

Subsecs. (b)(2)(A)(ii), (c)(6)(A)(i). Pub. L. 114-94, §1109(c)(5), substituted “surface transportation block grant program” for “surface transportation program”.

Subsec. (c)(7). Pub. L. 114-94, §1446(a)(11), substituted “paragraphs (1) through (4) of section 133(c) and section 133(b)(12)” for “paragraphs (2), (4), (7), (8), (14), and (19) of section 133(b)”.

2012—Pub. L. 112-141 amended section generally. Prior to amendment, section related to Puerto Rico highway program.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 166. HOV facilities

#### (a) IN GENERAL.—

(1) **AUTHORITY OF PUBLIC AUTHORITIES.**—A public authority 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 public authority operating a HOV facility.

#### (2) MOTORCYCLES AND BICYCLES.—

(A) **IN GENERAL.**—Subject to subparagraph (B), the public authority shall allow motorcycles and bicycles to use the HOV facility.

#### (B) SAFETY EXCEPTION.—

(i) **IN GENERAL.**—A public authority may restrict use of the HOV facility by motorcycles or bicycles (or both) if the authority 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 public authority may allow public transportation vehicles to use the HOV facility if the authority—

(A) establishes requirements for clearly identifying the vehicles;

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

(C) provides equal access under the same rates, terms, and conditions for all public transportation vehicles and over-the-road buses serving the public.

(4) **HIGH OCCUPANCY TOLL VEHICLES.**—The public authority may allow vehicles not other-

wise exempt pursuant to this subsection to use the HOV facility if the operators of the vehicles pay a toll charged by the authority for use of the facility and the authority—

(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;

(ii) enforce violations of use of the facility; and

(iii) ensure that over-the-road buses serving the public are provided access to the facility under the same rates, terms, and conditions as public transportation buses.

#### (5) LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—

(A) **SPECIAL RULE.**—Before September 30, 2025, if a public authority establishes procedures for enforcing the restrictions on the use of a HOV facility by vehicles described in clauses (i) and (ii), the public authority may allow the use of the HOV facility by—

(i) alternative fuel vehicles; and

(ii) any motor vehicle described in section 30D(d)(1) of the Internal Revenue Code of 1986.

(B) **OTHER LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.**—Before September 30, 2019, the public authority 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 authority for use of the facility and the authority—

(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 this paragraph, a public authority may charge no toll or may charge a toll that is less than or equal to tolls charged under paragraph (4).

#### (c) REQUIREMENTS APPLICABLE TO TOLLS.—

(1) **IN GENERAL.**—Notwithstanding section 301, tolls may be charged under paragraphs (4) and (5) of subsection (b), subject to the requirements of section 129.

(2) **TOLL REVENUE.**—Toll revenue collected under this section is subject to the requirements of section 129(a)(3).

#### (d) HOV FACILITY MANAGEMENT, OPERATION, MONITORING, AND ENFORCEMENT.—

(1) **IN GENERAL.**—A public authority that allows vehicles to use a HOV facility under paragraph (4) or (5) of subsection (b) shall submit to the Secretary a report demonstrating that the facility is not already degraded, and that the presence of the vehicles will not cause the facility to become degraded, and certify to the

Secretary that the authority will carry out the following responsibilities with respect to the facility:

(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 and submitting to the Secretary annual reports of those impacts.

(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 whenever the operation of the facility is degraded.

(D) MAINTENANCE OF OPERATING PERFORMANCE.—

(i) SUBMISSION OF PLAN.—Not later than 180 days after the date on which a facility is degraded under paragraph (2), the public authority with jurisdiction over the facility shall submit to the Secretary for approval a plan that details the actions the public authority will take to make significant progress toward bringing the facility into compliance with the minimum average operating speed performance standard through changes to the operation of the facility, including—

(I) increasing the occupancy requirement for HOV lanes;

(II) varying the toll charged to vehicles allowed under subsection (b) to reduce demand;

(III) discontinuing allowing non-HOV vehicles to use HOV lanes under subsection (b); or

(IV) increasing the available capacity of the HOV facility.

(ii) NOTICE OF APPROVAL OR DISAPPROVAL.—Not later than 60 days after the date of receipt of a plan under clause (i), the Secretary shall provide to the public authority a written notice indicating whether the Secretary has approved or disapproved the plan based on a determination of whether the implementation of the plan will make significant progress toward bringing the HOV facility into compliance with the minimum average operating speed performance standard.

