

the TAMP into the transportation planning process.

If the State believes extenuating circumstances apply, it should provide an explanation of the extenuating circumstances, the impacts, the State DOT's efforts to avoid or offset the changes and impacts, and program changes that will be undertaken to account for the changed conditions. In addition, State DOT should consider updating or amending its TAMPs whenever there is a material impact on the accuracy and validity of the processes, analysis, or investment strategies in the plan. Updates and other amendments may require FHWA review (see 23 CFR 515.13(c)).

#### Best Available Data

New Jersey asked whether State DOTs could use adjusted historical data to analyze NHS bridge and pavement conditions. The State DOT must use the best available data (23 CFR 515.7(g)). If changes are made to historic data, the State DOT needs to explain what it has done, and why the State DOT believes that the quality of the historic data is improved by the changes. However, any changes in historical data will not be used to revise reporting submitted pursuant to 23 U.S.C. 150(e) or to change determinations made under 23 U.S.C. 119(e)(7) or 119(f). No change was made to either document based on this comment.

**Authority:** 23 U.S.C. 119; 23 CFR part 515; 49 CFR 1.85.

Issued on: February 14, 2018.

**Brandye L. Hendrickson,**  
Acting Administrator, Federal Highway Administration.

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[FHWA Docket No. FHWA-2017-0006]

#### Fixing America's Surface Transportation (FAST) Act; Equal Access for Over-the-Road Buses Guidance

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

**ACTION:** Notice.

**SUMMARY:** This Notice announces and outlines the final guidance for requirements contained in Section 1411(a) and (b) of the FAST Act regarding the treatment of over-the-road buses (OTRBs).

**DATES:** This guidance is effective February 22, 2018.

**Electronic Access:** This document, the request for comments, and the comments received may be viewed online through the Federal eRulemaking portal at: <http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at: <http://www.archives.gov/federalregister> and the Government Publishing Office's website at: <http://www.gpo.gov/fdsys>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cynthia Essenmacher, Federal Tolling Program Manager, Center for Innovative Finance Support, Office of Innovative Program Delivery, Federal Highway Administration, 315 W. Allegan St., Ste. 201, Lansing, MI 48913, (517) 702-1856. For legal questions: Mr. Steven Rochlis, Office of the Chief Counsel, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366-1395. Office hours are from 8:00 a.m. to 4:30 p.m. E.T., Monday through Friday, except for Federal holidays.

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##### A. Background

The FHWA published a **Federal Register** Notice on April 28, 2017, at 82 FR 19784, seeking public comment for the FAST Act OTRB provisions related to high-occupancy vehicle (HOV) facilities and toll highways. In preparing this guidance to assist in the implementation of Section 1411 of the FAST Act, FHWA considered all public comments submitted to the **Federal Register** Notice.

Section 1411(a) and (b) of the FAST Act contained new requirements regarding the treatment of OTRBs that access toll highways and HOV facilities. Specifically, the FAST Act amended 23 U.S.C. 129 and 23 U.S.C. 166 to address equal access to toll or HOV facilities for OTRBs. The FAST Act amendments defined certain key terms but did not define other terms. The FHWA considered how to define the terms that were not defined under Section 1411

(Section C) as well as enumerating the toll facilities subject to the OTRB requirements (Section D), as the OTRB amendment related to toll facilities that received or will receive Federal participation under 23 U.S.C. 129. In addition, FHWA believes that Congress intended that the OTRB equal access provisions be effective beginning on December 4, 2015, the enactment date of the FAST Act, in contrast to the FAST Act effective date of October 1, 2015, as noted further in Sections B and F. Application of the OTRB requirements retroactive to the FAST Act enactment date raised potential constitutional implications associated with the application prior to the enactment date, particularly for those toll facilities operated by private taxpayers under agreement with a public authority that may have assessed different toll rates to OTRBs during this period between October 1, 2015, and December 4, 2015, without notice of the change in law.

