

Guidance - FHWA Change in Access Request Programmatic Agreement Q&A

Use of Programmatic Agreements to Process Changes in Interstate System Access

Introduction

This document (web page) provides guidance on the implementation of Programmatic Agreements (PAs) on Interstate System Change in Access Requests, which allow State Departments of Transportation (State DOTs) to review and receive expedited FHWA approval for changes in Interstate System (I-System) access. The authority for these PAs comes from sections 1505 and 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141). Additionally, section 1405 of the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114-94) amended 23 U.S.C. 111(e). The purpose of this guidance is to clarify the FHWA statutory, regulatory, and policy requirements for review and approval of I-System change in access requests and to describe the requirements and procedures for FHWA Division Offices and State DOTs for establishing and operating a PA process.

Acronyms

AASHTO – American Association of State Highway and Transportation Officials
CE – Categorical Exclusion
CFR – Code of Federal Regulations
DOT – Department of Transportation (or equivalent State Transportation Agency)
E&O – Engineering and Operational
FAHP – Federal-aid Highway Program
FAST – Fixing Americas Surface Transportation
FHWA – Federal Highway Administration
FONSI – Finding of No Significant Impact
MAP-21 – Moving Ahead for Progress in the 21st Century
NEPA – National Environmental Policy Act
PA – Programmatic Agreement
TMA – Transportation Management Area
ROD – Record of Decision
U.S.C. – United States Code

1. What is a PA process for review and approval of Interstate change in access requests?

Section 1505 of MAP-21 provides the Secretary the option of allowing State DOTs to review and approve access justification reports for changes in access to the I-System. Further, section 1318(d) of MAP-21 provides the authority for FHWA to enter into PAs with State DOTs for carrying out project reviews. Therefore, FHWA has identified the opportunity to streamline the review and approval process for certain types of change in I-System access requests by entering into PAs with State DOTs. Under these PAs, State DOTs would be allowed to determine engineering and operational acceptability for certain types of access changes and receive expedited FHWA approval.

2. What changes did the FAST Act make regarding PAs?

Section 1405 of the FAST Act amends 23 U.S.C. 111(e) to add new freeway-to-crossroad interchanges inside a TMA to the list of types of I-System access requests for which a State could make operational and engineering acceptability determinations and receive expedited FHWA approval.

3. Does FHWA's Policy on Access to the Interstate System still apply under the PA?

Yes, approval of an access request still rests on the determination that the access request addresses FHWA's Policy on Access to the Interstate System (Policy). Under the PA, State DOTs would review the access request and make a determination of E&O acceptability based on the assessment that the access request is consistent with all eight points and related requirements of the Policy.

4. What authority does FHWA have for access requests that are a part of the PA process?

23 U.S.C. 111(a) requires that any new or revised access point to the I-System must be approved by the Secretary. Therefore, FHWA remains legally responsible for the approval of all proposed changes to access. Under the PA, State DOTs will review access requests and make a determination of E&O acceptability in accordance with the Policy. FHWA's lack of objections to the State DOT's determination within an agreed time period (recommended to be 10 working days) specified in the PA would constitute FHWA's concurrence required under 23 U.S.C. 111(a). The access request may be deemed to have approval from FHWA once NEPA compliance for the project is completed.

5. What types of access requests may be approved under the PA?

While FHWA remains legally responsible for the approval of all access request approvals, the FHWA Office of Infrastructure has determined that certain types of access requests may be suitable for review and approval under the PA due to their low level of complexity and limited regional impact. The following types of access requests are eligible for State DOT processing under a PA:

1. New and modified freeway-to-crossroad (service) interchanges;
2. Completion of basic movements at existing partial interchanges.

6. What is a determination of E&O acceptability and how is it related to the final approval of an access request?

A determination of E&O acceptability for an access request indicates that the request complies with the eight points and related requirements of the Policy. The determination also is an indicator that the access proposal is a viable alternative that may be included in the environmental analysis for a project involving change in Interstate access. A determination of E&O acceptability is not considered a guarantee of an approval for a proposed change in access but is considered as one step in the approval process. After the NEPA process is completed for a proposed change in access that has been determined to be E&O acceptable, it may receive final approval.

7. What are the appropriate considerations for the Division Office and State DOT to assess a State's ability to enter into a PA?

The following is a list of important considerations for assessing a State DOTs ability to enter into and carry out the responsibilities in accordance with the PA:

- A. **Written Policies and Procedures:** Does the State DOT have written policies and procedures in place for the development and review of Interstate access changes, and if so, when was the last update made? Are the State DOT policies and procedures consistent with FHWA's Policy Statement of 2009? Does the State DOT have an established state interchange review committee or would it consider establishing such a committee?
- B. **Technical Knowledge and Proficiencies of State DOT Staff:** Has the State DOT recently provided training on Interstate access to staff engaged in developing and reviewing Interstate access requests? Has State DOT staff been trained in the use and assessment of the latest traffic and safety analysis procedures and tools?
- C. **Appropriate Linkages Between State Offices Involved in the Project Development Process:** Are there active linkages between the State DOT planning, environment, design, and construction offices to ensure that potential changes in access requests are fully addressed during the entire project development process?

8. What are the requirements for controls that State DOTs need to have in place prior to execution of the PA?

In general, for a State DOT to enter into a PA with FHWA for the processing of access requests, the State DOT would need to demonstrate, and FHWA verify, that they have developed and implemented the necessary controls and processes and have the resources available to take the necessary actions if the programmatic agreement is approved.

