

TITLE 23 - HIGHWAYS**CHAPTER 1 - FEDERAL-AID HIGHWAYS****§ 166. HOV facilities****(a) In General.—**

(1) Authority of state agencies.— A State agency that has jurisdiction over the operation of a HOV facility shall establish the occupancy requirements of vehicles operating on the facility.

(2) Occupancy requirement.— Except as otherwise provided by this section, no fewer than two occupants per vehicle may be required for use of a HOV facility.

(b) Exceptions.—

(1) In general.— Notwithstanding the occupancy requirement of subsection (a)(2), the exceptions in paragraphs (2) through (5) shall apply with respect to a State agency operating a HOV facility.

(2) Motorcycles and bicycles.—

(A) In general.— Subject to subparagraph (B), the State agency shall allow motorcycles and bicycles to use the HOV facility.

(B) Safety exception.—

(i) In general.— A State agency may restrict use of the HOV facility by motorcycles or bicycles (or both) if the agency certifies to the Secretary that such use would create a safety hazard and the Secretary accepts the certification.

(ii) Acceptance of certification.— The Secretary may accept a certification under this subparagraph only after the Secretary publishes notice of the certification in the Federal Register and provides an opportunity for public comment.

(3) Public transportation vehicles.— The State agency may allow public transportation vehicles to use the HOV facility if the agency—

(A) establishes requirements for clearly identifying the vehicles; and

(B) establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

(4) High occupancy toll vehicles.— The State agency may allow vehicles not otherwise exempt pursuant to this subsection to use the HOV facility if the operators of the vehicles pay a toll charged by the agency for use of the facility and the agency—

(A) establishes a program that addresses how motorists can enroll and participate in the toll program;

(B) develops, manages, and maintains a system that will automatically collect the toll; and

(C) establishes policies and procedures to—

(i) manage the demand to use the facility by varying the toll amount that is charged; and

(ii) enforce violations of use of the facility.

(5) Low emission and energy-efficient vehicles.—

(A) Inherently low emission vehicle.— Before September 30, 2009, the State agency may allow vehicles that are certified as inherently low-emission vehicles pursuant to section 88.311–93 of title 40, Code of Federal Regulations (or successor regulations), and are labeled in accordance with section 88.312–93 of such title (or successor regulations), to use the HOV facility if the agency establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

(B) Other low emission and energy-efficient vehicles.— Before September 30, 2009, the State agency may allow vehicles certified as low emission and energy-efficient vehicles under subsection (e), and labeled in accordance with subsection (e), to use the HOV facility if the

operators of the vehicles pay a toll charged by the agency for use of the facility and the agency—

- (i) establishes a program that addresses the selection of vehicles under this paragraph; and
- (ii) establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

(C) Amount of tolls.— Under subparagraph (B), a State agency may charge no toll or may charge a toll that is less than tolls charged under paragraph (4).

(c) Requirements Applicable to Tolls.—

(1) In general.— Tolls may be charged under paragraphs (4) and (5) of subsection (b) notwithstanding section 301 and, except as provided in paragraphs (2) and (3), subject to the requirements of section 129.

(2) HOV facilities on the interstate system.— Notwithstanding section 129, tolls may be charged under paragraphs (4) and (5) of subsection (b) on a HOV facility on the Interstate System.

(3) Excess toll revenues.— If a State agency makes a certification under section 129 (a)(3) with respect to toll revenues collected under paragraphs (4) and (5) of subsection (b), the State, in the use of toll revenues under that sentence, shall give priority consideration to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety.

(d) HOV Facility Management, Operation, Monitoring, and Enforcement.—

(1) In general.— A State agency that allows vehicles to use a HOV facility under paragraph (4) or (5) of subsection (b) in a fiscal year shall certify to the Secretary that the agency will carry out the following responsibilities with respect to the facility in the fiscal year:

(A) Establishing, managing, and supporting a performance monitoring, evaluation, and reporting program for the facility that provides for continuous monitoring, assessment, and reporting on the impacts that the vehicles may have on the operation of the facility and adjacent highways.

