Seventh meeting held on 23–24 October 2006, RTCA Paper No. 279–06/SC204–019.
- EUROCAE ELT Status.
- Committee Presentations, Discussion, Recommendations.
- Revisions/Updates to DO–204–Minimum Operational Performance Standards for 406 MHz Emergency Locator Transmitters (ELT).
- Any New Items Discussions.
- PLBs.
- Closing Session (Other Business, Assignment/Review of Future Work, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 19, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–9861 Filed 12–16–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–25750]

Final Policy Statement on When High-Occupancy Vehicle (HOV) Lanes Converted to High-Occupancy/Toll (HOT) Lanes Shall Be Classified as Fixed Guideway Miles for FTA's Funding Formulas and When HOT Lanes Shall Not Be Classified as Fixed Guideway Miles for FTA's Funding Formulas

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final policy statement.

SUMMARY: This Final Policy Statement describes the terms and conditions on which the Federal Transit Administration (FTA) will classify High-Occupancy Vehicle (HOV) lanes that are converted to High-Occupancy/Toll (HOT) lanes as ''fixed guideway miles'' for purposes of the transit funding formulas administered by FTA. The Final Policy Statement also describes when HOT lanes shall not be classfied as fixed guideway miles in FTA's funding formulas.

DATES: *Effective Date:* The effective data of this Final Policy Statement is January 1, 2007.

ADDRESSES: *Availability of the Final Policy Statement and Comments:* Copies of this Final Policy Statement and comments and material received frot he public, as well as any documents indicated in the preamble as being available in the docket, are part of docket number FTA–2006–25750. For access to the DOT docket, please go to *http://dms.dot.gov* at any time or to the Docket Management System facility, U.S. Department of Transportation, Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington , DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David B. Horner, Esq., Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4040, *david.horner@dot.gov* or Robert J. Tuccillo, Associate Administrator, Office of Budget & Policy, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4050, *robert.tuccillo@dot.gov*. Office hours are from 8:30 a.. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2006, the Federal Transit Administration (FTA) published in the **Federal Register** a proposed Policy Statement on When High-occupancy Vehicle (HOV) Lanes Converted to High-Occupancy/Toll (HOT) Lanes Shall Be Classified as Fixed Guideway Miles for FTA's Funding Formulas and When Hot Lanes Shall Not Be Classified as Fixed Guideway Miles for FTA'S Funding Formulas and When HOT Lanes Shall Not Be Classified as Fixed Guideway Miles for FTA's Funding Formulas (Notice of Proposed Policy) (71 FR 528490). In its Notice of Proposed Policy, FTA proposed the following terms and conditions on which it would classify HOV lanes that are converted to HOT lanes as ''fixed guideway miles'' for purposes of the transit funding formulas administered by FTA:

FTA would classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of the following conditions is satisfied: (i) The HOT lanes were previously HOV lanes reported in the National Transit Databased as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 49 U.S.C. 5309; (ii) The HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in 23 U.S.C. 166(d); and (iii) Program income from the HOT lane facility, including all toll revenue, is used solely for 'permissible uses.'

In its Notice of Proposed Policy, FTA also discussed whether it would require certain transit and tolling policies with respect to HOT lanes classified as fixed guideway miles, and whether FTA would require the return of funds made available under Full Funding Grant Agreements made available for the construction of HOV lanes that have later converted to HOT lanes in accordance with this Final Policy Statement.

34 parties submitted comments in response to FTA's Notice of Proposed Policy. FTA hereby responds to these comments by topic and in the folllowing order: (a) Policy Statement Generally; (b) HOT Lanes as ''Fixed Guideway Miles''; (c) Monitoring and Performance Standards; (d) Program Income and Toll Revenues; (e) Transit Fares and Tolls; (f) Return of Funds under Full Funding Grant Agreements; and (g) Miscellaneous Comments.

(a) Policy Statement Generally

The intended purpose of the Proposed Statement of Policy was to ensure that Federal transit funding for congested urban areas is not decreased when HOV facilitates are converted to variably-priced HOT lanes. The proposed policy also suggested a uniform approach by the Department of Transportation's (the Department's) operating agencies concerning HOV-to-HOT conversions, and supported the Department's policy of encouraging HOV-to-HOT conversions. Eight commenters agreed generally with FTA's Notice of Proposed Policy, Six parties submitted general comments. Four commenters asked FTA to defer its final policy determination until the impacts are more apparent. One commenter articulated four policy principles that discuss ways to integrate transit into toll roads and HOT lanes.[1] Another commenter stated that one of FTA's top priorities in developing this policy statement should be to foster an increase in alternative transportation ridership, whether that alternative is carpool, transit, or other shared-mode, and suggested four ways this policy

[1] The suggested policy principles are as follows: (1) Metropolitan areas and states should have greater latitude to use roadway tolling; (2) Tolling should be a supplement to and not a substitution for existing transportation funding; (3) Local sponsors should have the discretion to fund public transportation with toll revenues; and (4) Tolling should be permitted as a long-term strategy.

statement could better support this end.[2]

FTA Response: The commenters that ask FTA to defer its final policy determination until the impacts are more apparent appear to misunderstand the scope of FTA's Notice of Proposed Policy FTA's HOV-to-HOT policy will *not* result in *all* HOT lane facilities being classified as ''fixed guideway miles'' for purposes of FTA's funding formulas. Rather, only those HOT lane facilities converted from HOV lanes that have been previously classified as ''fixed guideway miles'' shall qualify for continued classification as such, subject to the conditions set forth in this Final Policy Statement.

