

## II. Conclusion

FDA concludes that the data establish the safety and functionality of formaldehyde (CAS No. 50-00-0; 37 percent aqueous solution), for use as proposed and that the food additive regulations should be amended as set forth below.

## III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person listed above. As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

## IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

## V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may at any time on or before November 5, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number

found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

## VI. References

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA Talk Paper "Formaldehyde," T80-27, May 21, 1980, and T82-40, June 17, 1982.

### List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.  
Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

### PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR part 573 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348.

2. Section 573.460 is amended by revising paragraphs (b)(1), (b)(2)(ii), (b)(2)(iii), and (b)(3)(iv), and by adding paragraph (b)(2)(iv) to read as follows:

#### § 573.460 Formaldehyde.

\* \* \* \* \*

(b)(1) The food additive is formaldehyde (CAS No. 50-00-0; 37 percent aqueous solution). It is used at a rate of 5.4 pounds (2.5 kilograms) per ton of animal feed or feed ingredient. It is an antimicrobial agent used to maintain complete animal feeds or feed ingredients *Salmonella* negative for up to 21 days.

(2) \* \* \*

(ii) A statement that formaldehyde solution which has been stored below 40 °F or allowed to freeze should not be applied to complete animal feeds or feed ingredients.

(iii) Adequate directions for use including a statement that formaldehyde should be uniformly sprayed on and thoroughly mixed into the complete animal feeds or feed ingredients and that the complete animal feeds or feed ingredients so treated shall be labeled as containing formaldehyde. The label must prominently display the statement: "Treated with formaldehyde to maintain feed *Salmonella* negative. Use within 21 days."

(iv) The labeling for feed or feed ingredients to which formaldehyde has

been added under the provisions of paragraph (b)(1) of this section is required to carry the following statement: "Treated with formaldehyde to maintain feed *Salmonella* negative. Use within 21 days."

(3) \* \* \*

(iv) Statements reflecting requirements of applicable sections of the Superfund Amendments and Reauthorization Act (SARA), and the Occupational Safety and Health Administration's (OSHA) human safety guidance regulations.

\* \* \* \* \*

Dated: September 28, 1998.

**Michael J. Blackwell,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. 98-26646 Filed 10-5-98; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Federal Highway Administration

### 23 CFR Part 1270

[Docket No. NHTSA-98-4493]

RIN 2127-AH41

### Open Container Laws

**AGENCY:** National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule implements a new program established by the Transportation Equity Act for the 21st Century (TEA-21) Restoration Act, which provides for the transfer of Federal-aid highway construction funds to 23 U.S.C. 402 State and Community Highway Safety Program grant funds for any State that fails to enact and enforce a conforming "open container" law.

This regulation is being published as an interim final rule, which will go into effect prior to providing notice and the opportunity for comment. Following the close of the comment period, NHTSA will publish a separate document responding to comments and, if appropriate, will amend provisions of the regulation.

**DATES:** This interim final rule becomes effective on November 5, 1998. Comments on this interim rule are due no later than December 7, 1998.

**ADDRESSES:** Written comments should refer to the docket number of this notice

and be submitted (preferably in two copies) to: Docket Management, Room PL-401 Section, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays.)

**FOR FURTHER INFORMATION CONTACT:** In NHTSA: Ms. Jennifer Higley, Office of State and Community Services, NSC-01, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590, telephone (202) 366-2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC-30, telephone (202) 366-1834.

In FHWA: Mr. Bing Wong, Office of Highway Safety, HHS-20, telephone (202) 366-2169; or Mr. Raymond W. Cuprill, HCC-20, telephone (202) 366-0834.

**SUPPLEMENTARY INFORMATION:** The Transportation Equity Act for the 21st Century (TEA-21), H.R. 2400, Pub. L. 105-178, was signed into law on June 9, 1998. On July 22, 1998, a technical corrections bill, entitled the TEA-21 Restoration Act, Pub. L. 105-206, was enacted to restore provisions that were agreed to by the conferees to H.R. 2400, but were not included in the TEA-21 conference report. Section 1405 of the Act amended chapter 1 of title 23, United States Code (U.S.C.), by adding Section 154, which established a transfer program under which a percentage of a State's Federal-aid highway construction funds will be transferred to the State's apportionment under Section 402 of Title 23 of the United States Code, if the State fails to enact and enforce a conforming "open container" law.