(iii) ANNUAL PROGRESS UPDATES.—Until the date on which the Secretary determines that the public authority has brought the HOV facility into compliance with this subsection, the public authority shall submit annual updates that describe—

(I) the actions taken to bring the HOV facility into compliance; and

(II) the progress made by those actions.

(E) COMPLIANCE.—If the public authority fails to bring a facility into compliance under subparagraph (D), the Secretary shall subject the public authority to appropriate

program sanctions under section 1.36 of title 23, Code of Federal Regulations (or successor regulations), until the performance is no longer degraded.

(F) WAIVER.—

(i) IN GENERAL.—Upon the request of a public authority, the Secretary may waive the compliance requirements of subparagraph (E), if the Secretary determines that—

(I) the waiver is in the best interest of the traveling public;

(II) the public authority is meeting the conditions under subparagraph (D); and

(III) the public authority has made a good faith effort to improve the performance of the facility.

(ii) CONDITION.—The Secretary may require, as a condition of providing a waiver under this subparagraph, that a public authority take additional actions, as determined by the Secretary, to maximize the operating speed performance of the facility, even if such performance is below the level set under paragraph (2).

(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 public authority 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—

(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 solely 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) **OVER-THE-ROAD BUS.**—The term “over-the-road bus” has the meaning given the term in section 301 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181).

(5) **PUBLIC AUTHORITY.**—The term “public authority” as used with respect to a HOV facility, means a State, interstate compact of States, public entity designated by a State, or local government having jurisdiction over the operation of the facility.

(6) **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 public authority to provide motorbus or school vehicle transportation services to the public.

(g) **CONSULTATION OF MPO.**—If a HOV facility charging tolls under paragraph (4) or (5) of subsection (b) is on the Interstate System and located in a metropolitan planning area established in accordance with section 134, the public authority shall consult with the metropolitan planning organization for the area concerning the placement and amount of tolls on the facility.

(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; Pub. L. 112-141, div. A, title I, §1514, July 6, 2012, 126 Stat. 572; Pub. L. 114-94, div. A, title I, §1411(b), Dec. 4, 2015, 129 Stat. 1413.)

#### REFERENCES IN TEXT

Section 30D(d)(1) of the Internal Revenue Code of 1986, referred to in subsec. (b)(5)(A)(ii), is classified to section 30D(d)(1) of Title 26, Internal Revenue Code.

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

2015—Pub. L. 114-94, §1411(b)(1), substituted “the authority” for “the agency” wherever appearing.

Subsec. (a)(1). Pub. L. 114-94, §1411(b)(2), substituted “authority of public authorities” for “Authority of state agencies” in heading and “public authority” for “State agency” in text.

Subsec. (b). Pub. L. 114-94, §1411(b)(3)(A), substituted “public authority” for “State agency” wherever appearing.

Subsec. (b)(3)(C). Pub. L. 114-94, §1411(b)(3)(B), added subpar. (C).

Subsec. (b)(4)(C)(iii). Pub. L. 114-94, §1411(b)(3)(C), added cl. (iii).

Subsec. (b)(5)(A). Pub. L. 114-94, §1411(b)(3)(D)(i), added subpar. (A) and struck out former subpar. (A). Prior to amendment, text read as follows: “Before September 30, 2017, 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.”

Subsec. (b)(5)(B). Pub. L. 114-94, §1411(b)(3)(D)(ii), substituted “2019” for “2017” in introductory provisions.

Subsec. (c)(1). Pub. L. 114-94, §1411(b)(4)(A), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “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.”

Subsec. (c)(2), (3). Pub. L. 114-94, §1411(b)(4)(B), redesignated par. (3) as (2) and struck out former par. (2). Prior to amendment, text of par. (2) read as follows: “Notwithstanding section 129, tolls may be charged under paragraphs (4) and (5) of subsection (b) on a HOV facility on the Interstate System.”

Subsec. (d)(1). Pub. L. 114-94, §1411(b)(5)(A), substituted “public authority” for “State agency” in introductory provisions.

Subsec. (d)(1)(D) to (F). Pub. L. 114-94, §1411(b)(5)(B), added subpars. (D) to (F) and struck out former subpars. (D) and (E), which related to maintenance of operating performance and compliance, respectively.

Subsec. (d)(2)(C). Pub. L. 114-94, §1411(b)(5)(A), substituted “public authority” for “State agency”.

Subsec. (f)(1). Pub. L. 114-94, §1411(b)(6)(A), inserted “solely” before “operating” in introductory provisions.

