

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 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).

\* \* \* \* \*

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 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.*

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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.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Third Avenue Bridge, at mile 1.9, across the Harlem River in New York City. This deviation from the regulations allows the bridge owner to require at least a 48 hour advance notice for openings from 10 a.m. to 5 p.m., daily, from August 4, 2000 through September 17, 2000. This action is necessary to facilitate manual operation of the bridge and electrical repairs at the bridge.

**DATES:** This deviation is effective August 4, 2000, through September 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Joe Arca, Project Officer, First Coast Guard District, at (212) 668-7165.

**SUPPLEMENTARY INFORMATION:** The Third Avenue Bridge, at mile 1.9, across the Harlem River has a vertical clearance of 25 feet at mean high water, and 30 feet at mean low water in the closed position.

The existing operating regulations in 33 CFR 117.789(a) require the bridge to open on signal from 10 a.m. to 5 p.m., daily.

The bridge owner, the New York City Department of Transportation, requested a temporary deviation from the drawbridge operating regulations because the electrical operating system for the Third Avenue Bridge has failed and the bridge can be opened only by manual operation. The bridge owner needs at least a 48 hour advance notice to facilitate the mobilization of equipment and personnel to open the bridge manually during the time period the electrical operating system is being repaired.

This deviation to the operating regulations allows the owner of the Third Avenue Bridge to require at least a 48 hour advance notice for openings, 10 a.m. to 5 p.m., August 4, 2000 through September 17, 2000. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 15, 2000.

**G.N. Naccara,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD05-00-035]

RIN 2115-AA97

#### Safety Zone; Chesapeake Bay, Hampton, VA.

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the 1812 Overture Fireworks display to be held on a deck barge in Chesapeake Bay, adjacent to Fort Monroe, Hampton, Virginia. This action is intended to restrict vessel traffic on Chesapeake Bay, within a 1000-foot radius of a fireworks laden barge. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

**DATES:** This temporary final rule is effective from 8 p.m. until 9 p.m. on August 24, 2000.

**ADDRESSES:** USCG Marine Safety Office Hampton Roads maintains the public docket for this rulemaking. Documents indicated in this preamble as being available in this docket, will become part of this docket and will be available for inspection or copying at the Marine Safety Office, 200 Granby St., Norfolk, VA, 23510 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Petty Officer Roddy Corr, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441-3290.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory History

A Notice of Proposed Rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553, the Coast Guard finds that good cause exists for not publishing a NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The Coast Guard received confirmation of this request for a temporary safety zone on July 6, 2000. There was insufficient time to publish a proposed rule in advance of the event. Publishing an NPRM and delaying the effective date of the regulation would be contrary to the public interest, because immediate action is necessary to protect the vessels and spectators from the

hazards associated with the fireworks display.

#### Background and Purpose

The Coast Guard is establishing a temporary safety zone for the 1812 Overture Fireworks Display to be held on a deck barge in Chesapeake Bay adjacent to Fort Monroe, Hampton, Virginia. The safety zone will restrict vessel traffic on a portion of the Chesapeake Bay, within a 1000-foot radius of the fireworks deck barge, located in approximate position 37°00'03"N, 076°18'26"W (NAD 1983). The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

The safety zone is effective from 8 p.m. until 9 p.m. on August 24, 2000. Entry into this safety zone is prohibited unless authorized by the Captain of the Port Hampton Roads. Public notifications will be made prior to the event via local notice to mariners and marine information broadcasts.

#### Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This temporary final rule will only affect a limited area for one hour and only affects the waters of Chesapeake Bay adjacent to Fort Monroe within a 1000-foot radius of the fireworks deck barge. Alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid the safety zones.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and