In accordance with Section 154, these funds are to be used for alcohol-impaired driving countermeasures or the enforcement of driving while intoxicated (DWI) laws, or States may elect to use all or a portion of the funds for hazard elimination activities, under 23 U.S.C. Section 152.

As provided in Section 154, to avoid the transfer of funds, State "open container" laws must prohibit the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway, or the right-of-way of a public highway, in the State.

This new program was established to address the issue of impaired driving, which is a serious national problem.

## Background

### *The Problem of Impaired Driving*

Injuries caused by motor vehicle traffic crashes are a major health care problem in America and are the leading cause of death for people aged 6 to 27. Each year, the injuries caused by traffic crashes in the United States claim approximately 42,000 lives and cost Americans an estimated \$150 billion, including \$19 billion in medical and emergency expenses, \$42 billion in lost productivity, \$52 billion in property damage, and \$37 billion in other crash related costs. In 1997, alcohol was involved in approximately 39 percent of fatal traffic crashes and 7 percent of all crashes. Every 32 minutes, someone in this country dies in an alcohol-related crash. In 1994, alcohol-involved crashes resulted in \$45 billion in economic costs, accounting for 30 percent of all crash costs. Impaired driving is the most frequently committed violent crime in America.

### *Open Container Law Incentives*

State open container laws can serve as an important tool in the fight against impaired driving. In order to encourage States to enact and enforce effective impaired driving measures (including open container laws), Congress enacted 23 U.S.C. Section 410 (the Section 410 program). Under this program, States could qualify for supplemental grant funds if they were eligible for a basic Section 410 grant, and they had an open container law that met certain requirements.

TEA-21 changed the Section 410 program and removed the open container incentive grant criterion. The conferees to that legislation had intended to create a new open container transfer program to encourage States to enact open container laws, but this new program was inadvertently omitted from the TEA-21 conference report. The program was included instead in the TEA-21 Restoration Act, which was signed into law on July 22, 1998.

### *Section 154 Open Container Law Program*

Section 154 provides that the Secretary must transfer a portion of a State's Federal-aid highway funds apportioned under Sections 104(b)(1), (3), and (4) of title 23 of the United States Code, for the National Highway System, Surface Transportation Program and Interstate System, to the State's apportionment under Section 402 of that title, if the State does not meet certain statutory requirements. All 50 States, the District of Columbia and

Puerto Rico are considered to be States, for the purpose of this program.

To avoid the transfer, a State must enact and enforce a law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

Consistent with other programs that are administered by the agencies, a State's law must have been both passed and come into effect to permit a State to rely on the law to avoid the transfer of funds. In addition, the State must be actively enforcing the law.

Any State that does not enact and enforce a conforming open container law will be subject to a transfer of funds. In accordance with Section 154, if a State does not meet the statutory requirements on October 1, 2000 or October 1, 2001, an amount equal to one and one-half percent of the funds apportioned to the State on those dates under each of Sections 104(b)(1), (3) and (4) of title 23 of the United States Code will be transferred to the State's apportionment under Section 402 of that title. If a State does not meet the statutory requirements on October 1, 2002, an amount equal to three percent of the funds apportioned to the State on that date under Sections 104(b)(1), (3) and (4) will be transferred. An amount equal to three percent will continue to be transferred on October 1 of each subsequent fiscal year, if the State does not meet the requirements on those dates.

Section 154 and this implementing regulation, provides also that the amount of the apportionment to be transferred may be derived from one or more of the apportionments under Sections 104(b)(1), (3) and (4).

In other words, the total amount to be transferred from a non-conforming State will be calculated based on a percentage of the funds apportioned to the State under each of Sections 104(b)(1), (3) and (4). However, the actual transfers need not be evenly distributed among these three sources. The transferred funds may come from any one or a combination of the apportionments under Sections 104(b)(1), (3) or (4), as long as the appropriate total amount is transferred from one or more of these three sections.

The funds transferred to Section 402 under this program are to be used for alcohol-impaired driving countermeasures or directed to State and local law enforcement agencies for

the enforcement of laws prohibiting driving while intoxicated, driving under the influence or other related laws or regulations. The Act provides that States may elect to use all or a portion of the transferred funds for hazard elimination activities under 23 U.S.C. 152.

