SUPPORTING STATEMENT

Drug Offenders’ Drivers’ License Suspension Certification

This is to request OMB’s renewed three-year approved clearance for the information collection entitled “Drug Offenders’ Drivers’ License Suspension Certification” (OMB Control No. 2125-0579).

**1.** **Circumstances that make collection of information necessary:**

The Department of Transportation (DOT) and Related Agencies Appropriations Act for FY 1991 (Public Law 101-516) directed States to enact and enforce laws that revoke or suspend the drivers’ licenses of any individual convicted of a drug offense and make annual certifications regarding their compliance. 23 U.S.C. 159 requires the withholding of certain Federal-aid highway funds from States that do not enact legislation requiring the revocation or suspension of an individual driver’s license upon conviction for any violation of the Controlled Substances Act or any drug offense. Each State (including the District of Columbia and Puerto Rico) must submit by January 1 of each year either a written certification, signed by the Governor, stating that the State is in compliance with the law; or a written certification stating that the Governor is opposed to the enactment or enforcement, and that the State legislature has adopted a resolution expressing its opposition to 23 U.S.C. Section 159. As of September 1995, responsibilities for 23 U.S.C. 159 and the implementing regulation, 23 CFR 192, are coordinated by the FHWA.

This information collection supports the DOT Strategic Goal of Safety by promoting safety programs that continually improve highway safety by reducing the number of highway fatalities and injuries including large trucks and ensuring the safe travel on highways.

**2. How, by whom, and for what purpose is the information used:**

By the issuance of certifications by the State Governors, the FHWA can determine the States’ compliance with the law. States’ failure to comply by October 1 of each fiscal year will result in a withholding penalty of 10-percent from major categories of Federal-aid funds; i.e., the National Highway System Component, the Surface Transportation Program and the Interstate Maintenance Component, from States’ apportionments for the fiscal year.

**3. Extent of automated information collection.**

The States are required to provide annual certifications, signed by the Governors. The FHWA currently requires hard-copy documents, but will pursue the feasibility of allowing electronic signatures. Transmission of the Governors’ statement can be transmitted electronically.

**4.**  **Efforts to identify duplication.**

This information is not collected by any other agency and is not duplicated.

**5. Efforts to minimize the burden on small businesses.**

This information is collected from the 50 States, District of Columbia and Puerto Rico and does not include small businesses.

**6. Impact of less frequent collection of information.**

If the information were collected less frequently, compliance with the law would not be determined, and funds would have to be withheld from the States.

**7. Special circumstances.**

There are no special circumstances related to this information collection.

**8.** **Compliance with 5 CFR 1320.8**.

A Federal Register notice was published on May 19, 2010, which solicited public comments on the intention of the FHWA to seek renewal of this information collection. No comments were received.

**9. Payments or gifts to respondents.**

No payments or gifts are provided to the respondents.

**10. Assurance of confidentiality.**

#### There is no personal data collected; therefore, there are no assurances of

confidentiality.

**11. Justification for collection of sensitive information.**

There are no questions of a sensitive nature.

**12. Estimate of burden hours for information requested.**

There are an annual average of 5 hours for each of the 52 respondents. Each respondent is required to submit information once a year, and the burden estimate includes the time necessary to write a certification statement, describe enforcement efforts and gather the necessary information to comply with the reporting requirements. The total estimate is 260 annual burden hours.

**13. Estimate of total annual cost to respondents**.

There are no costs to respondents.

**14. Estimate of cost to the Federal government**.

N/A

**15. Explanation of program changes or adjustments.**

There are no program changes.

**16. Publication of results of data collection.**

The data is not used for statistical purposes and will not be published.

**17. Approval for not displaying the expiration date for OMB approval.**

No such approval is being requested.

**18. Exceptions to certification statement.**

There are no exceptions to the certification statement.