Subsec. (f)(4). Pub. L. 114-94, §1411(b)(6)(E), added par. (4). Former par. (4) redesignated (6).

Subsec. (f)(4)(B)(iii). Pub. L. 114-94, §1411(b)(6)(B), substituted “public authority” for “State agency”.

Subsec. (f)(5). Pub. L. 114-94, §1411(b)(6)(C), (E), added par. (5) and struck out former par. (5). Prior to amendment, text read as follows:

“(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.”

Subsec. (f)(6). Pub. L. 114-94, §1411(b)(6)(D), redesignated par. (4) as (6).

Subsec. (g). Pub. L. 114-94, §1411(b)(7), added subsec. (g).

2012—Subsec. (b)(5)(A), (B). Pub. L. 112-141, §1514(1)(A), (B), substituted “2017” for “2009”.

Subsec. (b)(5)(C). Pub. L. 112-141, §1514(1)(C), substituted “this paragraph” for “subparagraph (B)” and inserted “or equal to” after “less than”.

Subsec. (c)(3). Pub. L. 112-141, §1514(2), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “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.”

Subsec. (d)(1). Pub. L. 112-141, §1514(3)(A), in introductory provisions, substituted “shall submit to the Secretary a report demonstrating that the facility is not already degraded, and that the presence of the vehicles will not cause the facility to become degraded, and certify” for “in a fiscal year shall certify” and struck out “in the fiscal year” before the colon.

Subsec. (d)(1)(A). Pub. L. 112-141, §1514(3)(B), inserted “and submitting to the Secretary annual reports of those impacts” before period at end.

Subsec. (d)(1)(C). Pub. L. 112-141, §1514(3)(C), substituted “whenever the operation of the facility is degraded” for “if the presence of the vehicles has degraded the operation of the facility”.

Subsec. (d)(1)(D), (E). Pub. L. 112-141, §1514(3)(D), added subpars. (D) and (E).

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

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 167. National highway freight program

#### (a) IN GENERAL.—

(1) POLICY.—It is the policy of the United States to improve the condition and performance of the National Highway Freight Network established under this section to ensure that the Network provides the foundation for the United States to compete in the global economy and achieve the goals described in subsection (b).

(2) ESTABLISHMENT.—In support of the goals described in subsection (b), the Administrator

of the Federal Highway Administration shall establish a national highway freight program in accordance with this section to improve the efficient movement of freight on the National Highway Freight Network.

(b) GOALS.—The goals of the national highway freight program are—

(1) to invest in infrastructure improvements and to implement operational improvements on the highways of the United States that—

(A) strengthen the contribution of the National Highway Freight Network to the economic competitiveness of the United States;

(B) reduce congestion and bottlenecks on the National Highway Freight Network;

(C) reduce the cost of freight transportation;

(D) improve the year-round reliability of freight transportation; and

(E) increase productivity, particularly for domestic industries and businesses that create high-value jobs;

(2) to improve the safety, security, efficiency, and resiliency of freight transportation in rural and urban areas;

(3) to improve the state of good repair of the National Highway Freight Network;

(4) to use innovation and advanced technology to improve the safety, efficiency, and reliability of the National Highway Freight Network;

(5) to improve the efficiency and productivity of the National Highway Freight Network;

(6) to improve the flexibility of States to support multi-State corridor planning and the creation of multi-State organizations to increase the ability of States to address highway freight connectivity; and

(7) to reduce the environmental impacts of freight movement on the National Highway Freight Network.

#### (c) ESTABLISHMENT OF NATIONAL HIGHWAY FREIGHT NETWORK.—

(1) IN GENERAL.—The Administrator shall establish a National Highway Freight Network in accordance with this section to strategically direct Federal resources and policies toward improved performance of the Network.

(2) NETWORK COMPONENTS.—The National Highway Freight Network shall consist of—

(A) the primary highway freight system, as designated under subsection (d);

(B) critical rural freight corridors established under subsection (e);

(C) critical urban freight corridors established under subsection (f); and

(D) the portions of the Interstate System not designated as part of the primary highway freight system.

#### (d) DESIGNATION AND REDESIGNATION OF THE PRIMARY HIGHWAY FREIGHT SYSTEM.—

(1) INITIAL DESIGNATION OF PRIMARY HIGHWAY FREIGHT SYSTEM.—The initial designation of the primary highway freight system shall be the 41,518-mile network identified during the designation process for the primary freight network under section 167(d) of this title, as in effect on the day before the date of enactment of the FAST Act.