#### *Compliance Criteria*

To avoid the transfer of funds under this program, Section 154 provides that a State must enact and enforce:

A law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

The interim final rule specifies a number of elements that State open container laws must meet to be considered to be conforming and to enable a State to avoid the transfer of Federal-aid highway construction funds. The elements are described below.

#### 1. Prohibits Possession of Any Open Alcoholic Beverage Container and the Consumption of Any Alcoholic Beverage

To avoid the transfer of funds, the State's open container law must prohibit the possession of any open alcoholic beverage container in the passenger area of any motor vehicle that is located on a public highway or right-of-way. The State's law must also prohibit the consumption of any alcoholic beverage in the passenger area of any motor vehicle that is located on a public highway or right-of-way.

The agencies are aware of 16 States that prohibit the consumption of alcoholic beverages, but not the possession of an open container in the absence of consumption. These laws do not conform to the requirements of the regulation.

#### 2. In the Passenger Area of Any Motor Vehicle

To avoid the transfer of funds, the State's open container law prohibiting the possession of open alcoholic beverage containers and the consumption of alcoholic beverages must apply whenever such activity is taking place in the passenger area of any motor vehicle, consistent with the definitions of "motor vehicle" and "passenger area" that are included in § 1270.3 of the regulation.

The agencies have defined "motor vehicle" in the regulation to mean a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways. The term does

not include a vehicle operated exclusively on a rail or rails.

*Passenger area* is defined in the regulation to mean the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment.

The agencies have reviewed existing State open container laws and identified certain exceptions to this element contained in those laws. The agencies' review revealed that two States prohibit occupants from possessing open alcoholic beverage containers in the passenger area, but do not consider it to be an offense if the container is located in a locked glove compartment of the vehicle.

The agencies' review revealed also that a number of States prohibit occupants from possessing open alcoholic beverage containers in motor vehicles, but provide an exception when the vehicle is not equipped with a trunk. These States do not consider it to be an offense to keep an open alcoholic beverage container behind the last upright seat of such vehicles or in an area of such vehicles not normally occupied by the driver or passengers.

These exceptions will not disqualify an otherwise qualified State from complying with the requirements of the regulation. A law that permits the possession of open alcoholic beverage containers in an unlocked glove compartment, however, will not conform to the requirements of the regulation. The agencies note, for example, that one State permits occupants to keep an open alcoholic beverage container in a closed glove compartment of a motor vehicle. Such an exception is not acceptable under the regulation.

#### 3. All Alcoholic Beverages

To avoid the transfer of funds, the State's open container law must apply to all "alcoholic beverages." In accordance with section 154, "alcoholic beverage" is defined in the regulation to include all types of alcoholic beverages, including beer, wine and distilled spirits. Beer and wine are covered by the definition if they contain one-half of 1 percent or more of alcohol by volume. Distilled spirits containing any amount of alcohol are covered. Accordingly, a State law that does not define 3.2 percent beer, for instance, as an alcoholic beverage would not conform to the requirements of the regulation.

An "open alcoholic beverage container" is any bottle, can, or other receptacle that contains any amount of

alcoholic beverage, and that is open or has a broken seal, or the contents of which are partially removed.

#### 4. Applies to All Occupants

To avoid the transfer of funds, the State's open container law must apply to all occupants of the motor vehicle, including the driver and all passengers.

The agencies are aware of one State that prohibits drivers from possessing an open alcoholic beverage container, but passengers are not covered by the prohibition. Since this law does not apply to all occupants in the passenger area, it does not conform to the requirements of the regulation.

The statute provides for two exceptions, however, to the all-occupant requirement. A State's law will be deemed to apply to all occupants if the law prohibits the possession of any open alcoholic beverage container by the driver, but permits possession of alcohol by passengers in "the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation" (such as buses, taxis and limousines) and those "in the living quarters of a house coach or house trailer."

The regulation clarifies that the exceptions may apply to the consumption of alcoholic beverages by a passenger as well as to the passenger's possession of open alcoholic beverage containers. The driver of a motor vehicle, however, may not be covered by the exception.

