purposes of this section unless and until the National Futures Association has found the agreement acceptable and such agreement has become effective in the form found acceptable. A proposed agreement filed by a registrant shall be reviewed by the designated self-regulatory organization with whom such an agreement is required to be filed prior to its becoming effective or, if the registrant is not a member of any designated self-regulatory organization, by the regional office of the Commission where the agreement is required to be filed prior to its becoming effective. No proposed agreement shall be a satisfactory subordination agreement for the purposes of this section unless and until the designated self-regulatory organization or, if a registrant is not a member of any designated self-regulatory organization, the Commission, has found the agreement acceptable and such agreement has become effective in the form found acceptable: Provided, however, That a proposed agreement shall be a satisfactory subordination agreement for purpose of this section if the registrant: is a securities broker or dealer registered with the Securities and Exchange Commission; files signed copies of the proposed subordination agreement with the applicable securities designated examining authority, as defined in Rule 15c3–1(c)(12) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(12)), in the form and manner prescribed by the designated examining authority; files signed copies of the proposed subordination agreement with the designated self-regulatory organization at the time it files such copies with the designated examining authority in the form and manner prescribed by the designated self-regulatory organization; and files a copy of the designated examining authority's approval of the proposed subordination agreement with the designated self-regulatory organization immediately upon receipt of such approval. The designated examining authority's determination that the proposed subordination agreement satisfies the requirements for a satisfactory subordination agreement will be deemed a like finding by the designated self-regulatory organization, unless the designated self-regulatory organization notifies the registrant that the designated examining authority's determination shall not constitute a like finding by the designated self-regulatory organization.

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Issued in Washington D.C. on August 17, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–21498 Filed 8–23–00; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 811

[Docket No. 99N–4955]

Amendment of Various Device Regulations to Reflect Current American Society for Testing and Materials Citations, Confirmation in Part and Technical Amendment; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of July 18, 2000 (65 FR 44435). The document confirmed, in part, the direct final rule amending certain references in various medical devices regulations. The document was published with an incorrect **Federal Register** page reference. This document corrects that error.

DATES: Effective August 24, 2000.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–18082 appearing on page 44435 in the **Federal Register** of Tuesday, July 18, 2000, the following correction is made:

1. On page 44435, in the 2d column, under the **DATES** and the **SUPPLEMENTARY INFORMATION** captions, the phrase ''January 24, 2000 (65 FR 3627)'' is corrected to read ''January 24, 2000 (65 FR 3584)''.

Dated: August 15, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–21562 Filed 8–23–00; 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–99–4493]

RIN 2127–AH41

Open Container Laws

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, the regulations that were published in an interim final rule to implement a new program established by the Transportation Equity Act for the 21st Century (TEA 21) Restoration Act. The final rule provides for a transfer of Federal-aid highway construction funds authorized under 23 U.S.C. 104 to the State and Community Highway Safety Program under 23 U.S.C. 402 for any State that fails to enact and enforce a conforming ''open container'' law.

DATES: This final rule becomes effective on August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Karr, Office of State and Community Services, NSC–01, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA 21), Pub. L. 105–178, was signed into law on June 9, 1998. On July 22, 1998, the TEA 21 Restoration Act, Pub. L. 105–206, was enacted to restore provisions that had been agreed to by the conferees on TEA 21, but had not been included in the TEA 21 conference report. Section 1405 of the Act amended Chapter 1 of Title 23, United States Code, by adding Section 154, which established a program to transfer a percentage of a State's Federal-aid highway construction funds 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 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 located on a public highway, or the right-of-way of a public highway, in the State.

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

Background

The Problem of Impaired Driving

Injuries caused by motor vehicle traffic crashes are the leading cause of death in America for people aged 5 to 29. Each year, traffic crashes in the United States claim approximately 41,000 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 1998, alcohol was involved in approximately 39 percent of fatal traffic crashes. Every 33 minutes, someone in this country dies in an alcohol-related crash. 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. 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) in 1988. Under this program, States could qualify for supplemental grant funds if they qualified for a basic Section 410 grant and 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 fails to enact and enforce a conforming ''open container'' law. 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 will be transferred. 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 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.

To avoid the transfer of funds 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.

Interim Final Rule

On October 6 1998, NHTSA and the FHWA published an interim final rule in the **Federal Register** to implement the Section 154 program (63 FR 53580). The interim final rule provided that, to avoid the transfer of funds, a State must have a law that has been enacted and made effective, and must be actively enforcing the law. In addition, the law must meet certain basic elements.