FTA recognizes the four policy principles summarized at footnote (1) and responds by reminding the commenter that without this Final Policy Statement transit formula funding for congested urban areas would decrease if existing HOV facilities were converted to variably-priced HOT lanes. For this reason, FTA believes that this policy statement (1) Gives states greater latitude to use tolling without negatively impacting available transit resources; (2) enhances existing transportation funding through the collection of toll revenues; (3) grants project sponsors discretion to use toll revenues for any ''permissible use''; and (4) encourages variably-priced HOT lanes as a long-term strategy consistent with the policy of the Department.

In response to the commenter that believes FTA should consider fostering an increase in alternative transportation ridership as one of its top priorities in developing this guidance, FTA reemphasizes its primary in drafting this guidance__to ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to HOT lanes. FTA responds to the commenter's four suggestions summarized at footnote (2) in turn with respect to the first suggestion, this policy statement supports HOV usage, but recognizes that many HOV facilities are underutilized; the ability of HOT lanes to introduce additional traffic to existing HOV facilities, while using pricing and other management techniques to control the number of additional motorists, maintain high service levels and provide new revenue, make HOT lanes an effective means of reducing congestion and improving mobility. With respect to the second and third suggestions, FTA will rely on the management, operation, monitoring and enforcement provisions of 23 U.S.C. 166(d). with respect to the fourth suggestions, this guidance does not modify or enhance language at 23 U.S.C. 166(c)(3).

Accordingly, FTA adopts as final the general provisions of its Notice of Proposed Policy.

(b) HOT Lanes Were Previously HOV lanes reported in the National Transit Database as ''Fixed Guideway Miles''

In its Notice of Proposed Policy, FTA requested comments on its proposal to classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of three conditions is satisfied. The first condition is that the HOT lanes were previously HOV lanes reported in the National Transit Database as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 49 U.S.C. 5309. FTA received thirty five comments on this condition, with some parties offering multiple comments. Eight commenters favored FTA's proposed policy to classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA so long as each of three conditions is satisfied. Eighteen commenters asked FTA to expand its policy to classify *all* lanes as ''fixed guideway miles0z4 for purposes of the funding formulas administered by FTA, regardless of whether the HOT lane facility is newly constructed or was converted from an existing HOV facility. Seven commenters asked FTA not to fund HOT lane facilities at a level that would dilute the pool of transit funding available for existing ''fixed guideway'' facilities. Two commenters proposed that FTA require converted HOV lanes to have operated as HOV lanes for seven years prior to conversion to HOT lanes and before FTA would classify them as ''fixed guideway miles'' for purposes of its funding formulas.

FTA Response: FTA recognizes that all HOT lanes provide similar benefits to metropolitan areas that are experiencing severe and worsening congestion, regardless of whether the facility is newly constructed or converted from HOV or general purpose lanes. However, the purpose of this policy statement is to ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes in an effort by localities to reduce congestion, improve air quality, or maximize throughput using excess HOV lane capacity and to promote a uniform approach by the Department's operating agencies concerning HOV-to-HOT conversions. If FTA were to classify all HOT lanes as ''fixed guideway mile'' without a commensurate increase in overall funding levels, it could negatively impact the ability of many transit operators to finance needed capital maintenance on existing infrastructure. For this reason, FTA limited the scope of this policy statement to classify as ''fixed guideway miles'' only those HOT lane facilities that are converted from HOV lanes that previously have been classified as ''fixed guideway miles.'' In this way, FTA will ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes. FTA believes it appropriate to leave for Congress, and not to determine on an administrative basis, the question of whether and on what terms facilities newly constructed as HOT lanes or general purpose lanes converted directly to HOT lanes shall be classified as ''fixed guideway miles'' given the substantial reallocation of formula funds among transit authorities that might result over time if such facilities were classified as ''fixed guideway miles.''

