements for the change in access request and documentation necessary to substantiate any request that is submitted by a State DOT to FHWA for approval. Once the State DOT's analysis is completed, it would be required to be documented in the form of a standalone IJR and submitted by the State DOT to FHWA for a SO&E determination. FHWA expects that an IJR will be clearly written for someone who is not familiar with the project, the area, or the State. The technical analysis presented in the IJR enables FHWA to make an informed decision about safety and operational impacts of the change in access to the Interstate System and make the SO&E determination based on those impacts.

The proposed rule would not alter or restrict the option for FHWA to delegate approval authority for the determination of SO&E acceptability of IJR to a State DOT pursuant to 23 U.S.C. 111(e). Nor would it alter a State DOT's ability to assume FHWA environmental review responsibilities under 23 U.S.C. 326 (State assumption of responsibility for categorical exclusions) or 23 U.S.C. 327 (Surface transportation Project Delivery Program). As discussed in the section-by-section analysis, under the proposed rule, FHWA may grant final approval of an Interstate System change in access request once certain conditions are met. There must be a favorable SO&E determination, and the applicable transportation planning, conformity, congestion management process, and National Environmental Policy Act (NEPA) procedures must be completed. In addition, the alternative selected and approved in the NEPA decision must also be the subject of a favorable SO&E determination. FHWA retains approval authority for final approval of changes in access to the Interstate System under the proposed rule.

The section-by-section analysis provides a detailed discussion of the proposed rule.

## Section-by-Section Discussion

### Section 624.1 Purpose

In § 624.1, FHWA proposes to set forth the purpose of part 624. Specifically, the purpose is to prescribe requirements and procedures for State requests for, and FHWA consideration of, changes in access to the Interstate System. Both aspects of changes in access are reflected throughout this proposal.

### Section 624.3 Applicability

In § 624.3(a), FHWA proposes to specify the conditions under which proposed part 624 would be applicable. Historically, FHWA has applied the Policy to changes in access regardless of the funding source. This Policy was not applied to toll roads incorporated into the Interstate System, except for segments where Federal-aid highway funds have been expended or would be used for roadway improvements, or where the toll road section has been added to the Interstate System under the provisions of 23 U.S.C. 103(c)(4)(A). In this rulemaking, the proposed applicability aligns with 23 U.S.C. 111(a), which ties the requirement for approval of changes in access along the Interstate System to the project agreement. On roadway segments where Federal-aid highway funds or other funds administered under Title 23 have never been used and will not be used for the modified access, there is no project agreement and the provisions of 23 U.S.C. 111(a) do not apply. Therefore, under § 624.3(a)(1), applicability of the proposed rule is limited to Interstate System segments for which Federal-aid highway funds or other funds administered under Title 23 have been used in the past or are used to develop a project. As used in the proposed rule, a segment is the section of Interstate that falls within the project limits specified in the project agreement for the use of Title 23 funds.

In proposed § 624.3(b), FHWA would clarify that the requirements of this part are not applicable to ramps providing access to safety rest areas, information centers, weigh stations, and truck inspection stations located within the Interstate right-of-way when such areas are accessible to vehicles only to and from the Interstate System. This section does not change the requirements of this part for connections from other public facilities, which may be allowed if an exception is granted in accordance with § 624.7(f).

In proposed § 624.3(c), FHWA would clarify that the requirements of this part are not applicable to connections between managed lanes and general-purpose lanes on the same Interstate highway.

### Section 624.5 Definitions

In § 624.5, FHWA proposes definitions for 11 terms specific to the Interstate System access approval process. *Access point* is proposed to mean any permanent (including those metered or closed at times) connection to the through lanes or shoulders, collector-distributor roads, or ramps on

the Interstate System, including “locked gate access.” This definition is consistent with the definition included in the 1990 and 1998 policies. The 2009 and 2017 policies changed the definition to focus on breaks in the control of access to the Interstate System right-of-way. Under a risk-based approach to stewardship and oversight, FHWA believes the focus should return to permanent connections to the Interstate through lanes or shoulders, collector-distributor roads, or ramps. *Area of influence* is proposed to mean the geographic extent to which a proposed change in access will affect traffic operations and safety. *Change in access* is proposed to mean the addition of a new, or modification of an existing, interchange or access point along the Interstate System. *Interchange* is proposed to mean a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels. *Interstate Justification Report (IJR)* is proposed to mean a technical report that documents the SO&E aspects of a proposed change in access to the Interstate System and demonstrates that the proposal meets the provisions of part 624. *Interstate System* has the meaning given in 23 U.S.C. 101 and for purposes of part 624, we propose that it includes: mainline lanes; shoulders; existing, new or modified ramps; collector-distributor roads; and ramp termini. *Partial interchange* is proposed to mean an interchange that does not provide for each of the eight basic movements (or four basic movements in the case of a three-legged interchange). *Programmatic agreement (PA)* is proposed to mean an agreement between FHWA and a State DOT under 23 U.S.C. 111(e) to allow a State to review an IJR and make the SO&E determination. *Public road* as proposed has the meaning given in 23 U.S.C. 101(a)(22). *Safety, Operations, and Engineering (SO&E) determination* is proposed to mean the technical determination of whether the proposed location, configuration, geometric design, and signing related to the proposed change in access may be reasonably expected to serve the anticipated traffic of the Interstate System in a manner that is conducive to safety, durability, and economy of maintenance. *Safety rest area* as proposed reflects the definition in 23 CFR 752.3(a). That definition in the FHWA regulations governing landscape and roadside development refers to a roadside facility safely removed from

the traveled way with parking and such facilities for the motorist deemed necessary for rest, relaxation, comfort, and information needs. The definition adds that the term is synonymous with “rest and recreation areas.”

FHWA requests comments on the proposed definitions. In addition, FHWA requests comments on additional terms relating to changes in access to the Interstate System that could benefit from definition in part 624.