Compliance Criteria

To avoid a transfer of funds under the interim final rule, a State must meet the following basic elements:

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

The 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 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.

2. In the Passenger Area of Any Motor Vehicle

The law 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.

3. All Alcoholic Beverages

The law must apply to all ''alcoholic beverages.''

4. Applies to All Occupants

The law must apply to all occupants of the motor vehicle, including the driver and all passengers.

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

The 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.

6. Primary Enforcement

The State must provide for primary enforcement of its 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 law that provides for secondary enforcement will not conform to the requirements of the regulation.

A more detailed discussion of the six elements described above is contained in the interim final rule (63 FR 53580–586).

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, the interim final rule provided that each 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 part 1270. A more detailed discussion regarding the certifications is contained in the interim final rule (63 FR 53583).

Enforcement

Section 154 provides that a State must not only enact a conforming law, but must also enforce the law. In the interim final rule, the agencies encouraged the States to enforce their open container laws rigorously. In particular, the agencies recommended 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, the interim rule indicated that States are required only

to submit a certification that they are enforcing their laws.

Notification of Compliance

The interim final rule provided that 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 been determined by the agencies, based on the State's laws and a conforming certification, to comply with section 154 and the implementing regulation, the agencies will make an initial determination that the State does not comply with section 154, 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 until September 30 to rebut the initial determination or to come into compliance. 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.

Request for Comments

The agencies requested comments from interested persons on the interim final rule. The agencies stated in the interim final rule that all comments submitted would be considered and that following the close of the comment period, the agencies would publish a document in the **Federal Register** responding to the comments and, if appropriate, would make revisions to the provisions of part 1270.

Comments Received

The agencies received submissions from six commenters in response to the interim final rule. Comments were received from: Betty J. Mercer, Division Director, Office of Highway Safety Planning, Michigan Department of State Police and James R. DeSana, Director, Michigan Department of Transportation (Michigan); Henry M. Jasny, General Counsel for Advocates for Highway and Auto Safety (Advocates); Carl D. Tubbesing, Deputy Executive Chair, National Conference of State Legislatures (NCSL); Tricia Roberts, Director of the Delaware Office of Highway Safety, Brian J. Bushweller, Secretary, Delaware Department of Public Safety and Ann P. Canby, Secretary, Delaware Department of Transportation (Delaware); K. Craig Allred, Director, Utah Highway Safety Office and Chair, National Association of Governors' Highway Safety Representatives (NAGHSR); and Peter M. Thompson, Coordinator, State of New Hampshire, Office of the Governor, Highway Safety Agency (New Hampshire). The comments, and the agencies' responses to them, are discussed in detail below. Also discussed below are certain changes that the agencies decided to make in this final rule regarding issues that were raised during NHTSA's review of State laws and proposed legislation pursuant to the interim final rule.

1. General Comments

In general, the comments in response to the interim final rule were positive. Advocates strongly supported the compliance requirements, citing studies that show ''that possession of open containers of alcoholic beverages in the passenger compartment of motor vehicles is associated with an [unexpectedly] high percentage of motor vehicle crashes, even if the driver of the vehicle has not been shown to have consumed any alcohol.''

Michigan and Delaware indicated that they opposed penalties applied to transportation funding for non-compliance with requirements such as section 154. NCSL stated that ''a one-size-fits-all approach is not the best way to tackle the nation's drunk driving problem.''

Most comments related to the specific requirements that State open container laws must meet to avoid a transfer of funds. These comments and the agencies' responses to them are discussed in greater detail below.

2. Comments Regarding the Definition of Open Container

Section 154 defined the term ''open alcoholic beverage container'' to mean 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.

The agencies adopted this definition in the interim final rule.

NAGHSR argued that the agencies' definition was too broad. It commented that the agencies' definition ''prohibits an open container even when such container carries only trace amounts of an alcoholic beverage.'' It recommended that the definition be changed ''to one which prohibits an open container with any usable or consumable amount of alcohol.''

As indicated above, the definition of ''open container'' was specifically included in the statute and the agencies are not at liberty to change it in the absence of an amendment to the legislation. Accordingly, this portion of the interim regulation has been adopted without change.

3. Comments Regarding the Possession and Consumption Requirement

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.

The interim final rule provided that the State's open container law must prohibit both the possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in the passenger area of any motor vehicle.