FTA has added the following language by footnote to section (b)(1) of its Final Statement of Policy in response to the recommendation that FTA require HOV lanes to have operated as HOV lanes for seven years before they may be converted to HOT lanes and remain classified as ''fixed guideway miles:''

FTA apportions amounts made available for fixed guideway modernization under 49 U.S.C. 5309 pursuant to fixed guideway factors detailed at 49 U.S.C. 5337. One of these fixed guideway factors, located at 49 U.S.C. 5337(a)(5)(B), apportions a percentage of the available fixed guideway modernization funds to 'fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available.' For purposes of 49 U.S.C. 5337(a)(5)(B), (i) no HOV facility that has been in revenue service at least 7 years shall forfeit its eligibility for fixed guideway modernization funds because it is converted to a HOT lane facility in accordance with this Final Policy Statement; and (ii) no HOV facility that has been in revenue service for less than seven years shall forfeit the years it has accrued thereunder because it is converted to a HOT lane facility and for so

[2] The four suggestions on how FTA's policy statement could foster alternative transportation ridership are as follows: (1) The policy statement should support transportation demand management and HOV usage; (2) Greater emphasis on enforcement should be considered; (3) FTA should tie fixed guideway qualification to integrity of lane; and (4) FTA should emphasize language at 23 U.S.C. 166(c)(3), which section requests that States, in the use of toll revenues, give priority consideration to projects for developing alternatives to single occupancy vehicle and projects for improving highway safety.

long as the HOT lane facility maintains its ✖fixed guideway'' classification in accordance with this policy statement, it shall continue to accrue years thereunder.

Accordingly, FTA will not require that converted HOV lanes operate as HOV lanes for seven years before they may be converted to HOT lanes and remain classified as ''fixed guideway miles'' Pursuant to this Final Policy Statement.

(c) Monitoring and Performance Standards

In its Notice of Proposed Policy, FTA requested comments on its proposal to classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of three conditions is satisfied. The second condition is that the HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in 23 U.S.C. 166(d). FTA received twenty comments on this topic. Four commenters favored FTA's proposed position. Seven commenters proposed that FTA require a minimum level of transit service on a HOT land facility before its lanes could be classified as ''fixed guideway miles'' for purposes of the funding formulas administered by FTS. Five commenters requested that FTA adopt more exacting performance standards. One commenter requested that FTA state explicitly that local agencies may increase HOV occupancy levels as necessary to ensure free-flow conditions needed for transit bus service. Another commenter asked FTA to amend its policy to state that single occupant vehicles may be permitted on HOT lanes that are classified as ''guideway miles,'' provided that the lanes satisfy the conditions set forth FTA's Final Policy Statement. One commenter requested that FTA acknowledge that compliance with state law governing performance standards for HOT lanes suffices in terms of meeting the condition that the HOT lanes are continuously monitored and continue to meet performance standards that preserve free fow traffic conditions as specified in 23 U.S.C. 166(d). One commenter asked FTA to require a study on degradation of transit service before an HOV facility may convert to a HOT lane facility and be classified as ''fixed guideway miles'' for purposes of funding formulas administered by FTA.

FTA Response: A number of commenters recommend a more exacting performance standard, including a minimum level of transit service. FTA recognizes that a more exacting standard would be necessary if all HOT land facilities were eligible for classification as ''fixed guideway miles,'' for under this scenario rural or suburban HOT lane facilities with little or no transit service could receive a portion of the Federal transit funds needed by the Nation's largest transit providers to maintain their current infrastructure. For this reason, FTA has limited the benefits of this policy to HOV lanes that have already been classified as ''fixed guideway miles.'' Current designation as a ''fixed guideway mile'' indicates that a facility has a minimum level of transit service. FTA believes that compliance with the performance standards codified at 23 U.S.C. 166(d) is sufficient to ensure free flow traffic conditions and to avoid degradation of transit service on these facilities when converted from HOV lanes to HOT lane facilities. Moreover, HOV facilities constructed using capital funds available under 49 U.S.C. 5309(d) and (e) could be required, when an HOV facility converts to a HOT lane facility, to achieve a higher performance standard than required under 23 U.S.C. 166(d). In all circumstances, FTA shall require real-time monitoring of traffic flows to ensure on-going compliance with 23 U.S.C. 166(d).

FTA will not acknowledge that compliance with state law governing HOT land performance standards will satisfy FTA's requirements in all circumstances. Rather, FTA shall require all HOT land facilities to comply with the statutory requirements of 23 U.S.C. 166 to be classified as ''fixed guideway miles'' for purposes of FTA's funding formulas. It may be the case that the laws of certain states require a higher level of performance than the Federal standard articulated here. In these instances, the lesser Federal standard should present no obstacle to HOT conversion.

With respect to the request that FTA require a study on the degradation of transit service before an HOV facility may convert to a HOT facility, FTA (i) believes that compliance with the free flow traffic requirements of 23 U.S.C. 166 is sufficient to avoid the degradation of transit service on these facilities and (ii) will not require that project sponsors incur the additional expense of a formal study on the degradation of transit service.