 **ATTACHMENT A**

 TITLE 23--HIGHWAYS

 CHAPTER 1--FEDERAL-AID HIGHWAYS

 SUBCHAPTER I--GENERAL PROVISIONS

Sec. 159. Revocation or suspension of drivers' licenses of

 individuals convicted of drug offenses

 (a) Withholding of Apportionments for Noncompliance.--

 (1) Beginning in fiscal year 1994.--For each fiscal year the

 Secretary shall withhold 5 percent of the amount required to be

 apportioned to any State under each of paragraphs (1), (3), and (5)

 (as in effect on the day before the date of enactment of the

 Transportation Equity Act for the 21st Century) of section 104(b) on

 the first day of each fiscal year which begins after the second

 calendar year following the effective date of this section if the

 State does not meet the requirements of paragraph (3) on such date.

 (2) Beginning in fiscal year 1996.--The Secretary shall withhold

 10 percent (including any amounts withheld under paragraph (1)) of

 the amount required to be apportioned to any State under each of

 paragraphs (1), (3), and (5) (as in effect on the day before the

 date of enactment of the Transportation Equity Act for the 21st

 Century) of section 104(b) on the first day of each fiscal year

 which begins after the fourth calendar year following the effective

 date of this section if the State does not meet the requirements of

 paragraph (3) on the first day of such fiscal year.

 (3) Requirements.--A State meets the requirements of this

 paragraph if--

 (A) the State has enacted and is enforcing a law that

 requires in all circumstances, or requires in the absence of

 compelling circumstances warranting an exception--

 (i) the revocation, or suspension for at least 6 months,

 of the driver's license of any individual who is convicted,

 after the enactment of such law, of--

 (I) any violation of the Controlled Substances Act,

 or

 (II) any drug offense; and

 (ii) a delay in the issuance or reinstatement of a

 driver's license to such an individual for at least 6 months

 after the individual applies for the issuance or

 reinstatement of a driver's license if the individual does

 not have a driver's license, or the driver's license of the

 individual is suspended, at the time the individual is so

 convicted; or

 (B) the Governor of the State--

 (i) submits to the Secretary no earlier than the

 adjournment sine die of the first regularly scheduled

 session of the State's legislature which begins after the

 effective date of this section a written certification

 stating that the Governor is opposed to the enactment or

 enforcement in the State of a law described in subparagraph

 (A), relating to the revocation, suspension, issuance, or

 reinstatement of drivers' licenses to convicted drug

 offenders; and

 (ii) submits to the Secretary a written certification

 that the legislature (including both Houses where

 applicable) has adopted a resolution expressing its

 opposition to a law described in clause (i).

 (b) Period of Availability; Effect of Compliance and

Noncompliance.--

 (1) Period of availability of withheld funds.--

 (A) Funds withheld on or before September 30, 1995.--Any

 funds withheld under subsection (a) from apportionment to any

 State on or before September 30, 1995, shall remain available

 for apportionment to such State as follows:

 (i) If such funds would have been apportioned under

 section 104(b)(5)(A) (as in effect on the day before the

 date of enactment of the Transportation Equity Act for the

 21st Century) but for this section, such funds shall remain

 available until the end of the fiscal year for which such

 funds are authorized to be appropriated.

 (ii) If such funds would have been apportioned under

 section 104(b)(5)(B) (as in effect on the day before the

 date of enactment of the Transportation Equity Act for the

 21st Century) but for this section, such funds shall remain

 available until the end of the second fiscal year following

 the fiscal year for which such funds are authorized to be

 appropriated.

 (iii) If such funds would have been apportioned under

 paragraph (1), (3), or (5) (as in effect on the day before

 the date of enactment of the Transportation Equity Act for

 the 21st Century) of section 104(b) but for this section,

 such funds shall remain available until the end of the third

 fiscal year following the fiscal year for which such funds

 are authorized to be appropriated.

 (B) Funds withheld after September 30, 1995--No funds

 withheld under this section from apportionment to any State

 after September 30, 1995, shall be available for apportionment

 to such State.