#### 5. Located on a Public Highway or the Right-of-way of a Public Highway

To avoid the transfer of funds, the State's open container law must apply to a motor vehicle while it is located anywhere on a public highway or the right-of-way of a public highway. The agencies have defined "public highway or the right-of-way of a public highway" to mean the entire width between and immediately adjacent to the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

The agencies are aware of 11 States with open container laws that apply only when the motor vehicle is being operated on a highway, but do not prohibit possession or consumption by persons in a vehicle that is stopped or parked on the highway or on the right-of-way, along the side of the highway. These laws do not conform to the requirements of the regulation.

The agencies are also aware of one State with an open container law that applies only to motor vehicles in

parking areas in certain counties of the State. Since this law does not apply when the vehicle is located on the highway or right-of-way and since it does not apply Statewide, it does not conform to the requirements of the regulation.

#### 6. Primary Enforcement

To avoid the transfer of funds, the State must provide for primary enforcement of its open container law. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause to believe that another violation had been committed. A State open container law that provides for secondary enforcement will not conform to the requirements of the regulation.

The agencies are aware of one State open container law that can be enforced only as a secondary action when the driver has been determined to have a blood alcohol concentration above a specified minimum blood alcohol level. Since this open container law cannot be enforced in the absence of this condition, it does not conform to the requirements of the regulation.

#### *Demonstrating Compliance*

Section 154 provides that nonconforming States will be subject to the transfer of funds beginning in fiscal year 2001. To avoid the transfer, this interim final rule provides that each State must submit a certification demonstrating compliance.

The certifications submitted by the States under this Part will provide the agencies with the basis for finding States in compliance with the Open Container requirements. Accordingly, until a State has been determined to be in compliance with these requirements, a State must submit a certification by an appropriate State official that the State has enacted and is enforcing an open container law that conforms to 23 U.S.C. 154 and § 1270 of this Part.

Certifications must include citations to the State's conforming open container law. These citations must include all applicable provisions of the State's code including, for example, citations to the State's definition of alcoholic beverage.

Once a State has been determined to be in compliance with the requirements, the State would not be required to submit certifications in subsequent fiscal years, unless the State's law had changed or the State had ceased to enforce the open container law. It is the responsibility of each State to inform the agencies of any such change in a subsequent fiscal year, by submitting an

amendment or supplement to its certification.

States are required to submit their certifications on or before September 30, 2000, to avoid the transfer of FY 2001 funds on October 1, 2000.

States that are found in noncompliance with these requirements in any fiscal year, once they have enacted complying legislation and are enforcing the law, must submit a certification to that effect before the following fiscal year to avoid the transfer of funds in that following fiscal year. Such certifications demonstrating compliance must be submitted on or before the first day (October 1) of the following fiscal year.

The agencies strongly encourage States to submit their certifications in advance. The early submission of these documents will enable the agencies to inform States as quickly as possible whether or not their laws satisfy the requirements of Section 154 and the implementing regulation, and will provide States with noncomplying laws an opportunity to take the necessary steps to meet these requirements before the date for the transfer of funds.

The agencies also strongly encourage States that are considering the enactment of open container legislation to request preliminary reviews of such legislation from the agencies while the legislation is still pending. The agencies would determine in these preliminary reviews whether the legislation, if enacted, will conform to the new regulation, thereby avoiding a situation in which a State unintentionally enacts a non-conforming open container law and the State remains subject to the transfer of funds. Requests should be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

#### *Enforcement*

Section 154 provides that, to qualify for grant funding, a State must not only enact a conforming law, but must also enforce the law. To ensure the effective implementation of an open container law, the agencies encourage the States to enforce their open container laws rigorously. In particular, the agencies recommend that States incorporate into their enforcement efforts activities designed to inform law enforcement officers, prosecutors, members of the judiciary and the public about their open container laws. States should also take steps to integrate their open container enforcement efforts into their enforcement of other impaired driving laws.

To demonstrate that they are enforcing their laws under the regulation, however, States are required only to submit a certification that they are enforcing their laws.