NAGHSR disagreed with the agencies' decision to require open container laws to cover both possession and consumption and argued that under the statutory language, laws may prohibit either possession or consumption. NAGHSR stated that the agencies have ''interpreted the federal statutory language too expansively and not in a manner consistent with Congressional intent.'' NAGHSR commented also that ''there is nothing in the legislative history of the open container provision to support a requirement that both possession and consumption should be prohibited.''

By contrast, Advocates expressed support for the possession and consumption requirement. It indicated that ''we concur with the agencies that the statute requires that State open container laws must prohibit both 'the possession of any open alcoholic container' and 'must also prohibit the consumption of any alcoholic beverage in the passenger area of any motor vehicle'* * *. There is no other plausible way to read the statutory language.''

NCSL expressed its concern that many State laws do not cover both possession and consumption. It stated that ''sixteen state laws currently prohibit consumption but not possession. It is unlikely that states could change the laws to reflect the requirement in time to avoid the 1½ % redirection penalty in either the first or second year.''

New Hampshire noted that its law prohibited possession of an open container but did not specifically prohibit consumption of an alcoholic beverage. It stated that ''in order to consume an alcoholic beverage, an individual must first have that beverage in their possession. Why is it necessary

to complicate the language by requiring that both 'possession' and 'consumption' be included in the law when simply possessing alcohol in an open container in the passenger area is sufficient.''

The agencies do not believe that they have interpreted the statutory language too broadly or in a manner inconsistent with Congressional intent. The statutory language requires that State laws must penalize an individual for either possessing an open container or consuming an alcoholic beverage in the passenger area of a motor vehicle. In other words, State laws must prohibit both activities independently. NHTSA has interpreted this language consistently since 1990, when it issued regulations implementing the Section 410 program, under which States could qualify for a supplemental grant by adopting laws that prohibited both the possession of an open container and the consumption of alcoholic beverages. There is nothing in the legislative history of section 154 that would suggest that Congress intended that this interpretation should change. For these reasons, this portion of the interim regulation has been adopted without change.

With respect to New Hampshire's assertion that open container laws that prohibit possession need not specifically prohibit consumption, the agencies agree with this view. We note that, during NHTSA's review of State laws and proposed legislation, when presented with provisions that prohibit possession of any open container, it has determined that these provisions necessarily also prohibit consumption of alcoholic beverages because it is not possible to consume an alcoholic beverage without also possessing it. Accordingly, State laws and proposed legislation that prohibit possession have been found to be in compliance with the possession and consumption criterion.

4. Comments Regarding the Passenger Area of Any Motor Vehicle Requirement

The term ''passenger area'' was defined in the interim final rule 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.'' Delaware commented that ''the prohibition of the entire ''passenger area'' is not justified.'' It stated that ''the intent is to prohibit the driver from driving under the influence. Passenger area of the vehicle needs to be less stringent with a focus on the driver.''

The statutory language specifically provides that open container laws must prohibit possession and consumption in the passenger area of any motor vehicle and the agencies are not at liberty to change this requirement in the absence of an amendment to the legislation. Moreover, there is nothing in the legislative history that suggests that the purpose of the Section 154 program was focused solely on preventing a driver from possessing alcoholic beverages. Congress enacted other programs in TEA 21 and in the TEA 21 Restoration Act, such as the Section 410 and 164 programs, that are limited to drivers, but did not enact such a limitation in section 154. Accordingly, the agencies will not change this element of the requirement in the final rule.

The interim regulations permitted some exceptions to the ''passenger area of any motor vehicle'' requirement. Specifically, they provided that State laws that contained exceptions allowing open containers behind the last upright seat or in an area not normally occupied by the driver and passengers in a vehicle not equipped with a trunk or in locked glove compartments would be permitted under section 154.

Advocates argued that the agencies should not permit exceptions allowing open containers to be kept behind the last upright seat or in an area not normally occupied by the driver or passengers in a vehicle not equipped with a trunk. It stated that ''the agencies provide no basis for allowing this practice'' and that ''the express language of the statute does not permit the agencies to entertain an exception in state open container laws for vehicles that are not equipped with a trunk.'' Arguing that the only permissible exceptions to the ''passenger area of any motor vehicle'' requirement were specifically identified in the statute, Advocates asserted that ''the agencies are not at liberty to enlarge the scope of the exceptions determined by Congress' and that ''the statute does not provide any statement that vehicles that are not equipped with trunks can be excepted and, therefore, the agencies have no authority to permit this practice.''