For HOV facilities, 23 U.S.C. 166 (b)(3) was amended by the FAST Act, adding subparagraph (C) to grant HOV authorities an exception to allow public transportation vehicles (which FHWA interprets to include all public transportation vehicles, including public transportation buses) that do not meet the minimum occupancy requirements to use HOV lanes, but only if the HOV authority also gives equal access to OTRBs that serve the public. Under this exception, HOV authorities may allow all public transportation vehicles to use HOV lanes, whether they meet the minimum occupancy requirements or not, if they provide equal access to OTRBs serving the public, under the same rates, terms, and conditions as all other public transportation vehicles.

Additionally, 23 U.S.C. 166(b)(4)(C) was amended by the FAST Act, adding subparagraph (iii), to grant HOV authorities the alternative to toll vehicles not meeting the minimum occupancy requirements in HOV lanes. In that case, HOV authorities are required to provide access to OTRBs that serve the public under the same rates, terms, and conditions as public transportation buses (which FHWA interprets to exclude other types of public transportation vehicles, which may be treated differently by the HOV authority). Similarly, on toll facilities subject to 23 U.S.C. 129, the FAST Act amended 23 U.S.C. 129(a) by adding paragraph (9) to also require that OTRBs that serve the public be provided access to the toll facility under the same rates, terms, and conditions as public transportation buses.

### B. Summary Discussion of Comments

Comments were submitted to the **Federal Register** Notice published in April 2017. Comments submitted to the docket can be viewed at: <https://www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dct=PS&D=FHWA-2017-0006>.

Commenters included the public transit constituency, both public and private operators, as well as individuals. The respondents directed their comments within three categories. The three categories are general comments, compliance, and information availability. The following summarizes the comments and FHWA's response.

#### General Comments

- Two commenters recommended that FHWA use the **Federal Register** Notice comments to update and expand existing tolling program guidance published on September 24, 2012.

- One commenter inquired about toll transponders recognizing exemptions on different facilities.

*FHWA Response:* The purpose of the Notice was to solicit comments on the new OTRB requirements that FHWA would incorporate into implementation of OTRB requirements. Comments concerning expansion of the guidance to address tolling guidance and transponder use is beyond the scope of the **Federal Register** Notice.

- One commenter would like to see FHWA explain why certain facilities are not included in the Section 129 covered facilities list.

*FHWA Response:* Section 1411 of the FAST Act is applicable to Federal-aid toll facilities where construction of the facility occurred under 23 U.S.C. 129(a) authority. This would include a facility that either uses Federal-aid funds on an existing toll facility in accordance with section 129(a), or imposes tolls on a facility constructed with Federal-aid funds pursuant to section 129(a). Facilities under other Federal tolling authority are not subject to OTRB requirements.

#### Compliance Comments

- Three commenters requested that FHWA use the existing annual audit process required under 23 U.S.C. 129(a)(3)(B) to determine whether tolling facilities are complying with the OTRB equal access requirements.

*FHWA Response:* The purpose of the annual audit process is to ensure facilities are complying with the limits on the use of revenues under 23 U.S.C. 129, it does not address operational aspects of the toll facility.

- Three commenters requested FHWA clearly state that bus companies

have a legal right to seek refunds from toll operators to correct unequal treatment.

*FHWA Response:* If an OTRB entity believes equal access was not provided by a covered facility any time after December 4, 2015, that entity should contact the owner/operator of the facility to request a refund. The FHWA does not own, operate, or control the HOV and toll facilities subject to the OTRB requirements.

- Three commenters recommended that the FHWA guidance should make it clear to Division Administrators and to the public authority recipients of Federal funding that the OTRB requirements are already effective and have been in effect since October 1, 2015, and do not depend on any further guidance or other action by FHWA to be enforceable.

*FHWA Response:* The FHWA acknowledges that the changes in law are effective beginning on the enactment date of the FAST Act on December 4, 2015, and continue in effect, but believes that the issuance of this guidance clarifies the OTRB provisions and will assist affected parties that are subject to the OTRB requirements.

#### Information Availability Comments

- Three commenters suggested that FHWA require that all facility agencies create and publish their respective rates, terms, and conditions for use of their facilities.