#### *Notification of Compliance*

For each fiscal year, beginning with FY 2001, NHTSA and the FHWA will notify States of their compliance or noncompliance with Section 154, based on a review of certifications received. If, by June 30 of any year, beginning with the year 2000, a State has not submitted a certification or if the State has submitted a certification and it does not conform to Section 154 and the implementing regulation, the agencies will make an initial determination that the State does not comply with Section 154 and with this regulation, and the transfer of funds will be noted in the FHWA's advance notice of apportionment for the following fiscal year, which generally is issued in July.

Each State determined to be in noncompliance will have an opportunity to rebut the initial determination. The State will be notified of the agencies' final determination of compliance or noncompliance and the amount of funds to be transferred as part of the certification of apportionments, which normally occurs on October 1 of each fiscal year.

As stated earlier, NHTSA and the FHWA expect that States will want to know as soon as possible whether their laws satisfy the requirements of Section 154, or they may want assistance in drafting conforming legislation.

States are strongly encouraged to submit certifications in advance, and to request preliminary reviews and assistance from the agencies. Requests should be submitted through NHTSA's Regional Administrators, who will refer these requests to appropriate NHTSA and FHWA offices for review.

#### *Interim Final Rule*

This document is being published as an interim final rule. Accordingly, the new regulations in part 1270 are fully in effect 30 days after the date of the document's publication. No further regulatory action by the agencies is necessary to make these regulations effective.

These regulations have been published as an interim final rule because insufficient time was available to provide for prior notice and opportunity for comment. Some State legislatures do not meet every year. Other State legislatures do meet every year, but limit their business every other year to certain limited matters, such as

budget and spending issues. The agencies are aware of six State legislatures that are not scheduled to meet at all in the Year 2000, and additional State legislatures may have limited agendas in that year. These States will have just one opportunity (during the 1999 session of their State legislatures) to enact conforming legislation, and they are preparing agendas and proposed legislation now for their 1999 legislative sessions. These States have an urgent need to know what the criteria will be as soon as possible so they can develop and enact conforming legislation and avoid the transfer of funds on October 1, 2000.

In the agencies' view, the States will not be impeded by the use of an interim final rule. The procedures that States must follow to avoid the transfer of funds under this new program are similar to procedures that States have followed in other programs administered by NHTSA and/or the FHWA. These procedures were established by rulemaking and were subject to prior notice and the opportunity for comment.

Moreover, the criteria that States must meet to demonstrate that they have a conforming open container law are derived from the Federal statute and are similar to the criteria that the agencies followed when an open container criterion was included as an incentive under the Section 410 program. NHTSA's Section 410 program regulations were subject to prior notice and the opportunity for comment.

For these reasons, the agencies believe that there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest.

The agencies request written comments on these new regulations. All comments submitted in response to this document will be considered by the agencies. Following the close of the comment period, the agencies will publish a document in the **Federal Register** responding to the comments and, if appropriate, will make revisions to the provisions of Part 1270.

#### *Written Comments*

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that two copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (49 CFR 553.21) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by December 7, 1998. To expedite the submission of comments, simultaneous with the issuance of this notice, NHTSA and the FHWA will mail copies to all Governors' Representatives for Highway Safety and State Departments of Transportation.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in the Docket 98-4493 in Docket Management, Room PL-401, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590.

#### **Regulatory Analyses and Notices**

##### *Executive Order 12778 (Civil Justice Reform)*

This interim final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

##### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The agencies have determined that this action is not a significant action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. States can choose to enact and enforce an open container law, in conformance with Pub. L. 105-206, and thereby avoid the transfer of Federal-aid highway funds. Alternatively, if States choose not to enact and enforce a conforming law, their funds will be transferred, but not withheld. Accordingly, the amount of

funds provided to each State will not change.

In addition, the costs associated with this rule are minimal and are expected to be offset by resulting highway safety benefits. The enactment and enforcement of open container laws should help to reduce impaired driving, which is a serious and costly problem in the United States. Accordingly, further economic assessment is not necessary.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the agencies have evaluated the effects of this action on small entities. This rulemaking implements a new program enacted by Congress in the TEA-21 Restoration Act. As the result of this new Federal program, and the implementing regulation, States will be subject to a transfer of funds if they do not enact and enforce laws prohibiting the possession of open alcoholic beverage containers and the consumption of alcoholic beverages. This interim final rule will affect only State governments, which are not considered to be small entities as that term is defined by the Regulatory Flexibility Act. Thus, we certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

#### *Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

#### *National Environmental Policy Act*

The agencies have analyzed this action for the purpose of the National Environmental Policy Act, and have determined that it will not have a significant effect on the human environment.