As the agencies noted in the interim final rule, prior to the issuance of that document, the agencies had reviewed existing State open container laws to determine whether they contained any exceptions. We determined that a number of States prohibit occupants from possessing open alcoholic beverage containers in motor vehicles, but provide for an exception when the vehicle is not equipped with a trunk. Specifically, 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.

Although the section 154 statute did not specifically provide for such an exception, the agencies did not believe it was Congress' intent that the statute be read so literally as to penalize every State whose laws contained any exceptions at all. Accordingly, the agencies considered whether this exception should be permitted under the regulations. Specifically, we considered whether this particular exception would render the underlying open container requirement unenforceable, so that it would undermine or be wholly inconsistent with the purpose of the statute.

In the agencies' view, an exception that permits open containers behind the last upright seat or in an area not normally occupied by the driver or passengers in vehicles not equipped with a trunk, addresses a legitimate need for storage. In addition, we believe this exception would not undermine the purpose of open container laws or render them unenforceable, because it would permit open containers only in the least accessible place in a vehicle. We continue to believe that such exceptions should be permitted.

Advocates noted that the agencies declined to permit exceptions allowing open containers in an unlocked glove compartment and stated that ''we fail to see the distinction between the use of a glove compartment or the area behind a seat.'' As indicated above, the agencies believe that the area behind the last upright seat of a vehicle is the area that is least accessible to the driver or passengers in a vehicle. By contrast, we believe that an unlocked glove compartment is readily accessible to the driver and passengers. We decided to permit exceptions for open containers in a locked glove compartment because the requirement that the glove compartment be locked makes the open container significantly less accessible.

Accordingly, the agencies do not believe that it is necessary to change the interim regulation in response to these comments.

5. Comments Regarding the All Occupants Requirement

The interim rule indicated that a State's law would be deemed to be in compliance with the all occupants requirement if it 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 agencies received three comments indicating that the interim final rule was unclear as to whether this exception for passengers in house coaches or house trailers is broad enough to cover passengers in recreational vehicles (RVs).

The agencies consider the exception for house coaches and house trailers to be broad enough to cover recreational vehicles. We believe that the purpose of the exception was to allow passengers in vehicles which have living quarters to possess open containers in that area. House coaches, house trailers and recreational vehicles all have a living quarters area and, accordingly, we believe that passengers in the living quarters of recreational vehicles should be permitted to possess open containers. During NHTSA's review of State laws and proposed legislation, it has determined that laws which permit possession and consumption by passengers in the living quarters of recreational vehicles comply with the all occupants requirement.

Accordingly, the agencies do not believe that it is necessary to change the interim regulation in response to these comments.

6. Comments Regarding the Public Highway or Right-of-Way Requirement

Three comments addressed the requirement that a 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. In the interim final rule, the agencies 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 comments suggested that the agencies' definition of ''public highway or the right-of-way of a public highway'' was too broad. NAGHSR suggested that, under the definition of right-of-way in the interim final rule, ''picnics and other activities involving a stopped vehicle in a roadside park or other public area adjacent to a roadway would all be prohibited if alcohol were consumed.'' NAGHSR suggested also that ''a person in a parked vehicle at a public rest area along a major Interstate would be in violation of the law if he or she consumed an alcoholic beverage'' and that ''similar activities could be prohibited in parked vehicles in public parking lots adjacent to roadways or public roadways that have been blocked off under local permit.'' NAGHSR concluded that ''there is no legislative history to support such a broad interpretation of the statute'' and recommended that ''the definition of public right-of-way should be limited only to the entire width of the roadway including the shoulders, and that possession or consumption in a stopped vehicle should be prohibited only within that area.''

NCSL and Delaware asserted that the right-of-way requirement is not justified because it does not involve any impaired driving on a right-of-way. NCSL and Delaware asserted also that, under the interim final rule, picnics and tailgate parties would be prohibited and that the regulations would even prohibit a tailgate party where there was a designated driver. By contrast, Advocates supported the right-of-way requirement.

The requirement that open container laws apply to a vehicle located on public highway or on the right-of-way of a public highway was specifically included in the statute. The agencies believe that this provision ensures that an individual cannot pull off a highway, drink, and get back on the highway and drive impaired. There is nothing in the legislative history of section 154 to suggest that the purpose of section 154 was limited to preventing a driver from possessing or consuming an alcoholic beverage only while driving.