### Section 624.7 Interstate System Access Requirements

In § 624.7, FHWA proposes to specify the requirements applicable to Interstate System access. In § 624.7(a), FHWA proposes to require that proposed changes in access shall not result in a significant adverse impact on the Interstate System traffic operations or the safety for all roadway users in the project’s area of influence, consistent with FHWA’s goal of reducing fatal and serious injury crashes on the entire roadway network. The 2009 Policy stated, “An operational and safety analysis has concluded that the proposed change in access does not have a significant adverse impact on the safety and operation of the Interstate facility (which includes mainline lanes, existing, new, or modified ramps, ramp intersections with crossroad) or on the local street network based on both the current and the planned future traffic projections.” Since 2009, there has been confusion regarding the applicability of the “or” statement contained in this sentence in the 2009 Policy and carried forward in the 2017 policy. Questions have been raised about whether the “or” statement applied to the safety analysis, operational analysis, or both and whether a request for a change in access would be denied because the operational or safety analysis for either the Interstate System or the local roads was adversely impacted. To address these questions, FHWA proposes to clarify in § 624.7(a) that any change in access to the Interstate System shall not result in a significant adverse impact on the traffic operations of the Interstate System or the safety for all roadway users in the project’s area of influence. To ensure safety for all roadway users in the project’s area of influence, all users must be considered when reviewing an access request. To that end, the existing and projected land use along the crossroad should be examined and opportunities to improve connectivity for pedestrian and bicycle travel should be considered as part of the access modification.

FHWA also proposes to ensure that the traffic and safety data used to

develop the safety and operational analysis for inclusion in the IJR is reasonably current. The traffic data available for the analysis is generally no more than 3 years old since metropolitan planning organizations (MPO) are required to update their models on a 3-year cycle. However, to account for the project development process (*i.e.*, planning, preliminary design, environmental analysis, final design, right-of-way acquisition, and construction) and to minimize the need to revise an analysis that was started at the end of the MPO modeling cycle, the proposed rule would specify that traffic data used in the State DOT's analysis may be no more than 5 years old. Where microsimulation modeling is used for the analysis, even more current traffic data may be useful.

With multiple operational analysis tools and methodologies available, FHWA does not require the specific use of any tool. Regardless of which tool type is selected, it is important to understand the limitations of the chosen tool(s) and apply the tools in a manner which supports a verifiable, reproducible, and accurate analysis. This includes the effective calibration of the chosen tool(s) and proper interpretation of the output. In addition, it is important to provide documentation of the operational analysis in the IJR that gives sufficient information for an independent review of the conditions and does not require the use of any specific traffic analysis tool software. FHWA encourages the use of appropriate tools in a scope commensurate with the project complexity.

For the safety evaluation, an analysis of recent crash data is useful for determining if the elements under study (freeway through lanes, interchange ramps, crossroads, and intersections) within the project area are experiencing more or greater severity of crashes than what would be considered typical for the conditions relevant to the facility. This information is helpful for identifying potential factors contributing to poor safety performance and how those conditions could be improved as part of the build proposal(s). Crash data more than 5 years old does not provide an accurate assessment of the safety performance conditions of the facility because there may have been significant changes in travel patterns and conditions as evidenced by the need for proposed changes in access. FHWA believes the 5-year requirement for traffic and safety data proposed in this rule provides State DOTs with sufficient flexibility that accounts for project development

processes and ensures that the analysis is based on reasonably current data.

The safety analysis should assess the safety performance of the overall project (both Interstate and local roads) within the project's area of influence. The scope of the analysis and the tools and methodologies used for the assessment should be commensurate with the scope and complexity of the proposed project. More complex projects have greater risk for introducing unintended negative safety consequences and therefore a more robust analysis may be necessary.

The intent of the safety analysis is to guide project design decisions in an effort to: identify and mitigate any existing safety risk features that may be contributing to the number and severity of crashes; implement effective and efficient design choices that reduce future safety risks; and implement designs consistent with known human factors design guidance. Safety has traditionally been considered in highway projects within a standards-based framework. Recent advancements in the development and use of statistical models within a data driven safety analysis framework allow for a more thorough understanding of the quantitative relationship between design features and safety performance.

With multiple safety analysis tools and methodologies available, FHWA does not require the specific use of any tool. FHWA encourages the use of appropriate tools in a scope commensurate with the project complexity. If applying safety predictive models, it is important that the analysis consider the boundaries and conditions for which the model was developed. Not all conditions and scenarios have safety predictive models available.

The safety analysis should assess safety performance (number and severity of crashes) under the proposed build and no-build scenarios. Predictive safety analysis tools may be applied on individual segments or components of the project, and it may be possible to sum the results for the entire project. If using predictive safety analysis tools, it is important to acknowledge the complexities of safety modeling and the potential variability from actual results.

Instances may arise where the Interstate System could incur expected or predicted increases to overall crashes, or specific crash severity types, while the overall project crash impacts are reduced. FHWA expects agencies to carefully evaluate and discuss the tradeoffs between increased crashes on one facility versus another and will take this into account when making the SO&E determination.

In § 624.7(b), FHWA proposes to require that access to the Interstate System must connect only to a public road, consistent with FHWA practice since 1990. The American Association of State Highway and Transportation Officials (AASHTO) *A Policy on Design Standards—Interstate System* has been adopted as the standard for the Interstate System. See § 625.4(a)(2). Since 1988, this standard has included the following provision related to access control to the Interstate System: "Access is to be achieved by interchanges at select public roads." (AASHTO, *A Policy on Design Standards—Interstate System*, page 2). Requiring that access points connect to a public road assures that the access to the Interstate System will not be closed by private interests and that a public agency has the ability to make necessary improvements to maintain the safety and traffic operations of the interchange and the Interstate System. The proposed rule would specifically prohibit connections directly to private developments, parking lots, or private roads.