- Proposed process and terms of the requested access PA with FHWA;
- List of proposed changes in State DOT and FHWA Stewardship and Oversight Plan and other standard operating procedures;
- List of changes made to State DOT's policies, procedures, and programs to carry out the requirements of the PA;
- Documentation demonstrating the State DOT Chief Engineer has the authority to make determinations of E&O acceptability in accordance with the PA;
- 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 I-System access to which the terms of the PA would apply;
- Documentation demonstrating the process, guidance, assistance, and oversight the State DOT will provide to local agencies (e.g., cities, counties, toll authorities, MPOs) that may propose or submit requests to the State DOT for changes in I-System access to which the terms of the PA would apply;
- Verification that the State DOT has made available the technical assistance and resources (e.g., training, analysis tools) that State DOT staff may need to carry out the requirements of the PA;
- Proposed process and list of proposed changes to ensure the State DOT provides the necessary oversight, monitoring and annual reporting to the FHWA Division Office to ensure the changes in access to the I-System are processed in a manner that is consistent with the terms of the PA.

This list is not exhaustive and not all items will apply to all States. The Division Office will need to work with the State DOT to determine the appropriate controls and processes to have in place and/or develop prior to executing a PA.

9. What is the process for State DOTs to apply for a PA?

A State DOT would submit a request to the FHWA Division Office to enter into a PA to process approvals for any (or all) of the following types of changes in I-System access:

1. New and modified freeway-to-crossroad (service) interchanges;
2. Completion of basic movements at existing partial interchanges.

The request should include a discussion of controls and resources the State DOT has implemented, and actions that would be taken, if the agreement were to be approved. Upon receipt of the request, the Division Office would then work with the State DOT to develop a draft PA establishing the scope and conditions for review and approval of access requests.

The FHWA Division Office would then submit the draft PA to the FHWA Office of Infrastructure for review, along with information verifying that appropriate controls were developed and implemented, and the State DOT commitment to conduct future actions in support of compliance with the terms of the requested programmatic agreement. The FHWA Office of Infrastructure will coordinate concurrence from the Office of Planning, Environment and Realty and the Chief Counsel and then give approval authority for the PA to the Division Office.

10. What are the reporting requirements for State DOTs that enter into a PA?

Each participating State DOT is required to annually submit to the FHWA Division Office in that State a report summarizing: (1) the results of all of the changes in access to the I-System that were processed and approved under the terms of the access PA for the previous year; and (2) the changes in access the State DOT plans to process in the coming year. This report will assess the effectiveness of the PA and will verify that all changes in access to the I-System processed through the PA were evaluated and processed in a manner consistent with the terms of their agreement with FHWA.

11. What are the reporting requirements for Division Offices that enter into a PA with their State DOTs?

The FHWA Division Office will review the State DOT's annual report on I-System access changes processed under the PA during the previous year. In this review the Division Office will verify that the State DOT complied with the terms of the PA. The Division Office will also review the list of planned access changes to be processed under the PA to determine if any involve issues that may require full FHWA participation. The FHWA Division Office will submit the verified report to the FHWA Office of Infrastructure. The Office of Infrastructure will compile and promote the results and successful practices that are identified in the report.

12. Can State DOTs take on the responsibility for review and approval of environmental actions associated with access requests?

Yes, State DOTs wishing to take on FHWA's responsibility for environmental reviews associated with changes in I-System access have three methods of doing so. The first is an assignment of FHWA environmental responsibilities for CE decisions under 23 U.S.C. 326. The second is an assignment of FHWA's environmental responsibilities for CEs, environmental assessments, and environmental impacts statements under 23 U.S.C. 327. Both of those options transfer legal responsibility for the NEPA decisions to the State. The third option is to enter a programmatic CE agreement under which the State makes determinations for specific types of changes in access FHWA identified as CEs on behalf of FHWA, but FHWA retains legal responsibility for those decisions. These arrangements may allow State DOTs that enter into an access PA to proceed with certain changes in I-System access without the need for FHWA's approval of the NEPA decision.

13. Do proposed changes in access meet the requirements to be classified as a CE?

Types of changes in I-System access that have qualified as CEs (as specified in 23 CFR 771.117(d)) include:

- A. Reconstruction or major modifications to existing freeway-to-crossroad (service) interchanges that do not involve adding roadway capacity;
- B. Reconstruction or major modification to freeway-to-freeway interchanges that do not involve adding roadway capacity.

With appropriate supporting documentation, the FHWA may designate these types of actions as CEs to be processed under any of the types of agreements described in question 12. If an existing agreement does not expressly cover these actions, it could be amended to do so.

14. Is the two-step process for access approval accounted for in the PA process for access approvals?

Yes. The two-step process for access approval begins by verifying that the access request complies with the eight points and related requirements of the Policy, also known as a determination of E&O acceptability. The second step is final approval which occurs upon completion of the NEPA process for the proposal and the verification that the design of the preferred NEPA alternative matches the design of the E&O acceptable change in access proposal. If NEPA is completed prior to the determination of E&O acceptability, then final approval of the change in access request may be given immediately upon the determination of E&O acceptability.

15. If a State DOT is not presently interested in requesting a PA for I-System access, will they be able to submit a request in the future?

Yes. A State DOT may submit a request at any time to enter into a PA for I-System access. Some State DOTs may need time to implement the appropriate controls and processes before requesting a PA.