(d) Program Income and Toll Revenues

In its Notice of Proposed Policy, FTA requested comments on its proposal to classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of three conditions is satisfied. The third condition is that program income from the HOT lane facility, including all toll revenue, is used solely for ''permissible uses.'' FTA received twenty five comments on this condition. Five commenters favored FTA's proposed policy. Seven commenters requested that FTA expressly state in its final policy that grantees may use toll revenues for transit operating costs. Four commenters stated that FTA funds should not be used for the maintenance and/or construction of HOT lane facilities. Four commenters asked that FTA require all Federal transit funds generated by HOT lane facilities because of their classification as ''fixed guideway miles'' be directed to the ''designated receipt'' for Federal transit funding. Three commenters stated that FTA should not permit the operators of HOT lane facilities to finance a HOT lane facility's operating losses with Federal funds generated by the facility's operating losses with Federal funds generated by the facility's classification as ''fixed guideway miles.'' One commenter asked that FTA not limit the use of HOT lane toll revenues to transit. Another commenter asked FTA to require that priority of payment be provided for in the project implementation documents.

FTA Response: Based on the recommendation of several commenters that FTA expressly state that grantees may use toll revenues for transit operating costs, and pursuant to CFR 18.25, which states that FTA ''grantees may retain program income for allowable capital or operating expenses,'' FTA as added transit operating costs to its description of ''permissible uses'' at section (iii)(b) of its Final Policy Statement.

FTA disagrees with the comment that its grantees should not use Federal transit funds for the maintenance and/or construction of HOT lane facilities. The commenter did not indicate whether it referred to the use of grant funds or program income. While FTA recognizes both HOV and HOT lanes as permissible incidental uses of FTA-funded assets, FTA grant funds shall not be used to construct a HOT lane facility beyond what is allowed by 49 U.S.C. 5302(a)(4), as implemented by FTA's regulations, as amended from time to time.[3] Any facility that converts from an HOV to a HOT facility, and retains its classification as a ''fixed guideway'' by satisfying the conditions of this policy statement, may use program income in accordance with this Final Policy Statement, the Department's regulation at 49 CFR 18.25, and other applicable statutes, regulations and requirements.

Similarly, FTA disagrees with the comment that it should limit the use of HOT lane toll revenues to transit. In many cases, a HOT lane facility may have received (or receives) funding from FTA and another Federal agency, such that use of the facility's program income is governed by more than one Federal program. In these instance, FTA's restrictions concerning permissible use shall not apply to more than transit's allocable share of the facility's program income, as described elsewhere in this Final Policy Statement. FTA will not require recipients to assign priority in payment to any permissible use.

Federal transit law requires FTA to disburse certain funds to the designated recipient. The designated recipient for FTA formula funds shall not be changed because the grantee converted an HOV facility to a HOT facility, so long as the facility maintains its classification as a ''fixed guideway'' by satisfying the conditions of this Final Policy Statement. FTA shall not prevent such designated recipients from using the funds for eligible activities in accordance with the process for programming transit funds described at 23 CFR 450.324(1) of the joint FTA–FHWA planning regulations.

(e) Transit Fares and Tolls

In its Notice of Proposed Policy, FTA requested comments on transit fares and tolls on HOT lane facilities. FTA stated that it would not condition the receipt of Federal transit funds by a qualifying HOT lane facility on the tolling authority's adoption of policies concerning the price of transit services on the HOT lane facility or the tolls payable by single occupant vehicles. FTA would allow grantees and tolling authorities to develop their own fare structures for transit services and tools on HOT lane facilities. FTA received sixteen comments on this topic. Without further comment, five commenters agreed with FTA's proposed policy not to regulate toll prices. Ten commenters stated that transit vehicles should be exempt from tolls charged on federally-funded HOT lane facilities for its lanes to be classified as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA. One commenter asked FTA to require that transit fares and tolls remain competitive.

FTA Response: Federal transit law prohibits FTA from regulating the ''rates, fares, tolls, rentals, or other charges prescribed by any provider of public transportation.'' 49 U.S.C. 5334(b)(1). Accordingly, FTA shall not condition the receipt of Federal transit funds by a qualifying HOT lane facility on the tolling authority's adoption of policies concerning the price of transit services on the HOT lane facility or the tolls payable by single occupant vehicles. FTA will allow grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities. Transit fares shall remain subject to 49 U.S.C. 5332 (Nondiscrimination) and 49 U.S.C. 5307 (Urbanized area formula grants).

(f) Return of Funds under Full Funding Grant Agreements

In its Notice of Proposed Policy, FTA requested comments on its proposed policy that, in the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA would not require the grantee to return such funds so long as the facility complied with the conditions set forth in the Notice of Proposed Policy. FTA received one comment on this topic. The commenter expressed concern that, when the grantee is not also the tolling authority, the tolling authority may make business decisions contrary to the interest of the grantee/transit provider, thus forcing the grantee/transit provider to repay New Starts funding to FTA.