In § 624.7(c), FHWA proposes to prohibit access from outside of the Interstate System right-of-way to safety rest areas, information centers, weigh stations, and truck inspection stations located within the right-of-way. Such prohibition is consistent with FHWA's implementation of the 2009 Policy as documented in the Interstate System Access Informational Guide, 2010, available at <https://www.fhwa.dot.gov/design/interstate/pubs/access/access.pdf>. Also, as noted in the AASHTO document, *A Policy on Geometric Design of Highways and Streets*, 2018, "a rest area is not intended to be used for social or civic gatherings or for such active forms of recreation as boating, swimming, or organized games." (Section 3.6.2, page 3–187). In addition, the AASHTO document, *A Policy on Design Standards—Interstate System*, 2016, states that access to the Interstate System is to be achieved by interchanges at selected public roads. (AASHTO, *A Policy on Design Standards—Interstate System*, page 2). Access to rest areas from outside the Interstate right-of-way is prohibited to ensure that the rest area is not used as an interchange to access a local road network, jeopardizing its intended function of reducing driver fatigue and for the convenience of highway users. These facilities should only be accessible to vehicles to and from the Interstate System.

In § 624.7(d), FHWA proposes to require that each interchange provides for all traffic movements, consistent

with the Policy since 1990 and the AASHTO document, *A Policy on Design Standards—Interstate System*, 2016, which has been adopted as a design standard. See § 625.4(a)(2). In § 624.7(e), FHWA proposes to require that the proposed change in access shall be designed to meet the standards in accordance with part 625 of this title or have approved exceptions, and shall comply with part 655 of this title, Traffic Operations, consistent with the Policy since 1990.

In § 624.7(f), FHWA proposes to grant exceptions on a case by case basis to the requirements in § 624.7(b) through (d) for the situations referenced in paragraphs (f)(1) through (f)(4). In § 624.7(f)(1), FHWA could grant exceptions for locked gate access to private property for public safety. Locked gate access is sometimes necessary for use by maintenance or utility forces in remote areas, between widely spaced interchanges for emergency management or medical personnel, hazardous materials response and evacuations at industrial sites, or for temporary construction access. In § 624.7(f)(2), FHWA could grant exceptions to allow locked gate access from an information center, weigh station, and truck inspection station to a local road as needed for public safety, such as locked gate access from a truck inspection station to a minor local road to access repair services in a remote area. In § 624.7(f)(3), FHWA could grant exceptions for access from a safety rest area to an adjacent, publicly owned conservation and recreation area if access to this area is available only through the safety rest area, as provided under 23 CFR 752.5(d). Section 752.5(d), in FHWA's regulations governing safety rest areas, allows FHWA to permit access from safety rest areas to adjacent publicly owned conservation and recreation areas if access to these areas is only available through the rest area and if these areas or their usage does not adversely affect the safety rest area facilities. In proposed § 624.7(f)(4), FHWA could grant exceptions for partial interchanges where they are necessary to provide special access (e.g., to managed lanes or park and ride lots), or where factors such as social, economic, and environmental impacts of a full interchange justify the exception.

#### Section 624.9 Approval Process

Proposed § 624.9(a) sets out the approval process for a change in access to the Interstate System. In § 624.9(a), FHWA proposes to require that a State DOT proposing a change in access submit electronically a request letter

and an IJR to FHWA demonstrating that the proposed change in access meets the requirements of part 624. FHWA would not accept requests from other parties besides a State DOT. In § 624.9(b), FHWA proposes that approval of a change in access requires a SO&E determination and a final approval. The SO&E determination is separate from the NEPA process and final approval could not be granted until the NEPA process is complete. In § 624.9(c), FHWA proposes that the SO&E determination shall be based on the safety, operational, and engineering aspects of the request as documented in an IJR submitted by the State DOT in accordance with the requirements of proposed § 624.11. In § 624.9(c), FHWA also proposes that all SO&E determinations shall be made by FHWA except where an approved PA is in effect. When an approved PA is in effect, the State DOT shall make a SO&E determination on behalf of FHWA in accordance with 23 U.S.C. 111(e) and 23 CFR 624.13 for specific types of Interstate System access.

In § 624.9(d), FHWA proposes that if a favorable SO&E determination is made, FHWA would consider whether final approval of a proposed change in access to the Interstate System is appropriate. Further, FHWA proposes that final approval may only be granted by FHWA if the following conditions are met: (1) applicable transportation planning, conformity, congestion management process, and NEPA procedures have been completed; and (2) the alternative covered by the favorable SO&E determination is of the same scope and design as the alternative selected and approved in the NEPA decision. FHWA could not issue final approval of access until the NEPA procedures have been completed because the final approval is a major Federal action subject to NEPA. However, FHWA could make a SO&E determination in advance of the NEPA decision.

In § 624.9(e), FHWA proposes that if a proposed change in access to the Interstate System has not progressed to construction within 5 years of an affirmative SO&E determination, FHWA may require a State DOT to provide verification that the requirements of § 624.7 continue to be met based on current and projected future conditions. The 2009 Policy discussed reevaluating a proposal if the project did not proceed to construction within 8 years. This limit was reduced to 3 years in the 2017 Policy to coincide with the timeframe for written NEPA re-evaluation for draft and final environmental impact statements (EIS) pursuant to 23 CFR

771.129(a) and (b). FHWA has determined that linking these two timeframes is not appropriate because the 3-year NEPA requirement applies only in situations where an EIS is developed and not every Interstate access modification request requires an EIS. As mentioned above, traffic and safety data that is up to 5 years old is adequate to make SO&E determinations. Therefore, FHWA now proposes to set the limit for a proposed change in access to progress to construction without State DOT verification under § 624.7 at 5 years after an affirmative SO&E determination. FHWA selected this duration because traffic and safety data that is older than 5 years introduces higher risk in the analysis of SO&E acceptability. The 5 year threshold for proceeding to construction will provide a maximum of 10 years [5 years (project development) + 5 years (verification)] from the time the traffic data was collected. Within this time period, some areas could see significant change in travel patterns and conditions, which may warrant a reconsideration of whether the technical assumptions that formed the basis of FHWA's prior approval are still valid. In addition, this timeframe would allow for two Long-Range Transportation Plan updates for most MPOs. See 23 U.S.C. 134(i)(1).