 (2) Apportionment of withheld funds after compliance.--If,

 before the last day of the period for which funds withheld under

 subsection (a) from apportionment are to remain available for

 apportionment to a State under paragraph (1), the State meets the

 requirements of subsection (a)(3), the Secretary shall, on the first

 day on which the State meets the requirements of subsection (a)(3),

 apportion to the State the funds withheld under subsection (a) that

 remain available for apportionment to the State.

 (3) Period of availability of subsequently apportioned funds.--

 Any funds apportioned pursuant to paragraph (2) shall remain

 available for expenditure as follows:

 (A) Funds which would have been originally apportioned under

 section 104(b)(5)(A) (as in effect on the day before the date of

 enactment of the Transportation Equity Act for the 21st Century)

 shall remain available until the end of the fiscal year

 succeeding the fiscal year in which such funds are apportioned

 under paragraph (2).

 (B) Funds which would have been originally apportioned under

 paragraph (1), (3), or (5)(B) (as in effect on the day before

 the date of enactment of the Transportation Equity Act for the

 21st Century) of section 104(b) shall remain available until the

 end of the third fiscal year succeeding the fiscal year in which

 such funds are so apportioned.

 Sums not obligated at the end of such period shall lapse or, in the

 case of funds apportioned under section 104(b)(5) (as in effect on

 the day before the date of enactment of the Transportation Equity

 Act for the 21st Century), shall lapse and be made available by the

 Secretary for projects in accordance with section 118(b).

 (4) Effect of noncompliance.--If, at the end of the period for

 which funds withheld under subsection (a) from apportionment are

 available for apportionment to a State under paragraph (1), the

 State does not meet the requirements of subsection (a)(3), such

 funds shall lapse or, in the case of funds withheld from

 apportionment under section 104(b)(5) (as in effect on the day

 before the date of enactment of the Transportation Equity Act for

 the 21st Century), such funds shall lapse and be made available by

 the Secretary for projects in accordance with section 118(b).

 (c) Definitions.--For purposes of this section--

 (1) Driver's license.--The term ``driver's license'' means a

 license issued by a State to any individual that authorizes the

 individual to operate a motor vehicle on highways.

 (2) Drug offense.--The term ``drug offense'' means any criminal

 offense which proscribes--

 (A) the possession, distribution, manufacture, cultivation,

 sale, transfer, or the attempt or conspiracy to possess,

 distribute, manufacture, cultivate, sell, or transfer any

 substance the possession of which is prohibited under the

 Controlled Substances Act; or

 (B) the operation of a motor vehicle under the influence of

 such a substance.

 (3) Convicted.--The term ``convicted'' includes adjudicated

 under juvenile proceedings.

(Added Pub. L. 102-143, title III, Sec. 333(a), Oct. 28, 1991, 105 Stat.

944; amended Pub. L. 102-388, title III, Sec. 327(a), Oct. 6, 1992, 106

Stat. 1547; Pub. L. 105-178, title I, Sec. 1103(l)(3)(E), June 9, 1998,

112 Stat. 126.)

 References in Text

 The date of enactment of the Transportation Equity Act for the 21st

Century, referred to in subsections. (a)(1), (2) and (b)(1)(A), (3), (4), is

the date of enactment of Pub. L. 105-178, which was approved June 9,

1998.

 The effective date of this section, referred to in subsections. (a)(1),

(2), (3)(B)(i), is Nov. 5, 1990. See section 333(e) of Pub. L. 102-143,

set out as a note below.

 The Controlled Substances Act, referred to in subsections.

(a)(3)(A)(i)(I) and (c)(2)(A), is title II of Pub. L. 91-513, Oct. 27,

1970, 84 Stat. 1242, as amended, which is classified principally to

subchapter I (Sec. 801 et seq.) of chapter 13 of Title 21, Food and

Drugs. For complete classification of this Act to the Code, see Short

Title note set out under section 801 of Title 21 and Tables.