#### *The Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits and other affects of final rules that include a Federal mandate likely to result in the expenditure by the State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This interim final rule does not meet the definition of a Federal mandate, because the resulting annual

expenditures are not expected to exceed the \$100 million threshold. In addition, the program is optional to the States. States may choose to enact and enforce a conforming open container law and avoid the transfer of funds altogether. Alternatively, if States choose not to enact and enforce a conforming law, funds will be transferred, but no funds will be withheld from any State.

#### *Executive Order 12612 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, a Federalism Assessment has not been prepared.

#### **List of Subjects in 23 CFR Part 1270**

Alcohol and alcoholic beverages, Grant programs—transportation, Highway safety.

In accordance with the foregoing, a new Subchapter D—Transfer and Sanction Programs is added to Chapter II of Title 23 Code of Federal Regulations and a new Part 1270 is added to Subchapter D to read as follows:

#### **SUBCHAPTER D—TRANSFER AND SANCTION PROGRAMS**

#### **PART 1270—OPEN CONTAINER LAWS**

Sec.

- 1270.1 Scope.
- 1270.2 Purpose.
- 1270.3 Definitions.
- 1270.4 Compliance criteria.
- 1270.5 Certification requirements.
- 1270.6 Transfer of funds.
- 1270.7 Use of transferred funds.
- 1270.8 Procedures affecting States in noncompliance.

**Authority:** 23 U.S.C. 154; delegation of authority at 49 CFR 1.48 and 1.50.

##### **§ 1270.1 Scope.**

This part prescribes the requirements necessary to implement Section 154 of Title 23 of the United States Code which encourages States to enact and enforce open container laws.

##### **§ 1270.2 Purpose.**

The purpose of this part is to specify the steps that States must take to avoid the transfer of Federal-aid highway funds for noncompliance with 23 U.S.C. 154.

##### **§ 1270.3 Definitions.**

As used in this part:

(a) *Alcoholic beverage* means:

(1) Beer, ale, porter, stout, and other similar fermented beverages (including

sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(2) Wine of not less than one-half of 1 per centum of alcohol by volume; or

(3) Distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced).

(b) *Enact and enforce* means the State's law is in effect and the State has begun to implement the law.

(c) *Motor vehicle* means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail or rails.

(d) *Open alcoholic beverage container* means any bottle, can, or other receptacle that:

(1) Contains any amount of alcoholic beverage; and

(2)(i) Is open or has a broken seal; or  
(ii) The contents of which are partially removed.

(e) *Passenger area* means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment.

(f) *Public highway or right-of-way of a public highway* means the entire width between and immediately adjacent to the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(g) *State* means any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

##### **§ 1270.4 Compliance criteria.**

(a) To avoid the transfer of funds as specified in § 1270.6 of this part, a State must enact and enforce a law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

(b) The law must apply to:

- (1) The possession of any open alcoholic beverage container and the consumption of any alcoholic beverage;
- (2) The passenger area of any motor vehicle;
- (3) All alcoholic beverages;

(4) All occupants of a motor vehicle; and (5) All motor vehicles located a public highway or the right-of-way of a public highway.

(c) The law must provide for primary enforcement.

(d) *Exceptions.* (1) If a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in the passenger area of any motor vehicle, but permits the possession of an open alcoholic beverage container in a locked glove compartment, or behind the last upright seat or in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk, the State shall be deemed to have in effect a law that applies to the passenger area of any vehicle, as provided in paragraph (b)(2) of this section.

(2) If a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container or the consumption of any alcoholic beverage by the driver (but not by a passenger) in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or in the living quarters of a house coach or house trailer, the State shall be deemed to have in effect a law that applies to all occupants of a motor vehicle, as provided in paragraph (b)(4) of this section.

##### **§ 1270.5 Certification requirements.**

(a) Until a State has been determined to be in compliance, or after a State has been determined to be in non-compliance, with the requirements of 23 U.S.C. 154, to avoid the transfer of funds in any fiscal year, beginning with FY 2001, the State shall certify to the Secretary of Transportation, on or before September 30 of the previous fiscal year, that it meets the requirements of 23 U.S.C. 154 and this part.