(B) Establishing, managing, and supporting an enforcement program that ensures that the facility is being operated in accordance with the requirements of this section.

(C) Limiting or discontinuing the use of the facility by the vehicles if the presence of the vehicles has degraded the operation of the facility.

(2) Degraded facility.—

(A) Definition of minimum average operating speed.— In this paragraph, the term “minimum average operating speed” means—

- (i) 45 miles per hour, in the case of a HOV facility with a speed limit of 50 miles per hour or greater; and
- (ii) not more than 10 miles per hour below the speed limit, in the case of a HOV facility with a speed limit of less than 50 miles per hour.

(B) Standard for determining degraded facility.— For purposes of paragraph (1), the operation of a HOV facility shall be considered to be degraded if vehicles operating on the facility are failing to maintain a minimum average operating speed 90 percent of the time over a consecutive 180-day period during morning or evening weekday peak hour periods (or both).

(C) Management of low emission and energy-efficient vehicles.— In managing the use of HOV lanes by low emission and energy-efficient vehicles that do not meet applicable occupancy requirements, a State agency may increase the percentages described in subsection (f)(3)(B)(i).

(e) Certification of Low Emission and Energy-Efficient Vehicles.— Not later than 180 days after the date of enactment of this section, the Administrator of the Environmental Protection Agency shall—

NB: This unofficial compilation of the U.S. Code is current as of Jan. 8, 2008 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

- (1) issue a final rule establishing requirements for certification of vehicles as low emission and energy-efficient vehicles for purposes of this section and requirements for the labeling of the vehicles; and
 - (2) establish guidelines and procedures for making the vehicle comparisons and performance calculations described in subsection (f)(3)(B), in accordance with section 32908 (b) of title 49.
- (f) **Definitions.**— In this section, the following definitions apply:
- (1) **Alternative fuel vehicle.**— The term “alternative fuel vehicle” means a vehicle that is operating on—
 - (A) methanol, denatured ethanol, or other alcohols;
 - (B) a mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels;
 - (C) natural gas;
 - (D) liquefied petroleum gas;
 - (E) hydrogen;
 - (F) coal derived liquid fuels;
 - (G) fuels (except alcohol) derived from biological materials;
 - (H) electricity (including electricity from solar energy); or
 - (I) any other fuel that the Secretary prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits, including fuels regulated under section 490 of title 10, Code of Federal Regulations (or successor regulations).
 - (2) **HOV facility.**— The term “HOV facility” means a high occupancy vehicle facility.
 - (3) **Low emission and energy-efficient vehicle.**— The term “low emission and energy-efficient vehicle” means a vehicle that—
 - (A) has been certified by the Administrator as meeting the Tier II emission level established in regulations prescribed by the Administrator under section 202(i) of the Clean Air Act (42 U.S.C. 7521 (i)) for that make and model year vehicle; and
 - (B)
 - (i) is certified by the Administrator of the Environmental Protection Agency, in consultation with the manufacturer, to have achieved not less than a 50-percent increase in city fuel economy or not less than a 25-percent increase in combined city-highway fuel economy (or such greater percentage of city or city-highway fuel economy as may be determined by a State under subsection (d)(2)(C)) relative to a comparable vehicle that is an internal combustion gasoline fueled vehicle (other than a vehicle that has propulsion energy from onboard hybrid sources); or
 - (ii) is an alternative fuel vehicle.
 - (4) **Public transportation vehicle.**— The term “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.
 - (5) **State agency.**—
 - (A) **In general.**— The term “State agency”, as used with respect to a HOV facility, means an agency of a State or local government having jurisdiction over the operation of the facility.
 - (B) **Inclusion.**— The term “State agency” includes a State transportation department.

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(Added Pub. L. 109–59, title I, § 1121(a), Aug. 10, 2005, 119 Stat. 1192; amended Pub. L. 110–244, title I, § 101(p), June 6, 2008, 122 Stat. 1576.)

References in Text

The date of enactment of this section, referred to in subsec. (e), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

Amendments

2008—Subsec. (b)(5)(C). Pub. L. 110–244 substituted “paragraph (4)” for “paragraph (3)”.