

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration**

[Docket No: FTA-2006-25750]

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:** Notice of policy statement and request for comment.

SUMMARY: This notice describes the terms and conditions on which the Federal Transit Administration (FTA) proposes to 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 notice also describes when HOT lanes would be ineligible for classification as fixed guideway miles in FTA's funding formulas, clarifies which HOT lanes shall not be eligible for reporting as fixed guideway miles in FTA's funding formulas, and seeks comment from interested parties. After consideration of the comments, FTA will issue a second **Federal Register** notice responding to comments received and noting any changes made to the policy statement as a result of comments received.

DATES: Comments must be received by October 10, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure your comments are not entered more than once into the DOT Docket, please identify your submissions by the following docket number: FTA-2006-25750. Please make your submissions by only one of the following means:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for making submissions to the DOT electronic docket site.

- Web Site: <http://dms.dot.gov>. Follow the online instructions for making submissions to the DOT electronic docket site.

- Fax: 1-202-493-2478.

- U.S. Post or Express Mail: Docket Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: To the Docket Management System; 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.

Instructions: All submissions must make reference to the "Federal Transit Administration" and include the docket number for this notice set forth above. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://dms.dot.gov>.

Docket: For access to the DOT docket to read materials relating to this notice, please go to <http://dms.dot.gov> at any time or to the Docket Management System.

FOR FURTHER INFORMATION CONTACT:

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David.Horner@dot.gov. Telephone: (202) 366-4040; or

Robert J. Tuccillo, Associate Administrator, Office of Budget & Policy, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. E-mail: Robert.Tuccillo@dot.gov. Telephone: (202) 366-4050.

Office hours are from 8:30 a.m. to 6 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**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 U.S.,¹ 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.² Since 1990,

¹ Office of Operations, Federal Highway Administration, U.S. Department of Transportation.

² National Transit Database.

however, HOV mode share in 36 of the 40 largest metropolitan areas has steadily declined,³ while both excess capacity on HOV lanes and congestion have increased.⁴

An increasing number of metropolitan areas are considering new demand management strategies as alternatives to HOV 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 significant 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

³ *Journey to Work Trends in the United States and its Major Metropolitan Areas 1960-2000*, Publication No. FHWA-EP-03-058 Prepared for: U.S. Department of Transportation, Federal Highway Administration, Office of Planning, Prepared by: Nancy McGuckin, Consultant, Nanda Srinivasan, Cambridge Systematics, Inc.

⁴ 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 2000, 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.

standards. The Department has strongly endorsed the conversion of HOV lanes to variably-priced 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-priced lanes along 18 miles on the Inter-County Connector in Montgomery and Prince George's Counties in Maryland.⁵ Virginia is also exploring the possibility of converting existing HOV lanes along the I-95/395 corridor into HOT lanes.⁶ Maryland is considering express toll lanes along I-495, I-95 and I-270, as well as along other facilities.⁷ 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;⁸ 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;⁹ 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.¹⁰ Other jurisdictions are exploring the potential for HOT lanes with grants provided by the Department's Value Pricing Pilot Program.¹¹ These include the Port Authority of New York/New Jersey; San Antonio, Texas; Seattle, Washington; Atlanta, Georgia; and Portland, Oregon.¹²

While an increasing number of metropolitan planning organizations and State departments of transportation are studying 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 QuickRide and the Northwest Freeway (US 290) 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.¹³ 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.

¹⁰ Miami-Dade Transportation Plan (to the Year 2030) December 2004, FINAL DRAFT, Page 24.

¹¹ 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.

¹² Federal Highway Administration, U.S. Department of Transportation.

¹³ 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."

Proposed FTA Policy

(a) *Purpose of Revised Policy.* The proposed FTA policy described below would 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 would also promote a uniform approach by the Department's operating agencies concerning HOV-to-HOT conversions. In particular, FTA policy would 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 would also support the Administration's policy of encouraging HOV-to-HOT conversions.

(b) *Proposed Policy.* FTA would classify HOT lanes as "fixed guideway miles" for purposes of the funding formulas administered under 49 U.S.C. § 5307(b) and 49 U.S.C. § 5309(a)(E), so long as each of the following conditions is satisfied:

(i) *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(b) and 49 U.S.C. 5309(a)(E).* Facilities that were not eligible HOV lanes prior to being converted to HOT lanes would 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 would be eligible for classification as "fixed guideway miles."