(b) The certification shall be made by an appropriate State official, and it shall provide that the State has enacted and is enforcing an open container law that conforms to 23 U.S.C. 154 and § 1270.4 of this part. The certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_, has enacted and is enforcing an open container law that conforms to the requirements of 23 U.S.C. 154 and 23 CFR 1270.4, (citations to State law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional

Administrator will forward the certifications to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 154, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's open container law changes or the State ceases to enforce such law.

#### **§ 1270.6 Transfer of funds.**

(a) On October 1, 2000, and October 1, 2001, if a State does not have in effect or is not enforcing the law described in § 1270.4, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State for that fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

(b) On October 1, 2002, and each October 1 thereafter, if a State does not have in effect or is not enforcing the law described in § 1270.4, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State for that fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

#### **§ 1270.7 Use of transferred funds.**

(a) Any funds transferred under § 1270.6 may:

(1) Be used for approved projects for alcohol-impaired driving countermeasures; or

(2) Be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(b) States may elect to use all or a portion of the transferred funds for hazard elimination activities eligible under 23 U.S.C. 152.

(c) The Federal share of the cost of any project carried out with the funds transferred under § 1270.6 of this part shall be 100 percent.

(d) The amount to be transferred under § 1270.6 of this part may be derived from one or more of the following:

(1) The apportionment of the State under § 104(b)(1);

(2) The apportionment of the State under § 104(b)(3); or

(3) The apportionment of the State under § 104(b)(4).

(e)(1) If any funds are transferred under § 1270.6 of this part to the apportionment of a State under Section 402 for a fiscal year, an amount, determined under paragraph (e)(2) of this section, of obligation authority will be distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under Section 402.

(2) The amount of obligation authority referred to in paragraph (e)(1) of this section shall be determined by multiplying:

(i) The amount of funds transferred under § 1270.6 of this part to the apportionment of the State under Section 402 for the fiscal year; by

(ii) The ratio that:

(A) The amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to

(B) The total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(f) Notwithstanding any other provision of law, no limitation on the total obligations for highway safety programs under Section 402 shall apply to funds transferred under § 1270.6 to the apportionment of a State under such section.

#### **§ 1270.8 Procedures affecting States in noncompliance.**

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 154 and this part, based on NHTSA's and FHWA's preliminary review of its certification, will be advised of the funds expected to be transferred under § 1270.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 154 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the appropriate National Highway Traffic Safety Administration Regional office.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 154 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being transferred under § 1270.6 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: September 30, 1998.

**Kenneth R. Wykle,**

*Administrator, Federal Highway Administration.*

**Ricardo Martinez,**

*Administrator, National Highway Traffic Safety Administration.*

[FR Doc. 98-26639 Filed 10-1-98; 9:31 am]

BILLING CODE 4910-59-P

## **DEPARTMENT OF TRANSPORTATION**

### **Coast Guard**

#### **33 CFR Part 100**

[CGD07 98-059]

RIN 2115-AE46

#### **Special Local Regulations; Columbus Day Regatta Sailboat Race, Miami, FL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Temporary Special Local Regulations are being adopted for the Columbus Day Regatta Sailboat Race. The event will be held in Biscayne Bay from 9 a.m. to 5 p.m. Eastern Daylight Time (EDT) each day, on October 10 and 11, 1998. These regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES:** These regulations become effective at 9 a.m. and terminate at 5 p.m. each day on October 10 and 11, 1998.

**FOR FURTHER INFORMATION CONTACT:** QMCS T.E. KJERULFF Coast Guard Group Miami, Florida at (305) 535-4448.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background and Purpose**

Columbus Day Regatta, Inc., is sponsoring a sailboat race with approximately 500 sailboats, ranging in length from 20 to 60 feet, participating in the event. The race will take place in Biscayne Bay from Dinner Key to Soldier Key on October 10 and 11, 1998. There will also be approximately fifty (50) spectator craft. These regulations are intended to promote safe navigation on the waters of Biscayne Bay by controlling the traffic entering, exiting, and traveling within the regulated area.