#### Section 624.11 Interstate Justification Report

Proposed § 624.11 addresses the IJR. In § 624.11(a), FHWA proposes to require that the IJR be a standalone report. We expect that all information necessary to make the SO&E determination would be in the IJR. Relevant information from other documents must be included in the IJR, rather than referenced.

In § 624.11(b), FHWA proposes to prescribe the minimum information that must be included in the IJR, except as provided under § 624.11(d), so that FHWA can make a determination regarding the SO&E aspects of the proposed change in access request. These requirements are consistent with long-standing practice as documented in the 2010 Interstate System Access Informational Guide.

In § 624.11(b)(1), FHWA proposes to require a proposed project description and overview along with a location map with applicable distances to adjacent interchanges.

In § 624.11(b)(2), FHWA proposes to require preliminary design documents sufficient for FHWA to determine the geometric viability of the proposed project. Specifically, FHWA proposes to require that the IJR include, at a

minimum, the design criteria, existing geometry overlaid with clearly labeled proposed geometry plan views, lane configuration schematics, typical sections, control-of-access lines, interchange spacing, ramp spacing, and other design features necessary to evaluate the proposed design. The geometric design criteria needed would vary based on the stage of development and complexity of the proposal.

In § 624.11(b)(3), FHWA proposes requirements for the limits of the operational and safety analysis for the proposed change in access included in the IJR. In § 624.11(b)(3)(i) and (ii), FHWA proposes that the operational and safety analysis must include at least the first adjacent existing or proposed interchanges and intersections to evaluate the impacts on the roadway network. A preliminary understanding of the traffic conditions should be gained prior to selecting the limits of the network. Based on the complexity of the proposal, logical traffic breaks should be selected within the system rather than adhering to only the minimum requirements.

In § 624.11(b)(4), FHWA proposes to require that a conceptual signing plan showing the type and location of the signs proposed to support the proposed design be included in the IJR. This plan is necessary for FHWA to determine if the proposed interchange can be adequately and clearly signed.

In § 624.11(c), FHWA proposes to specify the additional information that must be included in the IJR when a proposed change in access will not provide for all traffic movements at an interchange (also known as a partial interchange) in accordance with proposed § 624.7(d). In § 624.11(c)(1), FHWA proposes to require that the IJR must provide a full-interchange option and compare the SO&E to the proposed partial interchange option. The IJR must justify the necessity for a partial interchange alternative. In

§ 624.11(c)(2), FHWA proposes that the IJR must describe why a partial interchange is proposed and include the proposed mitigation to compensate for missing movements, such as wayfinding signage, local intersection improvements, mitigation of driver expectation leading to wrong-way movements on ramps, and other proposed strategies as necessary. In § 624.11(c)(3), FHWA proposes that the IJR must discuss if the future provision of a full interchange will be precluded by the proposed design.

In § 624.11(d), FHWA proposes to consider the complexity of a change in access when determining the extent of the safety and operational analysis and

the format of the IJR. Due to the variation in complexity of projects, coordination between FHWA and a State DOT is necessary to determine the level of analysis needed based on the context of a specific project. Projects that include the addition of left-turn storage lanes, right-turn storage lanes and through lanes along the crossroad at the terminus of existing ramps are not changes in access and would not require IJR. State DOTs are encouraged to coordinate with FHWA to determine what constitutes a change in access.

#### **Section 624.13 Programmatic Agreement**

In § 624.13, FHWA proposes the process a State DOT must use if they wish to enter into a PA with FHWA that would delegate to the State DOT responsibility for making SO&E determinations on behalf of FHWA in accordance with 23 U.S.C. 111(e) and section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21). FHWA also proposes that, if delegated, SO&E determinations must be made in accordance with the requirements of this part. The process identified in this section is consistent with the FHWA memorandum, “Programmatic Agreement for Processing Interstate Access Requests—Revised” (PA Memo) dated April 26, 2016, available at <https://www.fhwa.dot.gov/design/interstate/160426.cfm>. FHWA intends to update the PA template to incorporate the regulatory provisions and citations after the final rule is published.

In § 624.13(a), FHWA proposes to specify the types of access requests that a State DOT, through a PA with FHWA, may assume delegated authority to make SO&E acceptability determinations on behalf of FHWA. The State DOT may assume all or any portion of the allowed types of access requests. The types of access requests, including new freeway-to-crossroad (service) interchanges, modifications to existing freeway-to-crossroad (service) interchanges, and completion of basic movements at freeway-to-crossroad (service) interchanges, are consistent with 23 U.S.C. 111(e).

In § 624.13(b), FHWA proposes to specify the information the State DOT must provide in the PA request. In § 624.13(b)(1), FHWA proposes that the State DOT must provide the types of access requests for which they wish to assume the responsibility of SO&E determinations. In § 624.13(b)(2), FHWA proposes that the State DOT must also describe the controls and resources they have available to effectively implement

the PA and address the considerations identified in proposed § 624.13(c).

In § 624.13(c)(1), FHWA proposes that upon receipt of a State DOT's request to enter into a PA, FHWA will verify that the State DOT has developed and implemented appropriate controls and processes, and that the State DOT has the necessary resources and commits to conduct future actions in compliance with the requested PA in order to assume responsibility for SO&E determinations on behalf of FHWA. FHWA also proposes a list of specific factors that will be considered.