 Amendments

 1998--Subsection. (a)(1), (2). Pub. L. 105-178, Sec. 1103(l)(3)(E)(i),

substituted ``(5) (as in effect on the day before the date of enactment

of the Transportation Equity Act for the 21st Century) of'' for ``(5)

of'' before ``section 104(b)''.

 Subsection. (b)(1)(A)(i). Pub. L. 105-178, Sec. 1103(l)(3)(E)(ii)(I),

substituted ``section 104(b)(5)(A) (as in effect on the day before the

date of enactment of the Transportation Equity Act for the 21st

Century)'' for ``section 104(b)(5)(A)''.

 Subsection. (b)(1)(A)(ii). Pub. L. 105-178, Sec. 1103(l)(3)(E)(ii)(II),

substituted ``section 104(b)(5)(B) (as in effect on the day before the

date of enactment of the Transportation Equity Act for the 21st

Century)'' for ``section 104(b)(5)(B)''.

 Subsection. (b)(1)(A)(iii). Pub. L. 105-178, Sec. 1103(l)(3)(E)(i),

substituted ``(5) (as in effect on the day before the date of enactment

of the Transportation Equity Act for the 21st Century) of'' for ``(5)

of'' before ``section 104(b)''.

 Subsection. (b)(3). Pub. L. 105-178, Sec. 1103(l)(3)(E)(ii)(IV),

substituted ``section 104(b)(5) (as in effect on the day before the date

of enactment of the Transportation Equity Act for the 21st Century)''

for ``section 104(b)(5)'' in concluding provisions.

 Subsection. (b)(3)(A). Pub. L. 105-178, Sec. 1103(l)(3)(E)(ii)(I),

substituted ``section 104(b)(5)(A) (as in effect on the day before the

date of enactment of the Transportation Equity Act for the 21st

Century)'' for ``section 104(b)(5)(A)''.

 Subsection. (b)(3)(B). Pub. L. 105-178, Sec. 1103(l)(3)(E)(ii)(III),

substituted ``(5)(B) (as in effect on the day before the date of

enactment of the Transportation Equity Act for the 21st Century)'' for

``(5)(B)''.

 Subsection. (b)(4). Pub. L. 105-178, Sec. 1103(l)(3)(E)(ii)(IV),

substituted ``section 104(b)(5) (as in effect on the day before the date

of enactment of the Transportation Equity Act for the 21st Century)''

for ``section 104(b)(5)''.

 1992--Pub. L. 102-388 amended section generally, substituting

``Beginning in fiscal year 1994'' for ``After second calendar year'' as

subsection. (a)(1) heading, ``paragraphs (1), (3), and (5)'' for

``paragraphs (1), (2), (5), and (6)'' in subsection. (a)(1) and (2),

``Beginning in fiscal year 1996'' for ``After fourth calendar year'' as

subsection. (a)(2) heading, ``paragraph (1), (3), or (5)'' for ``paragraph

(1), (2), or (6)'' in subsection. (b)(1)(A)(iii), and ``paragraph (1), (3),

or (5)(B)'' for ``paragraph (1), (2), (5)(B), or (6)'' in subsection.

(b)(3)(B).

 Effective Date of 1992 Amendment

 Section 327(b) of Pub. L. 102-388 provided that: ``The amendments

made by subsection (a) of this section [amending this section] shall

take effect November 5, 1990.''

 Effective Date

 Section 333(e) of Pub. L. 102-143 provided that: ``The amendments

made by subsection (a) of this section [enacting this section] shall

take effect November 5, 1990.''

 Study on State Compliance With Requirements for Revocation and

 Suspension of Drivers' Licenses

 Pub. L. 102-240, title I, Sec. 1094, Dec. 18, 1991, 105 Stat. 2025,

provided that:

 ``(a) Study.--The Secretary shall conduct a study of State efforts

to comply with the provisions of section 333 of the Department of

Transportation and Related Agencies Appropriations Acts, 1991 and 1992

[section 333 of Pub. L. 102-143 (1992 Act) enacted this section and

provisions set out as a note above and repealed section 333 of Pub. L.