FTA Response: It appears that the commenter misunderstands the scope of FTA's proposed policy, which states that ''in the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA would *not* require the grantee to return such funds so long as the facility complied with the conditions set forth in this guidance.'' If a grantee wishes to convert an existing HOV facility to a HOT lane facility and maintain the classification of its facility as a ''fixed guideway for purposes of FTA's funding formulas, it must comply with the conditions set forth in this Final Policy Statement. To the extent that the facility is subject to a Full Funding Grant Agreement, the grantee is obligated to abide by the requirements thereof, just as it is bound to any other contractual or legal obligation.''

(g) Miscellaneous Comments

FTA received seven miscellaneous comments in response to its Notice of Proposed Policy. One commenter asked FTA to address a circumstance where a previously eligible HOV lane (or a portion of an HOV lane) is temporarily or permanently taken out of service in order to be reconstructed and expanded into an improved HOT lane facility in the same corridor. A second commenter requested that FTA indicate whether it would classify as ''fixed guideway miles'' bus-only shoulders converted to HOT lanes when the bus-only shoulders are currently classified as ''fixed guideway miles.'' Another commenter asked FTA to clarify its policy with respect to variable-priced express lanes. Two commenters asked FTA to require coordination between privately operated HOT lane facilities and public transportation agencies. One commenter asked FTA to connect this policy with transit supportive land use. And another commenter argued that FTA'[s policy should not affect New Starts project eligibility criteria.

FTA Response: FTA recognizes that it may be necessary to temporarily remove an HOV lane from service in order to convert it into a HOT lane facility. South a HOT lane facility will not lose its classification as a ''fixed guideway'' so long as it satisfies the conditions of this Final Policy Statement.

FTA agrees with the proposal that it classify as ''fixed guideway miles'' bus-only shoulders converted to HOT lanes as long as the bus-only shoulders are currently classified as ''fixed guideway miles'' and satisfy the conditions of this Final Policy Statement. Accordingly, FTA has added the following language to its Final Policy Statement by footnote at section (b)(1):

> FTA shall classify HOT lane facilities converted from bus-only shoulders as ''fixed guideway miles,'' so long as such HOT lanes satisfy conditions (ii) and (iii) of this Final Policy Statement and were bus-only shoulders previously reported in the National Transit Database as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 5309.

The commenter that asked FTA to consider variably-priced express lanes did not provide enough information for FTA to determine whether such facility could satisfy the conditions of its Proposed Statement of Policy. FTA responds by reiterating its statement at section (b)(i) of the Final Policy Statement, that with the exception of bus-only shoulders, ''neither non-HOV facilities nor facilities constructed as HOT lanes would be eligible for classification as fixed 'guideway miles.' ''

The comment requesting that FTA require coordination between privately operated HOT lane facilities and public transportation is beyond the scope of this policy statement. FTA's Planning and Assistance Standards are located at 49 CFR part 613.

Similarly, the comments requesting that FTA connect this policy with transit supportive land and that this policy not affect FTA's New Starts

project eligibility criteria are beyond the scope of this policy statement, which is limited to the classification of HOT lane facilities as ''fixed guideway miles'' for purposes for FTA's funding formulas.

Final Policy Statement on HOV-to-HOT Conversion

The following Final Policy Statement explains when FTA shall classify HOV lanes converted to HOT lanes as ''fixed guideway miles'' for FTA's funding formulas and when FTA shall not classify HOT lanes as ''fixed guideway miles'' for its funding formulas.

Background

Since the early 1980s, transportation officials have sought to manage traffic congestion and increase vehicle occupancy by means of High-Occupancy Vehicle (HOV) lanes—highway lanes reserved for the exclusive use of car pools and transit vehicles. Today, there are over 130 freeway HOV facilities in metropolitan areas in the US,[4] of which approximately 10 have received funding through FTA's Major Capital Investment program and approximately 80 are counted as ''fixed guideway miles'' for purposes of FTA's formula grant programs.[5] Since 1990, however, HOV mode share in 26 of the 40 largest metropolitan areas has steadily declined,[6] while both excess capacity on HOV lanes and congestion on general purpose lanes have increased.[7]

An increasing number of metropolitan areas are considering new demand management strategies as alternative to HOB lanes. One emerging alternative is the variably-priced High-Occupancy/Toll (HOT) lane. HOT lanes combine HOV and pricing strategies by allowing Single-Occupant Vehicles (SOVs) to access HOV lanes by paying a toll. The lanes are ''managed'' through pricing to maintain free flow conditions even during the height of rush hours.

HOT lanes provide multiple benefits to metropolitan areas that are experiencing severe and worsening congestion and significant transportation funding shortages. First, variably-priced HOT lanes expand mobility options in congested urban areas by providing an opportunity for reliable travel times for users prepared to pay a premium for this service. HOT lanes also improve the efficiency of HOV facilities by allowing toll-paying SOVs to utilize excess lane capacity on HOVs. In addition, HOT lanes generate new revenue which can be used to pay for transportation improvements, including enhanced transit service.

