

SUBCHAPTER D—TRANSFER AND SANCTION PROGRAMS

PART 1270—OPEN CONTAINER LAWS

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

SOURCE: 63 FR 53585, Oct. 6, 1998, unless otherwise noted.

§ 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 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.

[63 FR 53585, Oct. 6, 1998, as amended at 65 FR 51538, Aug. 24, 2000]

§ 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

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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.

(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 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).

(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.

[63 FR 53585, Oct. 6, 1998, as amended at 65 FR 51538, Aug. 24, 2000]

§ 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.