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*** THIS SECTION IS CURRENT THROUGH THE DECEMBER 20, 2002 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 23 -- HIGHWAYS

CHAPTER II -- NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION AND FEDERAL
HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER D -- TRANSFER AND SANCTION PROGRAMS

PART 1270 -- OPEN CONTAINER LAWS

23 CFR 1270.1

§ 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.

HISTORY: [63 FR 53580, 53585, Oct. 6, 1998, as confirmed at 65 FR 51532, 51538, Aug. 24, 2000]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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

NOTES: NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations concerning construction and maintenance of roads on Indian lands, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR part 170.

Regulations of the Bureau of Land Management concerning rights-of-way for roads and highways: See Public Lands, Interior, 43 CFR part 2800.

Employment and Training Administration, Department of Labor: See Employees' Benefits, 20 CFR chapter V.

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23 CFR 1270.2

§ 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.

HISTORY: [63 FR 53580, 53585, Oct. 6, 1998, as confirmed at 65 FR 51532, 51538, Aug. 24, 2000]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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

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23 CFR 1270.3

§ 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 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.

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

HISTORY: [63 FR 53580, 53585, Oct. 6, 1998, as confirmed and amended at 65 FR 51532, 51538, Aug. 24, 2000]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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

NOTES: [EFFECTIVE DATE NOTE: 65 FR 51532, 51538, Aug. 24, 2000, revised paragraph (f), effective Aug. 24, 2000.]

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations concerning construction and maintenance of roads on Indian lands, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR part 170.

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23 CFR 1270.4

§ 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.

(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.

HISTORY: [63 FR 53580, 53585, Oct. 6, 1998, as confirmed at 65 FR 51532, 51538, Aug. 24, 2000]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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

NOTES: NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations concerning construction and maintenance of roads on Indian lands, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR part 170.

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23 CFR 1270.5

§ 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.

(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).

(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.

HISTORY: [63 FR 53580, 53585, Oct. 6, 1998, as confirmed and amended at 65 FR 51532, 51538, Aug. 24, 2000]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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

NOTES: [EFFECTIVE DATE NOTE: 65 FR 51532, 51538, Aug. 24, 2000, revised paragraph (b), effective Aug. 24, 2000.]

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations concerning construction and maintenance of roads on Indian lands, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR part 170.

Regulations of the Bureau of Land Management concerning rights-of-way for roads and highways: See Public Lands, Interior, 43 CFR part 2800.

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23 CFR 1270.6

§ 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 2 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.

(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).

HISTORY: [63 FR 53580, 53586, Oct. 6, 1998, as confirmed and amended at 65 FR 51532, 51538, Aug. 24, 2000]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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

NOTES: [EFFECTIVE DATE NOTE: 65 FR 51532, 51538, Aug. 24, 2000, added paragraph (c), effective Aug. 24, 2000.]

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations concerning construction and maintenance of roads on Indian lands, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR part 170.

Regulations of the Bureau of Land Management concerning rights-of-way for roads and highways: See Public Lands, Interior, 43 CFR part 2800.

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23 CFR 1270.7

§ 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) 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.

(d) 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.

(e) 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).

(f) (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.

(g) 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.

HISTORY: [63 FR 53580, 53586, Oct. 6, 1998, as confirmed and amended at 65 FR 51532, 51538, Aug. 24, 2000]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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

NOTES: [EFFECTIVE DATE NOTE: 65 FR 51532, 51538, Aug. 24, 2000, redesignated paragraphs (c) through (f) as paragraphs (d) through (g) and added paragraph (c), effective Aug. 24, 2000.]

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations concerning construction and maintenance of roads on Indian lands, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR part 170.

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23 CFR 1270.8

§ 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.

HISTORY: [63 FR 53580, 53586, Oct. 6, 1998, as confirmed at 65 FR 51532, 51538, Aug. 24, 2000]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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

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