

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.

192.1 Scope.

192.2 Purpose.

192.3 Definitions.

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

192.5 Certification requirements.

192.6 Period of availability of withheld funds.

192.7 Apportionment of withheld funds after compliance.

192.8 Period of availability of subsequently apportioned funds.

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].