In § 624.13(c)(1)(i), FHWA proposes to examine whether the State DOT has in place or has modified policies, standard operating procedures (SOP), and processes that are necessary to implement the PA. In § 624.13(c)(1)(ii), FHWA proposes to examine whether State DOT processes and guidance have been developed and implemented to support the development, analysis, documentation, review, and potential processing of Interstate System access changes under the terms of the PA. In § 624.13(c)(1)(iii), FHWA proposes to examine documentation demonstrating the process, guidance, assistance, and oversight that State DOTs will provide to support local agencies who may propose changes in Interstate System access. In § 624.13(c)(1)(iv), FHWA proposes to examine documentation demonstrating whether the State DOT has the technical expertise and resources (e.g., training, analysis tools) for State DOT staff to analyze, review, and process proposed changes in Interstate System access under the terms of the PA. In § 624.13(c)(1)(v), FHWA proposes to examine documentation demonstrating whether the State DOT has procedures in place governing oversight, monitoring, and annual reporting to FHWA to ensure that changes in access to the Interstate System are processed in a manner that is consistent with the terms of the PA. In § 624.13(c)(1)(vi), FHWA proposes that any other factors deemed necessary by the Secretary will be examined.

In § 624.13(c)(2), FHWA proposes to establish, with input from the State DOT, the scope and conditions for the State DOT's review of access requests and the process by which the State DOT will make the SO&E determination.

In § 624.13(d), FHWA proposes that the PA will require that the State DOT submit electronically an annual report to FHWA that at a minimum summarizes specific information about SO&E determinations under the PA. In § 624.13(d)(1), FHWA proposes to require a State DOT to submit a list of all the SO&E determinations made in

the previous calendar year. In § 624.13(d)(2), FHWA proposes to require a State DOT to submit a summary of anticipated changes in access to be evaluated under the PA in the coming calendar year. In § 624.13(d)(3), FHWA proposes to require that the report assess the effectiveness and verify that all changes in access to the Interstate System processed through the PA were evaluated and processed consistent with the terms of the PA. In § 624.13(d)(4), FHWA proposes to require that the report identify any areas where improvements are needed and what actions the State DOT is taking to implement those improvements. In § 624.13(d)(5), FHWA proposes that the report will include actions taken by the State DOT as part of its quality control efforts.

In § 624.13(e), FHWA proposes that once all concerns have been addressed to the satisfaction of the Secretary, the PA may be executed.

FHWA requests comments on the proposed rule. Please follow the instructions in the **ADDRESSES** section of this Notice to submit comments. Additional information about commenting is available under “Electronic Access and Filing” in the **SUPPLEMENTARY INFORMATION** section of this document.

#### **Rulemaking Analyses and Notices**

##### **Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Rulemaking Policies and Procedures**

The Office of Management and Budget (OMB) has not designated this rulemaking a significant action under section 3(f) of Executive Order (E.O.) 12866. Accordingly, OMB has not reviewed it. This proposed rule would codify existing policy, processes and procedures relating to new or modified access to the Interstate System. In addition, this proposed rule complies with E.O. 12866 and E.O. 13563 to improve regulation. This proposed rule is not anticipated to adversely affect, in any material way, any sector of the economy. In addition, this proposed rule would not create a serious inconsistency with any action taken or planned by another agency or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This proposed rule also does not raise any novel legal or policy issues. FHWA anticipates that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not necessary.

#### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), FHWA has evaluated the effects of this proposed rule on small entities, such as local governments and businesses. Based on the evaluation, FHWA anticipates that this action would not have a significant economic impact on a substantial number of small entities. The proposed rule would codify the processes that are currently in-use by State DOTs when changes in access to the Interstate System are sought, and States are not included in the definition of small entity set forth in 5 U.S.C. 601. FHWA believes the projected impact upon small entities that utilize Federal-aid highway program funding for the development of highway improvement projects on the National Highway System would be negligible. Therefore, FHWA certifies that the proposed action would not have a significant economic impact on a substantial number of small entities.

#### **Unfunded Mandates Reform Act of 1995**

FHWA has determined that this NPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) (UMRA). This proposed rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$155 million or more in any one year (when adjusted for inflation). Further, in compliance with the Unfunded Mandates Reform Act, FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal governments and the private sector. In addition, the definition of “Federal Mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

#### **Executive Order 13132 (Federalism Assessment)**

FHWA has analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13132. FHWA has determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism assessment. FHWA has also determined that this action would not preempt any State law

or State regulation or affect the States’ ability to discharge traditional State governmental functions.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), a person is not required to respond to a collection of information by a Federal Agency unless the collection displays a valid OMB control number. Federal agencies must obtain OMB approval for each collection of information they conduct, sponsor, or require through regulations, among others. This proposed rule would have new collection of information requirements that would require the submittal of two reports that State DOTs have submitted to FHWA for years under existing policy: the IJR and the PA annual report. The IJR provides the justification and documentation necessary to substantiate any proposed change in access to the Interstate System and facilitates FHWA’s decisionmaking giving consideration to the SO&E aspects of the proposed change. The PA annual report was established under PA procedures to track IJR that have received SO&E determinations and the processes used to make those determinations under the PA. Accordingly, FHWA has forwarded an Information Collection Request (ICR) for the proposed new collection of information described below to the OMB for review and comment. The ICR describes the nature of the collection of information and its expected burden.

In compliance with the PRA, FHWA also requests comments on the proposed new collection of information:

*Title:* Interstate System Access—Reports.

*Type of Request:* New collection.

*OMB Control Number:* 2125—New.

*Form Number:* The collection of information would not use any standard forms.

*Requested Expiration Date of Approval:* Three years from the date of approval.