*FHWA Response:* The FHWA does not own, operate, and control the toll facilities and does not have jurisdiction to impose this suggested requirement.

- One commenter requested FHWA amend the Section 129 facilities list to include the names of the tolling authorities responsible for the operation of each facility.

*FHWA Response:* The FHWA is publishing an inventory of facilities that received Federal-aid funding under 23 U.S.C. 129 and are subject to the OTRB provisions. See section D, below.

All comments were taken into consideration when developing this final **Federal Register** Notice. The following sections of this Notice provide the final guidance for implementation of the OTRB requirements. This guidance is also available at FHWA's website: [INSERT LINK].

### C. Applicable Definitions for Implementing Section 1411 of the FAST Act

For the purposes of implementing FAST Act Section 1411 amendments to 23 U.S.C. 129 and 166, FHWA will use the following definitions previously

stated in the **Federal Register** Notice at 82 FR 19784. The definitions are:

“*Over-the-road bus*” is defined as a bus characterized by an elevated passenger deck located over a baggage compartment.

“*Public Transportation Bus*” is a category of public transportation vehicle (as defined in 23 U.S.C. 166(f)(6)), consisting of a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons.

“*Public Transportation Vehicle*” means a vehicle that (A) provides designated public transportation (as defined in section 221 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12141) or provides public school transportation (to and from public or private primary, secondary, or tertiary schools); and (B)(i) is owned or operated by a public entity; (ii) is operated under a contract with a public entity; or (iii) is operated pursuant to a license by the Secretary or a State agency to provide motorbus or school vehicle transportation services to the public.

“*Serve/Serving the Public*” means provision of service to the general public, including general or special service (including charter service) on a regular and continuing basis.

“*Toll Facility*” means a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel constructed under 23 U.S.C. 129(a).

### D. Covered Facilities Subject to OTRB Equal Access

#### Section 129 Facilities

Section 1411 of the FAST Act is applicable to Federal-aid toll facilities where construction of the facility occurred under 23 U.S.C. 129(a) authority. Facilities “constructed under” Section 129 includes both facilities subject to Section 129 tolling agreements executed prior to the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141), which eliminated the requirement for a Section 129 toll agreement, and facilities that have become (or will become) subject to Section 129 post-MAP-21 (which may, or may not, have a tolling Memorandum of Understanding with FHWA). This would include a facility that either uses Federal-aid funds on an existing toll facility in accordance with Section 129(a), or imposes tolls on a facility constructed with Federal-aid funds pursuant to Section 129(a).

Federal-aid toll facilities that were constructed under other Federal tolling authorities and not subject to Section 1411 of the FAST Act are included in the Section 129 Covered Facilities list

for reference. Other Federal tolling authorities include the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17) and the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240).

The OTRB Section 129 Covered Facilities list can be found at the FHWA's Center for Innovative Finance Support's website at: [https://www.fhwa.dot.gov/ipd/revenue/road\\_pricing/tolling\\_pricing/active\\_agreements.aspx](https://www.fhwa.dot.gov/ipd/revenue/road_pricing/tolling_pricing/active_agreements.aspx). The FHWA will annually review and update this list for additions and completeness.

#### Section 166 Facilities

Under 23 U.S.C. 166(f)(2), the term "HOV facility" means a high occupancy vehicle facility. There are no exclusions or exceptions under this definition based on Federal-aid participation in the construction or operation of the HOV facility. Therefore, FHWA believes amendments made by Section 1411 of the FAST Act are applicable to all Section 166 HOV facilities, regardless of Federal-aid participation in the project.

#### E. Compliance

The requirements of 23 U.S.C. 129(a) and 23 U.S.C. 301 apply to the use of Federal-aid funds for construction (as defined at 23 U.S.C. 101(a)(4)) on tolled highways, bridges, and tunnels, including the use of emergency relief funds for repairs to toll facilities (see 23 CFR 668.109(b)(9)). When Federal funds are used for allowable purposes under 23 U.S.C. 129, grantees are required to follow applicable statute, regulations, and policies. This includes equal access and treatment for OTRBs.