(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) could 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

⁵ Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

⁶ Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

⁷ Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.

⁸ A Vision for the Future Transportation 2030, February 2005, Chapter 1, Page 6.

⁹ 2025 Regional Transportation Plan Houston-Galveston Area, June 2005, Page 31.

performance for facilities constructed with funds from FTA's New Starts program would be determined by FTA on a case-by-case basis. FTA would 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" could mean 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 (including reconstruction and rehabilitation), 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. ("transit law"). 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 would not apply to more than *transit's allocable share*¹⁴ of the facility's program income. FTA would not require recipients to assign priority in payment to any permissible use.

(c) *Transit Fares and Tolls on HOT Lane Facilities.* FTA would not condition reporting of HOT lanes as fixed guideway miles following conversion from HOV lanes 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 would allow grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities. Transit fares would remain subject to 49 U.S.C. 5332 (Nondiscrimination) and 49

¹⁴ *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 funds contributed to the facility, in each case at the time transit's allocable share is calculated.

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 would not require the grantee to return such funds so long as the facility complied with the conditions set forth in this guidance.

James S. Simpson,
Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-25324, Notice 2]

Automobili Lamborghini SpA; Bugatti Automobiles S.A.S. and Bugatti Engineering GmbH; Group Lotus Plc; Morgan Motor Company Limited; Maserati; Grant of Applications for a Temporary Exemption From Advanced Air Bag Requirements of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of applications for temporary exemptions from certain advanced air bag provisions of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*.

SUMMARY: This notice grants the Automobili Lamborghini SpA ("Lamborghini"); Bugatti Automobiles S.A.S. and Bugatti Engineering GmbH (collectively, "Bugatti"); Group Lotus Plc ("Lotus"); Morgan Motor Company Limited ("Morgan"); and Maserati SpA ("Maserati") applications for temporary exemption from certain advanced air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*. The exemptions apply to the Lamborghini Murcielago, the Bugatti Veyron 16.4, the Lotus Elise, the Morgan Aero 8, and the Maserati Coupe/Spyder. In accordance with 49 CFR part 555, the basis for each grant is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and the exemption would have a negligible impact on motor vehicle safety.

The exemptions for the Lamborghini Murcielago, the Lotus Elise, and the Morgan Aero 8 are effective September 1, 2006 and will remain in effect until

August 31, 2009. The exemption for the Bugatti Veyron 16.4 is effective from September 1, 2006 and will remain in effect until September 1, 2008. The exemption for the Maserati Coupe/Spyder is effective from September 1, 2006 and will remain in effect until December 31, 2007.

In accordance with the requirements of 49 U.S.C. 30113(b)(2), we published a notice of receipt of the applications¹ in the **Federal Register** and asked for public comments.² We received comments from four of the petitioners (Lamborghini, Lotus, Morgan, and Maserati), one trade organization, and one individual. Please note that, as was done with the notice of receipt, we are publishing this decision notice for the five applications together to ensure efficient use of agency resources and to facilitate the timely processing of the applications. However, NHTSA considered each application individually, and our decision regarding the temporary exemption for each company is discussed separately below.

DATES: The exemptions from the specified provisions of FMVSS No. 208 for the Lamborghini Murcielago, the Lotus Elise, and the Morgan Aero 8 are effective September 1, 2006 until August 31, 2009. The exemption for the Bugatti Veyron 16.4 is effective from September 1, 2006 until September 1, 2008. The exemption for the Maserati Coupe/Spyder is effective from September 1, 2006 until December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Glancy or Mr. Eric Stas in the Office of the Chief Counsel at the National Highway Traffic Safety Administration (NCC-112), 400 Seventh Street, SW., Room 5215, Washington, DC 20590 (Phone: 202-366-2992; Fax 202-366-3820).

SUPPLEMENTARY INFORMATION

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air bags."³ The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate to high speed crashes, and of minimizing the risks posed by air bags to infants, children,

¹ To view the applications, go to: <http://dms.dot.gov/search/searchFormSimple.cfm> and enter the Docket No. NHTSA-2006-25324.

² See 71 FR 39386 (July 12, 2006) (Docket No. NHTSA-2006-25324-6).

³ See 65 FR 30680 (May 12, 2000) (Docket No. NHTSA-2000-7013).