In August of 2005, recognizing the advantages of HOT lanes, Congress enacted Section 112 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), codified at 23 U.S.C. 166, to authorize States to permit use of HOV lanes by SOVs, so long as the performance of the HOV lanes is continuously monitored and continues to meet specified performance standards. The U.S. Department of Transportation (Department) has strongly endorsed the conversion of HOV lanes to variably HOT lanes, most recently in its *Initiative to Reduce Congestion on the Nation's Transportation Network.* It is the Department's policy to encourage jurisdictions to consider ''HOV-to-HOT'' conversion as a means of congestion relief and possible revenue enhancement.

The ability of HOT lanes to introduce additional traffic to existing HOV facilities, while using pricing and other management techniques to control the number of additional motorists, maintain high service levels and provide new revenue, make HOT lanes an effective means of reducing congestion and improving mobility. For this reason, and given the new authority enacted by Congress to promote ''HOV-to-HOT'' conversions, many States, transportation agencies and metropolitan areas are seriously considering applying variable pricing to both new and existing roadways. For example, the current long-range transportation plan for the Washington, DC, metropolitan area includes four new HOT lanes along 15 miles of the Capital Beltway in Virginia, and six new variably lanes along 18 miles on the Inter-County Connector in Montgomery and Prince george's Counties in Maryland.[8] Virginia ia also exploring the possibility of converting existing HOV lanes along the I–95/395 corridor into HOT lanes.[9] Maryland is considering express toll lanes along I–495, I–270, as well as along other facilities.[10] Similarly, in San Francisco, the Metropolitan Transportation Commission's Transportation 2030 Plan advocates development of a HOT network that would convert that region's existing HOV lanes to HOT lanes;[11] Houston's 2025 Regional Transportation Plan includes plans to implement peak period pricing within the managed HOT lanes of the major freeway corridors in the region;[12] and the Miami-Dade, Florida 2030 Transportation Plan includes conversion of existing HOV lanes to reversible HOV/HOT lanes to provide additional capacity to I–95 in Miami-Dade County.[13] Other jurisdictions are exploring the potential for HOT lanes with grants provided by the Department's Value Pricing Pilot Program.[14] These include the Port Authority of New York/New Jersey; San Antonio, Texas; Seattle, Washington; Atlanta, Georgia; and Portland, Oregon.[15]

While an increasing number of metropolitan planning organization and State departments of transportation are study the HOT lane concept as a strategy to improve mobility, six HOT lane facilities currently operate in the United States: State Route 91 (SR 91) Express Lanes in Orange County, California; the I 15 FasTrak in San Diego, California; the Katy Freeway

[4] Office of Operations, Federal Highway Administration, U.S. Department of Transportation.

[5] National Transit Database.

[6] Journey to Work Trends in the United States and its Major Metropolitan Areas 1960–2000, Publication No. FHWA–EP–03–058 Prepared for: US Department of Transportation, Federal Highway Administration, Office of Planning, Prepared by: Nancy McGuckin, Consultant, Nanda Srinivasan, Cambridge Systematics, Inc.

[7] Office of Operations, Federal Highway Administration, U.S. Department of Transportation. Demand for highway travel by Americans continues to grow as population increases, particularly in metropolitan areas. Construction of new highway capacity to accommodate this growth in travel has not kept pace. Between 1980 and 1999, route miles of highways increased 1.5 percent while vehicle miles of travel increased 76 percent. The Texas Transportation Institute estimates that, in 200, the 75 largest metropolitan areas experienced 3.6 billion vehicle-hours of delay, resulting in 5.7 billion gallons in wasted fuel and $67.5 billion in lost productivity. And traffic volumes are projected to continue to grow. The volume of freight movement alone is forecast to nearly double by 2020. Congestion is largely thought of as a big city problem, but delays are becoming increasingly common in small cities and some rural areas as well.

[8] Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

[9] Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

[10] Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

[11] A Vision for the Future Transportation 2030, February 2005, Chapter 1, Page 6.

[12] 2025 Regional Transportation Plan Houston-Galveston Area, June 2005, Page 31.

[13] Miami-Dade Transportation Plan (to the Year 2030) December 2004, FINAL DRAFT, Page 24.

[14] Federal Highway Administration, U.S. Department of Transportation. The Department's Value Pricing Pilot Program (VPPP), initially authorized by the Intermodal Surface Transportation Efficiency Act as the Congestion Pricing Pilot Program and continued as the VPPP under SAFETEA–LU, encourages implementation and evaluation of value pricing pilot projects, offering flexibility to encompass a variety of innovative applications including areawide pricing, pricing of multiple or single facilities or corridors, single lane pricing, and implementation of other market-based strategies.

[15] Federal Highway Administration, U.S. Department of Transportation.

QuickRide and the Northwest Freeway (US 90) in Harris County, Texas; I 394 in Minneapolis and St. Paul, Minnesota; and I 25 in Denver, Colorado.

