



DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

[FHWA Docket No. FHWA-2017-0006]

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

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

ACTION: Notice; request for comment.

SUMMARY: The FHWA invites interested parties to review and comment on definitions and applicable facilities related to requirements contained in Section 1411(a) and (b) of the Fixing America's Surface Transportation (FAST) Act regarding the treatment of over-the-road buses (OTRBs). In addition, FHWA invites interested parties to review and comment on a listing of covered Section 129 Federal-aid toll facilities in the United States.

DATES: Comments must be received by **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION]**.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

- Mail: U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Ave., S.E., Washington, DC 20590– 0001.
- Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., S.E., between 9 a.m. 5p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

All comments must include the docket number DOT–FHWA–2017–0006 at the beginning of the submission.

Electronic Access: This document 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 Web site. 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 Web site at: <http://www.archives.gov/federalregister> and the Government Publishing Office’s Web site 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., Room 201, Lansing, MI 48933, (517) 702-1856. For legal questions: Mr. Steven Rochlis, Office of the Chief Counsel, Federal Highway Administration, 1200 New Jersey Avenue, S.E., 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 FAST Act includes a number of provisions that modify Federal requirements related to high-occupancy vehicle (HOV) facilities and the tolling of highways. Sections 1411(a) and (b) of the FAST Act contained new requirements regarding the treatment of over-the-road buses (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 access to toll or HOV facilities for OTRBs.

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 provided in 23 U.S.C. 166(b), HOV authorities may allow all public transportation vehicles to use HOV lanes, whether they meet the minimum occupancy requirements, as long as they provide equal access to OTRBs

servicing 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 also 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.

In preparing guidance to assist in the implementation of Section 1411 of the FAST Act, FHWA considered how to define key terms in Section 1411 as well as which facilities are governed by the new requirements. The FHWA is seeking comment on implementation of these terms as they relate to FAST Act Section 1411 amendments to 23 U.S.C. 129 and 166.

B. 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 intends to use definitions where they exist in relevant statutes and regulations. Where FHWA found no existing definition, such as for the term

“public transportation bus,” FHWA developed a definition based on its interpretation of Congress’s intent. The definitions for the key terms, are:

“*Over-the-road bus*” is defined as a bus characterized by an elevated passenger deck located over a baggage compartment. *Source:* As amended by FAST Act Section 1411, 23 U.S.C. 129(a)(10)(C) and 23 U.S.C. 166(f)(4) define this term, giving it the same meaning as in Section 301 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181).

“*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. *Source:* The FHWA developed this definition by drawing upon definitions of similar or related terms. The FHWA incorporated the definition of “public transportation vehicle” in 23 U.S.C. 166(f)(6), and the definition of “bus” in 49 CFR 571.3.

“*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. *Source:* This term is defined in 23 U.S.C. 166(f)(6).

“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. *Source:* This term has a similar meaning as the term “designated public transportation” in Section 221 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12141).

“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). *Source:* This term has the same meaning as the term is given in 23 U.S.C. 129(a)(10)(E).

C. Covered Facilities Subject to OTRB Equal Access

Section 129 Facilities

Section 1411(a) of the FAST Act amends 23 U.S.C. 129 to provide that, “An over-the-road bus that serves the public shall be provided access to a toll facility under the same rates, terms, and conditions as public transportation buses.” 23 U.S.C. 129(a)(9). A toll facility is defined in 23 U.S.C. 129(a)(10)(E) (as amended by the FAST Act) as: “a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel constructed under [section 129(a)].”

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)(P.L. 112-141) (which eliminated the statutory 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).

Section 166 Facilities

For HOV facilities under 23 U.S.C. 166, Section 1411(b) of the FAST Act added Section 166(b)(3)(C), which requires any authority that allows public transportation vehicles to use an HOV facility to provide equal access to the facility under the same rates, terms, and conditions for all public transportation vehicles and OTRBs serving the public. The FAST Act also added Section 166(b)(4)(C)(iii), which provides that if an authority operates HOT lanes that allow vehicles not otherwise exempt under 23 U.S.C. 166(b) to pay a toll to use the facility, the authority must ensure that OTRBs serving the public are provided access to the facility under the same rates, terms, and conditions as public transportation buses.

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.

D. Covered Section 129 Facilities List

The Section 129 Covered Facilities list can be found on the docket for this Federal Register Notice. Federal-aid toll facilities that were constructed under other Federal tolling authorities and not subject to Section 1411 of the FAST Act are also included in the docket list of covered facilities 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 FHWA invites comment on the accuracy and completeness of the list of facilities subject to OTRB equal access.

E. Request for Comment

The FHWA is seeking public comment on the following specific sections of this Federal Register Notice:

- 1) Applicable definitions for implementing Section 1411 of the FAST Act,
- 2) Covered facilities subject to OTRB equal access, and
- 3) OTRB Section 129 Covered Facilities list.

The OTRB Section 129 Covered Facilities list can be found on the docket for this Federal Register Notice.

Commenters are encouraged to address any or all of the areas listed above.

Commenters are also encouraged to provide specific information on toll facilities subject to OTRB requirements that are not included on the Section 129 Covered Facilities-OTRB list. Commenters may also describe why they believe certain facilities should be included in the Section 129 Covered Facilities-OTRB list. This description should include such information as the facility name, location, route designation, and owner/operator.

Commenters are also encouraged to focus on matters within the control of FHWA. (Matters not within the control of FHWA include such items as HOV occupancy requirements at specific facilities, setting of toll rates, or Federal Transit Administration

laws.) The FHWA will consider public comment before adopting its final guidance on OTRBs.

Issued on: April 24, 2017.

Walter C. Waidehch, Jr.,
Acting Deputy Administrator,
Federal Highway Administration.

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