During NHTSA's review of State laws and proposed legislation, it has indicated that we intend the ''right-of-way'' requirement to apply to shoulders. While State laws may reach beyond the Federal requirements, NHTSA has determined that if a State law covers the public highway and the shoulder alongside of it, that is sufficient to meet this element of the open container requirements. To clarify the agency's position, we have changed the definition of the term ''public highway or right-of-way of a public highway'' to reflect this determination.

7. Comments Regarding the Timing of Certifications

The interim final rule provided that, to avoid a transfer of funds in FY 2001, the agencies must receive a State's certification no later than September 30, 2000, and the certification must indicate that the State ''has enacted and is enforcing an open container law that conforms to 23 U.S.C. 154 and (the agencies' implementing regulations).'' The interim rule indicated that States found in noncompliance with the requirements in any fiscal year, once they enacted complying legislation and are enforcing the law, must submit a certification to that effect before the following fiscal year to avoid a transfer of funds in that following fiscal year. The interim rule indicated that such certifications must be submitted by October 1 of the following fiscal year.

To avoid confusion, the agencies believe that States should be required to submit their certifications by the same date in any fiscal year. Accordingly, the agencies have determined that, to avoid a transfer of funds in FY 2001 or in any subsequent fiscal year, States will be required to submit certifications by September 30.

The agencies realize that a State could enact a conforming law by September 30, and the law could become effective on October 1 of the following fiscal year. Accordingly, the agencies have decided to amend the regulations to enable such States to avoid a transfer of funds in the year in which the State's new law becomes effective. To avoid a transfer of funds, they may certify that the State has enacted an open container law that conforms to 23 U.S.C. 154 and the agencies' implementing regulations and that will become effective and be enforced by October 1 of the following fiscal year.

We note that, since the issuance of the interim final rule, NHTSA has reviewed certifications from several States that have not been complete. States must include citations to all applicable provisions of their law including, for example, citations to the definition of alcoholic beverage and other sections of their statute, as well as regulations or case law, as applicable.

8. Comments Regarding the Transfer of Funds

As explained in the interim final rule, 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.

The interim rule indicated that, in accordance with the statute, the 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 drawn evenly from these three sources. The

transferred funds may come from any one or a combination of the apportionments under section 104(b)(1), (3) and (4), as long as the total amount meets the statutory requirement.

One commenter noted that the interim rule did not specify which State agency has authority to decide from which category funds should be transferred. The agencies believe that, because the decision concerning which of the three highway apportionments should lose funds solely affects State Department of Transportation (DOT) programs, the DOT should have authority to inform the FHWA of any changes in distribution. The agencies have added language to the final rule, in the section on Transfer of Funds, indicating that on October 1, the FHWA will make the transfers based on a proportionate amount, then the State's Department of Transportation will be given until October 30 to notify the FHWA if they would like to change the distribution among sections 104(b)(1), (3) and (4).

The interim rule indicated that the funds transferred to section 402 could 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. In addition, the interim final rule indicated that States may elect to use all or a portion of the transferred funds for hazard elimination activities under 23 U.S.C. 152.

Four commenters noted that the interim final rule did not specify which State agency has the authority to determine how transferred funds should be used. NAGHSR stated that ''it is unclear whether these decisions are state department of transportation decisions, state highway safety office decisions, or both.'' Michigan suggested that ''it should be made clear that all affected state agencies are to participate, and that States' decisions may be guided by the traffic-safety benefit returned by the investment.''

The agencies have determined that all of the affected State agencies should participate in deciding how transferred funds should be directed. Accordingly, the agencies have added language to the section on Use of Transferred Funds specifying that both the State DOT, which will ''lose'' the funds, and the State Highway Safety Office (SHSO), which will ''gain'' the funds must jointly decide.

The State DOT and SHSO officials will provide written notification of their funding decisions to the agencies, within 60 days of the transfer, identifying the amounts of apportioned funds to be obligated to alcohol-impaired driving programs, hazard elimination programs, and related planning and administration costs allowable under section 402. This process will permit account entries to be made. Joint decision making by the DOT and SHSO is the same process required by NHTSA and FHWA for other TEA 21 programs in which Congress authorized flexible highway safety/highway construction funding choices—the Section 157 Seat Belt Use Incentive Grant program and the Section 153 .08 BAC Law Incentive program.