Prior FTA Policy

Since 2002, FTA's policy has been to continue to classify the lanes of an HOV facility converted to HOT lanes as ''fixed guideway miles'' for funding formula purposes on the condition that the facility meets two requirements: (i) the HOT facility manages SOV use so that it does not impede the free-flow and high speed of transit and high-occupancy vehicles and (ii) toll revenues collected on the facility will be used for mass transit purposes.[16] FTA has considered requiring as an additional condition for eligibility that the lowest toll payable by SOVs on a HOT facility be not less than the fare charged for transit services on the HOT facility.

Final FTA Policy

(a) *Purpose of Final Policy.* This Final Statement of Policy will help ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes in an effort by localities to reduce congestion, improve air quality, and maximize throughput using excess HOV lane capacity. The revised FTA policy will also promote a uniform approach by the Department's operating agencies concerning HOV-t0-HOT conversions. In particular, FTA's policy will be coordinated with the statutes enacted by Congress under Section 112 of SAFETEA–LU applicable to the Federal Highway Administration intended to simplify conversion of HOV lanes to HOT lanes. The policy statement will also support the Department's policy of encouraging HOV-to-HOT conversions.

Final Policy. FTA shall classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as *each* of the following conditions is satisfied:

The HOT lanes were previously[17] *HOV lanes reported in the National Transit Database as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307(b) and 49 U.S.C. 5309(a)(E).*[18] Facilities that were not eligible HOV lanes prior to being converted to HOT lanes will remain ineligible for inclusion as fixed guideway miles in FTA's funding formulas. Therefore, neither non-HOV facilities converted directly to HOT facilities nor facilities constructed as HOT lanes will be eligible for classification as ''fixed guideway miles.''[19]

(ii) *The HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in* 23 U.S.C. 166(d) 23 U.S.C. 166(d) provides operational performance standards for an HOV facility converted to a HOT facility. It also requires that the performance of the facility be continuously monitored and that it continue to meet specified performance standards. Due to original project commitments, HOV facilities constructed using capital funds available under 49 U.S.C. 5309(d) or (e) may be required, when converted to HOT lanes, to achieve a higher performance standard than required under 23 U.S.C. 166(d). Standards for operational performance and determining degradation of operational performance for facilities constructed with funds from FTA's New Starts program shall be determined by FTA on a case-by-case basis. FTA will require real-time monitoring of traffic flows to ensure on-going compliance with operational performance standards.

(iii) *Program income from the HOT lane facility, including all toll revenue, is used solely for ''permissible uses.''* ''Permissible uses'' means any of the following uses with respect to any HOT lane facility, whether operated by a public or private entity: (a) Debt service, (b) a reasonable return on investment of any private financing, (c) the costs necessary for the proper operation and maintenance of such facility,[20] and (d) if the operating entity annually certifies that the facility is being adequately operated and maintained (including that the permissible uses described in (a), (b) and (c) above, if applicable, are being duly paid), any other purpose relating to a project carried out under Title 49 U.S.C. 5301 *et seq.* In cases where the HOT lane facility has received (or receives) funding from FTA and another Federal agency, such that use of the facility's program income is governed by more than one Federal program, FTA's restrictions concerning permissible use shall not apply to more than *transit's allocable share*[21] of the facility's program income. FTA shall not require recipients to assign priority in payment to any permissible use.

(c) *Transit Fares and Tolls on HOT Lane Facilities.* FTA shall not condition

[16] In a Letter to U.S. Representative Randall Cunningham, dated June 10, 2002, concerning the I–15 FasTrak facility in San Diego, FTA stated: ''* * * FTA will recognize, for formula allocation purposes, exclusive fixed guideway transit facilities that permit toll-paying SOVs on an incidental basis (often called high occupancy/toll (HOT) lanes) under the following conditions: the facility must be able to control SOV use so that it does not impede the free flow and high speed of transit and HOV vehicles, and the toll revenues collected must be used for mass transit purposes.''

[17] With respect to whether HOT lanes were previously HOV lanes reported in the National Transit Database (''HTD'') as ''fixed guideway miles,'' HOV facilities classified as ''fixed guideway miles'' in the NTD on or before data of the publication of this Final Policy Statement shall satisfy this requirement. With data of publication of this Final Policy Statement, such HOV lanes may not be converted to HOT lanes and maintain their classification as ''fixed guideway miles'' unless: (i) the HOV lanes have reported to the NTD as ''fixed guideway miles'' for three years to their conversion to HOT lanes, (ii) users of public transportation have accounted for at least 50% of the passenger miles traveled on the HOV lanes in their last twelve months of service (or once the HOV lanes are converted to HOT lanes, users of public transportation are reasonably expected to account for at least 50% of the passenger miles traveled on the HOT lanes in their twelve months of service), or (iii) in his or her discretion, the Administrator so approves.