*Summary of the Collection of Information:* The proposed regulations in §§ 624.11 and 624.13(d), respectively, would require State DOTs to submit two reports; the IJR and the PA annual report. The IJR has been submitted under existing policy since 1990, 55 FR 42670 (October 22, 1990). It provides the justification and documentation necessary to substantiate any proposed changes in access to the Interstate System and facilitates FHWA’s decisionmaking, giving consideration to the SO&E aspects of the proposed change. The IJR must include a description and overview of the proposed change, preliminary design

documents, operational and safety analyses evaluating the impact on the Interstate System and local road network, and a conceptual plan showing the type and location of proposed signs. The IJR for a proposed partial interchange must include additional information. The PA annual report has been submitted since 2013, when PA procedures were first established, to track IJR that have received SO&E determinations and the processes used to make those determinations under the PA. Under proposed § 624.13(d), a PA must require that the State DOT electronically submit an annual report to FHWA summarizing its performance under the PA.

*Description of the Need for the Information:* As discussed under the “Background and Legal Authority” heading of this preamble, FHWA is authorized to approve any points of access to, or exit from, the Interstate System for those routes for which Federal-aid highway funds or other funds administered under Title 23 have been used in the past or will be used to develop a project, in accordance with 23 U.S.C. 111. Additional authority is found in section 1318(d) of MAP-21, and 23 U.S.C. 111(e). Full control of access along the Interstate mainline and ramps, along with control of access on the crossroad at interchanges, is critical to ensuring that the Interstate System provides the highest level of service in terms of safety and mobility. Collecting information in the form of an IJR allows FHWA to adequately review proposed changes in access to the Interstate System and determine the safety and mobility impacts prior to making a decision of acceptability of a proposed construction project. In addition, information collected in the IJR is streamlined to remove duplication amongst other programs within FHWA and reduce administrative burdens to State DOTs.

The proposed requirements for the submission of IJR and PA annual reports to FHWA align with the DOT priority of Safety.<sup>2</sup>

*Proposed Use of the Information:* FHWA’s decision to approve change in access points to the Interstate System must be supported by technical information indicating that the proposed change in access will not have a significant adverse impact on the safety and operation of the Interstate facility. FHWA is proposing to require in 23 CFR 624.9(a) that when a State DOT requests a change in access, such technical information be submitted to FHWA in the form of an IJR that meets

the requirements of proposed 23 CFR 624.11, together with a letter requesting the change in access. FHWA staff in the division office (field) will review the IJR to determine whether the request is consistent with FHWA policy and applicable requirements and whether to recommend concurrence. The IJR may be shared with staff in FHWA’s Resource Center and Headquarters for technical assistance, depending on the complexity of the analysis where supplemental technical expertise is needed. For changes in access that require FHWA Headquarters concurrence, such as system interchanges (freeway-to-freeway) or partial interchanges the IJR is transmitted to FHWA Headquarters, Office of Infrastructure, to make the determination on the IJR.

A State DOT has the option of entering into a PA with FHWA to make SO&E determinations on IJR. If a State DOT has an approved PA then they are required to submit a PA annual report, which is used to monitor the performance of the PA. FHWA staff in the field will review the annual report as part of their oversight of the PA process.

*Description of the Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information):* The respondents are 52 State DOTs. State DOTs will only submit IJR if they are requesting Interstate System access. The IJR are submitted based on need; as a result, there is no expectation that all respondents will submit IJR annually. Based on historical data, a maximum of 30 annual responses are expected with this collection. The PA annual reports are submitted from State DOTs that have an approved PA with FHWA. It is estimated that five PA annual reports will be submitted yearly with this collection.

*Estimate of the Total Response Burden Resulting from the Collection of Information:* FHWA estimates the total burden for IJR collections to be approximately 3,900 hours and \$214,500 annually for State DOTs. It is estimated that the total burden for IJR reviews will be approximately 990 hours and \$65,340 annually for FHWA.

FHWA estimates the total burden for the PA annual reports collection to be approximately 50 hours and \$2,750 annually for State DOTs. It is estimated that the total burden for reviews of the PA annual reports collection will be approximately 10 hours and \$660 annually for FHWA.

*Public Comments Requested:* FHWA requests comments on any aspect of this information collection, including: (1)

whether the proposed collection is necessary for FHWA’s performance; (2) the accuracy of the estimated burdens; (3) ways for FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including through the use of electronic technology, without reducing the quality of the collected information. FHWA will summarize and/or include comments on these points in the request for OMB’s clearance of this information collection.

#### **National Environmental Policy Act**

FHWA has analyzed this proposed rule for the purposes of the NEPA (42 U.S.C. 4321, *et seq.*) and has determined that it qualifies for a categorical exclusion (CE) under 23 CFR 771.117(c)(20), which applies to the promulgation of regulations, and that no unusual circumstances are present under 23 CFR 771.117(b). Categorically excluded actions meet the criteria for CEs under the Council on Environmental Quality regulations and under 23 CFR 771.117(a) and normally do not require any further NEPA approvals by FHWA. This proposed rule would not affect the NEPA process for Interstate access requests, and if it is promulgated as proposed, FHWA would not grant a project final approval until the NEPA process was completed.

#### **Executive Order 13175 (Tribal Consultation)**

FHWA has analyzed this proposed rule under E.O. 13175 and believes that it would not have substantial direct effects on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal law. This proposed rule would not impose any direct compliance requirements on Indian Tribal governments nor would it have any economic or other impacts on the viability of Indian Tribes. Therefore, the funding and consultation requirements of E.O. 13175 do not apply and a Tribal summary impact statement is not required.

#### **Executive Order 12898 (Environmental Justice)**

E.O. 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. FHWA has determined that

<sup>2</sup> See, e.g., <https://www.transportation.gov/safety>.



this proposed rule does not raise any environmental justice issues.

### Regulation Identifier Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

### List of Subjects in 23 CFR Part 624

Interstate access process, Interstate Justification Report, Programmatic Agreement.

Issued under authority delegated in 49 CFR 1.81 and 1.85.