101-516 (1991 Act) which amended section 104 of this title and enacted

provisions set out as a note thereunder], relating to revocation and

suspension of drivers' licenses.

 ``(b) Report.--Not later than December 31, 1992, the Secretary shall

transmit to Congress a report on the results of the study conducted

under this section.''

 ATTACHMENT B

 TITLE 23--HIGHWAYS

 CHAPTER I--FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 192--DRUG OFFENDER'S DRIVER'S LICENSE SUSPENSION--Table of Contents

Sec.

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192.9 Effect of noncompliance.

192.10 Procedures affecting States in noncompliance.

 Authority: 23 U.S.C. 159 and 315.

 Source: 57 FR 35999, Aug. 12, 1992, unless otherwise noted.

Re-designated at 60 FR 50100, Sept. 28, 1995.

Sec. 192.1 Scope.

 This part prescribes the requirements necessary to implement 23

U.S.C. Sec. 159, which encourages States to enact and enforce drug

offender's driver's license suspensions.

Sec. 192.2 Purpose.

 The purpose of this part is to specify the steps that States must

take in order to avoid the withholding of Federal-aid highway funds for

noncompliance with 23 U.S.C. 159.

Sec. 192.3 Definitions.

 As used in this part:

 (a) Convicted includes adjudicated under juvenile proceedings.

 (b) Driver's license means a license issued by a State to any

individual that authorizes the individual to operate a motor vehicle on

highways.

 (c) Drug offense means:

 (1) The possession, distribution, manufacture, cultivation, sale,

transfer, or the attempt or conspiracy to possess, distribute,

manufacture, cultivate, sell, or transfer any substance the possession

of which is prohibited under the Controlled Substances Act, or

 (2) The operation of a motor vehicle under the influence of such a

substance.

 (d) Substance the possession of which is prohibited under the

Controlled Substances Act or substance means a controlled or counterfeit

chemical, as those terms are defined in subsections 102 (6) and (7) of

the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21

U.S.C. 802 (6) and (7) and listed in 21 CFR 1308.11-.15.

[57 FR 35999, Aug. 12, 1992; 58 FR 62415, Nov. 26, 1993; 59 FR 39256,

Aug. 2, 1994]

Sec. 192.4 Adoption of drug offender's driver's license suspension.

 (a) The Secretary shall withhold five percent of the amount required

to be apportioned to any State under each of sections 104(b)(1),

104(b)(3), and 104(b)(5) of title 23 of the United States Code on the

first day of fiscal years 1994 and 1995 if the States does not meet the

requirements of this section on that date.

 (b) The Secretary shall withhold ten percent of the amount required

to be apportioned to any State under each of sections 104(b)(1), 104(b)(3),

and 104(b)(5) of title 23 of the United States Code on the first day of

fiscal year 1996 and any subsequent fiscal year if the State does not

meet the requirements of this section on that date.

 (c) A State meets the requirements of this section if:

 (1) The State has enacted and is enforcing a law that requires in

all circumstances, or requires in the absence of compelling

circumstances warranting an exception:

 (i) The revocation, or suspension for at least 6 months, of the

driver's license of any individual who is convicted, after the enactment

of such law, of

 (A) Any violation of the Controlled Substances Act, or

 (B) Any drug offense, and

 (ii) A delay in the issuance or reinstatement of a driver's license

to such an individual for at least 6 months after the individual

otherwise would have been eligible to have a driver's license issued or

reinstated if the individual does not have a driver's license, or the

driver's license of the individual is suspended, at the time the

individual is so convicted, or

 (2) The Governor of the State:

 (i) Submits to the Secretary no earlier than the adjournment sine

die of the first regularly scheduled session of the State's legislature

which begins after November 5, 1990, a written certification stating

that he or she is opposed to the enactment or enforcement in the State

of a law described in paragraph (c)(1) of this section relating to the

revocation, suspension, issuance, or reinstatement of driver's licenses

to convicted drug offenders; and

 (ii) Submits to the Secretary a written certification that the

legislature (including both Houses where applicable) has adopted a

resolution expressing its opposition to a law described in paragraph

(c)(1) of this section.