#### F. Effective Date

If an OTRB entity believes equal access was not provided by a covered facility any time after December 4, 2015, that entity should contact the owner/operator of the facility to address this concern.

Issued on: February 15, 2018.

**Brandye L. Hendrickson,**

*Acting Administrator, Federal Highway Administration.*

[FR Doc. 2018–03617 Filed 2–21–18; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement; Henry County, Virginia

**AGENCY:** U.S. Department of Transportation, Federal Highway Administration.

**ACTION:** Notice of Intent to prepare an environmental impact statement.

**SUMMARY:** The U.S. Department of Transportation, Federal Highway Administration (FHWA), in coordination with the Virginia Department of Transportation (VDOT), is issuing this notice of intent to advise the public, agencies, and stakeholders that an Environmental Impact Statement (EIS) will be prepared to study the effects of a highway project under consideration along the Route 220 corridor in Henry County, Virginia.

**DATES:** To ensure that a full range of issues related to the study are addressed and all potential issues are identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the range of issues to be evaluated in the EIS should be submitted to FHWA at the address below within 30 days of the issuance of this notice to ensure timely consideration.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mack Frost, Planning and Environment Specialist, Federal Highway Administration, 400 North 8th Street, Suite 750, Richmond, VA 23219–4825; email: [Mack.Frost@dot.gov](mailto:Mack.Frost@dot.gov); (804)–775–3352.

**SUPPLEMENTARY INFORMATION:** The environmental review of transportation improvement alternatives for the Route 220 corridor will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), 23 U.S.C. 139, Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR 1500–1508), FHWA regulations implementing NEPA (23 CFR 771.101–771.139) and all applicable Federal, State, and local governmental laws and regulations.

1. *Description of the Proposed Action:* The EIS will evaluate the environmental effects from reasonable project alternatives and determine the potential for significant impacts to social, economic, natural or physical environmental resources associated with these alternatives.

2. *Description of Study Area:* A study area large enough to incorporate

detailed studies for a full range of reasonable alternatives to be considered for the project will be evaluated. The study area is anticipated to generally encompass a portion of Henry County southeast of the City of Martinsville, roughly following Greensboro Road (U.S. Route 220) from the North Carolina state line until turning northeast along William F. Stone Highway (U.S. Route 58 Bypass) until A.L. Philpott Highway (U.S. Route 58). The specific geographic limits of the study area will be informed during scoping and defined through the course of the study.

3. *Scoping and Public Review Process:* VDOT, in coordination with FHWA, will solicit public and agency comments through this notice as well as public scoping meetings on the proposed action. The locations, dates, and times for each meeting will be publicized through the VDOT website (<http://www.virginiadot.org/projects/salem/default.asp>) and in newspapers with local and regional circulation, including the Roanoke Times and the Martinsville Bulletin. Scoping materials will be available at the meetings and oral and written comments will be solicited. Comments may also be sent to the address above.

Notification of the draft EIS for public and agency review will be made in the **Federal Register** and using other methods to be jointly determined by FHWA and VDOT. Those methods will identify where interested parties can go to review a copy of the draft EIS.

For the draft EIS, public hearings will be held and a minimum 45-day comment period will be provided. The hearings will be conducted by VDOT and announced a minimum of 15 days in advance of the meetings. VDOT will provide information for the public hearings, including the locations, dates, and times for each meeting through a variety of means including the VDOT website (<http://www.virginiadot.org/projects/salem/default.asp>) and by newspaper advertisement.

4. *Additional Review and Consultation:* The EIS will comply with other Federal and State requirements including, but not limited to: Section 404 of the Clean Water Act of 1972, the State water quality certification under Section 401 of the Clean Water Act of 1972; protection of endangered and threatened species under Section 7 of the Endangered Species Act; consideration of cultural resources under Section 106 of the National Historic Preservation Act; protection of water quality under the Virginia/National Pollutant Discharge Elimination System; and consideration