**Shailen P. Bhatt,**

*Administrator, Federal Highway Administration.*

■ In consideration of the foregoing, FHWA proposes to amend title 23 of the Code of Federal Regulations by adding part 624 as follows:

## PART 624—INTERSTATE SYSTEM ACCESS

Sec.

624.1 Purpose.

624.3 Applicability.

624.5 Definitions.

624.7 Interstate System access requirements.

624.9 Approval process.

624.11 Interstate Justification Report.

624.13 Programmatic agreement.

**Authority:** 23 U.S.C. 109(a) and (b) and 111; 23 CFR 1.32; 49 CFR 1.85.

### § 624.1 Purpose.

To prescribe requirements and procedures for State requests for and FHWA consideration of changes in access to the Interstate System.

### § 624.3 Applicability.

(a) Except as provided in paragraph (b) and (c) of this section, this part is applicable to all segments designated as part of the Dwight D. Eisenhower National System of Interstate and Defense Highways (Interstate System) for which Federal-aid highway funds or other funds administered under title 23 have been used in the past or are used to develop a project.

(b) This part is not applicable to ramps providing access to safety rest areas, information centers, weigh stations, and truck inspection stations located within the Interstate right-of-way when such areas are accessible to vehicles only to and from the Interstate System. Connections from other public facilities to facilities within the

Interstate System right-of way, if an exception is granted in accordance with § 624.7(f), are subject to the requirements of this part.

(c) This part is not applicable to connections between managed lanes and general-purpose lanes on the same Interstate highway.

### § 624.5 Definitions.

The following terms used in this part are defined as follows:

*Access point.* Any permanent connection (including those metered or closed at times) to the through lanes or shoulders, collector-distributor roads, or ramps on the Interstate System, including “locked gate access”.

*Area of influence.* The geographic extent to which a proposed change in access will affect traffic operations and safety.

*Change in access.* The addition of a new, or modification of an existing, interchange or access point along the Interstate System.

*Interchange.* A system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.

*Interstate Justification Report (IJR).* A technical report that documents the safety, operations, and engineering aspects of a proposed change in access to the Interstate System and demonstrates that the proposal meets the provisions of this part.

*Interstate System.* The term “Interstate System” as defined in 23 U.S.C. 101, and includes mainline lanes; shoulders; existing, new, or modified ramps; collector-distributor roads; and ramp termini. For purposes of this part, the Interstate System shall be limited to those routes for which Federal-aid highway funds or other funds administered under title 23 have been used in the past or will be used to develop a project.

*Partial interchange.* An interchange that does not provide for each of the eight basic movements (or four basic movements in the case of a three-legged interchange).

*Programmatic agreement (PA).* Agreement between FHWA and a State department of transportation (DOT) under 23 U.S.C. 111(e) to allow a State to review and make the Safety, Operations, and Engineering (SO&E) determination.

*Public road.* The term “public road” as defined in 23 U.S.C. 101.

*Safety, Operations, and Engineering (SO&E) determination.* Technical determination of whether the proposed

location, configuration, geometric design, and signing related to the proposed change in access may be reasonably expected to serve the anticipated traffic of the Interstate System in a manner that is conducive to safety, durability, and economy of maintenance.

*Safety rest area.* The term “safety rest area” as defined in § 752.3(a) of this chapter.

### § 624.7 Interstate System access requirements.

(a) The proposed change in access to the Interstate System shall not result in a significant adverse impact on the Interstate System traffic operations or the safety for all roadway users in the project’s area of influence, as demonstrated by operational and safety analyses based on both the current and future traffic projections using traffic and safety data that is no more than 5 years old.

(b) Interstate System access points shall connect only to a public road. Connections directly to private developments, parking lots, or private roads are prohibited.

(c) Connections from outside of the Interstate System right-of-way to safety rest areas, information centers, weigh stations, and truck inspection stations located within the Interstate System right-of-way are prohibited.

(d) Each interchange shall provide for all traffic movements.

(e) A proposed change in access shall be designed to meet the standards in accordance with part 625 of this chapter or have approved exceptions and shall comply with part 655 of this chapter.

(f) On a case by case basis, FHWA may grant exceptions to the requirements in paragraphs (b) through (d) of this section for:

(1) Locked gate access to private property for purposes of public safety;

(2) Locked gate access from an information center, weigh station, and truck inspection station to a local road for the purposes of public safety;

(3) Access from a safety rest area to an adjacent publicly owned conservation and recreation area if access to this area is available only through the safety rest area as allowed under § 752.5(d) of this chapter; or

(4) A partial interchange where necessary to provide special access, such as to managed lanes or park and ride lots, or where factors such as the social, economic, and environmental impacts of a full interchange justify an exception.

### § 624.9 Approval process.

(a) To propose a change in access to the Interstate System, the State DOT

shall submit electronically to FHWA a request letter and an IJR complying with § 624.11 demonstrating that the proposed change in access meets the requirements of this part. Change in access requests will not be accepted from other parties besides a State DOT.

(b) Approval of a change in access to the Interstate System requires a SO&E determination and a final approval.

(c) The SO&E determination shall be based on the safety, operations, and engineering aspects of the request as documented in an IJR meeting the requirements of this part. FHWA shall make the SO&E determination, except where FHWA has delegated to a State DOT the authority to make the SO&E determination on behalf of FHWA by entering into a programmatic agreement that meets the requirements of § 624.13.

(d) If a favorable SO&E determination is made, FHWA will consider whether final approval is appropriate for the proposed change in access to the Interstate System. Final approval may only be granted by FHWA and constitutes a major Federal action under the National Environmental Policy Act (NEPA). Final approval may be granted if the following conditions are met:

(1) Applicable transportation planning, conformity, congestion management process, and NEPA procedures have been completed.

(2) The alternative covered by the favorable SO&E determination is of the same scope and design as the alternative selected and approved in the NEPA decision.

(e) If the project has not progressed to construction within 5 years of receiving an affirmative SO&E determination, FHWA may require the State DOT to provide verification that the requirements of § 624.7 continue to be met based on current and projected future conditions.