 (d) A State that makes exceptions for compelling circumstances must

do so in accordance with a State law, regulation, binding policy

directive or Statewide published guidelines establishing the conditions

for making such exceptions and in exceptional circumstances specific to

the offender.

Sec. 192.5 Certification requirements.

 (a) Each State shall certify to the Secretary of Transportation by

April 1, 1993 and by January 1 of each subsequent year that it meets the

requirements of 23 U.S.C. 159 and this regulation.

 (b) If the State believes it meets the requirements of 23 U.S.C. 159

and this regulation on the basis that it has enacted and is enforcing a

law that suspends or revokes the driver's license of drug offenders, the

certification shall contain:

 (1) A statement by the Governor of the State that the State has

enacted and is enforcing a Drug Offender's Driver's License Suspension

law that conforms to 23 U.S.C. 159(a)(3)(A). The certifying statement

may be worded as follows: I, (Name of Governor), Governor of the (State

or Commonwealth) of ------------, do hereby certify that the (State or

Commonwealth) of ------------, has enacted is enforcing a Drug

Offender's Driver's License Suspension law that conforms to section 23

U.S. C. 159(a)(3)(A).

 (2) Until a State has been determined to be in compliance with the

requirements of 23 U.S.C. 159 and this regulation, the certification

shall include also:

 (i) A copy of the State law, regulation, or binding policy directive

implementing or interpreting such law or regulation relating to the

suspension, revocation, issuance or reinstatement or driver's licenses

of drug offenders, and

 (ii) A statement describing the steps the State is taking to enforce

its law with regard to within State convictions, out-of-State

convictions, Federal convictions and juvenile adjudications. The

statement shall demonstrate that, upon receiving notification that a

State driver has been convicted of a within State, out-of-State or

Federal conviction or juvenile adjudication, the State is revoking,

suspending or delaying the issuance of that drug offender's driver's

license; and that, when the State convicts an individual of a drug

offense, it is notifying the appropriate State office or, if the

offender is a non-resident driver, the appropriate office in the

driver's home State. If the State is not yet making these notifications,

the State may satisfy this element by submitting a

plan describing the steps it is taking to establish notification

procedures.

 (c) If the State believes it meets the requirements of 23 U.S.C.

159(a)(3)(B) on the basis that it opposes a law that requires the

suspension, revocation or delay in issuance or reinstatement of the

driver's license of drug offenders that conforms to 23 U.S.C.

159(a)(3)(A), the certification shall contain:

 (1) A statement by the Governor of the State that he or she is

opposed to the enactment or enforcement of a law that conforms to 23

U.S.C. 159(a)(3)(A) and that the State legislature has adopted a

resolution expressing its opposition to such a law. The certifying

statement may be worded as follows: I, (Name of Governor), Governor of

the (State or Commonwealth of ------------, do hereby certify that I am

opposed to the enactment or enforcement of a law that conforms to 23

U.S.C. 159(a)(3)(A) and that the legislature of the (State or

Commonwealth) of ------------, has adopted a resolution expressing its

opposition to such a law.

 (2) Until a State has been determined to be in compliance with the

requirements of 23 U.S.C. 159(a)(3)(B) and this regulation, the

certification shall include a copy of the resolution.

 (d) The Governor each year shall submit the original and three

copies of the certification to the local FHWA Division Administrator.

The FHWA Division Administrator shall retain the original and forward

one copy each to the FHWA Regional Administrator, FHWA Chief Counsel,

and the Director of the Office of Highway Safety.