[18] FTA apportions amounts made available for fixed guideway modernization under 49 U.S.C. 5309 pursuant to fixed guideway factors detailed at 49 U.S.C. 5337. One off these fixed guideway factors, located at 49 U.S.C. 5337(a)(5)(B), apportions a percentage of the available fixed guideway modernization funds to 'fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available.' For purposes of 49 U.S.C. 5337(a)(5)(B), (i) no HOV facility that has been in revenue service at least 7 years shall forfeit its eligibility for fixed guideway modernization funds because it is converted to a HOT lane facility in accordance with this Final Policy Statement; and (ii) no HOV facility that has been in revenue service for less than seven years shall forfeit the years it has accrued thereunder because it is converted to a HOT lane facility and for so long as the HOT lane facility maintains its ''fixed guideway'' in accordance with this Final Policy Statement, it shall continue to accrue years thereunder.

[19] FTA recognizes one exception to this statement—bus-only shoulders. Accordingly, FTA shall classify HOT lane facilities converted from bus-only shoulders as ''fixed guideway miles,'' so long as such HOT lanes satisfy conditions (ii) and (iii) of this Final Policy Statement and were bus-only shoulders previously reported in the National Transit Database as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 5309.

[20] The costs necessary for the proper operation and maintenance of a HOT lane facility may include reconstruction, rehabilitation, and the costs associated with operating transit service on the facility.

[21] Transit's allocable share of the facility's program income shall be an amount equal to the facility's total program income, for any period, multiplied by a ratio, (a) the numerator of which shall be the cumulative amount of funds contributed to the facility through a program established by transit law, and (b) the denominator of which shall be the cumulative amount of all Federal, State and local capital funds contributed to the facility, in each case at the time transit's allocable share is calculated. For purposes of 49 CFR 18.25, (i) amounts other than transit's allocable share shall not constitute program income and (ii) any expenditure of transit's allocable share that is not deducted from outlays made under transit law shall be deemed an ''alternative'' under 49 U.S.C. 18.25(g) and deemed by FTA a term of the grant agreement.

the classification of HOT lanes converted from HOV lanes as ''fixed guideway miles,'' or condition any approval or waiver under a Full Funding Grant Agreement, on a grantee's adopting transit fare policies or a tolling authority's adopting of tolling policies concerning, respectively, the price of transit services on the HOT lane facility and the tolls payable by SOVs. Instead, FTA shall permit grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities. Transit fares shall remain subject to 49 U.S.C. 5332 (Nondiscrimination) and 49 U.S.C. 5307 (Urbanized area formula grants).

(d) *No Return of Funds under Full Funding Grant Agreements.* In the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA shall not require the grantee to return such funds so long as the facility complies with the conditions set forth in this guidance and the original grant agreement or Full Funding Grant Agreement, as applicable.

Issued on the 21st day of December, 2006.

James S. Simpson,

Administrator.

[FR Doc. 06–9873 Filed 12–26–06; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Final Rule—Management of Federal Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to make this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the ''Final Rule—Management of Federal Agency Disbursements.''

DATES: Written comments should be received on or before February 26, 2007.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Sally Phillips, Director, EFT Strategy Division, Room 420, Liberty Center Building, 401 14th Street, SW., Washington, DC 20227, (202) 874–7106.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Final Rule—Management of Federal Agency Disbursements.

OMB Number: 1510–0066.

Form Number: None.

Abstract: Recipients of Federal disbursements must furnish to FMS their bank account number and the name and routing number of their financial institution to receive payment electronically.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Businesses, or other for-profit institutions, Individuals or households, Not-for-profit Institutions.

Estimated Number of Respondents: 1,300.

Estimated Time per Respondents: 15 minutes.

Estimated Total Annual Burden Hours: 325.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 21, 2006.

Wanda Rogers,

Assistant Commissioner, Regional Operations.

[FR Doc. 06–9857 Filed 12–26–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Direct Deposit Sign-Up Form

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the Form 1199A ''Direct Deposit Sign-Up Form'' and Form 1200 ''Go Direct Sign Up Form for Direct Deposit of Federal Benefit Payments.''

DATES: Written comments should be received on or before February 26, 2007.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the form(s) and instructions should be directed to Sally Phillips, Director, EFT Strategy Division, Room 420, 401 14th Street, SW., Washington, DC 20227, (202) 874–7106.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(a)), the Financial Management Service solicits comments on the collection of information described below:

Title: Direct Deposit Sign-Up Form, and Go Direct Sign-Up Form for Direct Deposit of Federal Benefit Payments.

OMB Number: 1510–0007.

*Form Number(s):*SF–1199A, FMS 1200.

Abstract: These forms are used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. The information on the forms routes the direct deposit payment to the correct account at the financial institution.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals of household, Business or other for-profit, Federal Government.

Estimated Number of Respondents: 406,715.

Estimated Time Per Respondent: 10 minutes.