

Section 2B.26 Preferential Only Lane Signs (R3–10 through R3–15). As a result, the FHWA is not making the change to the first paragraph of the third GUIDANCE statement that was proposed in the NPA.

The FHWA changes the last paragraph of the third GUIDANCE statement (of the 2000 MUTCD) to a fifth STANDARD statement (second in the NPA) to be consistent with requirements in Section 2A.07 Changeable Message Signs. These requirements indicate that changeable message signs serving as HOV signs shall be the required sign size and shall display the required letter height and legend format that corresponds to the type of facility and design speed. This change from a recommended practice to a required practice is made to preclude the use of insufficiently sized or designed changeable message signs to display these important regulatory messages for HOV lane use. The FHWA received one comment from the NCUTCD in support of this change, and one comment from Caltrans suggesting further clarification. To respond to the comments, the FHWA inserts an OPTION statement prior to the STANDARD, indicating appropriate uses of changeable message signs, and the FHWA includes editorial modifications to the STANDARD.

Additionally, the FHWA adds a new GUIDANCE statement at the end of the section stating that the Inherently Low Emission Vehicle (ILEV) (R3–10b) sign should be used when it is permissible for a properly labeled and certified ILEV, regardless of the number of occupants, to operate in the HOV lanes and that, when used, the ILEV signs should be ground mounted in advance of the HOV lanes and at intervals along the HOV lanes based upon engineering judgment. A uniform sign design and application is needed to enhance driver understanding and compliance regarding ILEV use of HOV lanes and also to correspond to changes in Section 2B.27 Preferential Only Lanes for High Occupancy Vehicles (HOVs). The FHWA received one comment from ATSSA in support of this new statement, and two comments from Caltrans and the Minnesota DOT opposed to it. The opposing commenters suggested that there are different types of ILEV vehicles, and that the text needed to be clarified. To respond to those comments, the FHWA adds a SUPPORT statement, following the GUIDANCE, that explains what an ILEV is, similar to the definition in Section 1A.13, and also providing citations of applicable sections of the Code of Federal Regulations (CFR). The R3–10b sign is recommended for use

when a State or local jurisdiction permits ILEVs to use a particular HOV lane facility.

The FHWA establishes a 10-year phase-in target compliance date from the effective date of this final rule for signs in good condition to comply with the new requirements of Section 2B.26 Preferential Only Lane Signs (R3–10 through R3–15), to minimize any impact on State or local governments.

43. In Section 2B.27 Preferential Only Lanes for High-Occupancy Vehicles (numbered and titled Section 2B.49 High Occupancy Vehicle (HOV) Lanes in the NPA), the FHWA adds a second paragraph to the first STANDARD statement that the requirements for a minimum number of occupants in a vehicle to use an HOV lane shall be in effect for most, or all, of at least one of the usual times during the day when the demand to travel is greatest (such as morning or afternoon peak travel periods) and the traffic congestion problems on the roadway and adjoining transportation corridor are at their worst. The FHWA also adds in the last paragraph the requirement of a Federal review (as outlined in Section 2 of the Federal-aid Highway Program Guidance on HOV Lanes¹¹) prior to initiating a proposed project (including a proposed test or demonstration project) that seeks to significantly change the operation of the HOV lanes for any length of time. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in general support of the changes to this section, and one comment from Caltrans opposed to the specific change regarding Federal review of a proposed test or demonstration project. Caltrans felt that FHWA review is not currently required. However, the Federal review is required because of provisions in Titles 23 and 49 of the United States Code as well as a variety of commitments, agreements, transportation planning requirements, and transportation conformity requirements under the Clean Air Act. The FHWA responds by providing an additional reference to the Federal-Aid Highway Program Guidance on HOV Lanes, which gives very detailed information about the basis of the review and factors considered.

In the NPA, the FHWA proposed to modify the first STANDARD statement to allow motorcycles to use HOV lanes that received Federal-aid program funding. The FHWA also proposed to require agencies to allow a vehicle with

less than the required number of occupants to operate in the HOV lanes if:

A. The vehicle is properly labeled and certified as an ILEV and the lane is not a bus-only HOV lane; or

B. The HOV lanes are part of a project that is participating in the FHWA Value Pricing Pilot Program.¹²

The FHWA adopts this requirement as it pertains to motorcycles because, under the provisions of 23 U.S.C. 102(a)(1), motorcycles are specifically identified as not a single-occupant vehicle. However, the FHWA recognizes that the provisions of 23 U.S.C. 102(a)(2) and Environmental Protection Agency (EPA) regulations in 40 CFR section 88.313–93 permit, but do not require, States to allow ILEVs to use HOV lanes. Further, the FHWA recognizes that the applicable provisions of the Transportation Equity Act for the 21st Century (TEA–21) permit, but do not require, States to allow vehicles with fewer than two occupants to operate in HOV lanes if the vehicles are part of a value pricing program. Therefore, the FHWA revises the paragraph in Section 2B.27 about these uses of HOV lanes to OPTION statements rather than STANDARD statements.

The FHWA also revises the first SUPPORT statement to clarify the examples of significant operational changes to HOV lanes. While most of this information was included in the NPA (and the 2000 MUTCD), the FHWA provides examples in the form of individual items in this final rule for clarity. The FHWA adds implementing a pricing option to an existing HOV lane, such as High Occupancy Toll (HOT) lane or toll lane to the list of example items to reflect current practice.

The FHWA modifies this section to add a SUPPORT statement at the end of the section. The SUPPORT statement states that the Inherently Low Emissions Vehicle (ILEV) program requirements, certification program, and other regulatory provisions are developed and administered through the U.S. Environmental Protection Administration (EPA). The U.S. EPA is the only entity with the authority to certify ILEVs. Vehicle manufacturers must request the U.S. EPA to grant an ILEV certification for any vehicle to be considered and labeled as meeting these standards. According to the U.S. EPA,

¹¹ The "Federal-Aid Highway Program Guidance on High Occupancy Vehicle (HOV) Lanes" dated March 28, 2001, is available at the following URL: <http://www.fhwa.dot.gov/operations/hovguide01.htm>.

¹² The Value Pricing Pilot Program is an experimental program to learn the potential of different value pricing approaches for reducing congestion authorized by Section 1216(a) of the Transportation Equity Act for the 21st Century (TEA–21). Information is available at the following URL: <http://www.fhwa.dot.gov/policy/vppp.htm>.