 (e) Any changes to the original certification or supplemental

information necessitated by the review of the certifications as they are

forwarded, State legislative changes or changes in State enforcement

activity (including failure to make progress in a plan previously

submitted) shall be submitted in the same manner as the original.

[57 FR 35999, Aug. 12, 1992. Re-designated and amended at 60 FR 50100,

Sept. 28, 1995]

Sec. 192.6 Period of availability of withheld funds.

 (a) Funds withheld under Sec. 1212.4 from apportionment to any State

on or before September 30, 1995, will remain available for apportionment

as follows:

 (1) If the funds would have been apportioned under 23 U.S.C.

104(b)(5)(A) but for this section, the funds will remain available until

the end of the fiscal year for which the funds are authorized to be

appropriated.

 (2) If the funds would have been apportioned under 23 U.S.C.

104(b)(5)(B) but for this section, the funds will remain available until

the end of the second fiscal year following the fiscal year for which

the funds are authorized to be appropriated.

 (3) If the funds would have been apportioned under 23 U.S.C.

104(b)(1) or 104(b)(3) but for this section, the funds will remain

available until the end of the third fiscal year following the fiscal

year for which the funds are authorized to be appropriated.

 (b) Funds withheld under Sec. 1212.4 from apportionment to any State

after September 30, 1995 will not be available for apportionment to the

State.

Sec. 192.7 Apportionment of withheld funds after compliance.

 Funds withheld under Sec. 1212.4 from apportionment, which remain

available for apportionment under Sec. 1212.6(a), will be made available

to any State that conforms to the requirements of Sec. 1212.4 before the

last day of the period of availability as defined in Sec. 1212.6(a).

[57 FR 35999, Aug. 12, 1992, as amended at 59 FR 39256, Aug. 2, 1994]

Sec. 192.8 Period of availability of subsequently apportioned funds.

 (a) Funds apportioned pursuant to Sec. 1212.7 will remain available

for expenditure as follows:

 (1) Funds originally apportioned under 23 U.S.C. 104(b)(5)(A) will

remain available until the end of the fiscal year succeeding the fiscal

year in which the funds are apportioned.

 (2) Funds originally apportioned under 23 U.S.C. 104(b)(1),

104(b)(2), 104(b)(5)(B), or 104(b)(6) will remain available until the

end of the third fiscal year succeeding the fiscal year in which the

funds are apportioned.

 (b) Sums apportioned to a State pursuant to Sec. 1212.7 and not

obligated at the end of the periods defined in Sec. 1212.8(a), shall

lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5),

shall lapse and be made available by the Secretary for projects in

accordance with 23 U.S.C. 118(b).

Sec. 192.9 Effect of noncompliance.

 If a State has not met the requirements of 23 U.S.C. 159(a)(3) at

the end of the period for which funds withheld under Sec. 1212.4 are

available for apportionment to a State under Sec. 1212.6, then such

funds shall lapse or, in the case of funds withheld from apportionment

under 23 U.S.C. 104(b)(5), shall lapse and be made available by the

Secretary for projects in accordance with 23 U.S.C.118(b).

Sec. 192.10 Procedures affecting States in noncompliance.

 (a) Each fiscal year, each State determined to be in noncompliance

with 23 U.S.C. 159, based on FHWA's preliminary review of its statutes,

will be advised of the funds expected to be withheld under Sec. 1212.4

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 FHWA determines that the State is not in compliance with 23

U.S.C. 159 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 Federal Highway Administration, 400 Seventh

Street, SW., Washington, DC 20590.

 (c) Each fiscal year, each State determined not to be in compliance

with 23 U.S.C. 159(a)(3), based on FHWA's final determination, will

receive notice of the funds being withheld under Sec. 1212.4 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.

[57 FR 35999, Aug. 12, 1992. Re-designated and amended at 60 FR 50100,

Sept. 28, 1995].