#### **§ 624.11 Interstate Justification Report.**

(a) The IJR shall be a standalone report. Relevant information from other documents (such as feasibility studies, NEPA documents or preliminary engineering reports) must be included in the appropriate section of the IJR.

(b) At a minimum, an IJR submitted to FHWA shall include all of the following, except as provided under paragraph (d) of this section.

(1) A description and overview of the proposed change in access including a project location map and distances to adjacent interchanges.

(2) Preliminary design documents sufficient to demonstrate the geometric viability of the proposal. The design documents shall include the design criteria, existing geometry overlaid with

clearly labeled proposed geometric plan views, lane configuration schematics, typical sections, control-of-access lines, interchange spacing, ramp spacing, and other design features necessary to evaluate the proposed design.

(3) Operational and safety analyses that evaluate the impact of the proposed change in access on the Interstate System and local road network extending to the following area of influence limits at a minimum:

(i) Along the Interstate System, and interchanging freeway if applicable, to the adjacent existing or proposed interchange on either side of the proposed change in access, extending further as needed to ensure the limits of the analysis are appropriate to fully understand the impact of the proposed change in access on the Interstate System.

(ii) Along each crossroad to the first major intersection on either side of the proposed change in access, extending further as needed to demonstrate the safety and operational impacts that the proposed change in access and other transportation improvements may have on the local road network.

(4) A conceptual plan showing the type and location of the signs proposed to support the proposed design.

(c) The IJR for a proposed partial interchange shall meet the following additional requirements.

(1) The IJR shall include a full-interchange option with a comparison of the operational and safety analyses to the partial interchange option. The IJR shall justify the necessity for a partial interchange alternative.

(2) The IJR shall describe why a partial interchange is proposed and include the mitigation proposed to compensate for the missing basic movements, including wayfinding signage, local intersection improvements, mitigation of driver expectation leading to wrong-way movements on ramps, and other proposed strategies as necessary.

(3) The IJR shall describe whether future provision of a full interchange is precluded by the proposed design.

(d) FHWA will consider the complexity of a change in access when determining the extent of the safety and operational analysis and the format of the IJR.

#### **§ 624.13 Programmatic agreement.**

A State DOT may submit to FHWA a written request to enter into a programmatic agreement (PA) with FHWA that delegates to the State DOT the authority to make the SO&E determination on behalf of FHWA in

accordance with 23 U.S.C. 111(e) and the requirements of this part.

(a) A PA may allow a State DOT to make the SO&E determination for all or any part of the following types of change in access requests:

(1) New freeway-to-crossroad (service) interchanges;

(2) Modifications to existing freeway-to-crossroad (service) interchanges; and

(3) Completion of basic movements at freeway-to-crossroad (service) interchanges.

(b) The State DOT request to enter into a PA with FHWA shall include:

(1) The types of changes in access listed in paragraph (a) of this section for which the State DOT would like to make SO&E determinations; and

(2) A discussion of controls the State DOT has implemented, resources available, and actions that would be taken if the PA is approved, as needed to address the considerations outlined in paragraph (c) of this section.

(c) Upon receipt of the request, FHWA will:

(1) Verify that appropriate controls and processes have been developed and implemented by the State DOT, and that the State DOT has the necessary resources and commits to conduct future actions in compliance with the terms of the requested PA. FHWA will examine:

(i) State DOT policies, standard operating procedures, and processes, either in place or modified as needed to carry out the requirements of the PA;

(ii) Documentation demonstrating the processes and guidance that have been developed and implemented to support the development, analysis, documentation, review, and potential processing of each type of proposed change in access to the Interstate System to which the terms of the PA would apply;

(iii) Documentation demonstrating the process, guidance, assistance, and oversight the State DOT will provide to support local agencies (e.g., cities, counties, toll authorities, metropolitan planning organizations (MPOs)) that may propose or submit requests to the State DOT for changes in access to the Interstate System to which the terms of the PA would apply;

(iv) Documentation demonstrating that the State DOT has the expertise and resources (e.g., training, analysis tools) needed to carry out the requirements of the PA;

(v) Documentation of State DOT procedures to provide the necessary oversight, monitoring and annual reporting to the FHWA to ensure the changes in access to the Interstate

System are processed consistent with the terms of the PA; and

(vi) Any other factors deemed necessary by the Secretary.

(2) Establish, with input from the State DOT, the scope and conditions for the State DOT's review of change in access requests and the process by which the State DOT will make the SO&E determination.

(d) A PA shall require that the State DOT submit electronically an annual report to FHWA summarizing its performance under the PA. The report shall, at a minimum:

(1) Include the results of all changes in access to the Interstate System that were processed and received a SO&E determination under the terms of the PA for the previous calendar year;

(2) Summarize the changes in access to the Interstate System that the State DOT plans to process in the coming calendar year;

(3) Assess the effectiveness of and verify that all changes in access to the Interstate System processed through this agreement were evaluated and processed in a manner consistent with the terms of this PA;

(4) Identify any areas where improvements are needed and what actions the State DOT is taking to implement those improvements; and

(5) Include actions taken by the State DOT as part of its quality control efforts.

(e) When all concerns have been addressed to the satisfaction of the Secretary, the PA may be executed.

[FR Doc. 2023–20218 Filed 9–18–23; 8:45 am]

BILLING CODE 4910–RY–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA–HQ–OPP–2023–0069; FRL–10579–08–OCSPP]

### Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (August 2023)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of filing of petition and request for comment.

**SUMMARY:** This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before October 19, 2023.

**ADDRESSES:** Submit your comments, identified by docket identification (ID)

number EPA–HQ–OPP–2023–0069, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566–2427, email address: [RDfRNotices@epa.gov](mailto:RDfRNotices@epa.gov). The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

###### B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the

public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

##### II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at <https://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of