Regulatory Analyses and Notices

Executive Order 12988 (Civil Justice Reform)

This 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 a transfer of Federal-aid highway construction 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 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. In the interim final rule, the agencies indicated that the Section 154 program did not meet the definition of a Federal mandate, because the resulting annual expenditures were not expected to exceed the $100 million and because the States were not required to enact and enforce a conforming open container law.

NCSL asserted that the rule will result in an unfunded mandate. It stated that ''the total cost to the states to enforce these open container laws will exceed one hundred million dollars in cost. Even the sixteen states that currently have open container laws that prohibit the consumption of alcoholic beverages will now have to have primary enforcement of an open container law with simple possession as a violation.'' NCSL noted that the UMRA requires agencies to prepare a written assessment of the anticipated costs and benefits of any unfunded Federal mandate and that NHTSA failed to do so. NCSL asserted also that NHTSA failed to consult with

State officials to determine the financial and political ramifications of this regulatory proposal.

The agencies do not believe that the rule will result in an unfunded mandate because the Section 154 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. Moreover, the agencies do not believe that the resulting cost to States from implementing conforming laws will be over $100 million. Prior to the passage of TEA 21, many States already had enacted and were enforcing open container laws. Some of these States have amended their laws to conform to the new Section 154 requirements, but such changes will not result in expenditures of over $100 million. For States that did not previously have open container laws, the cost to enact such laws will be minimal. There may be some costs to provide training to law enforcement or other officials or to educate the public about these changes, but these costs are not likely to be significant.

In the interim final rule, the agencies recommended 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. In addition, the agencies advised States to take steps to integrate their open container enforcement efforts into their enforcement of other impaired driving laws. If States take these steps, the cost to enforce such laws would likely be absorbed into the State's overall law enforcement budget because the States would not be required to conduct separate enforcement efforts to enforce open container laws.

Accordingly, the agencies do not believe that it is necessary to prepare a written assessment of the costs and benefits, or other effects of the rule.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, 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 consideration of the foregoing, the interim final rule published in the **Federal Register** of October 6, 1998, 63 FR 53580, is adopted as final, with the following changes:

SUBCHAPTER D—TRANSFER AND SANCTION PROGRAMS

PART 1270—OPEN CONTAINER LAWS

1. The authority citation for part 1270 continues to read as follows:

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

§ 1270.3 [Amended]

2. Section 1270.3 is amended by revising paragraph (f) to read as follows:

* * * * *

(f) *Public highway or right-of-way of a public highway* means the 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; inclusion of the roadway and shoulders is sufficient.

* * * * *

3. Section 1270.5 is amended by revising paragraph (b) to read as follows:

§ 1270.5 Certification Requirements.

(a) * * *

(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.

(1) If the State's open container law is currently in effect and is being enforced, 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 a open container law that conforms to the requirements of 23 U.S.C. 154 and 23 CFR 1270.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed).

(2) If the State's open container law is not currently in effect, but will become effective and be enforced by October 1 of the following fiscal year, 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 an open container law that conforms to the requirements of 23 U.S.C. 154 and 23 CFR 1270.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed), and will become effective and be enforced as of (effective date of the law).

* * * * *

4. Section 1270.6 is amended by adding paragraph (c) to read as follows:

§ 1270.6 Transfer of Funds.

* * * * *

(c) On October 1, the transfers to Section 402 apportionments will be made based on proportionate amounts from each of the apportionments under Sections 104(b)(1), (b)(3) and (b)(4). Then the State's Department of Transportation will be given until October 30 to notify FHWA, through the appropriate Division Administrator, if they would like to change the distribution among Section 104(b)(1), (b)(3) and (b)(4).

5. Section 1270.7 is amended by redesignating paragraphs (c) through (f) as paragraphs (d) through (g) and by a adding new paragraph (c) to read as follows:

§ 1270.7 Use of Transferred Funds.

* * * * *

(c) No later than 60 days after the funds are transferred under § 1270.6, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State shall jointly identify, in writing to the appropriate NHTSA Administrator and FHWA Division Administrator, how the funds will be programmed among alcohol-impaired driving programs, hazard elimination programs and planning and administration costs.

* * * * *

Issued on: August 16, 2000.

Anthony R. Kane,

Executive Director, Federal Highway Administration.

L. Robert Shelton,

Executive Director, National Highway Traffic Safety Administration.

[FR Doc. 00–21564 Filed 8–23–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–205]

Drawbridge Operation Regulations: Harlem River, NY

AGENCY: Coast Guard, DOT.